

Co-operatives Amendment Bill 2015

Contents

1.	Short title		2
2.	Commencement		2
3.	Act amended		2
4.	Section 4 amended		2
5.	Sections 5A and 5B inserted		5
	5A. Corresponding co-operatives laws	5	
	5B. Involvement in contraventions	5	
6.	Section 10 amended		6
7.	Section 11 amended		6
8.	Part 2 Division 1 heading replaced		8
	Division 1 — Introductory		
9.	Section 13 amended		8
10.	Section 14 amended		8
11.	Section 15A inserted		9
	15A. Provisions regarding Registrar's approvals about numbers	9	
12.	Section 15 amended		10
13.	Section 16 amended		10
14.	Section 17 amended		12
15.	Section 18 amended		13
16.	Section 22 amended		14
17.	Section 23 amended		15
18.	Section 24 amended		15
19.	Section 28 amended		16
20.	Section 33 amended		16
21.	Section 65 amended		17
22.	Section 68 amended		17
23.	Section 69A inserted		18
	69A. False copies of documents	18	
24.	Section 75 amended		19
25.	Section 76 amended		20
26.	Section 84 amended		20

Contents

27.	Section 86 amended	20
28.	Part 4 Division 6A inserted	20
	Division 6A — Inspection of books	
	90A. Order for inspection of books of co-operative	20
	90B. Ancillary orders	22
	90C. Disclosure of information acquired in inspection	22
	90D. Co-operative may allow member to inspect books	22
29.	Section 98 amended	23
30.	Section 103 amended	23
31.	Section 126 amended	24
32.	Section 131 amended	25
33.	Section 132 amended	25
34.	Section 133 amended	26
35.	Part 7 Division 2 heading replaced	26
	Division 2 — Disclosure requirements for distributing co-operatives	
36.	Sections 137A and 137B inserted	26
	137A. Registration of current disclosure statement	26
	137B. Restrictions on advertising and publicity: shares	27
37.	Sections 137 and 138 replaced	28
	137. Disclosure to intending shareholders in distributing co-operative	28
38.	Section 139 amended	29
39.	Part 7 Division 3A inserted	30
	Division 3A — Compensation for defective disclosure	
	140A. Contravention leading to right to recover loss or damage	30
	140B. Right to recover for loss or damage resulting from contravention	31
	140C. Due diligence defence	32
	140D. General defences	33
40.	Section 141 deleted	33
41.	Section 146 amended	33
42.	Part 7 Division 4A inserted	34
	Division 4A — Provisions applying to particular share subscriptions	
	150A. Term used: disclosure statement	34
	150B. Application of this Division	34
	150C. Application money to be held on trust	34

	150D. Minimum subscription condition must be fulfilled before issue or transfer	35	
	150E. Repayment of money if disclosure statement condition not met	36	
43.	Part 7 Division 4 heading replaced		37
	Division 4 — Disclosure and registration of interests in shares		
44.	Section 151 amended		37
45.	Section 163 amended		37
46.	Section 169 amended		38
47.	Section 171 amended		38
48.	Section 180 amended		38
49.	Section 181 amended		39
50.	Section 185 amended		39
51.	Section 187 amended		39
52.	Section 190 amended		40
53.	Section 194 amended		40
54.	Section 196 amended		40
55.	Sections 197A to 197D inserted		41
	197A. Auditor entitled to notice and other communications	41	
	197B. Auditor's right to be heard at general meetings	41	
	197C. Questions and comments by members on co-operative management at annual general meeting	42	
	197D. Questions by members of auditors at annual general meeting	42	
56.	Section 197 amended		43
57.	Section 198 amended		44
58.	Section 200 deleted		44
59.	Section 205 amended		44
60.	Section 206A inserted		45
	206A. Removal from office by resolution	45	
61.	Part 9 Division 2A inserted		47
	Division 2A — Disqualification from managing co-operatives		
	206B. Offence for disqualified person to manage co-operative	47	
	206C. Automatic disqualification for offences	48	
	206D. Extension of period of automatic disqualification	49	
	206E. Court's power of disqualification: contravention of civil penalty provision	49	

Contents

	206F.	Court's power of disqualification: insolvency and non-payment of debts	50
	206G.	Court's power of disqualification: repeated contraventions of law	51
	206H.	Registrar's power of disqualification	52
	206I.	Registrar's power to give permission	53
	206J.	Court's power to grant leave	54
62.		Section 207A inserted	55
	207A.	Responsibility of secretary	55
63.		Sections 207 to 212 replaced	55
	207.	Care and diligence: civil obligations	55
	208.	Good faith: civil obligations	56
	209.	Use of position: civil obligations	57
	210.	Use of information: civil obligations	57
	211.	Good faith, use of position and use of information: criminal offences	57
	212.	Other duties and liabilities not affected	59
64.		Section 213 amended	59
65.		Section 214 amended	59
66.		Section 215 amended	60
67.		Section 216 amended	60
68.		Section 217 amended	60
69.		Section 218 amended	60
70.		Section 220 amended	61
71.		Part 9 Division 6 deleted	61
72.		Part 9 Division 7 heading replaced	61
		Division 7 — Registers, books and returns	
73.		Section 230 amended	61
74.		Section 232 amended	62
75.		Section 233 amended	63
76.		Section 234 amended	63
77.		Section 235 deleted	64
78.		Section 236 amended	64
79.		Section 237 amended	64
80.		Section 238 amended	64
81.		Section 240 replaced	65
	240.	Name to appear on business documents etc.	65
82.		Section 241 amended	66
83.		Section 242 amended	66
84.		Section 243 amended	66
85.		Part 10A inserted	67

Part 10A — Financial reports and audit	
Division 1 — Preliminary	
244A.	Terms used 67
244B.	General modifications to applied provisions of the Corporations Act Chapter 2M 68
Division 2 — Financial records	
244C.	Obligation to keep financial records 69
244D.	Language requirements 69
244E.	Physical format 70
244F.	Place where records are kept 70
244G.	Director access 71
Division 3 — Annual financial reports and directors' reports generally	
244H.	Who has to prepare annual financial reports and directors' reports 72
244I.	Small co-operative: direction by members 72
244J.	Small co-operative: direction by Registrar 74
Division 4 — Annual financial reports	
244K.	Contents of annual financial report 75
244L.	Compliance with accounting standards and regulations 76
244M.	True and fair view 77
244N.	Audit of financial report 77
244O.	Application of Corporations Act to co-operatives with quoted securities: declaration about financial statements by certain officers 78
Division 5 — Annual directors' reports	
244P.	Annual directors' report 78
244Q.	Annual directors' report: general information 80
244R.	Annual directors' report: specific information 81
244S.	Application of Corporations Act to co-operatives with quoted securities: additional information to be provided in annual directors' report 86
Division 6 — Half-year financial report and directors' report	
244T.	Application of Corporations Act to co-operatives that are disclosing entities: half-year financial reports and directors' reports 86
Division 7 — Audit and auditor's report	
244U.	Application of Corporations Act: audit and auditor's report 87

Division 8 — Annual financial reporting to members		
244V.	Annual financial reporting to members	87
244W.	Deadline for reporting to members	90
244X.	Member's choices for annual financial information	91
244Y.	Consideration of reports at annual general meeting	92
244ZA.	Application of Corporations Act: additional reporting by debenture issuers	92
Division 9 — Lodging reports and returns with Registrar		
244ZB.	Lodgment of annual returns with the Registrar	93
244ZC.	Lodgment of financial reports etc. with Registrar	94
244ZD.	Lodgment of half-year reports with the Registrar	94
244ZE.	Registrar's power to require lodgment	95
244ZF.	Relodgment if financial report or directors' reports amended after lodgment	95
Division 10 — Special provisions about consolidated financial statements		
244ZG.	Application of Corporations Act: special provisions about consolidated financial statements	96
Division 11 — Financial years and half years		
244ZH.	Financial year	96
244ZI.	Half-year	97
Division 12 — Auditors		
Subdivision 1 — General provisions relating to auditors		
244ZJ.	Application of Corporations Act: auditors	97
Subdivision 2 — Appointment of auditors		
244ZK.	Appointment of auditor of small co-operative	98
244ZL.	Initial appointment of auditor of a large co-operative	98
244ZM.	Annual appointment at annual general meeting of auditor of large co-operative to fill vacancy	99
244ZN.	Appointment by directors or annual general meeting of auditor of large co-operative to fill casual vacancy	103
244ZO.	Appointment to replace auditor removed from office	104
244ZP.	Registrar to be notified of appointment of auditor	105

244ZQ.	Registrar may appoint auditor of large co-operative if auditor removed but not replaced	105
244ZR.	Registrar's general power to appoint auditor of large co-operative	106
244ZS.	Restrictions on Registrar's powers to appoint auditor of large co-operative	107
244ZT.	Remaining auditors may act during vacancy	107
244ZU.	Nomination of auditor	108
244ZV.	Auditor's consent to appointment	109
Subdivision 3 — Removal and resignation of auditors		
244ZW.	Removal and resignation of auditors	110
244ZX.	Effect of winding-up on office of auditor	113
Subdivision 4 — Auditors' fees and expenses		
244ZY.	Fees and expenses of auditors	113
Subdivision 5 — Protection of auditors		
244ZZA.	Protection of auditors	113
Division 13 — Accounting and auditing standards		
244ZZB.	Accounting and auditing standards	114
244ZZC.	Interpretation of accounting and auditing standards	115
Division 14 — Exemptions and modifications		
244ZZD.	Exemptions: individual co-operatives	115
244ZZE.	Exemptions: classes of co-operatives	116
244ZZF.	Exemptions: criteria for exemptions for individual co-operatives or classes of co-operatives	117
244ZZG.	Exemptions: non-auditor members and former members of audit firms, and former employees of audit companies	118
244ZZH.	Exemptions: classes of non-auditor members	119
244ZZI.	Exemptions: criteria for exemptions for non-auditor members etc.	120
244ZZJ.	Exemptions from regulations	120
244ZZK.	Registrar's power to modify the operation of section 324DA of Corporations Act	121
244ZZL.	Auditor to notify co-operative of declaration	123
244ZZM.	Amendment, suspension or revocation of exemption	124
Division 15 — Miscellaneous		
244ZZN.	Disclosure by directors	124
244ZZO.	Contravention by directors of a provision of this Part	124
86.	Section 250 amended	125

Contents

87.	Section 251 deleted	125
88.	Section 252 amended	126
89.	Sections 253A and 253B inserted	127
	253A. Restrictions on advertising and publicity	127
	253B. Application money to be held on trust	127
90.	Section 254 amended	128
91.	Section 255 amended	128
92.	Section 257 amended	129
93.	Section 261 amended	129
94.	Section 271 amended	129
95.	Section 273 amended	130
96.	Section 284 amended	132
97.	Section 288 amended	132
98.	Section 289 amended	133
99.	Section 290 replaced	134
	290. Requirements to be satisfied before offer can be made	134
100.	Section 291 amended	134
101.	Section 293 amended	134
102.	Section 296 amended	135
103.	Section 300 amended	135
104.	Section 306 amended	135
105.	Section 309 amended	136
106.	Section 315 amended	137
107.	Section 316 replaced	137
	316. Application of Corporations Act to winding-up and deregistration	137
108.	Section 317 amended	139
109.	Section 322 amended	139
110.	Part 12 Division 4 heading replaced	140
	Division 4 — Administration	
111.	Part 12 Division 4 Subdivision 1 inserted	140
	Subdivision 1 — Introductory	
	323A. Operation of this Division	140
112.	Part 12 Division 4 Subdivision 2 heading inserted	140
	Subdivision 2 — Administration under Corporations Act	
113.	Section 323 amended	140
114.	Section 324A inserted	141
	324A. Appointment of administrator by Registrar in case of insolvency	141
115.	Part 12 Division 5 heading replaced	142

	Subdivision 3 — Administration: alternative procedure	
116.	Section 324B inserted	142
	324B. Operation of this Division	142
117.	Section 325 amended	142
118.	Section 326 amended	143
119.	Section 336 amended	143
120.	Section 337 amended	143
121.	Section 344 amended	145
122.	Section 346 amended	145
123.	Section 359 amended	145
124.	Part 14 heading replaced	146
	Part 14 — Participating co-operatives	
125.	Section 365 deleted	146
126.	Section 366 amended	146
127.	Section 367 deleted	146
128.	Section 368 amended	147
129.	Part 14 Division 2 heading replaced	147
	Division 2 — Participating co-operatives carrying on business in this State	
130.	Section 370 amended	148
131.	Sections 372 to 374 replaced	148
	372. Existing foreign co-operatives	148
132.	Section 376 amended	149
133.	Section 377 amended	149
134.	Sections 378 and 379 replaced	150
	378. Appeal against Registrar's decision under s. 377(5)	150
	379. Application of Act and regulations to participating co-operatives	151
135.	Section 380 replaced	151
	380A. False copies of rules of participating co-operative	151
	380B. False copies of documents of participating co-operatives	152
	380C. Restrictions on advertising and publicity: shares in participating co-operatives	153
	380D. Restrictions on advertising and publicity: debentures or CCUs in participating co-operatives	154
	380E. Registrar's directions about participating co-operative obtaining financial accommodation	155

Contents

	380.	Name and place of origin to appear on business and other documents of participating co-operative	156	
136.		Section 381 amended		157
137.		Sections 382 and 383 deleted		158
138.		Section 384 amended		158
139.		Section 385A inserted		158
	385A.	Registrar may exempt participating co-operatives	158	
140.		Section 386 amended		159
141.		Section 387 amended		159
142.		Section 388 amended		160
143.		Part 14 Division 5 heading replaced		160
		Division 5 — Mergers and transfers of engagements affecting participating co-operatives		
144.		Section 389 amended		161
145.		Section 390 amended		161
146.		Section 391 amended		161
147.		Section 392 amended		162
148.		Section 393 amended		163
149.		Section 394 amended		163
150.		Section 395 amended		163
151.		Section 396 amended		164
152.		Part 15 Division 1A inserted		164
		Division 1A — Examining a person about a co-operative		
	398A.	Application of Corporations Act: court-directed examinations	164	
153.		Part 15 Division 1 heading replaced		164
		Division 1 — Supervision and inspection		
154.		Section 398 amended		164
155.		Section 399 amended		165
156.		Section 400 amended		165
157.		Section 412 amended		166
158.		Section 415 amended		166
159.		Section 419 amended		167
160.		Section 420 amended		167
161.		Section 421 amended		167
162.		Section 422 amended		167
163.		Section 423 amended		167
164.		Section 427 amended		168
165.		Section 431 amended		168

166.	Section 432 amended	168
167.	Section 438 replaced	168
	438. Falsification of books	168
168.	Section 449 amended	170
169.	Section 452 amended	170
170.	Section 454 amended	170
171.	Part 16 Division 4 deleted	171
172.	Part 17 heading replaced	171
	Part 17 — Legal proceedings and other matters	
	Division 1 — Offences, enforcement and remedies	
173.	Section 474 deleted	171
174.	Section 476 amended	171
175.	Section 478 amended	172
176.	Section 480A inserted	172
	480A. Order against person concerned with co-operative	172
177.	Section 481 replaced	174
	481A. Undertakings	174
	481B. Offence of contravention of undertaking	175
	481C. Enforcement order on application with consent of person giving undertaking	175
	481D. Enforcement orders after contravention of undertaking	175
	481E. Copy of undertaking	177
	481F. Registration of undertakings	177
	481G. Double jeopardy	178
	481H. Time limit for starting proceedings for offence	178
	481I. Authorisation to start proceedings for offence	179
	481. Proceedings for recovery of fine or penalty imposed by rules	179
178.	Part 17 Divisions 2 and 3 inserted	179
	Division 2 — Civil consequences of contravening civil penalty provisions	
	482A. Terms used	179
	482B. Declarations of contravention	180
	482C. Declaration of contravention is conclusive evidence	181
	482D. Pecuniary penalty orders	181
	482E. Compensation orders	182
	482F. Who may apply for a declaration or order	183
	482G. Time limit for application for a declaration or order	183

Contents

482H.	Civil evidence and procedural rules for declarations and civil penalty orders	183
482I.	Civil proceedings after criminal proceedings	184
482J.	Criminal proceedings during civil proceedings	184
482K.	Criminal proceedings after civil proceedings	184
482L.	Evidence given in proceedings for penalty not admissible in criminal proceedings	185
482M.	Relief from liability for contravention of civil penalty provision	185
	Division 3 — Miscellaneous	
482N.	Power to grant relief	187
482O.	Irregularities	189
482P.	Civil proceedings not to be stayed	192
482Q.	Standard of proof	192
179.	Section 482 amended	193
180.	Section 483 amended	193
181.	Section 484 amended	195
182.	Section 485 amended	195
183.	Section 487 replaced	196
	487. Disclosure statements	196
184.	Section 489A inserted	196
	489A. Approvals to be in writing	196
185.	Schedule 3 clause 1 amended	197
186.	Schedule 3 clause 32 amended	197
187.	Schedule 3 clause 39 amended	197
188.	Schedule 3 clause 41 amended	197
189.	Schedule 4 clause 1 amended	198
190.	Schedule 4 clause 20 amended	198
191.	Schedule 4 clause 22 amended	199
192.	Schedule 4 clause 23 amended	199
193.	Schedule 5 deleted	199
194.	Schedule 6 amended	199
195.	Schedule 6 Division 1 inserted	200
	Division 1 — Modifications to Corporations Act provisions applying under section 316	
	1A. Modifications to winding-up and deregistration provisions: co-operatives	200
196.	Schedule 6 Division 2 heading inserted	202
	Division 2 — Modifications to Corporations Act provisions applying under section 387	
197.	Schedule 6 clause 1 amended	203

198.	Various references to “co-operative capital unit” amended	204
199.	Various references to “foreign co-operative” amended	205
200.	Various penalties amended	206

Western Australia

LEGISLATIVE COUNCIL

Co-operatives Amendment Bill 2015

A Bill for

An Act to amend the *Co-operatives Act 2009*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Co-operatives Amendment Act 2015*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Co-operatives Act 2009*.

11 **4. Section 4 amended**

12 (1) In section 4(1) delete the definitions of:

13 *co-operative capital unit*

14 *foreign co-operative*

15 *officer*

16 *records*

17 (2) In section 4(1) insert in alphabetical order:

18 **books** includes —

19 (a) a register; and

20 (b) minutes; and

21 (c) any other record of information; and

22 (d) financial reports or financial records, however
23 compiled, recorded or stored; and

24 (e) a document;

25 **carry on business**, in relation to a co-operative or a
26 participating co-operative, has the same meaning as it
27

- 1 has in the Corporations Act Part 1.2 Division 3 in
2 relation to a company;
- 3 **CCU** means a co-operative capital unit as defined in
4 section 257(1);
- 5 **corresponding co-operatives law** means a law of
6 another jurisdiction declared under section 5A to be a
7 corresponding co-operatives law;
- 8 **department** means the department of the Public Service
9 principally assisting the Minister in the administration
10 of this Act;
- 11 **director**, of a co-operative, includes —
- 12 (a) a person who occupies or acts in the position of
13 a director or member of the board of a
14 co-operative, whether or not the person is
15 called a director and whether or not the person
16 is validly appointed or properly authorised to
17 act in the position; and
- 18 (b) a person under whose directions or instructions
19 the directors or members of the board of
20 directors of the co-operative are accustomed to
21 act;
- 22 **financial year** has the meaning given in
23 section 244ZH;
- 24 **half-year** has the meaning given in section 244ZI;
- 25 **involved**, in a contravention, has the meaning given in
26 section 5B;
- 27 **jurisdiction** means a State or Territory;
- 28 **large co-operative** means a co-operative that is not a
29 small co-operative;
- 30 **legal practitioner** means an Australian legal
31 practitioner within the meaning of that term in the
32 *Legal Profession Act 2008* section 3;

s. 4

- 1 *officer*, of a co-operative or participating co-operative,
2 means —
- 3 (a) a director or secretary of the co-operative; or
- 4 (b) a person —
- 5 (i) who makes, or participates in making,
6 decisions that affect the whole, or a
7 substantial part, of the business of the
8 co-operative; or
- 9 (ii) who has the capacity to affect
10 significantly the co-operative's financial
11 standing; or
- 12 (iii) in accordance with whose instructions
13 or wishes the directors of the
14 co-operative are accustomed to act
15 (excluding advice given by the person in
16 the proper performance of functions
17 attaching to the person's professional
18 capacity or their business relationship
19 with the directors or the co-operative);
- 20 or
- 21 (c) a receiver, or receiver and manager, of property
22 of the co-operative; or
- 23 (d) an administrator of the co-operative; or
- 24 (e) an administrator of a deed of arrangement
25 executed by the co-operative; or
- 26 (f) a liquidator of the co-operative; or
- 27 (g) a trustee or other person administering a
28 compromise or arrangement made between the
29 co-operative and someone else;
- 30 *participating co-operative* means a body that is
31 registered and incorporated under, and is subject to, a
32 corresponding co-operatives law;

- 1 *participating jurisdiction* means a jurisdiction in which
2 a corresponding co-operatives law is in force;
3 *participating Registrar* means a person exercising the
4 functions of a Registrar under a corresponding
5 co-operatives law;
6 *quoted security* means a security that is quoted on a
7 prescribed financial market (as defined in the
8 Corporations Act section 9);
9 *small co-operative* means a co-operative of a class or
10 description prescribed by the regulations;
11

12 **5. Sections 5A and 5B inserted**

13 At the end of Part 1 Division 1 insert:

14
15 **5A. Corresponding co-operatives laws**

16 The regulations may declare a law of another
17 jurisdiction that substantially corresponds to this Act to
18 be a corresponding co-operatives law for the purposes
19 of this Act.

20 **5B. Involvement in contraventions**

21 For the purposes of this Act, a person is involved in a
22 contravention if, and only if, the person —

- 23 (a) has aided, abetted, counselled or procured the
24 contravention; or
25 (b) has induced, whether by threats or promises or
26 otherwise, the contravention; or
27 (c) has been in any way, by act or omission,
28 directly or indirectly, knowingly concerned in,
29 or party to, the contravention; or

s. 6

1 (d) has conspired with others to effect the
2 contravention.
3

4 **6. Section 10 amended**

5 In section 10(1) after “co-operatives” insert:

6

7 or participating co-operatives
8

9 **7. Section 11 amended**

10 In section 11(1):

11 (a) before paragraph (a) insert:

12

13 (aa) a reference in the applied provisions to a
14 corporation, company or public company is to
15 be read as a reference to a co-operative;

16 (ab) a reference in the applied provisions to ASIC is
17 to be read as a reference to the Registrar;
18

19 (b) after paragraph (d) insert:

20

21 (ea) a reference in the applied provisions to a
22 special resolution is to be read as a reference to
23 a special resolution referred to in section 177 of
24 this Act;

25 (eb) a reference in the applied provisions to
26 shareholders is to be read as a reference to
27 members;

28 (ec) a reference in the applied provisions (including
29 the Corporations Act section 311) to “a
30 contravention of this Act” is to be read as
31 including a reference to a contravention of this
32 Act;

- 1 (ed) despite paragraph (aa), a reference in the
2 applied provisions to a company that is the
3 auditor of a company is to be read as a
4 reference to a company that is the auditor of a
5 co-operative;
- 6 (ee) a statement in the applied provisions that an
7 offence based on a particular provision is an
8 offence of strict liability is to be read as a
9 statement that, despite *The Criminal Code*
10 section 23B(2), it is immaterial for the purposes
11 of that provision that any event occurred by
12 accident;
- 13 (ef) a reference in the applied provisions to
14 “prescribed” is to be read as a reference to
15 “approved by the Registrar” and, without
16 limitation, a reference to a prescribed form is to
17 be read as a reference to a form approved by
18 the Registrar;
- 19 (eg) a reference in the applied provisions to
20 regulations is to be read as a reference to
21 regulations made under this Act;
- 22 (eh) the applied provisions are to be read as if all
23 notes were deleted;
- 24
- 25 (c) in paragraph (e) after “co-operatives” (each occurrence)
26 insert:
27
28 or participating co-operatives
29

s. 8

1 **8. Part 2 Division 1 heading replaced**

2 Delete the heading to Part 2 Division 1 and insert:

3

4 **Division 1 — Introductory**

5

6 **9. Section 13 amended**

7 (1) In section 13(3)(b)(i) delete “prescribed by the regulations,” and
8 insert:

9

10 approved by the Registrar,

11

12 (2) After section 13(3) insert:

13

14 (4) An approval under subsection (3)(b)(i) may be given in
15 relation to a particular co-operative or class of
16 co-operatives.

17

18 **10. Section 14 amended**

19 (1) In section 14(3)(b)(i) delete “prescribed by the regulations,” and
20 insert:

21

22 approved by the Registrar,

23

24 (2) After section 14(3) insert:

25

26 (4) An approval under subsection (3)(b)(i) may be given in
27 relation to a particular co-operative or class of
28 co-operatives.

29

1 **11. Section 15A inserted**

2 At the end of Part 2 Division 1 insert:

3

4 **15A. Provisions regarding Registrar's approvals about**
5 **numbers**

- 6 (1) The Registrar may give one composite approval that
7 operates as more than one of the following —
- 8 (a) an approval concerning the number of active
9 members of a co-operative required under
10 section 13(3)(b)(i) or 14(3)(b)(i);
 - 11 (b) an approval concerning the number of persons
12 required to hold the formation meeting of a
13 co-operative under section 15(3)(b);
 - 14 (c) an approval concerning the number of members
15 required to sign the application for registration
16 of a proposed co-operative under
17 section 18(1)(c)(ii);
 - 18 (d) an approval concerning the minimum number
19 of members for a co-operative to continue to
20 carry on business under section 65(3)(b).
- 21 (2) A composite approval may be given in relation to —
- 22 (a) a particular co-operative or proposed
23 co-operative; or
 - 24 (b) a particular class of co-operatives or proposed
25 co-operatives; or
 - 26 (c) all co-operatives or proposed co-operatives.
- 27 (3) This section does not limit the power of the Registrar
28 to give separate approvals under any of the relevant
29 sections.
30

s. 12

1 **12. Section 15 amended**

2 (1) Delete section 15(2)(b) and insert:

3

4 (b) a disclosure statement approved under
5 section 16 must be presented to the meeting in
6 the case of —

7 (i) a proposed distributing co-operative; or

8 (ii) a proposed non-distributing
9 co-operative that is the subject of a
10 direction under section 16(2B);

11 and

12

13 (2) In section 15(3)(b) delete “prescribed by the regulations, not
14 less than the prescribed number” and insert:

15

16 approved by the Registrar, not less than the approved number

17

18 **13. Section 16 amended**

19 (1) After section 16(1) insert:

20

21 (2A) If the Registrar so directs under subsection (2B), a draft
22 disclosure statement of a proposed non-distributing
23 co-operative must be submitted to the Registrar by the
24 time specified in the direction.

25 (2B) The Registrar may by written notice direct that —

26 (a) a draft disclosure statement of a proposed
27 non-distributing co-operative must be
28 submitted to the Registrar by the time specified
29 in the direction, being a time before the
30 formation meeting is due to be held; and

1 (b) a disclosure statement approved under this
2 section must be presented to the formation
3 meeting for the co-operative.
4

5 (2) In section 16(2):

6 (a) delete “The draft” and insert:

7

8 A draft

9

10 (b) after “subsection (1)” insert:

11

12 or (2A)

13

14 (3) In section 16(3) delete “The disclosure statement” and insert:

15

16 A draft disclosure statement of a proposed distributing
17 co-operative submitted under subsection (1)

18

19 (4) After section 16(3) insert:

20

21 (4A) A draft disclosure statement of a proposed
22 non-distributing co-operative submitted under
23 subsection (2A) must contain the information that the
24 Registrar directs to be included.
25

26 (5) In section 16(4) delete “The disclosure statement” and insert:

27

28 A draft disclosure statement submitted under subsection (1) or
29 (2A)

30

s. 14

- 1 (6) In section 16(5) delete “The Registrar may —” and insert:
2
- 3 The Registrar may, in respect of a draft disclosure statement
4 submitted under subsection (1) or (2A) —
5
- 6 (7) In section 16(6) and (7) after “disclosure statement” insert:
7
- 8 submitted under subsection (1) or (2A)
9
- 10 (8) In section 16(8) delete “the disclosure statement as submitted to
11 the Registrar” and insert:
12
- 13 a disclosure statement as submitted to the Registrar under
14 subsection (1) or (2A)
15
- 16 (9) After section 16(8) insert:
17
- 18 (9) If the Registrar approves an amended or different
19 disclosure statement, or refuses to approve a disclosure
20 statement, the Registrar must give the person who
21 submitted the draft statement written notice of the
22 reasons for doing so.
23

24 **14. Section 17 amended**

- 25 (1) In section 17(4):
26 (a) in paragraph (c) delete “rules.” and insert:
27 rules; or
28
29

- 1 (b) after paragraph (c) insert:
2
3 (d) require the person submitting the draft rules to
4 give the Registrar any additional information
5 the Registrar reasonably requires, and then act
6 under paragraph (a), (b) or (c).
7

8 (2) After section 17(6) insert:
9

- 10 (7) If the Registrar approves different rules to those
11 submitted, or refuses to approve proposed rules, the
12 Registrar must give the person who submitted the
13 proposed rules notice of the reasons for doing so.
14

15 **15. Section 18 amended**

16 In section 18(1):

- 17 (a) in paragraph (c)(ii) delete “prescribed under a
18 regulation, at least the prescribed number” and insert:
19
20 approved by the Registrar, at least the approved number
21
22 (b) in paragraph (d)(ii) delete “proposed distributing
23 co-operative,” and insert:
24
25 proposed distributing co-operative, or a proposed
26 non-distributing co-operative that is the subject of a
27 direction under section 16(2B) —
28

- 1 **16. Section 22 amended**
- 2 (1) In section 22(1):
- 3 (a) delete “special resolution in accordance with its
4 constitution” and insert:
5
6 resolution
7
- 8 (b) in paragraph (b) delete “Act.” and insert:
9
10 Act; and
11
- 12 (c) after paragraph (b) insert:
13
- 14 (c) the proposed rules of the proposed co-operative
15 approved under section 17, including active
16 membership provisions in accordance with
17 Part 6.
18
- 19 (2) Delete section 22(2) to (4) and insert:
20
- 21 (2) At the meeting to pass the resolution, a disclosure
22 statement approved under section 16 must be presented
23 to the meeting in the case of —
- 24 (a) a proposed distributing co-operative; or
25 (b) a proposed non-distributing co-operative that is
26 the subject of a direction under section 16(2B).
- 27 (3) A resolution under this section must have been passed
28 by a two-thirds majority of eligible members present at
29 the meeting.
30
- 31 Note: The heading to amended section 22 is to read:
32 **Formation meeting**

1 **17. Section 23 amended**

2 In section 23(1):

3 (a) in paragraph (c)(iv) delete “22(2) by special” and insert:

4

5 22(1) by

6

7 (b) in paragraph (c)(v) delete “proposed distributing
8 co-operative,” and insert:

9

10 proposed distributing co-operative, or a proposed
11 non-distributing co-operative that is the subject of a
12 direction under section 16(2B) —

13

14 (c) delete paragraph (c)(viii) and insert:

15

16 (viii) a statement setting out the connection
17 that the proposed co-operative would
18 have to this State; and

19 (ix) a statement of the address of the
20 co-operative’s registered office or
21 proposed registered office; and

22 (x) any other particulars that the Registrar
23 may require.

24

25 (2) Delete section 23(2).

26 **18. Section 24 amended**

27 In section 24(2):

28 (a) in paragraph (c) delete “co-operative.” and insert:

29

30 co-operative;

31

s. 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(b) after paragraph (c) insert:

(d) the proposed co-operative must have a sufficient connection with this State.

19. Section 28 amended

(1) After section 28(2) insert:

(3A) An alteration of the rules for the conversion of a non-distributing co-operative to a distributing co-operative does not have effect without the prior approval of the Registrar under section 103.

(2) After section 28(3) insert:

(4) The Registrar may, by order published in the *Gazette*, exempt a co-operative or class of co-operatives from the requirements of subsection (3).

(5) An exemption may be granted unconditionally or subject to conditions.

20. Section 33 amended

At the end of section 33(1) insert:

Penalty for this subsection: a fine of \$6 000.

1 **21. Section 65 amended**

2 In section 65(3)(b) delete “prescribed by the regulations, the
3 prescribed” and insert:

4
5 approved by the Registrar, the approved
6

7 **22. Section 68 amended**

8 (1) In section 68(1):

9 (a) delete “written notice to each person intending to
10 become a member of the co-operative and eligible to do
11 so that the person may request to either inspect at the
12 co-operative’s nearest office, or be sent —” and insert:

13
14 each person intending or applying to become a member
15 of the co-operative and eligible to do so —
16

17 (b) delete paragraph (c) and insert:

18
19 (c) a copy of the most recent financial information
20 reported to members of the co-operative under
21 Part 10A.
22

23 (2) After section 68(1) insert:

24
25 (2A) The board of a co-operative may comply with
26 subsection (1) in relation to a person by giving the
27 person a notice stating any or all of the following —

28 (a) that the person may request to inspect the
29 documents referred to in subsection (1) at an
30 office of the co-operative nominated by the
31 person;

s. 23

- 1 (b) that the person may request to be sent an
2 electronic copy of the documents referred to in
3 subsection (1) by an electronic means
4 nominated by the person;
- 5 (c) that the documents referred to in subsection (1)
6 are available on a website and specifying the
7 direct address on the website where the
8 documents may be accessed.
- 9

10 (3) In section 68(2) delete “(1),” and insert:

11

12 (2A)(a) or (b),

13

14 **23. Section 69A inserted**

15 After section 68 insert:

16

17 **69A. False copies of documents**

- 18 (1) A person who, in purported compliance with
19 section 68 —
- 20 (a) gives a person intending or applying to become
21 a member of a co-operative a document as a
22 copy of —
- 23 (i) a special resolution of the co-operative;
24 or
- 25 (ii) the most recent financial information
26 reported to members of the co-operative
27 under Part 10A;
- 28 and
- 29 (b) knows, or ought to know that, in a material
30 respect, it is not a true copy of the resolution or
31 information; and

1 (c) does not indicate to that person that it is not a
2 true copy,

3 is guilty of an offence.

4 Penalty for this subsection: a fine of \$1 000.

5 (2) A person who, in purported compliance with
6 section 68 —

7 (a) makes available for inspection by a person
8 intending or applying to become a member of a
9 co-operative a document as a copy of —

10 (i) a special resolution of the co-operative;
11 or

12 (ii) the most recent financial information
13 reported to members of the co-operative
14 under Part 10A;

15 and

16 (b) knows, or ought to know that, in a material
17 respect, it is not a true copy of the resolution or
18 information; and

19 (c) does not indicate to that person that it is not a
20 true copy,

21 is guilty of an offence.

22 Penalty for this subsection: a fine of \$1 000.

23
24 **24. Section 75 amended**

25 In section 75 delete “sections 76 and 159,” and insert:

26
27 sections 76, 158(2) and 159,
28

s. 25

1 **25. Section 76 amended**

2 In section 76(1) delete “section 159,” and insert:

3

4 sections 158(2) and 159,

5

6 **26. Section 84 amended**

7 In section 84:

8 (a) in paragraph (k) delete “costs.” and insert:

9

10 costs;

11

12 (b) after paragraph (k) insert:

13

14 (1) an order making alterations to the rules of the
15 co-operative.

16

17 **27. Section 86 amended**

18 In section 86 delete “member.” and insert:

19

20 member or unfairly prejudice the members as a whole.

21

22 **28. Part 4 Division 6A inserted**

23 After Part 4 Division 5 insert:

24

25 **Division 6A — Inspection of books**

26 **90A. Order for inspection of books of co-operative**

27 (1) On application by a member of a co-operative, the
28 Supreme Court may make an order —

- 1 (a) authorising the applicant to inspect books of the
2 co-operative; or
- 3 (b) authorising another person (whether a member
4 or not) to inspect books of the co-operative on
5 the applicant's behalf.
- 6 (2) A person who —
- 7 (a) is granted leave under section 91; or
- 8 (b) applies for leave under that section; or
- 9 (c) is eligible to apply for leave under that section,
10 may apply to the Supreme Court for an order under
11 subsection (3).
- 12 (3) On application, the Supreme Court may make an order
13 authorising —
- 14 (a) the applicant to inspect books of the
15 co-operative; or
- 16 (b) another person to inspect books of the
17 co-operative on the applicant's behalf.
- 18 (4) The Supreme Court may make the order only if it is
19 satisfied that —
- 20 (a) the applicant is acting in good faith; and
- 21 (b) the inspection is to be made for a purpose
22 connected with —
- 23 (i) applying for leave under section 91; or
- 24 (ii) bringing or intervening in proceedings
25 with leave under that section.
- 26 (5) A person authorised to inspect books under this section
27 may make copies of the books unless the Supreme
28 Court orders otherwise.

- 1 **90B. Ancillary orders**
- 2 If the Supreme Court makes an order under
- 3 section 90A, the court may make any other orders it
- 4 considers appropriate, including either or both of the
- 5 following —
- 6 (a) an order limiting the use that a person who
- 7 inspects books may make of information
- 8 obtained during the inspection;
- 9 (b) an order limiting the right of a person who
- 10 inspects books to make copies in accordance
- 11 with section 90A(5).
- 12 **90C. Disclosure of information acquired in inspection**
- 13 (1) A person who inspects books on behalf of an applicant
- 14 under section 90A must not disclose information
- 15 obtained during the inspection.
- 16 Penalty for this subsection: a fine of \$500.
- 17 (2) Subsection (1) does not apply to the extent that the
- 18 disclosure is to —
- 19 (a) the Registrar; or
- 20 (b) the applicant.
- 21 (3) Despite *The Criminal Code* section 23B(2), it is
- 22 immaterial for the purposes of subsection (1) that any
- 23 event occurred by accident.
- 24 **90D. Co-operative may allow member to inspect books**
- 25 (1) The board of a co-operative, or the co-operative by
- 26 resolution passed at a general meeting, may authorise a
- 27 member to inspect books of the co-operative.
- 28 (2) Subsection (1) does not apply to —
- 29 (a) minutes of board meetings; or

- 1 (b) minutes of meetings of committees to which the
2 board's functions have been delegated under
3 section 204(1).
4

5 **29. Section 98 amended**

6 Delete section 98(4) and insert:
7

- 8 (4) The rules may adopt by reference all or any of the
9 provisions of the model rules prescribed under
10 section 101 as in force at a particular time.
11

12 **30. Section 103 amended**

13 (1) Before section 103(1) insert:
14

15 (1A) This section applies to —

- 16 (a) an alteration of rules referred to in
17 subsection (1B); and
18 (b) an alteration of rules referred to in
19 section 28(3A) relating to the conversion of a
20 non-distributing co-operative to a distributing
21 co-operative.

22 (1B) The Registrar may, by order published in the *Gazette*,
23 specify for the purposes of this section classes of
24 alterations that must not be made to the rules of a
25 co-operative without the prior approval of the Registrar
26 and, without limitation, may do so by reference to
27 classes or subclasses of matters referred to in
28 Schedule 1.
29

s. 31

- 1 (2) In section 103(1) after “rules of a co-operative” insert:
2
3 to which this section applies
4
- 5 (3) In section 103(5):
6 (a) in paragraph (c) delete “alteration.” and insert:
7
8 alteration; or
9
- 10 (b) after paragraph (c) insert:
11
- 12 (d) require the co-operative to give the Registrar
13 any additional information the Registrar
14 reasonably requires, and then act under
15 paragraph (a), (b) or (c).
16
- 17 (4) After section 103(7) insert:
18
- 19 (8) If the Registrar approves a different alteration to that
20 submitted, or refuses to approve a proposed alteration,
21 the Registrar must give the co-operative written notice
22 of the reasons for doing so.
23

24 Note: The heading to amended section 103 is to read:

25 **Approval of certain alterations of rules**

26 **31. Section 126 amended**

- 27 (1) In section 126(1) delete “Court may” and insert:
28
29 Court may, on application by the member or former member,
30

- 1 (2) After section 126(1) insert:
2
- 3 (2A) An application for an order can only be made within
4 6 months after —
- 5 (a) notice of the board’s intention to declare the
6 membership to be cancelled is given to the
7 member under section 125(1); or
- 8 (b) if notice was not required as referred to in
9 section 125(2) — the cancellation takes effect.
10
- 11 **32. Section 131 amended**
- 12 In section 131(2) delete “the extent they are not inconsistent
13 with the rules of each particular distributing co-operative.” and
14 insert:
15
- 16 a distributing co-operative only to the extent that they are not
17 inconsistent with rules of the co-operative that were in effect
18 immediately before the commencement of the *Co-operatives*
19 *Amendment Act 2015* section 32.
20
- 21 **33. Section 132 amended**
- 22 (1) In section 132(1)(a) deleted “289(a),” and insert:
23
- 24 289(1)(a),
25
- 26 (2) In section 132(2)(a) delete “289(a)” and insert:
27
- 28 289(1)(a)
29

s. 34

1 **34. Section 133 amended**

2 Delete section 133(1)(a).

3 **35. Part 7 Division 2 heading replaced**

4 Delete the heading to Part 7 Division 2 and insert:

5

6 **Division 2 — Disclosure requirements for distributing**
7 **co-operatives**

8

9 **36. Sections 137A and 137B inserted**

10 At the beginning of Part 7 Division 2 insert:

11

12 **137A. Registration of current disclosure statement**

13 (1) A distributing co-operative must take all reasonable
14 steps to ensure that it has a current disclosure statement
15 in accordance with this section registered with the
16 Registrar.

17 Penalty for this subsection: a fine of \$1 000.

18 (2) The disclosure statement must contain the information
19 necessary to ensure prospective members are
20 adequately informed of the nature and extent of a
21 person's financial involvement or liability as a member
22 of the co-operative including so far as applicable —

23 (a) the active membership provisions of the
24 co-operative; and

25 (b) the rights and liabilities attaching to shares in
26 the co-operative; and

27 (c) any other information that the Registrar directs
28 to be included.

- 1 (3) A disclosure statement approved by the Registrar under
2 section 16 is taken to be registered with the Registrar
3 for the purposes of this section until it stops being
4 current under subsection (4).
- 5 (4) A disclosure statement stops being current when —
6 (a) a change occurs in the rights or liabilities
7 attaching to any class of share in the
8 co-operative; or
9 (b) a significant change occurs in the financial
10 position or prospects of the co-operative.
- 11 (5) The co-operative must lodge a new disclosure
12 statement with the Registrar for registration when the
13 currently registered disclosure statement stops being
14 current, and must do so within 14 days (or a longer
15 period approved by the Registrar) after it stops being
16 current.
17 Penalty for this subsection: a fine of \$1 000.
- 18 (6) A disclosure statement lodged under subsection (5) is
19 taken to be registered with the Registrar.

20 **137B. Restrictions on advertising and publicity: shares**

- 21 (1) A person must not —
22 (a) advertise; or
23 (b) publish a statement that directly or indirectly
24 refers to,
25 an offer, or intended offer, of shares in a distributing
26 co-operative unless a current disclosure statement
27 relating to the shares is registered with the Registrar
28 under section 137A.
29 Penalty for this subsection: a fine of \$1 000.
- 30 (2) Subsection (1) applies in relation to shares in a
31 distributing co-operative only if the shares are offered,

s. 37

- 1 or intended to be offered, to persons who are not
2 shareholders in the co-operative.
- 3 (3) A person does not contravene subsection (1) by
4 publishing an advertisement or statement if they
5 publish it in the ordinary course of business of —
6 (a) publishing a newspaper or a magazine; or
7 (b) broadcasting by radio or television,
8 and the person did not know and had no reason to
9 suspect that its publication would amount to a
10 contravention of that subsection.
- 11 (4) Despite *The Criminal Code* section 23B(2), it is
12 immaterial for the purposes of subsection (1) that any
13 event occurred by accident.
14
- 15 **37. Sections 137 and 138 replaced**
- 16 Delete sections 137 and 138 and insert:
17
- 18 **137. Disclosure to intending shareholders in distributing**
19 **co-operative**
- 20 (1) The board of a distributing co-operative must give a
21 person who intends to acquire shares in the
22 co-operative and is not already a shareholder in the
23 co-operative —
24 (a) a current disclosure statement; and
25 (b) any other information the Registrar directs.
- 26 (2) The disclosure statement and any other information
27 required under subsection (1) and Part 4 must be given
28 before the person becomes bound to acquire the shares.

- 1 (3) The board of a co-operative may comply with
2 subsection (1) in relation to a person by giving the
3 person a notice stating any or all of the following —
- 4 (a) that the person may request to inspect the
5 statement and information referred to in
6 subsection (1) at an office of the co-operative
7 nominated by the person;
- 8 (b) that the person may request to be sent an
9 electronic copy of the statement and
10 information referred to in subsection (1) by an
11 electronic means nominated by the person;
- 12 (c) that the statement and information referred to in
13 subsection (1) are available on a website and
14 specifying the direct address on the website
15 where the documents may be accessed.
- 16 (4) If a person who has received notice under this section
17 makes a request referred to in subsection (3)(a) or (b),
18 the co-operative must comply with that request.
19

20 **38. Section 139 amended**

- 21 (1) Delete section 139(1) and insert:
22
- 23 (1) The Registrar may, by order published in the *Gazette*,
24 exempt a co-operative or a class of co-operatives from
25 any or all of the provisions of this Division.
26
- 27 (2) After section 139(2) insert:
28
- 29 (3) An exemption may be granted unconditionally or
30 subject to conditions.
31

1 **39. Part 7 Division 3A inserted**

2 After Part 7 Division 2 insert:

3

4 **Division 3A — Compensation for defective disclosure**

5 **140A. Contravention leading to right to recover loss or**
6 **damage**

- 7 (1) A co-operative contravenes this subsection if —
- 8 (a) a disclosure statement is given to a person
9 under section 137; and
- 10 (b) there is —
- 11 (i) a misleading or deceptive statement in
12 the disclosure statement or in any
13 application form or document that
14 accompanies the disclosure statement;
15 or
- 16 (ii) an omission from the disclosure
17 statement of material or information that
18 is required to be contained in the
19 statement by or under this Act;
- 20 and
- 21 (c) the misleading or deceptive statement or the
22 omission is materially adverse from the point of
23 view of the person to whom it is given.
- 24 (2) A co-operative contravenes this subsection if —
- 25 (a) a disclosure statement is given to a person
26 under section 137; and
- 27 (b) the disclosure statement is not current (as
28 referred to in section 137A(4)).

1 **140B. Right to recover for loss or damage resulting from**
2 **contravention**

- 3 (1) A person who suffers loss or damage because of a
4 contravention of section 140A(1) or (2) in relation to a
5 co-operative may recover the amount of the loss or
6 damage from a person referred to in a paragraph of
7 subsection (2) if the loss or damage is one that the
8 paragraph makes the person liable for, even if the
9 person did not commit, and was not involved in, the
10 contravention.
- 11 (2) For the purposes of subsection (1) —
- 12 (a) the co-operative is liable for loss or damage
13 caused by any contravention of section 140A(1)
14 or (2) in relation to the disclosure statement;
15 and
- 16 (b) each director of the co-operative is liable for
17 loss or damage caused by any contravention of
18 section 140A(1) or (2) in relation to the
19 disclosure statement; and
- 20 (c) a person named in the disclosure statement with
21 their consent as having made a statement (see
22 section 487) —
- 23 (i) that is included in the disclosure
24 statement; or
- 25 (ii) on which a statement in the disclosure
26 statement is based,
- 27 is liable for loss or damage caused by the
28 inclusion of the statement in the disclosure
29 statement; and
- 30 (d) a person who is involved in the contravention
31 of section 140A(1) or (2) is liable for loss or
32 damage caused by that contravention.

- 1 (3) Any action under subsection (1) may begin at any time
2 within 6 years after the day on which the cause of the
3 action arose.
- 4 (4) This Division does not affect any liability that a person
5 has under any other written law.
- 6 **140C. Due diligence defence**
- 7 (1) A person is not liable under this Division in relation to
8 a contravention of section 140A(1) because of a
9 misleading or deceptive statement if the person proves
10 they —
- 11 (a) made all inquiries (if any) that were reasonable
12 in the circumstances; and
- 13 (b) after doing so, believed on reasonable grounds
14 that the statement was not misleading or
15 deceptive.
- 16 (2) A person is not liable under this Division in relation to
17 a contravention of section 140A(1) because of an
18 omission from a disclosure statement in relation to a
19 particular matter or particular information if the person
20 proves they —
- 21 (a) made all inquiries (if any) that were reasonable
22 in the circumstances; and
- 23 (b) after doing so, believed on reasonable grounds
24 that there was no omission from the statement
25 in relation to that matter or information.
- 26 (3) A person is not liable under this Division in relation to
27 a contravention of section 140A(2) because a
28 disclosure statement is not current if the person proves
29 they —
- 30 (a) made all inquiries (if any) that were reasonable
31 in the circumstances; and

- 1 (b) after doing so, believed on reasonable grounds
2 that the statement was current.

3 **140D. General defences**

- 4 (1) A person is not liable under this Division in relation to
5 a contravention of section 140A(1) if the person proves
6 that they placed reasonable reliance on information
7 given to them by —
8 (a) if the person is a body — someone other than a
9 director, employee or agent of the body; or
10 (b) if the person is an individual — someone other
11 than an employee or agent of the individual.
- 12 (2) For the purposes of subsection (1), a person is not the
13 agent of a body or individual merely because they
14 perform a particular professional or advisory function
15 for the body or individual.
- 16 (3) A person is not liable under this Division in relation to
17 a contravention of section 140A(2) if the person proves
18 that they were not aware of the circumstance or event
19 that caused the disclosure statement to cease to be
20 current.
21

22 **40. Section 141 deleted**

23 Delete section 141.

24 **41. Section 146 amended**

- 25 (1) In section 146(1) delete “the co-operative.” and insert:
26
27 the co-operative passed by a special postal ballot.
28

s. 42

1 (2) Delete section 146(7) and insert:

2

3 (7) The requirements in respect of a proposal to take up
4 additional shares under subsection (3) do not apply to
5 the issue of bonus shares under section 144(4)(a), 147
6 or 271(2).
7

8 **42. Part 7 Division 4A inserted**

9 After Part 7 Division 3 insert:

10

11 **Division 4A — Provisions applying to particular share**
12 **subscriptions**

13 **150A. Term used: disclosure statement**

14 In this Division —

15 *disclosure statement* means a disclosure statement, of
16 any type, under this Act.

17 **150B. Application of this Division**

18 This Division applies in relation to shares in a
19 co-operative only if the shares are offered to persons
20 who are not shareholders in the co-operative.

21 **150C. Application money to be held on trust**

22 (1) If a person offers shares for issue or sale under a
23 disclosure statement, the person must hold —

24 (a) all application money received from people
25 applying for shares under the disclosure
26 statement; and

-
- 1 (b) all other money paid by them on account of the
2 shares before they are issued or transferred,
3 in trust under this section for the applicants until the
4 shares are issued or transferred or the money is
5 returned to the applicants.
6 Penalty for this subsection: a fine of \$2 500, or
7 imprisonment for 6 months, or both.
- 8 (2) If the application money needs to be returned to an
9 applicant, the person must return the money as soon as
10 practicable.
11 Penalty for this subsection: a fine of \$2 500, or
12 imprisonment for 6 months, or both.
- 13 (3) Despite *The Criminal Code* section 23B(2), it is
14 immaterial for the purposes of subsections (1) and (2)
15 that any event occurred by accident.

16 **150D. Minimum subscription condition must be fulfilled**
17 **before issue or transfer**

- 18 (1) If a disclosure statement for an offer of shares states
19 that the shares will not be issued or transferred
20 unless —
21 (a) applications for a minimum number of the
22 shares are received from members, or persons
23 eligible to become members, of the
24 co-operative; or
25 (b) a minimum amount is raised,
26 the person making the offer must not issue or transfer
27 any of the shares until that condition is satisfied.
- 28 (2) For the purpose of working out whether a condition
29 referred to in subsection (1) has been satisfied, a person
30 who has agreed to take securities as underwriter is
31 taken to have applied for those shares.

- 1 **150E. Repayment of money if disclosure statement**
2 **condition not met**
- 3 (1) If —
- 4 (a) a person offers shares under a disclosure
5 statement; and
- 6 (b) the disclosure statement states (expressly or
7 impliedly) that it is a condition that the shares
8 will not be issued or transferred unless —
- 9 (i) applications for a minimum number of
10 the shares are received from members,
11 or persons eligible to become members,
12 of the co-operative; or
- 13 (ii) a minimum amount is raised;
- 14 and
- 15 (c) that condition is not satisfied within 4 months
16 after the date of the disclosure statement,
- 17 the person must repay the money received by the
18 person in respect of any applications for the shares
19 made under the disclosure statement that have not
20 resulted in an issue or transfer of the shares.
- 21 Penalty for this subsection: a fine of \$2 500, or
22 imprisonment for 6 months, or both.
- 23 (2) For the purpose of working out whether a condition
24 referred to in subsection (1) has been satisfied, a person
25 who has agreed to take shares as underwriter is taken to
26 have applied for those shares.
- 27 (3) Despite *The Criminal Code* section 23B(2), it is
28 immaterial for the purposes of subsection (1) that any
29 event occurred by accident.
30

1 **43. Part 7 Division 4 heading replaced**

2 Delete the heading to Part 7 Division 4 and insert:

3

4 **Division 4 — Disclosure and registration of interests**
5 **in shares**

6

7 **44. Section 151 amended**

8 (1) In section 151(1) delete the Penalty and insert:

9

10 Penalty for this subsection: a fine of \$1 000.

11

12 (2) After section 151(2) insert:

13

14 (3A) Despite *The Criminal Code* section 23B(2), it is
15 immaterial for the purposes of subsection (1) that any
16 event occurred by accident.

17

18 (3) After section 151(5) insert:

19

20 (6A) A person does not have to comply with a direction if
21 the person proves that the giving of the direction is
22 vexatious.

23

24 **45. Section 163 amended**

25 (1) In section 163(4)(a) delete “records” and insert:

26

27 books

28

s. 46

- 1 (2) After section 163(4) insert:
2
- 3 (5A) A co-operative must not purchase shares or repay
4 amounts paid up on shares if —
5 (a) the co-operative is likely to become insolvent
6 because of the repurchase of the shares or
7 because of the repayment of amounts paid up
8 on the shares; or
9 (b) the co-operative is insolvent.
10
- 11 **46. Section 169 amended**
12 In section 169(1) delete the Penalty and insert:
13
14 Penalty for this subsection: a fine of \$6 000, or
15 imprisonment for 6 months, or both.
16
- 17 **47. Section 171 amended**
18 In section 171(1) delete “A member” and insert:
19
20 Subject to subsection (3) and section 167(5), a member
21
- 22 **48. Section 180 amended**
23 After section 180(2) insert:
24
25 (3) Subsection (2) and sections 181 and 182 do not apply
26 to a special resolution altering the rules of a
27 co-operative.
28

1 **49. Section 181 amended**

2 (1) At the end of section 181(1) insert:

3

4 Penalty for this subsection: a fine of \$2 000.

5

6 (2) Delete section 181(4) and insert:

7

8 (4) Despite *The Criminal Code* section 23B(2), it is
9 immaterial for the purposes of subsection (1) that any
10 event occurred by accident.

11

12 **50. Section 185 amended**

13 Delete section 185(1) and insert:

14

15 (1) A postal ballot may be held as provided by the rules of
16 the co-operative and must be conducted in the way
17 prescribed by the regulations.

18

19 **51. Section 187 amended**

20 In section 187:

21 (a) in paragraph (h) delete “winding-up.” and insert:

22

23 winding-up;

24

25 (b) after paragraph (h) insert:

26

27 (i) a requirement for members to take up or
28 subscribe for additional shares;

29 (j) a requirement for members to lend money to
30 the co-operative.

31

s. 52

1 **52. Section 190 amended**

2 After section 190(3) insert:

3

4 (4) An annual general meeting is to be held in addition to
5 any other meetings held by a co-operative in a year.

6 (5) A co-operative commits an offence if it does not hold
7 an annual general meeting as required by this section.

8 Penalty for this subsection: a fine of \$1 000.

9 (6) Despite *The Criminal Code* section 23B(2), it is
10 immaterial for the purposes of subsection (5) that any
11 event occurred by accident.
12

13 **53. Section 194 amended**

14 In section 194(3) delete “poll.” and insert:

15

16 poll, unless the rules of the co-operative restrict the number of
17 votes that a proxy may exercise.
18

19 **54. Section 196 amended**

20 (1) In section 196(1) delete “records within one month after the
21 meeting and confirmed at, and signed by the chairman of, the
22 next meeting.” and insert:

23

24 books within one month after the meeting.
25

26 (2) After section 196(1) insert:

27

28 (2A) A co-operative must ensure that minutes of a meeting
29 are signed within a reasonable time after the meeting
30 by one of the following —

31 (a) the chairman of the meeting;

1 (b) the chairman of the next meeting.
2

3 **55. Sections 197A to 197D inserted**

4 At the end of Part 8 Division 5 insert:
5

6 **197A. Auditor entitled to notice and other**
7 **communications**

- 8 (1) A co-operative must give its auditor —
9 (a) notice of a general meeting in the same way
10 that a member of the co-operative is entitled to
11 receive notice; and
12 (b) any other communications relating to the
13 general meeting that a member of the
14 co-operative is entitled to receive.

15 Penalty for this subsection: a fine of \$500.

- 16 (2) Despite *The Criminal Code* section 23B(2), it is
17 immaterial for the purposes of subsection (1) that any
18 event occurred by accident.

19 **197B. Auditor's right to be heard at general meetings**

- 20 (1) A co-operative's auditor is entitled to attend any
21 general meeting of the co-operative.
22 (2) The auditor is entitled to be heard at the meeting on
23 any part of the business of the meeting that concerns
24 the auditor in the capacity of auditor.
25 (3) The auditor is entitled to be heard even if —
26 (a) the auditor retires at the meeting; or
27 (b) the meeting passes a resolution to remove the
28 auditor from office.

- 1 (4) The auditor may authorise a person in writing as the
2 auditor's representative for the purpose of attending
3 and speaking at any general meeting.
- 4 **197C. Questions and comments by members on**
5 **co-operative management at annual general**
6 **meeting**
- 7 (1) The chairman of an annual general meeting of a
8 co-operative must allow a reasonable opportunity for
9 the members as a whole at the meeting to ask questions
10 about or make comments on the management of the
11 co-operative.
- 12 Penalty for this subsection: a fine of \$500.
- 13 (2) Despite *The Criminal Code* section 23B(2), it is
14 immaterial for the purposes of subsection (1) that any
15 event occurred by accident.
- 16 **197D. Questions by members of auditors at annual general**
17 **meeting**
- 18 (1) If a co-operative's auditor or their representative is at
19 the meeting, the chairman of an annual general meeting
20 of the co-operative must —
- 21 (a) allow a reasonable opportunity for the members
22 as a whole at the meeting to ask the auditor or
23 the auditor's representative questions relevant
24 to —
- 25 (i) the conduct of the audit; and
26 (ii) the preparation and content of the
27 auditor's report; and
28 (iii) the accounting policies adopted by the
29 co-operative in relation to the
30 preparation of the financial statements;
31 and

- 1 (iv) the independence of the auditor in
2 relation to the conduct of the audit;
3 and
4 (b) allow a reasonable opportunity for the auditor
5 or their representative to answer written
6 questions submitted to the auditor.
7 Penalty for this subsection: a fine of \$500.
- 8 (2) Despite *The Criminal Code* section 23B(2), it is
9 immaterial for the purposes of subsection (1) that any
10 event occurred by accident.
- 11 (3) If—
12 (a) the co-operative's auditor or their
13 representative is at the meeting; and
14 (b) the auditor has prepared a written answer to a
15 written question submitted to the auditor,
16 the chairman of the annual general meeting may permit
17 the auditor or their representative to table the written
18 answer to the written question.
- 19 (4) The co-operative must make the written answer tabled
20 under subsection (3) reasonably available to members
21 as soon as practicable after the annual general meeting.
22 Penalty for this subsection: a fine of \$500.
23

24 **56. Section 197 amended**

25 After section 197(1) insert:
26

- 27 (2A) The board must consist of at least 3 directors (not
28 counting alternates of directors) and at least 2 of the
29 directors must be ordinarily resident in Australia.
30

s. 57

1 **57. Section 198 amended**

2 Delete section 198(3) and insert:

3

4 (3) If authorised by the rules of the co-operative, a board
5 of directors may —

6 (a) appoint a person to fill a casual vacancy in the
7 office of a director until the next annual general
8 meeting; or

9 (b) appoint an employee of the co-operative, or a
10 person qualified as provided by the rules, to be
11 a director of the co-operative until the next
12 annual general meeting.

13

14 **58. Section 200 deleted**

15 Delete section 200.

16 **59. Section 205 amended**

17 In section 205(2):

18 (a) in paragraph (a) delete “disqualified from being a
19 director as provided by section 200;” and insert:

20

21 a disqualified person under section 206B;

22

23 (b) in paragraph (d) delete “by special resolution of the
24 co-operative;” and insert:

25

26 under section 206A;

27

28 (c) in paragraph (f) delete “Division 5.” and insert:

29

30 Division 4.

31

1 **60. Section 206A inserted**

2 At the end of Part 9 Division 1 insert:

3

4 **206A. Removal from office by resolution**

- 5 (1) A co-operative may by ordinary resolution remove a
6 director from office despite anything in —
- 7 (a) the rules of the co-operative; or
- 8 (b) an agreement between the co-operative and the
9 director; or
- 10 (c) an agreement between any or all members of
11 the co-operative and the director.
- 12 (2) Notice of intention to move the resolution must be
13 given to the co-operative at least 2 months before the
14 meeting is to be held.
- 15 (3) However, subject to subsection (4), if the co-operative
16 calls a meeting after the notice of intention is given
17 under subsection (2), the meeting may pass the
18 resolution even though the meeting is held less than
19 2 months after the notice of intention is given.
- 20 (4) At least 21 days' notice must be given of a meeting of
21 the members of the co-operative at which a resolution
22 will be moved —
- 23 (a) to remove a director from office; or
- 24 (b) to appoint a director in place of a director
25 removed from office.
- 26 (5) The co-operative must give the director a copy of the
27 notice as soon as practicable after it is received.
28 Penalty for this subsection: a fine of \$500.

- 1 (6) The director is entitled to put his or her case to
2 members by —
- 3 (a) giving the co-operative a written statement for
4 circulation to members (see subsections (7) and
5 (8)); and
- 6 (b) speaking to the motion at the meeting.
- 7 (7) The co-operative must circulate the written statement
8 to members by —
- 9 (a) sending a copy to everyone to whom notice of
10 the meeting is sent if there is time to do so; or
- 11 (b) if there is not time to comply with
12 paragraph (a) — having the statement
13 distributed to members attending the meeting
14 and read out at the meeting before the
15 resolution is voted on.
- 16 Penalty for this subsection: a fine of \$500.
- 17 (8) The director's statement does not have to be circulated
18 to members if it is more than 1 000 words long or
19 defamatory.
- 20 (9) If a person is appointed to replace a director removed
21 under this section, the time at which —
- 22 (a) the replacement director; or
23 (b) any other director,
- 24 is to retire is to be worked out as if the replacement
25 director had become director on the day on which the
26 replaced director was last appointed a director.
- 27 (10) Despite *The Criminal Code* section 23B(2), it is
28 immaterial for the purposes of subsections (5) and (7)
29 that any event occurred by accident.
30

1 **61. Part 9 Division 2A inserted**

2 After Part 9 Division 1 insert:

3

4 **Division 2A — Disqualification from**
5 **managing co-operatives**

6 **206B. Offence for disqualified person to manage**
7 **co-operative**

- 8 (1) A person is a *disqualified person* in relation to a
9 co-operative if the person —
- 10 (a) is disqualified from managing corporations
11 under the Corporations Act Part 2D.6; or
- 12 (b) is disqualified from managing co-operatives
13 under this Division; or
- 14 (c) is disqualified from managing co-operatives
15 under a corresponding co-operatives law; or
- 16 (d) is the auditor of the co-operative or a business
17 partner, employee or employer of the auditor.
- 18 (2) A disqualified person in relation to a co-operative must
19 not —
- 20 (a) act as a director of the co-operative; or
- 21 (b) directly or indirectly take part in, or be
22 concerned with, the management of the
23 co-operative.
- 24 Penalty for this subsection: a fine of \$24 000, or
25 imprisonment for 2 years, or both.
- 26 (3) It is a defence to an offence arising under this section if
27 the person had permission or leave —
- 28 (a) in the case of an offence arising in relation to
29 subsection (1)(a) — to manage corporations
30 granted under the Corporations Act

s. 61

1 section 206G and as referred to in
2 section 206G(1)(a) of that Act; or
3 (b) in any case — to manage co-operatives given
4 or granted under either section 206I or 206J,
5 and their conduct was within the terms of that
6 permission or leave.

7 **206C. Automatic disqualification for offences**

- 8 (1) A person who has been convicted of an offence under
9 this Act or a corresponding co-operatives law is
10 disqualified from managing co-operatives during the
11 period of 5 years after the conviction or, if sentenced to
12 imprisonment, after his or her release from prison.
- 13 (2) A person who has, whether before or after the
14 commencement of the *Co-operatives Amendment*
15 *Act 2015* section 61, been convicted of an offence
16 under a previous law of this or any other jurisdiction
17 relating to co-operatives is disqualified from managing
18 co-operatives during the period of 5 years after the
19 conviction or, if sentenced to imprisonment, after his or
20 her release from prison.
- 21 (3) In proceedings for an offence arising under this
22 Division in relation to this section, a certificate by an
23 authority prescribed by the regulations stating that a
24 person has been convicted of an offence under a stated
25 law on a stated date is evidence the person was
26 convicted of that offence on that date.
- 27 (4) In proceedings for an offence arising under this
28 Division in relation to this section, a certificate by an
29 authority prescribed by the regulations stating that a
30 person was released from prison on a stated date is
31 evidence the person was released from prison on that
32 date.

1 **206D. Extension of period of automatic disqualification**

- 2 (1) This section applies if a person is disqualified from
3 managing co-operatives on being convicted of an
4 offence under the Corporations Act, this Act, a
5 corresponding co-operatives law, or a previous law of
6 this or any other jurisdiction relating to co-operatives.
- 7 (2) On application by the Registrar, the Supreme Court
8 may extend the period of disqualification by up to an
9 additional 15 years.
- 10 (3) The Registrar must apply —
11 (a) before the period of disqualification begins; or
12 (b) before the end of the first year of the
13 disqualification.
- 14 (4) The Registrar may apply only once in relation to the
15 disqualification.
- 16 (5) In determining whether an extension is justified (and if
17 so, for how long), the Supreme Court may have regard
18 to any matters that the court considers appropriate.

19 **206E. Court's power of disqualification: contravention of**
20 **civil penalty provision**

- 21 (1) On application by the Registrar, the Supreme Court
22 may disqualify a person from managing co-operatives
23 for a period that the court considers appropriate if —
24 (a) a declaration is made under section 482B that
25 the person has contravened a civil penalty
26 provision; and
27 (b) the court is satisfied that the disqualification is
28 justified.

s. 61

- 1 (2) In determining whether the disqualification is justified,
2 the court may have regard to —
- 3 (a) the person’s conduct in relation to the
4 management, business or property of any
5 corporation; and
- 6 (b) any other matters that the court considers
7 appropriate.
- 8 **206F. Court’s power of disqualification: insolvency and**
9 **non-payment of debts**
- 10 (1) On application by the Registrar, the Supreme Court
11 may disqualify a person from managing co-operatives
12 for up to 20 years if —
- 13 (a) within the last 7 years, the person has been an
14 officer of 2 or more entities (being
15 co-operatives or other corporations) when they
16 have failed; and
- 17 (b) the court is satisfied that —
- 18 (i) the manner in which the entity was
19 managed was wholly or partly
20 responsible for the entity failing; and
- 21 (ii) the disqualification is justified.
- 22 (2) For the purposes of subsection (1), an entity fails if —
- 23 (a) a court orders the entity to be wound up
24 because the court is satisfied that it is insolvent;
25 or
- 26 (b) the entity enters into voluntary liquidation and
27 creditors are not fully paid or are unlikely to be
28 fully paid; or
- 29 (c) the entity executes a deed of arrangement and
30 creditors are not fully paid or are unlikely to be
31 fully paid; or

- 1 (d) the entity ceases to carry on business and
2 creditors are not fully paid or are unlikely to be
3 fully paid; or
- 4 (e) a levy of execution against the entity is not
5 satisfied; or
- 6 (f) a receiver, receiver and manager, or provisional
7 liquidator is appointed in relation to the entity;
8 or
- 9 (g) the entity enters into a compromise or
10 arrangement with its creditors; or
- 11 (h) the entity is wound up and a liquidator lodges a
12 report about the entity's inability to pay its
13 debts.
- 14 (3) In determining whether the disqualification is justified,
15 the Supreme Court may have regard to —
- 16 (a) the person's conduct in relation to the
17 management, business or property of any
18 entity; and
- 19 (b) any other matters that the court considers
20 appropriate.

21 **206G. Court's power of disqualification: repeated**
22 **contraventions of law**

- 23 (1) In this section —
24 *co-operatives legislation* means this Act or a
25 corresponding co-operatives law.
- 26 (2) On application by the Registrar, the Supreme Court
27 may disqualify a person from managing co-operatives
28 for the period that the court considers appropriate if —
- 29 (a) the person —
30 (i) has at least twice been an officer of a
31 co-operative that has contravened
32 co-operatives legislation while they

s. 61

- 1 were an officer of the co-operative and
2 each time the person has failed to take
3 reasonable steps to prevent the
4 contravention; or
5 (ii) has at least twice contravened
6 co-operatives legislation while they
7 were an officer of a co-operative; or
8 (iii) has been an officer of a body corporate
9 and has done something that would have
10 contravened section 207 or 208 if the
11 body corporate had been a co-operative;
12 and
13 (b) the court is satisfied that the disqualification is
14 justified.
- 15 (3) In determining whether the disqualification is justified,
16 the Supreme Court may have regard to —
17 (a) the person's conduct in relation to the
18 management, business or property of any
19 entity; and
20 (b) any other matters that the court considers
21 appropriate.

22 **206H. Registrar's power of disqualification**

- 23 (1) The Registrar may disqualify a person from managing
24 co-operatives for up to 5 years if —
25 (a) within 7 years immediately before the Registrar
26 gives a notice under paragraph (b)(i) —
27 (i) the person has been an officer of 2 or
28 more co-operatives; and
29 (ii) while the person was an officer, or
30 within 12 months after the person
31 ceased to be an officer of those
32 co-operatives, each of the co-operatives
33 was wound up and a liquidator lodged a

- 1 report about the co-operative's inability
2 to pay its debts;
- 3 and
- 4 (b) the Registrar has given the person —
- 5 (i) a notice in the form approved by the
6 Registrar requiring them to demonstrate
7 why they should not be disqualified; and
- 8 (ii) an opportunity to be heard on the
9 question;
- 10 and
- 11 (c) the Registrar is satisfied that the
12 disqualification is justified.
- 13 (2) If the Registrar disqualifies a person from managing
14 co-operatives under this section, the Registrar must
15 serve a notice on the person advising them of the
16 disqualification.
- 17 (3) The notice must be in the form approved by the
18 Registrar.
- 19 (4) The disqualification takes effect from the time when a
20 notice referred to in subsection (2) is served on the
21 person.

22 **206I. Registrar's power to give permission**

- 23 (1) The Registrar may give a person whom the Registrar
24 has disqualified from managing co-operatives under
25 this Division written permission to manage a particular
26 co-operative or co-operatives.
- 27 (2) The permission may be expressed to be subject to
28 conditions and limitations determined by the Registrar.
- 29 (3) A person must comply with any condition or limitation
30 subject to which permission is given.
- 31 Penalty for this subsection: a fine of \$24 000, or
32 imprisonment for 2 years, or both.

- 1 **206J. Court's power to grant leave**
- 2 (1) A person who is disqualified from managing
- 3 co-operatives may apply to the Supreme Court for
- 4 leave to manage —
- 5 (a) co-operatives; or
- 6 (b) a particular class of co-operatives; or
- 7 (c) a particular co-operative,
- 8 except where the person was disqualified by the
- 9 Registrar under section 206H.
- 10 (2) The person must lodge a notice with the Registrar at
- 11 least 21 days before commencing the proceedings.
- 12 (3) The notice must be in the form approved by the
- 13 Registrar.
- 14 (4) The order granting leave may be expressed to be
- 15 subject to conditions or limitations determined by the
- 16 Supreme Court.
- 17 (5) The person must lodge with the Registrar a copy of any
- 18 order granting leave within 14 days after the order is
- 19 made.
- 20 (6) On application by the Registrar, the Supreme Court
- 21 may revoke the leave.
- 22 (7) An order revoking leave under subsection (6) does not
- 23 take effect until it is served on the person.
- 24 (8) A person must comply with any condition or limitation
- 25 subject to which leave is granted.
- 26 Penalty for this subsection: a fine of \$24 000, or
- 27 imprisonment for 2 years, or both.
- 28 (9) This section does not apply to a person who is
- 29 disqualified from managing co-operatives because of
- 30 section 206B(1)(d).
- 31

1 **62. Section 207A inserted**

2 At the end of Part 9 Division 2 insert:

3

4 **207A. Responsibility of secretary**

5 The secretary of a co-operative must take all
6 reasonable steps to ensure that the co-operative does
7 not contravene a provision of this Act that is prescribed
8 by the regulations for the purposes of this section.

9 Penalty: a fine of \$500.

10

11 **63. Sections 207 to 212 replaced**

12 Delete sections 207 to 212 and insert:

13

14 **207. Care and diligence: civil obligations**

15 (1) In this section —

16 *business judgment* means any decision to take or not
17 take action in respect of a matter relevant to the
18 business operations of the co-operative.

19 (2) A director or other officer of a co-operative must
20 exercise their powers and discharge their duties with
21 the degree of care and diligence that a reasonable
22 person would exercise if they —

23 (a) were a director or officer of a co-operative in
24 the co-operative's circumstances; and

25 (b) occupied the office held by, and had the same
26 responsibilities within the co-operative as, the
27 director or officer.

28 Note for this subsection: This is a civil penalty provision (see section 482A).

29 (3) A director or other officer of a co-operative who makes
30 a business judgment is taken to meet the requirements

- 1 of subsection (2), and their equivalent duties at
2 common law and in equity in respect of the judgment,
3 if they —
- 4 (a) make the judgment in good faith for a proper
5 purpose (taking into account the co-operative
6 principles where relevant and other relevant
7 matters); and
 - 8 (b) do not have a material personal interest in the
9 subject matter of the judgment; and
 - 10 (c) inform themselves about the subject matter of
11 the judgment to the extent they reasonably
12 believe to be appropriate; and
 - 13 (d) rationally believe that the judgment is in the
14 best interests of the co-operative.
- 15 (4) The director's or officer's belief that the judgment is in
16 the best interests of the co-operative is a rational one
17 unless the belief is one that no reasonable person in
18 their position would hold.

19 **208. Good faith: civil obligations**

- 20 (1) A director or other officer of a co-operative must
21 exercise their powers and discharge their duties —
- 22 (a) in good faith in the best interests of the
23 co-operative; and
 - 24 (b) for a proper purpose.

25 Note for this subsection: This is a civil penalty provision (see section 482A).

- 26 (2) A person who is involved in a contravention of
27 subsection (1) contravenes this subsection.

28 Note for this subsection: This is a civil penalty provision (see section 482A).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

209. Use of position: civil obligations

- (1) A director, secretary, other officer or employee of a co-operative must not improperly use their position to —
 - (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the co-operative.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note for this subsection: This is a civil penalty provision (see section 482A).

210. Use of information: civil obligations

- (1) A person who obtains information because they are, or have been, a director or other officer or employee of a co-operative must not improperly use the information to —
 - (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the co-operative.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) The duty under subsection (1) continues after the person stops being a director or other officer or employee of the co-operative.

- (3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note for this subsection: This is a civil penalty provision (see section 482A).

211. Good faith, use of position and use of information: criminal offences

- (1) A director or other officer of a co-operative commits an offence if they are reckless, or are intentionally

s. 63

- 1 dishonest, and fail to exercise their powers and
2 discharge their duties —
- 3 (a) in good faith in the best interests of the
4 co-operative; or
- 5 (b) for a proper purpose.
- 6 Penalty for this subsection: a fine of \$200 000, or
7 imprisonment for 5 years, or both.
- 8 (2) A director, other officer or employee of a co-operative
9 commits an offence if they use their position
10 dishonestly —
- 11 (a) with the intention of directly or indirectly
12 gaining an advantage for themselves, or
13 someone else, or causing detriment to the
14 co-operative; or
- 15 (b) recklessly as to whether the use may result in
16 themselves or someone else directly or
17 indirectly gaining an advantage, or in causing
18 detriment to the co-operative.
- 19 Penalty for this subsection: a fine of \$200 000, or
20 imprisonment for 5 years, or both.
- 21 (3) A person who obtains information because they are, or
22 have been, a director or other officer or employee of a
23 co-operative commits an offence if they use the
24 information dishonestly —
- 25 (a) with the intention of directly or indirectly
26 gaining an advantage for themselves, or
27 someone else, or causing detriment to the
28 co-operative; or
- 29 (b) recklessly as to whether the use may result in
30 themselves or someone else directly or
31 indirectly gaining an advantage, or in causing
32 detriment to the co-operative.
- 33 Penalty for this subsection: a fine of \$200 000, or
34 imprisonment for 5 years, or both.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

212. Other duties and liabilities not affected

- (1) Sections 207 to 211 —
 - (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a co-operative; and
 - (b) do not prevent the commencement of civil proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).
- (2) This section does not apply to section 207(1), (3) and (4) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of section 207(2).

64. Section 213 amended

- In section 213:
- (a) delete paragraphs (a) and (b);
 - (b) in paragraph (c) delete “210(1)” and insert:

210
 - (c) in paragraph (d) delete “210(2)” and insert:

209

65. Section 214 amended

- In section 214:
- (a) delete “sections 344, 589 to 598 and 1307,” and insert:

Parts 5.8 and 5.8A,

s. 66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(b) delete paragraphs (a) to (c) and insert:

- (a) section 589(2) and (3) are taken to be deleted;
- (b) a reference in section 592(1)(a) to 23 June 1993 is to be read as a reference to 1 September 2010;

66. Section 215 amended

In section 215 delete the Penalty and insert:

Penalty: a fine of \$24 000, or imprisonment for 2 years, or both.

67. Section 216 amended

In section 216(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

68. Section 217 amended

In section 217(5) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

69. Section 218 amended

In section 218 delete the Penalty and insert:

Penalty: a fine of \$24 000, or imprisonment for 2 years, or both.

1 **70. Section 220 amended**

2 (1) In section 220(1) delete the Penalty and insert:

3

4 Penalty for this subsection: a fine of \$24 000, or
5 imprisonment for 2 years, or both.

6

7 (2) In section 220(5) delete the Penalty and insert:

8

9 Penalty for this subsection: a fine of \$24 000, or
10 imprisonment for 2 years, or both.

11

12 **71. Part 9 Division 6 deleted**

13 Delete Part 9 Division 6.

14 **72. Part 9 Division 7 heading replaced**

15 Delete the heading to Part 9 Division 7 and insert:

16

17 **Division 7 — Registers, books and returns**

18

19 **73. Section 230 amended**

20 (1) In section 230(1):

21 (a) in paragraphs (b) and (c) delete “co-operative capital
22 units” and insert:

23

24 CCUs

25

26 (b) in paragraph (e) delete “co-operative capital units,” and
27 insert:

28

29 CCUs,

30

s. 74

1 (c) delete paragraph (i).

2 (2) After section 230(2) insert:

3

4 (3) Despite *The Criminal Code* section 23B(2), it is
5 immaterial for the purposes of subsection (1) that any
6 event occurred by accident.

7

8 **74. Section 232 amended**

9 (1) In section 232(1):

10 (a) delete paragraph (d) and insert:

11

12 (d) a copy of the most recent annual return of the
13 co-operative under section 244ZB;

14 (ea) a copy of the most recent financial information
15 reported to members of the co-operative under
16 Part 10A;

17

18 (b) in paragraph (f) delete “co-operative capital units” and
19 insert:

20

21 CCUs

22

23 (2) After section 232(7) insert:

24

25 (8) The rules of a co-operative may provide for the
26 availability or non-availability for inspection by
27 members of —

28 (a) minutes of board meetings; and

29 (b) minutes of meetings of committees to which the
30 board’s functions have been delegated under
31 section 204(1).

- 1 (9) Minutes referred to in subsection (8) are not available
2 for inspection by members otherwise than in
3 accordance with rules referred to in that subsection.
4

5 **75. Section 233 amended**

- 6 (1) In section 233(1)(c) delete “co-operative capital units” and
7 insert:

8
9 CCUs
10

- 11 (2) After section 233(4) insert:

- 12
13 (5) The use or disclosure of information referred to in
14 subsection (1)(a) or (b) in the circumstances referred to
15 in subsection (1)(c), (d) or (e) is authorised by this Act.
16

17 **76. Section 234 amended**

- 18 (1) In section 234(1) delete “or a subsidiary of the co-operative,”.

- 19 (2) At the end of section 234(1) insert:

20
21 Penalty for this subsection: a fine of \$2 000.
22

- 23 (3) In section 234(2) delete the Penalty.

- 24 (4) After section 234(2) insert:

- 25
26 (3) Despite *The Criminal Code* section 23B(2), it is
27 immaterial for the purposes of subsection (1) that any
28 event occurred by accident.
29

s. 77

1 **77. Section 235 deleted**

2 Delete section 235.

3 **78. Section 236 amended**

4 (1) In section 236 delete “A co-operative” and insert:

5

6 (1) A co-operative

7

8 (2) At the end of section 236 insert:

9

10 (2) Despite *The Criminal Code* section 23B(2), it is
11 immaterial for the purposes of subsection (1) that any
12 event occurred by accident.

13

14 **79. Section 237 amended**

15 After section 237(2) insert:

16

17 (3) Despite *The Criminal Code* section 23B(2), it is
18 immaterial for the purposes of subsection (2) that any
19 event occurred by accident.

20

21 **80. Section 238 amended**

22 Delete section 238(9) and insert:

23

24 (9) The regulations may exempt or provide for the
25 exemption of specified entities or kinds of entities from
26 subsection (7).

27

1 **81. Section 240 replaced**

2 Delete section 240 and insert:

3

4 **240. Name to appear on business documents etc.**

5 (1) In this section —

6 *business document*, of a co-operative, means a
7 document that is issued, signed or endorsed by or on
8 behalf of the co-operative and is —

- 9 (a) a business letter, statement of account, invoice
10 or order for goods or services; or
11 (b) a bill of exchange, promissory note, cheque or
12 other negotiable instrument; or
13 (c) a receipt or letter of credit issued by the
14 co-operative; or
15 (d) a document belonging to a class prescribed by
16 the regulations as a class of business document.

17 (2) A co-operative must ensure its name appears in legible
18 characters —

- 19 (a) on each seal of the co-operative; and
20 (b) in all its business documents.

21 Penalty for this subsection: a fine of \$2 000.

22 (3) An officer of a co-operative or a person on its behalf
23 must not —

- 24 (a) use any seal of the co-operative; or
25 (b) sign or authorise to be signed on behalf of the
26 co-operative a business document of the
27 co-operative,

28 in or on which the co-operative's name does not appear
29 in legible characters.

30 Penalty for this subsection: a fine of \$2 000.

s. 82

- 1 (4) A director of a co-operative must not knowingly
2 authorise or permit a contravention of this section.
3 Penalty for this subsection: a fine of \$2 000.
- 4 (5) Despite *The Criminal Code* section 23B(2), it is
5 immaterial for the purposes of subsection (2) that any
6 event occurred by accident.
7

8 **82. Section 241 amended**

9 After section 241(7) insert:
10

- 11 (8) A co-operative that is given a direction under
12 subsection (7) must comply with the direction.
13 Penalty for this subsection: a fine of \$500.
- 14 (9) Despite *The Criminal Code* section 23B(2), it is
15 immaterial for the purposes of subsection (8) that any
16 event occurred by accident.
17

18 **83. Section 242 amended**

19 Delete section 242(2) and insert:
20

- 21 (2) The regulations may exempt or provide for the
22 exemption of specified entities or kinds of entities from
23 subsection (1).
24

25 **84. Section 243 amended**

26 After section 243(3) insert:
27

- 28 (4) The Registrar may, by order published in the *Gazette*,
29 exempt a small co-operative, a class of small

- 1 co-operatives or all small co-operatives from
 2 subsection (2).
- 3 (5) An exemption may be granted unconditionally or
 4 subject to conditions.
- 5 (6) Despite *The Criminal Code* section 23B(2), it is
 6 immaterial for the purposes of subsections (1), (2) and
 7 (3) that any event occurred by accident.
 8

9 **85. Part 10A inserted**
 10 After section 243 insert:
 11

12 **Part 10A — Financial reports and audit**

13 **Division 1 — Preliminary**

14 **244A. Terms used**

- 15 (1) In this Part —
 16 *accounting standard* has the meaning given in
 17 section 244ZZB;
 18 *audit* means —
 19 (a) an audit conducted for the purposes of this Act;
 20 or
 21 (b) a review of a financial report conducted for the
 22 purposes of this Act;
 23 *auditing standard* has the meaning given in
 24 section 244ZZB;
 25 *consolidated entity* means a co-operative together with
 26 all the entities it is required by the accounting standards
 27 to include in consolidated financial statements;
 28 *directors' declaration* has the meaning given in
 29 section 244K(4);

- 1 ***financial report*** means an annual financial report or a
2 half-year financial report prepared by the co-operative
3 under this Part (and see section 244K);
- 4 ***financial statements*** has the meaning given in
5 section 244K(2);
- 6 ***notes to the financial statements*** has the meaning
7 given in section 244K(3).
- 8 (2) Terms used in this Part have the same meaning as they
9 have in the Corporations Act and in particular in
10 Chapter 2M of the Corporations Act.
- 11 (3) Without limiting subsection (2), a reference in this Part
12 to an entity that a co-operative controls is a reference to
13 an entity that the co-operative controls within the
14 meaning of the Corporations Act section 50AA.
- 15 **244B. General modifications to applied provisions of the**
16 **Corporations Act Chapter 2M**
- 17 If a provision of this Part declares a matter to be an
18 applied Corporations legislation matter for the
19 purposes of the *Corporations (Ancillary Provisions)*
20 *Act 2001* Part 3 (the ***declaratory provision***) in relation
21 to any provisions of the Corporations legislation (the
22 ***applied provisions***), the declaratory provision is taken
23 to specify the following modifications —
- 24 (a) a reference in the applied provisions to a listed
25 company is to be read as a reference to a
26 co-operative;
- 27 (b) a reference in the applied provisions to a small
28 proprietary company is to be read as a reference
29 to a small co-operative;
- 30 (c) any other modifications, within the meaning of
31 the *Corporations (Ancillary Provisions)*
32 *Act 2001* Part 3, that are prescribed by the
33 regulations.

Division 2 — Financial records**244C. Obligation to keep financial records**

- (1) A co-operative must keep written financial records that —
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.

Penalty for this subsection: a fine of \$2 500.

- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The co-operative must retain the financial records for 7 years after the transactions covered by the records are completed.

Penalty for this subsection: a fine of \$2 500.

- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (3) that any event occurred by accident.

244D. Language requirements

- (1) The financial records may be kept in any language.
- (2) A co-operative must ensure that an English translation of financial records not kept in English is made available within a reasonable time to a person who —
- (a) is entitled to inspect the records; and
 - (b) asks for the English translation.

Penalty for this subsection: a fine of \$2 500.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.

- 1 **244E. Physical format**
- 2 (1) A co-operative must ensure that, if financial records are
- 3 kept in electronic form, they are to be convertible into
- 4 hard copy.
- 5 Penalty for this subsection: a fine of \$2 500.
- 6 (2) If financial records are kept in electronic form, the
- 7 co-operative must ensure that a hard copy is made
- 8 available within a reasonable time to a person who is
- 9 entitled to inspect the records.
- 10 Penalty for this subsection: a fine of \$2 500.
- 11 (3) Despite *The Criminal Code* section 23B(2), it is
- 12 immaterial for the purposes of subsections (1) and (2)
- 13 that any event occurred by accident.
- 14 **244F. Place where records are kept**
- 15 (1) A co-operative may decide where to keep the financial
- 16 records.
- 17 (2) If financial records about particular matters are kept
- 18 outside the State, the co-operative must ensure that
- 19 sufficient written information about those matters is
- 20 kept in the State to enable true and fair financial
- 21 statements to be prepared.
- 22 Penalty for this subsection: a fine of \$2 500.
- 23 (3) If financial records about particular matters are kept
- 24 outside the State, the co-operative must give the
- 25 Registrar written notice in the form approved by the
- 26 Registrar of the place where the information is kept.
- 27 Penalty for this subsection: a fine of \$2 500.
- 28 (4) The Registrar may direct a co-operative to produce
- 29 specified financial records that are kept outside the
- 30 State.

-
- 1 (5) The co-operative must comply with a direction under
2 subsection (4).
3 Penalty for this subsection: a fine of \$2 000.
- 4 (6) A direction under subsection (4) must —
5 (a) be in writing; and
6 (b) specify a place in the State where the records
7 are to be produced (the place must be
8 reasonable in the circumstances); and
9 (c) specify a day (at least 14 days after the day on
10 which the direction is given) by which the
11 records are to be produced.
- 12 (7) Despite *The Criminal Code* section 23B(2), it is
13 immaterial for the purposes of subsections (2), (3) and
14 (5) that any event occurred by accident.
- 15 **244G. Director access**
- 16 (1) A director of a co-operative has a right of access to the
17 financial records at all reasonable times.
- 18 (2) On application by a director, the Supreme Court may
19 authorise a person to inspect the financial records on
20 the director's behalf.
- 21 (3) A person authorised to inspect records may make
22 copies of the records unless the Supreme Court orders
23 otherwise.
- 24 (4) The Supreme Court may make any other orders it
25 considers appropriate, including either or both of the
26 following —
27 (a) an order limiting the use that a person who
28 inspects the records may make of information
29 obtained during the inspection;

- 1 (b) an order limiting the right of a person who
2 inspects the records to make copies in
3 accordance with subsection (3).

4 **Division 3 — Annual financial reports and directors’**
5 **reports generally**

6 **244H. Who has to prepare annual financial reports and**
7 **directors’ reports**

- 8 (1) A large co-operative must prepare a financial report
9 and a directors’ report in accordance with this Part for
10 each financial year.
- 11 (2) A small co-operative must prepare a financial report
12 and a directors’ report if and as directed under
13 section 244I or 244J.
- 14 (3) A small co-operative that is not the subject of a
15 direction under either section 244I or 244J —
- 16 (a) is not required to prepare reports in accordance
17 with this Part; and
- 18 (b) must comply with the requirements (if any) of
19 the regulations regarding the preparation and
20 provision of reports to members.

21 **244I. Small co-operative: direction by members**

- 22 (1) Members with at least 5% of the votes in a small
23 co-operative may give the co-operative a direction
24 to —
- 25 (a) prepare a financial report or directors’ report or
26 both for a financial year in accordance with all
27 or specified requirements of this Part; and
- 28 (b) report to members in accordance with the
29 direction.

-
- 1 (2) The small co-operative must comply with the direction.
2 Penalty for this subsection: a fine of \$1 000.
- 3 (3) Despite *The Criminal Code* section 23B(2), it is
4 immaterial for the purposes of subsection (2) that any
5 event occurred by accident.
- 6 (4) The direction must be —
7 (a) signed by all members giving the direction; and
8 (b) made no later than 12 months after the end of
9 the financial year concerned.
- 10 (5) The direction may specify all or any of the
11 following —
12 (a) that the financial report does not have to
13 comply with some or all of the accounting
14 standards;
15 (b) that a directors' report or a part of that report
16 need not be prepared in accordance with this
17 Part;
18 (c) that the financial report is to be audited or
19 reviewed.
- 20 (6) If the direction specifies that the financial report is to
21 be audited or reviewed, the direction may specify that
22 the audit or review is to be conducted —
23 (a) in accordance with the Corporations
24 Act Part 2M.3 Division 3 (as applying under
25 section 244U); or
26 (b) in accordance with requirements prescribed by
27 the regulations.
- 28 (7) The direction must specify the date by which the
29 co-operative must report to members.
- 30 (8) The date must be a reasonable one in view of the nature
31 of the direction.

- 1 (9) Despite anything else in this Part, the date by which the
2 small co-operative is to report to members is the date
3 specified in the direction.
- 4 **244J. Small co-operative: direction by Registrar**
- 5 (1) The Registrar may give a small co-operative a direction
6 to comply with all or specified requirements of this
7 Division and Divisions 4, 5, 7, 8, 9 and 10 for a
8 financial year (including any requirement that is
9 expressed to apply to a large co-operative).
- 10 (2) The small co-operative must comply with the direction.
11 Penalty for this subsection: a fine of \$1 000.
- 12 (3) Despite *The Criminal Code* section 23B(2), it is
13 immaterial for the purposes of subsection (2) that any
14 event occurred by accident.
- 15 (4) The direction may specify any or all of the matters
16 referred to in section 244I(5) or (6).
- 17 (5) The direction may be general or may specify the
18 particular requirements that the co-operative is required
19 to comply with.
- 20 (6) The direction must specify the date by which the
21 co-operative must report to members under
22 section 244V or lodge documents with the Registrar
23 under section 244ZC, as the case requires.
- 24 (7) The date specified in a direction must be a reasonable
25 one in view of the nature of the direction.
- 26 (8) The direction must —
27 (a) be in writing; and
28 (b) specify the financial year concerned; and
29 (c) be made no later than 6 years after the end of
30 that financial year.

- 1 (9) Despite anything else in this Part, the date by which the
2 small co-operative is to report to members or lodge
3 documents with the Registrar is the date specified in
4 the direction.

5 **Division 4 — Annual financial reports**

6 **244K. Contents of annual financial report**

- 7 (1) The financial report for a financial year consists of —
8 (a) the financial statements for the year; and
9 (b) the notes to the financial statements; and
10 (c) the directors' declaration about the statements
11 and notes.
- 12 (2) The financial statements for the year are —
13 (a) the financial statements in relation to the entity
14 that are required by the accounting standards;
15 and
16 (b) if the accounting standards require financial
17 statements in relation to a consolidated
18 entity — the financial statements in relation to
19 the consolidated entity required by the
20 accounting standards.
- 21 (3) The notes to the financial statements are —
22 (a) disclosures required by the regulations; and
23 (b) notes required by the accounting standards; and
24 (c) any other information necessary to give a true
25 and fair view (see section 244M).
- 26 (4) The directors' declaration is a declaration by the
27 directors —
28 (a) whether, in the directors' opinion, there are
29 reasonable grounds to believe that the

- 1 co-operative will be able to pay its debts as and
2 when they become due and payable; and
- 3 (b) whether, in the directors' opinion, the financial
4 statements and notes are in accordance with this
5 Act, including —
- 6 (i) section 244L; and
7 (ii) section 244M;
8 and
- 9 (c) if the co-operative has quoted securities — that
10 the directors have been given the declarations
11 required by the Corporations Act section 295A
12 (as applying under section 244O).
- 13 (5) The directors' declaration must —
- 14 (a) be made in accordance with a resolution of the
15 directors; and
- 16 (b) specify the date on which the declaration is
17 made; and
- 18 (c) be signed by a director.

19 **244L. Compliance with accounting standards and**
20 **regulations**

- 21 (1) The financial report for a financial year must comply
22 with the accounting standards.
- 23 (2) However, a small co-operative's financial report does
24 not have to comply with particular accounting
25 standards if —
- 26 (a) the report is prepared in response to a direction
27 under section 244I or 244J; and
- 28 (b) the direction specifies that the report does not
29 have to comply with those accounting
30 standards.

- 1 (3) The financial report must comply with any further
2 requirements in the regulations.

3 **244M. True and fair view**

- 4 (1) The financial statements and notes for a financial year
5 must give a true and fair view of —
6 (a) the financial position and performance of the
7 co-operative; and
8 (b) if consolidated financial statements are
9 required — the financial position and
10 performance of the consolidated entity.
- 11 (2) This section does not affect the obligation under
12 section 244L for a financial report to comply with
13 accounting standards.

14 **244N. Audit of financial report**

- 15 (1) A large co-operative must have the financial report for
16 a financial year audited in accordance with the
17 Corporations Act Part 2M.3 Division 3 (as applying
18 under section 244U) and obtain an auditor's report.
- 19 (2) A small co-operative's financial report for a financial
20 year does not have to be audited if —
21 (a) the report is prepared in response to a direction
22 under section 244I or 244J; and
23 (b) the direction did not ask for the financial report
24 to be audited.
- 25 (3) If a small co-operative's financial report for a financial
26 year is prepared in response to a direction under
27 section 244I or 244J and the direction asked for the
28 financial report to be audited —
29 (a) in accordance with the Corporations Act
30 Part 2M.3 Division 3 (as applying under
31 section 244U); or

- 1 (b) in some other specified manner,
2 the co-operative must have the financial report audited
3 as directed and obtain an auditor's report.
- 4 (4) If a small co-operative's financial report for a financial
5 year is prepared in response to a direction under
6 section 244I or 244J and the direction asked for the
7 financial report to be audited without specifying the
8 manner in which the audit is to be conducted, the
9 co-operative must have the financial report audited in
10 accordance with the Corporations Act Part 2M.3
11 Division 3 (as applying under section 244U) and obtain
12 an auditor's report.

13 **244O. Application of Corporations Act to co-operatives**
14 **with quoted securities: declaration about financial**
15 **statements by certain officers**

16 A co-operative with quoted securities is declared to be
17 an applied Corporations legislation matter for the
18 purposes of the *Corporations (Ancillary Provisions)*
19 *Act 2001* Part 3 in relation to the Corporations Act
20 section 295A.

21 **Division 5 — Annual directors' reports**

22 **244P. Annual directors' report**

- 23 (1) A co-operative must prepare a directors' report for
24 each financial year.
- 25 (2) The directors' report must include —
26 (a) the general information required by —
27 (i) section 244Q; and

-
- 1 (ii) for co-operatives with quoted
2 securities — the Corporations Act
3 section 299A (as applying under
4 section 244S);
5 and
6 (b) the specific information required by —
7 (i) section 244R; and
8 (ii) for co-operatives with quoted
9 securities — the Corporations Act
10 section 300 and 300A (as applying
11 under section 244S);
12 and
13 (c) a copy of the auditor’s declaration under the
14 Corporations Act section 307C (as applying
15 under section 244U) in relation to the audit for
16 the financial year.
- 17 (3) If the financial report for a financial year includes
18 additional information under section 244K(3)(c)
19 (information included to give a true and fair view of
20 financial position and performance), the directors’
21 report for the financial year must also —
22 (a) set out the directors’ reasons for forming the
23 opinion that the inclusion of that additional
24 information was necessary to give the true and
25 fair view required by section 244M; and
26 (b) specify where that additional information can
27 be found in the financial report.
- 28 (4) The directors’ report must —
29 (a) be made in accordance with a resolution of the
30 directors; and
31 (b) specify the date on which the report is made;
32 and
33 (c) be signed by a director.

- 1 (5) A small co-operative does not have to comply with
2 subsection (1) for a financial year if —
- 3 (a) it is preparing financial statements for that year
4 in response to a direction under section 244I or
5 244J; and
- 6 (b) the direction specified that a directors' report
7 need not be prepared.
- 8 **244Q. Annual directors' report: general information**
- 9 (1) The directors' report for a financial year must —
- 10 (a) contain a review of operations during the year
11 of the entity reported on and the results of those
12 operations; and
- 13 (b) give details of any significant changes in the
14 entity's state of affairs during the year; and
- 15 (c) state the entity's principal activities during the
16 year and any significant changes in the nature
17 of those activities during the year; and
- 18 (d) give details of any matter or circumstance that
19 has arisen since the end of the year that has
20 significantly affected, or may significantly
21 affect —
- 22 (i) the entity's operations in future
23 financial years; or
- 24 (ii) the results of those operations in future
25 financial years; or
- 26 (iii) the entity's state of affairs in future
27 financial years;
- 28 and
- 29 (e) refer to likely developments in the entity's
30 operations in future financial years and the
31 expected results of those operations; and

- 1 (f) if the entity's operations are subject to any
2 particular and significant environmental
3 regulation under a law of the Commonwealth or
4 of a State or Territory — give details of the
5 entity's performance in relation to
6 environmental regulation.
- 7 (2) The entity reported on is —
- 8 (a) the co-operative (if consolidated financial
9 statements are not required); or
- 10 (b) the consolidated entity (if consolidated
11 financial statements are required).
- 12 (3) The directors' report may omit material that would
13 otherwise be included under subsection (1)(e) if it is
14 likely to result in unreasonable prejudice to —
- 15 (a) the co-operative; or
- 16 (b) if consolidated financial statements are
17 required — the consolidated entity or any entity
18 (including the co-operative) that is part of the
19 consolidated entity.
- 20 (4) If material is omitted, the directors' report must say so.

21 **244R. Annual directors' report: specific information**

- 22 (1) The directors' report for a financial year must include
23 details of —
- 24 (a) dividends or distributions paid to members
25 during the year; and
- 26 (b) dividends or distributions recommended or
27 declared for payment to members, but not paid,
28 during the year; and
- 29 (c) the name of each person who has been a
30 director of the co-operative at any time during
31 or since the end of the year and the period for
32 which they were a director; and

- 1 (d) the name of each person who —
2 (i) is an officer of the co-operative at any
3 time during the year; and
4 (ii) was a partner in an audit firm, or a
5 director of an audit company, that is an
6 auditor of the co-operative for the year;
7 and
8 (iii) was such a partner or director at a time
9 when the audit firm or the audit
10 company undertook an audit of the
11 co-operative;
12 and
13 (e) options that are —
14 (i) granted over unissued shares or
15 unissued interests during or since the
16 end of the year; and
17 (ii) granted to any of the directors or any of
18 the 5 most highly remunerated officers
19 of the co-operative (other than the
20 directors); and
21 (iii) granted to them as part of their
22 remuneration (see subsections (4) to
23 (6)); and
24 (f) unissued shares or interests under option as at
25 the day the report is made (see subsections (4)
26 and (6)); and
27 (g) shares or interests issued during or since the
28 end of the year as a result of the exercise of an
29 option over unissued shares or interests (see
30 subsections (4) and (7)); and
31 (h) indemnities given and insurance premiums paid
32 during or since the end of the year for a person
33 who is or has been an officer or auditor (see
34 subsections (8) and (9)).

-
- 1 (2) Details do not have to be included in the directors’
2 report under this section if they are included in the
3 co-operative’s financial report for the financial year.
- 4 (3) If subsection (2) is relied on to not include in the
5 directors’ report for a financial year details that would
6 otherwise be required to be included in that report
7 under the Corporations Act section 300(11B) or
8 (11C)(b) (as applying under section 244S), that report
9 must specify, in the section headed “Non-audit
10 services”, where those details may be found in the
11 co-operative’s financial report for the financial year.
- 12 (4) Subsections (1)(e) to (g) cover —
- 13 (a) options over unissued shares and interests of
14 the co-operative; and
- 15 (b) if consolidated financial statements are
16 required — options over unissued shares and
17 interests of any entity forming part of the
18 consolidated entity.
- 19 (5) The details of an option granted are —
- 20 (a) the entity granting the option; and
- 21 (b) the name of the person to whom the option is
22 granted; and
- 23 (c) the number and class of shares or interests over
24 which the option is granted.
- 25 (6) The details of unissued shares or interests under option
26 are —
- 27 (a) the entity that will issue shares or interests
28 when the options are exercised; and
- 29 (b) the number and classes of those shares or
30 interests; and
- 31 (c) the issue price, or the method of determining
32 the issue price, of those shares or interests; and

s. 85

- 1 (d) the expiry date of the options; and
2 (e) any rights that the option holders have under
3 the options to participate in any share issue or
4 interest issue of the co-operative or any other
5 entity.
- 6 (7) The details of shares or interests issued as a result of
7 the exercise of an option are —
- 8 (a) the entity issuing the shares or interests; and
9 (b) the number of shares or interests issued; and
10 (c) if the entity has different classes of shares or
11 interests — the class to which each of those
12 shares or interests belongs; and
13 (d) the amount unpaid on each of those shares or
14 interests; and
15 (e) the amount paid, or agreed to be considered as
16 paid, on each of those shares or interests.
- 17 (8) The directors' report for a co-operative must include
18 details of —
- 19 (a) any indemnity that is given to a current or
20 former officer or auditor against a liability, or
21 any relevant agreement under which an officer
22 or auditor may be given an indemnity of that
23 kind; and
24 (b) any premium that is paid, or agreed to be paid,
25 for insurance against a current or former
26 officer's or auditor's liability for legal costs.
- 27 (9) The details required under subsection (8) are —
- 28 (a) for an officer — their name or the class of
29 officer to which they belong or belonged; and
30 (b) for an auditor — their name; and
31 (c) the nature of the liability; and

-
- 1 (d) for an indemnity given — the amount the
2 co-operative paid and any other action the
3 co-operative took to indemnify the officer or
4 auditor; and
- 5 (e) for an insurance premium — the amount of the
6 premium.
- 7 (10) The directors' report need not give details of the nature
8 of the liability covered by, or the amount of the
9 premium payable under, a contract of insurance to the
10 extent that the disclosure of those details is prohibited
11 by the insurance contract.
- 12 (11) The report for a co-operative must also include details
13 of —
- 14 (a) each directors' qualifications, experience and
15 special responsibilities; and
- 16 (b) the number of meetings of the board of
17 directors held during the year and each
18 director's attendance at those meetings; and
- 19 (c) the number of meetings of each board
20 committee held during the year and each
21 director's attendance at those meetings; and
- 22 (d) the qualifications and experience of each
23 person who is the secretary of the co-operative
24 as at the end of the year.
- 25 (12) The report for a co-operative must also include the
26 following details of any application for leave under
27 Part 4 Division 6 made in respect of the
28 co-operative —
- 29 (a) the applicant's name;
- 30 (b) a statement as to whether leave was granted.
- 31 (13) The report for a co-operative must also include the
32 following details of any proceedings that a person has

- 1 brought or intervened in on behalf of the co-operative
2 with leave under Part 4 Division 6 —
- 3 (a) the person's name;
 - 4 (b) the names of the parties to the proceedings;
 - 5 (c) sufficient information to enable members to
6 understand the nature and status of the
7 proceedings (including the cause of action and
8 any orders made by the court).

9 **244S. Application of Corporations Act to co-operatives**
10 **with quoted securities: additional information to be**
11 **provided in annual directors' report**

12 A co-operative with quoted securities is declared to be
13 an applied Corporations legislation matter for the
14 purposes of the *Corporations (Ancillary Provisions)*
15 *Act 2001* Part 3 in relation to the Corporations Act
16 section 299A, 300(11) to (11E) and 300A.

17 **Division 6 — Half-year financial report and**
18 **directors' report**

19 **244T. Application of Corporations Act to co-operatives**
20 **that are disclosing entities: half-year financial**
21 **reports and directors' reports**

22 A co-operative that is a disclosing entity is declared to
23 be an applied Corporations legislation matter for the
24 purposes of the *Corporations (Ancillary Provisions)*
25 *Act 2001* Part 3 in relation to the Corporations Act
26 Part 2M.3 Division 2.

Division 7 — Audit and auditor's report**244U. Application of Corporations Act: audit and auditor's report**

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act Part 2M.3 Division 3, subject to the following modifications —

- (a) a reference in section 308(3AA) to a company limited by guarantee is to be read as a reference to a small co-operative;
- (b) a reference in section 311(5) to section 344 is to be read as a reference to section 244ZZO of this Act.

Division 8 — Annual financial reporting to members**244V. Annual financial reporting to members**

- (1) A large co-operative must report to members for a financial year by providing either of the following in accordance with subsection (5) or (9) —
 - (a) all of the following reports —
 - (i) the financial report for the year;
 - (ii) the directors' report for the year;
 - (iii) the auditor's report on the financial report;
 - (b) a concise report for the year that complies with subsection (3).
- Penalty for this subsection: a fine of \$1 000.
- (2) Subject to any direction under section 244I or 244J, a small co-operative must provide financial reports to

- 1 members for a financial year that comply with any
2 requirements prescribed by the regulations.
3 Penalty for this subsection: a fine of \$1 000.
- 4 (3) A concise report of a large co-operative for a financial
5 year consists of —
- 6 (a) a concise financial report for the year drawn up
7 in accordance with accounting standards
8 applying for the purposes of this paragraph; and
9 (b) the directors' report for the year; and
10 (c) a statement by the auditor —
11 (i) that the financial report has been
12 audited; and
13 (ii) whether, in the auditor's opinion, the
14 concise financial report complies with
15 the accounting standards applying for
16 the purposes of paragraph (a);
17 and
18 (d) a copy of any qualification in, and of any
19 statements included in the emphasis of matter
20 section of, the auditor's report on the financial
21 report; and
22 (e) a statement that the report is a concise report
23 and that the full financial report and auditor's
24 report will be sent to the member free of charge
25 if the member asks for them.
- 26 (4) If the accounting standards applying for the purposes
27 of subsection (3)(a) require a discussion and analysis to
28 be included in a concise financial report —
- 29 (a) the auditor must report on whether the
30 discussion and analysis complies with the
31 requirements that the accounting standards lay
32 down for the discussion and analysis; and

-
- 1 (b) the auditor does not otherwise need to audit the
2 statements made in the discussion and analysis.
- 3 (5) A co-operative may provide the reports, or a concise
4 report, for a financial year by doing all of the
5 following —
- 6 (a) sending, to each member who has made the
7 election referred to in subsection (6)(a) —
- 8 (i) a hard copy of the reports or the concise
9 report; or
- 10 (ii) if the member has elected to receive the
11 reports, or the concise report, as an
12 electronic copy in accordance with
13 subsection (6)(c) — an electronic copy
14 of the reports, or the concise report;
- 15 (b) making a copy of the reports, or the concise
16 report, readily accessible on a website;
- 17 (c) directly notifying, in writing, all members who
18 did not make the election referred to in
19 subsection (6)(a) that the copy is accessible on
20 the website, and specifying the direct address
21 on the website where the reports, or the concise
22 report, may be accessed.
- 23 (6) For the purposes of subsection (5)(a), a co-operative
24 must, on at least one occasion, directly notify in writing
25 each member that —
- 26 (a) the member may elect to receive, free of
27 charge, a copy of the reports for each financial
28 year, or a copy of the concise report for each
29 financial year; and
- 30 (b) if the member does not so elect — the member
31 may access the reports, or the concise report, on
32 a specified website; and
- 33 (c) if the member does so elect and the
34 co-operative offers to send the report either as a

s. 85

- 1 hard copy or an electronic copy — the member
2 may elect to receive the copy as either a hard
3 copy or an electronic copy.
- 4 Penalty for this subsection: a fine of \$1 000.
- 5 (7) An election made under subsection (6) is a standing
6 election for each financial year until the member
7 changes the member’s election.
- 8 (8) A member may, for the purposes of subsection (5)(c)
9 or (6), be notified by electronic means only if the
10 member has previously nominated that means as one
11 by which the member may be notified.
- 12 (9) A co-operative may provide the reports, or the concise
13 report, by sending each member —
- 14 (a) a hard copy of the reports or the concise report;
15 or
- 16 (b) an electronic copy of the reports, or the concise
17 report, if the member has nominated that means
18 as one by which the member may be sent the
19 reports or the concise report.
- 20 (10) A co-operative is not required to provide the reports, or
21 the concise report, to a member who has made a
22 request under section 244X(1)(a).
- 23 (11) Despite *The Criminal Code* section 23B(2), it is
24 immaterial for the purposes of subsections (1), (2) and
25 (6) that any event occurred by accident.
- 26 **244W. Deadline for reporting to members**
- 27 (1) A large co-operative that is not a disclosing entity must
28 report to members under section 244V within 5 months
29 after the end of the financial year.

-
- 1 (2) A large co-operative that is a disclosing entity must
2 report to members under section 244V on or before the
3 earlier of —
4 (a) the day that is 21 days before the next annual
5 general meeting of the co-operative; or
6 (b) 5 months after the end of the financial year.

7 Note for this subsection: This is a civil penalty provision (see section 482A).

- 8 (3) A small co-operative that is required to report to
9 members under section 244V must do so on or before
10 the day that is 14 days before the next annual general
11 meeting of the co-operative.

12 **244X. Member's choices for annual financial information**

- 13 (1) A member may request the co-operative —
14 (a) not to send them the material required by
15 section 244V; or
16 (b) to send them a full financial report and the
17 directors' report and auditor's report.
- 18 (2) A request under subsection (1) may be a standing
19 request or for a particular financial year.
- 20 (3) The member is not entitled to a report for a financial
21 year earlier than the one before the financial year in
22 which the request is made.
- 23 (4) The co-operative must comply with a request under
24 subsection (1)(b) by the later of —
25 (a) the day that is 7 days after the request; or
26 (b) the day by which the co-operative is required to
27 report to members under section 244V.

28 Penalty for this subsection: a fine of \$1 000.

- 29 (5) When sending a full financial report, directors' report
30 and auditor's report, the co-operative must do so free

1 of charge unless the member has already received a
2 copy of them free of charge.

3 Penalty for this subsection: a fine of \$1 000.

4 (6) Despite *The Criminal Code* section 23B(2), it is
5 immaterial for the purposes of subsections (4) and (5)
6 that any event occurred by accident.

7 **244Y. Consideration of reports at annual general meeting**

8 (1) The directors of a co-operative must lay before the
9 annual general meeting —

10 (a) in the case of a large co-operative — each of
11 the following reports for the last financial year
12 that ended before the annual general meeting —

13 (i) the financial report;

14 (ii) the directors' report;

15 (iii) the auditor's report;

16 or

17 (b) in the case of a small co-operative — any report
18 for the last financial year that ended before the
19 annual general meeting that the co-operative is
20 required to provide to members before the date
21 of the meeting under section 244V or a
22 direction under section 244I or 244J.

23 Penalty for this subsection: a fine of \$1 000.

24 (2) Despite *The Criminal Code* section 23B(2), it is
25 immaterial for the purposes of subsection (1) that any
26 event occurred by accident.

27 **244ZA. Application of Corporations Act: additional**
28 **reporting by debenture issuers**

29 (1) A co-operative is declared to be an applied
30 Corporations legislation matter for the purposes of the
31 *Corporations (Ancillary Provisions) Act 2001* Part 3 in

1 relation to the Corporations Act section 318, subject to
2 the modification set out in subsection (2).

3 (2) A reference in section 318(2) or (3) to a debenture
4 holder is to be read as a reference to a debenture holder
5 who is not a member of the co-operative.

6 **Division 9 — Lodging reports and returns with**
7 **Registrar**

8 **244ZB. Lodgment of annual returns with the Registrar**

9 (1) A co-operative must lodge an annual return with the
10 Registrar for each financial year in accordance with
11 this section.

12 Penalty for this subsection: a fine of \$1 000.

13 (2) The contents of the annual return are to be as
14 prescribed by the regulations.

15 (3) Subject to subsection (4), the return must be lodged
16 within 28 days after the day on which the next annual
17 general meeting of the co-operative after the end of the
18 financial year is held in accordance with section 190.

19 (4) If, at the end of the 5-month period referred to in
20 section 190(3)(a), a co-operative to which that section
21 applies has not held its next annual general meeting
22 and no further time has been allowed under
23 section 190(3)(b) for the holding of that meeting, the
24 return must be lodged within 28 days after the end of
25 that 5-month period.

26 (5) Despite *The Criminal Code* section 23B(2), it is
27 immaterial for the purposes of subsection (1) that any
28 event occurred by accident.

- 1 **244ZC. Lodgment of financial reports etc. with Registrar**
- 2 (1) A large co-operative that has to prepare or obtain a
3 report for a financial year under Divisions 3 to 5
4 (including a concise report referred to in section 244V)
5 must lodge that report with the Registrar in accordance
6 with this section.
7 Penalty for this subsection: a fine of \$2 500.
- 8 (2) Subject to subsection (3), the return must be lodged
9 within 28 days after the day on which the next annual
10 general meeting of the co-operative after the end of the
11 financial year is held in accordance with section 190.
- 12 (3) If, at the end of the 5-month period referred to in
13 section 190(3)(a), a co-operative to which that section
14 applies has not held its next annual general meeting
15 and no further time has been allowed under
16 section 190(3)(b) for the holding of that meeting, the
17 return must be lodged within 28 days after the end of
18 that 5-month period.
- 19 (4) Despite *The Criminal Code* section 23B(2), it is
20 immaterial for the purposes of subsection (1) that any
21 event occurred by accident.
- 22 **244ZD. Lodgment of half-year reports with the Registrar**
- 23 (1) A co-operative that has to prepare or obtain a report for
24 a half-year under Division 6 must lodge the report with
25 the Registrar within 75 days after the end of the
26 half-year.
27 Penalty for this subsection: a fine of \$2 500.
- 28 (2) Despite *The Criminal Code* section 23B(2), it is
29 immaterial for the purposes of subsection (1) that any
30 event occurred by accident.

244ZE. Registrar's power to require lodgment

- 1
2 (1) The Registrar may give a co-operative a direction to
3 lodge with the Registrar a copy of reports prepared or
4 obtained by it under Divisions 3 to 6, and the
5 co-operative must comply with the direction.

6 Penalty for this subsection: a fine of \$1 000.

- 7 (2) Despite *The Criminal Code* section 23B(2), it is
8 immaterial for the purposes of subsection (1) that any
9 event occurred by accident.

- 10 (3) The direction must —

- 11 (a) be made in writing; and
12 (b) specify the period or periods concerned; and
13 (c) be made no later than 6 years after the end of
14 the period or periods; and
15 (d) specify the date by which the documents have
16 to be lodged.

- 17 (4) The date specified under subsection (3)(d) must be at
18 least 14 days after the date on which the direction is
19 given.

244ZF. Relodgment if financial report or directors' reports amended after lodgment

- 20
21
22 (1) If a financial report or directors' report is amended
23 after it is lodged with the Registrar, the co-operative
24 must —

- 25 (a) lodge the amended report with the Registrar
26 within 14 days after the amendment; and
27 (b) give a copy of the amended report free of
28 charge to any member who asks for it.

29 Penalty for this subsection: a fine of \$1 000.

- 1 (2) If the amendment is a material one, the co-operative
2 must also notify members as soon as practicable of —
3 (a) the nature of the amendment; and
4 (b) the right to obtain a copy of the amended report
5 under subsection (1).
6 Penalty for this subsection: a fine of \$1 000.
- 7 (3) Despite *The Criminal Code* section 23B(2), it is
8 immaterial for the purposes of subsections (1) and (2)
9 that any event occurred by accident.

10 **Division 10 — Special provisions about consolidated**
11 **financial statements**

12 **244ZG. Application of Corporations Act: special provisions**
13 **about consolidated financial statements**

14 A co-operative is declared to be an applied
15 Corporations legislation matter for the purposes of the
16 *Corporations (Ancillary Provisions) Act 2001* Part 3 in
17 relation to the Corporations Act Part 2M.3 Division 6.

18 **Division 11 — Financial years and half years**

19 **244ZH. Financial year**

- 20 (1) The financial year of a co-operative ends on the day in
21 each year that is provided for by the rules of the
22 co-operative.
- 23 (2) In the case of a co-operative registered under Part 2
24 Division 4, the first financial year of a co-operative
25 may extend from the date of its registration to a date
26 not more than 18 months after its registration.
- 27 (3) In the case of a co-operative registered under Part 2
28 Division 5, the first financial year of the co-operative is
29 to be a period not extending beyond a date that is
30 18 months after the end of the co-operative's last

- 1 financial year before the co-operative registered under
2 this Act.
- 3 (4) On an alteration of the rules of a co-operative
4 amending its financial year, the alteration may provide
5 either —
- 6 (a) that the current financial year (as at the date of
7 the amendment) is to be extended for not more
8 than 6 months; or
- 9 (b) that the next financial year is to be for a period
10 of more than one year but not more than
11 18 months.
- 12 (5) Without limitation, the regulations may make provision
13 for or with respect to requiring the adoption by a
14 co-operative of the same financial year for each entity
15 that the co-operative controls.

16 **244ZI. Half-year**

17 A half-year for a co-operative is the first 6 months of a
18 financial year, but the directors may determine that the
19 half-year is to be shorter or longer (but not by more
20 than 7 days).

21 **Division 12 — Auditors**

22 **Subdivision 1 — General provisions relating to auditors**

23 **244ZJ. Application of Corporations Act: auditors**

- 24 (1) A co-operative is declared to be an applied
25 Corporations legislation matter for the purposes of the
26 *Corporations (Ancillary Provisions) Act 2001* Part 3 in
27 relation to the Corporations Act Part 2M.4 Divisions 1
28 to 4, subject to the following modifications —
- 29 (a) Part 2M.4 Division 2 does not apply in relation
30 to an auditor appointed in circumstances set out
31 in section 244ZL(4) of this Act;

- 1 (b) section 324BA is to be read as if the words
2 "Subject to section 324BD" were deleted;
- 3 (c) section 324BD and 324BE are taken to be
4 deleted.
- 5 (2) A co-operative with quoted securities is declared to be
6 an applied Corporations legislation matter for the
7 purposes of the *Corporations (Ancillary Provisions)*
8 *Act 2001* Part 3 in relation to the Corporations Act
9 Part 2M.4 Division 5.
- 10 (3) A reference in the provisions of the Corporations Act
11 as applying under this section to a registered company
12 auditor is taken to be a reference to a registered
13 company auditor as defined in the Corporations Act
14 (and accordingly a reference in that term to a company
15 is not a reference to a co-operative).

16 **Subdivision 2 — Appointment of auditors**

17 **244ZK. Appointment of auditor of small co-operative**

- 18 (1) The directors of a small co-operative may appoint an
19 auditor for the co-operative if an auditor has not been
20 appointed by the co-operative in general meeting.
- 21 (2) An auditor appointed under subsection (1) holds office,
22 subject to this Part, until the co-operative's next annual
23 general meeting.

24 **244ZL. Initial appointment of auditor of a large**
25 **co-operative**

- 26 (1) The directors of a large co-operative must appoint an
27 auditor of the co-operative in accordance with
28 subsection (2) within one month after the day on which
29 it is registered as a co-operative unless the co-operative
30 at a general meeting has appointed an auditor.

-
- 1 (2) An auditor appointed under subsection (1) must be —
- 2 (a) a registered company auditor; or
- 3 (b) a firm with at least one member who is a
- 4 registered company auditor and is ordinarily
- 5 resident in Australia; or
- 6 (c) an authorised audit company.
- 7 (3) Subject to this Part, an auditor appointed under
- 8 subsection (1) holds office until the co-operative's first
- 9 annual general meeting.
- 10 (4) If a transferred co-operative, before the commencement
- 11 of this Act, had appointed a person to be its auditor and
- 12 the person continues to be the co-operative's auditor,
- 13 the directors of the co-operative are taken to have
- 14 complied with subsection (1).
- 15 (5) Despite subsection (3) but subject to this Part, an
- 16 auditor appointed in the circumstances set out in
- 17 subsection (4) may continue to be the co-operative's
- 18 auditor until the position is permanently vacated.
- 19 (6) A director of a large co-operative must take all
- 20 reasonable steps to comply with, or to secure
- 21 compliance with, subsection (1).
- 22 Penalty for this subsection: a fine of \$2 500, or
- 23 imprisonment for 6 months, or both.

24 **244ZM. Annual appointment at annual general meeting of**

25 **auditor of large co-operative to fill vacancy**

- 26 (1) A large co-operative must —
- 27 (a) appoint an auditor of the co-operative at its first
- 28 annual general meeting; and

s. 85

- 1 (b) appoint an auditor of the co-operative to fill any
2 vacancy in the office of auditor at each
3 subsequent annual general meeting.
- 4 Penalty for this subsection: a fine of \$2 500.
- 5 (2) An auditor appointed under subsection (1) holds office
6 until the auditor —
- 7 (a) dies; or
- 8 (b) is removed, or resigns, from office in
9 accordance with section 244ZW; or
- 10 (c) ceases to be capable of acting as auditor
11 because of the Corporations Act Part 2M.4
12 Division 2 as applying under this Part; or
- 13 (d) ceases to be auditor under subsection (3), (4) or
14 (5).
- 15 (3) An individual auditor ceases to be auditor of a large
16 co-operative under this subsection if —
- 17 (a) on a particular day (the *start day*), the
18 individual auditor —
- 19 (i) informs the Registrar of a conflict of
20 interest situation in relation to the
21 co-operative under the Corporations Act
22 section 324CA(1A) as applying under
23 this Part; or
- 24 (ii) informs the Registrar of particular
25 circumstances in relation to the
26 co-operative under the Corporations Act
27 section 324CE(1A) as applying under
28 this Part;
- 29 and
- 30 (b) the individual auditor does not give the
31 Registrar a notice, before the notification day
32 (see subsection (6)), that that conflict of interest
33 situation has, or those circumstances have,

- 1 ceased to exist before the end of the period (the
2 *remedial period*) of 21 days, or such longer
3 period as the Registrar approves in writing,
4 from the start day.
- 5 (4) An audit firm ceases to be auditor of a large
6 co-operative under this subsection if —
- 7 (a) on a particular day (the *start day*), the Registrar
8 is —
- 9 (i) informed of a conflict of interest
10 situation in relation to the co-operative
11 under the Corporations Act
12 section 324CB(1A) as applying under
13 this Part; or
- 14 (ii) informed of particular circumstances in
15 relation to the co-operative under the
16 Corporations Act section 324CF(1A) as
17 applying under this Part;
- 18 and
- 19 (b) the Registrar has not been given a notice on
20 behalf of the audit firm, before the notification
21 day (see subsection (6)), that that conflict of
22 interest situation has, or those circumstances
23 have, ceased to exist before the end of the
24 period (the *remedial period*) of 21 days, or such
25 longer period as the Registrar approves in
26 writing, from the start day.
- 27 (5) An audit company ceases to be auditor of a large
28 co-operative under this subsection if —
- 29 (a) on a particular day (the *start day*), the Registrar
30 is —
- 31 (i) informed of a conflict of interest
32 situation in relation to the co-operative
33 under the Corporations Act

- 1 section 324CB(1A) or 324CC(1A), as
2 applying under this Part; or
- 3 (ii) informed of particular circumstances in
4 relation to the co-operative under the
5 Corporations Act section 324CF(1A) or
6 324CG(1A) or (5A), as applying under
7 this Part;
- 8 and
- 9 (b) the Registrar has not been given a notice on
10 behalf of the audit company, before the
11 notification day (see subsection (6)), that that
12 conflict of interest situation has, or those
13 circumstances have, ceased to exist before the
14 end of the period (the *remedial period*) of
15 21 days, or such longer period as the Registrar
16 approves in writing, from the start day.
- 17 (6) For the purposes of subsections (3)(b), (4)(b) and
18 (5)(b), the notification day is —
- 19 (a) the last day of the remedial period; or
20 (b) such later day as the Registrar approves in
21 writing (whether before or after the remedial
22 period ends).
- 23 (7) A director of a large co-operative must take all
24 reasonable steps to comply with, or to secure
25 compliance with, subsection (1).
26 Penalty for this subsection: a fine of \$2 500, or
27 imprisonment for 6 months, or both.
- 28 (8) If an audit firm ceases to be the auditor of a large
29 co-operative under subsection (2) at a particular time,
30 each member of the firm who —
- 31 (a) is taken to have been appointed as an auditor of
32 the co-operative under the Corporations Act

1 section 324AB(1) or 324AC(4), as applying
2 under this Part; and
3 (b) is an auditor of the co-operative immediately
4 before that time,
5 ceases to be an auditor of the co-operative at that time.

6 **244ZN. Appointment by directors or annual general**
7 **meeting of auditor of large co-operative to fill**
8 **casual vacancy**

- 9 (1) If —
10 (a) a vacancy occurs in the office of auditor of a
11 large co-operative; and
12 (b) the vacancy is not caused by the removal of an
13 auditor from office; and
14 (c) there is no surviving or continuing auditor of
15 the co-operative,
16 the directors must, within one month after the vacancy
17 occurs, appoint an auditor to fill the vacancy unless the
18 co-operative at a general meeting has appointed an
19 auditor to fill the vacancy.
20 (2) An auditor appointed under subsection (1) holds office,
21 subject to this Part, until the co-operative's next annual
22 general meeting.
23 (3) A director of a large co-operative must take all
24 reasonable steps to comply with, or to secure
25 compliance with, subsection (1).
26 Penalty for this subsection: a fine of \$2 500, or
27 imprisonment for 6 months, or both.

- 1 **244ZO. Appointment to replace auditor removed from**
2 **office**
- 3 (1) This section deals with the situation in which an
4 auditor of a co-operative is removed from office at a
5 general meeting in accordance with section 244ZW.
- 6 (2) The co-operative may, at that general meeting (without
7 adjournment), by special resolution immediately
8 appoint an individual, firm or company as auditor of
9 the co-operative if a copy of the notice of nomination
10 has been sent to the individual, firm or company under
11 section 244ZU(4).
- 12 (3) The general meeting of a co-operative may be
13 adjourned if a special resolution under
14 subsection (2) —
- 15 (a) is not passed; or
- 16 (b) could not be passed merely because a copy of
17 the notice of nomination has not been sent to an
18 individual, firm or company under
19 section 244ZU(4).
- 20 (4) At a meeting adjourned under subsection (3), the
21 co-operative may by ordinary resolution appoint an
22 individual, firm or company as auditor of the
23 co-operative if —
- 24 (a) a member of the co-operative gives the
25 co-operative notice of the nomination of the
26 individual, firm or company for appointment as
27 auditor; and
- 28 (b) the co-operative receives the notice at least 14
29 clear days before the day to which the meeting
30 is adjourned.

- 1 (5) The day to which the general meeting is adjourned
2 must be —
- 3 (a) not earlier than 20 days after the day of the
4 meeting; and
- 5 (b) not later than 30 days after the day of the
6 meeting.
- 7 (6) Subject to this Part, an auditor appointed under
8 subsection (2) or (4) holds office until the
9 co-operative's next annual general meeting.

10 **244ZP. Registrar to be notified of appointment of auditor**

11 A large co-operative must notify the Registrar, in the
12 form approved by the Registrar, of the appointment, by
13 the co-operative or directors of the co-operative, of an
14 auditor of the co-operative within 28 days after the date
15 of the appointment.

16 Penalty: a fine of \$2 000.

17 **244ZQ. Registrar may appoint auditor of large co-operative**
18 **if auditor removed but not replaced**

- 19 (1) This section deals with the situation in which a large
20 co-operative fails to appoint an auditor under
21 section 244ZO(2) or (4) (the *auditor replacement*
22 *failure*).
- 23 (2) The co-operative must give the Registrar written notice
24 of the auditor replacement failure within the period of
25 7 days commencing on the day of the auditor
26 replacement failure (the *notification period*).
- 27 (3) If the co-operative gives the Registrar the notice
28 required by subsection (2), the Registrar must appoint
29 an auditor of the co-operative as soon as practicable
30 after receiving the notice.

- 1 (4) If the co-operative does not give the Registrar the
2 notice required by subsection (2), the Registrar may
3 appoint an auditor of the co-operative at any time —
4 (a) after the end of the notification period; and
5 (b) before the Registrar receives notice of the
6 auditor replacement failure from the
7 co-operative.
- 8 (5) If the co-operative —
9 (a) does not give the Registrar the notice required
10 by subsection (2); and
11 (b) gives the Registrar notice of the auditor
12 replacement failure after the end of the
13 notification period,
14 the Registrar must appoint an auditor of the
15 co-operative as soon as practicable after receiving the
16 notice.
- 17 (6) Subject to this Part, an auditor appointed under this
18 section holds office until the co-operative's next annual
19 general meeting.
- 20 (7) Subsections (3), (4) and (5) have effect subject to
21 section 244ZS.

22 **244ZR. Registrar's general power to appoint auditor of**
23 **large co-operative**

- 24 (1) The Registrar may appoint an auditor of a large
25 co-operative if —
26 (a) the co-operative does not appoint an auditor
27 when required by this Act to do so; and
28 (b) a member of the co-operative applies to the
29 Registrar in writing for the appointment of an
30 auditor under this section.
- 31 (2) Subsection (1) has effect subject to section 244ZS.

- 1 (3) An individual, firm or company appointed as auditor of
2 a co-operative under subsection (1) holds office,
3 subject to this Part, until the next annual general
4 meeting of the co-operative.

5 **244ZS. Restrictions on Registrar's powers to appoint**
6 **auditor of large co-operative**

- 7 (1) The Registrar may appoint an individual, firm or
8 company as auditor of a co-operative under
9 section 244ZQ or 244ZR only if the individual, firm or
10 company consents to being appointed.
- 11 (2) The Registrar must not appoint an auditor of a
12 co-operative under section 244ZQ or 244ZR if —
- 13 (a) there is another auditor of the co-operative (the
14 *continuing auditor*); and
- 15 (b) the Registrar is satisfied that the continuing
16 auditor is able to carry out the responsibilities
17 of auditor alone; and
- 18 (c) the continuing auditor agrees to continue as
19 auditor.
- 20 (3) The Registrar must not appoint an auditor of a
21 co-operative under section 244ZQ or 244ZR if —
- 22 (a) the co-operative does not give the Registrar the
23 notice required by section 244ZQ(2) before the
24 end of the notification period; and
- 25 (b) the Registrar has already appointed an auditor
26 of the co-operative under section 244ZQ after
27 the end of the notification period.

28 **244ZT. Remaining auditors may act during vacancy**

- 29 While a vacancy in the office of auditor of a
30 co-operative continues, the surviving or continuing
31 auditor or auditors (if any) may act as auditors of the
32 co-operative.

- 1 **244ZU. Nomination of auditor**
- 2 (1) Subject to this section, a co-operative may appoint an
- 3 individual, firm or company as auditor of the
- 4 co-operative at its annual general meeting only if a
- 5 member of the co-operative gives the co-operative
- 6 written notice of the nomination of the individual, firm
- 7 or company for appointment as auditor —
- 8 (a) before the meeting was convened; or
- 9 (b) not less than 21 days before the meeting.
- 10 (2) Subsection (1) does not apply if an auditor is removed
- 11 from office at the annual general meeting.
- 12 (3) If a co-operative purports to appoint an individual, firm
- 13 or company as auditor of the co-operative in
- 14 contravention of subsection (1) —
- 15 (a) the purported appointment is of no effect; and
- 16 (b) the co-operative is guilty of an offence.
- 17 Penalty for this subsection: a fine of \$2 500.
- 18 (4) If a member gives a co-operative notice of the
- 19 nomination of an individual, firm or company for
- 20 appointment as auditor of the co-operative, the
- 21 co-operative must send a copy of the notice to —
- 22 (a) each individual, firm or company nominated;
- 23 and
- 24 (b) each auditor of the co-operative; and
- 25 (c) each person entitled to receive notice of general
- 26 meetings of the co-operative.
- 27 (5) Subsection (4) applies whether the appointment is to be
- 28 made at a meeting or an adjourned meeting referred to
- 29 in section 244ZO or at an annual general meeting.
- 30 (6) The copy of the notice of nomination must be sent —
- 31 (a) not less than 7 days before the meeting; or

1 (b) at the time notice of the meeting is given.

2 **244ZV. Auditor's consent to appointment**

3 (1) A co-operative or the directors of a co-operative must
4 not appoint an individual, firm or company as auditor
5 of the co-operative unless that individual, firm or
6 company —

7 (a) has consented, before the appointment, to act as
8 auditor; and

9 (b) has not withdrawn that consent before the
10 appointment is made.

11 (2) For the purposes of this section, a consent, or the
12 withdrawal of a consent, must be given by written
13 notice to the co-operative or the directors.

14 (3) A notice under subsection (1) given by a firm must be
15 signed by a member of the firm who is a registered
16 company auditor both —

17 (a) in the firm name; and

18 (b) in his or her own name.

19 (4) A notice under subsection (1) given by a company
20 must be signed by a director or senior manager of the
21 company both —

22 (a) in the company's name; and

23 (b) in his or her own name.

24 (5) If a co-operative or the directors of a co-operative
25 appoint an individual, firm or company as auditor of a
26 co-operative in contravention of subsection (1) —

27 (a) the purported appointment is of no effect; and

28 (b) the co-operative is guilty of an offence.

29 Penalty for this subsection: a fine of \$2 500.

1 **Subdivision 3 — Removal and resignation of auditors**

2 **244ZW. Removal and resignation of auditors**

- 3 (1) An auditor of a co-operative may be removed from
4 office by resolution of the co-operative at a general
5 meeting of which notice under subsection (2) has been
6 given, but not otherwise.
- 7 (2) Notice of intention to move the resolution must be
8 given to the co-operative at least 2 months before the
9 meeting is to be held.
- 10 (3) However, if the co-operative calls a meeting after the
11 notice of intention is given under subsection (2), the
12 meeting may pass the resolution even though the
13 meeting is held less than 2 months after the notice of
14 intention is given.
- 15 (4) Where notice under subsection (2) of a resolution to
16 remove an auditor is received by a co-operative, it must
17 as soon as possible send a copy of the notice to the
18 auditor and lodge a copy of the notice with the
19 Registrar.
- 20 (5) Within 7 days after receiving a copy of the notice, the
21 auditor may make representations in writing, not
22 exceeding a reasonable length, to the co-operative and
23 request that, before the meeting at which the resolution
24 is to be considered, a copy of the representations be
25 sent by the co-operative at its expense to every member
26 of the co-operative to whom notice of the meeting is
27 sent.
- 28 (6) Unless the Registrar on the application of the
29 co-operative otherwise orders, the co-operative must
30 send a copy of the representations in accordance with
31 the auditor's request, and the auditor may, without
32 prejudice to his or her right to be heard orally or, where
33 a firm is the auditor, to have a member of the firm

-
- 1 heard orally on its behalf, require that the
2 representations be read out at the meeting.
- 3 (7) An auditor of a co-operative may, by notice in writing
4 given to the co-operative, resign as auditor of the
5 co-operative if —
- 6 (a) the auditor has, by notice in writing given to the
7 Registrar, applied for consent to the resignation
8 and stated the reasons for the application and, at
9 or about the same time as the notice was given
10 to the Registrar, notified the co-operative in
11 writing of the application to the Registrar; and
- 12 (b) the consent of the Registrar has been given.
- 13 (8) The Registrar must, as soon as practicable after
14 receiving a notice from an auditor under subsection (7),
15 notify the auditor and the co-operative whether the
16 Registrar consents to the resignation of the auditor.
- 17 (9) A statement made by an auditor in an application to the
18 Registrar under subsection (7) or in answer to an
19 inquiry by the Registrar relating to the reasons for the
20 application —
- 21 (a) is not admissible in evidence in any civil or
22 criminal proceedings against the auditor; and
- 23 (b) may not be made the ground of a prosecution,
24 action or suit against the auditor,
- 25 and a certificate by the Registrar that the statement was
26 made in the application or in the answer to the inquiry
27 by the Registrar is conclusive evidence that the
28 statement was so made.
- 29 (10) Subject to subsection (11), the resignation of an auditor
30 takes effect on whichever of the following occurs
31 last —
- 32 (a) the day (if any) specified for the purpose in the
33 notice of resignation;

- 1 (b) the day on which the Registrar gives its consent
2 to the resignation;
- 3 (c) the day (if any) fixed by the Registrar for the
4 purpose.
- 5 (11) The resignation of an auditor of a small co-operative
6 does not require the consent of the Registrar under
7 subsection (7), and takes effect on whichever of the
8 following is later —
- 9 (a) the day (if any) specified for the purpose in the
10 notice of resignation; or
- 11 (b) the day on which the notice is received by the
12 co-operative.
- 13 (12) Where, on the retirement or withdrawal from a firm of
14 a member, the firm will no longer be capable, by
15 reason of the provisions of the Corporations Act
16 section 324BB(1)(b)(i) or (2)(b)(i) (as applying under
17 this Part), of acting as auditor of a co-operative, the
18 member so retiring or withdrawing is (if not
19 disqualified from acting as auditor of the co-operative)
20 taken to be the auditor of the co-operative until he or
21 she obtains the consent of the Registrar to his or her
22 retirement or withdrawal.
- 23 (13) Within 14 days after the removal from office of an
24 auditor of a co-operative, or the receipt of a notice of
25 resignation from an auditor of a co-operative, the
26 co-operative must —
- 27 (a) lodge with the Registrar a notice of the removal
28 or resignation in the form approved by the
29 Registrar; and
- 30 (b) where there is a trustee for the holders of
31 debentures or CCUs of the co-operative — give
32 to the trustee a copy of the notice lodged with
33 the Registrar.

244ZX. Effect of winding-up on office of auditor

An auditor of a co-operative ceases to hold office if —

- (a) a special resolution is passed for the voluntary winding-up of the co-operative; or
- (b) a certificate winding-up the co-operative is given by the Registrar; or
- (c) if paragraph (a) or (b) does not apply — an order is made by the Supreme Court for the winding-up of the co-operative.

Subdivision 4 — Auditors' fees and expenses**244ZY. Fees and expenses of auditors**

The reasonable fees and expenses of an auditor of a co-operative are payable by the co-operative.

Subdivision 5 — Protection of auditors**244ZZA. Protection of auditors**

- (1) An auditor of a co-operative has qualified privilege in relation to —
 - (a) a statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or
 - (b) the giving of notice, or the sending of copies of financial reports or other reports, to the Registrar under this Act.
- (2) A person has qualified privilege in relation to —
 - (a) the publishing of a document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the Registrar, whether or not the document has been lodged; or

- 1 (b) the publishing of a statement made by an
2 auditor referred to in subsection (1).
- 3 (3) This section does not limit or affect a right, privilege or
4 immunity that an auditor or other person has, apart
5 from this section, as defendant in proceedings for
6 defamation.

7 **Division 13 — Accounting and auditing standards**

8 **244ZZB. Accounting and auditing standards**

- 9 (1) A reference in this Part (including provisions of the
10 Corporations Act applying under this Part) to
11 accounting or auditing standards is a reference to —
- 12 (a) the accounting or auditing standards made for
13 the purposes of the Corporations Act, except as
14 provided by paragraphs (b) and (c); or
- 15 (b) the accounting or auditing standards referred to
16 in paragraph (a) but as modified by the
17 regulations; or
- 18 (c) the accounting or auditing standards prescribed
19 by or determined under the regulations in
20 substitution for all or any accounting or
21 auditing standards referred to in paragraph (a).
- 22 (2) If an accounting or auditing standard referred to in
23 subsection (1)(a) applies for the purposes of a
24 particular provision of the Corporations Act, the
25 accounting or auditing standard is (subject to
26 subsection (1)(b) and (c)) taken to apply for the
27 purposes of the corresponding provision of this Act (if
28 any).
- 29 (3) The regulations may provide that an accounting or
30 auditing standard referred to in subsection (1)(a) does
31 not apply for the purposes of —
- 32 (a) this Act; or

- 1 (b) a particular provision of this Act; or
2 (c) a particular aspect or application of this Act,
3 and may do so without substituting another accounting
4 or auditing standard.

5 **244ZZC. Interpretation of accounting and auditing**
6 **standards**

7 In interpreting an accounting or auditing standard,
8 unless the contrary intention appears —

- 9 (a) expressions used in the standard have the same
10 meanings as they have in this Part or in the
11 Corporations Act Chapter 2M, as the case
12 requires; and
13 (b) the provisions of Part 1 Division 1 of this Act
14 or the Corporations Act Part 1.2 apply as if the
15 standard's provisions were provisions of this
16 Part or the Corporations Act Chapter 2M, as the
17 case requires.

18 **Division 14 — Exemptions and modifications**

19 **244ZZD. Exemptions: individual co-operatives**

- 20 (1) On an application made in accordance with
21 subsection (4) in relation to a co-operative, the
22 Registrar may, by order published in the *Gazette*,
23 exempt any of the following from compliance with all
24 or specified requirements of the target provisions
25 referred to in subsection (2) —
26 (a) the directors;
27 (b) the co-operative;
28 (c) the auditor.
29 (2) For the purposes of subsection (1), the target provisions
30 are Divisions 2 to 12 of this Part, including provisions
31 of the Corporations Act (as applying under any of the

- 1 provisions of those Divisions), but not including the
2 Corporations Act Part 2M.4 Division 4 as so applying.
- 3 (3) The exemption may —
4 (a) be expressed to be subject to conditions; and
5 (b) be indefinite or limited to a specified period;
6 and
7 (c) if indefinite, be expressed to commence on a
8 specified date.
- 9 (4) The application must be —
10 (a) authorised by a resolution of the directors; and
11 (b) in writing and signed by a director; and
12 (c) lodged with the Registrar.
- 13 (5) The Registrar must give the applicant written notice of
14 the granting, revocation or suspension of the
15 exemption.

16 **244ZZE. Exemptions: classes of co-operatives**

- 17 (1) The Registrar may, by order published in the *Gazette* in
18 respect of a specified class of co-operatives, exempt
19 any of the following from compliance with all or
20 specified requirements of the target provisions referred
21 to in subsection (2) —
22 (a) directors;
23 (b) the co-operatives themselves;
24 (c) auditors of the co-operatives.
- 25 (2) For the purposes of subsection (1), the target provisions
26 are Divisions 2 to 12 of this Part, including provisions
27 of the Corporations Act (as applying under any of the
28 provisions of those Divisions), but not including the
29 Corporations Act Part 2M.4 Division 4 as so applying.

-
- 1 (3) The exemption may —
- 2 (a) be expressed to be subject to conditions; and
- 3 (b) be indefinite or limited to a specified period;
- 4 and
- 5 (c) if indefinite, be expressed to commence on a
- 6 specified date.

7 **244ZZF. Exemptions: criteria for exemptions for individual**

8 **co-operatives or classes of co-operatives**

- 9 (1) To grant an exemption under section 244ZZD or
- 10 244ZZE, the Registrar must be satisfied that complying
- 11 with the relevant requirements of the target provisions
- 12 would —
- 13 (a) make the financial report or other reports
- 14 misleading; or
- 15 (b) be inappropriate in the circumstances; or
- 16 (c) impose unreasonable burdens.
- 17 (2) In deciding for the purposes of subsection (1) whether
- 18 the audit requirements for a small co-operative, or a
- 19 class of small co-operatives, would impose an
- 20 unreasonable burden on the co-operative or
- 21 co-operatives, the Registrar is to have regard to —
- 22 (a) the expected costs of complying with the audit
- 23 requirements; and
- 24 (b) the expected benefits of having the co-operative
- 25 or co-operatives comply with the audit
- 26 requirements; and
- 27 (c) any practical difficulties that the co-operative
- 28 or co-operatives face in complying effectively
- 29 with the audit requirements (in particular, any
- 30 difficulties that arise because a financial year is
- 31 the first one for which the audit requirements
- 32 apply or because the co-operative or

- 1 co-operatives are likely to move frequently
2 between the small and large co-operative
3 categories from one financial year to another);
4 and
- 5 (d) any unusual aspects of the operation of the
6 co-operative or co-operatives during the
7 financial year concerned; and
- 8 (e) any other matters that the Registrar considers
9 relevant.
- 10 (3) In assessing expected benefits under subsection (2), the
11 Registrar is to take account of —
- 12 (a) the number of creditors and potential creditors;
13 and
- 14 (b) the position of creditors and potential creditors
15 (in particular, their ability to independently
16 obtain financial information about the
17 co-operative or co-operatives); and
- 18 (c) the nature and extent of the liabilities of the
19 co-operative or co-operatives.

20 **244ZZG. Exemptions: non-auditor members and former**
21 **members of audit firms, and former employees of**
22 **audit companies**

- 23 (1) On an application made in accordance with
24 subsection (4) by any of the following, the Registrar
25 may, by order published in the *Gazette*, exempt the
26 applicant from all or specified requirements of the
27 target provisions referred to in subsection (2) —
- 28 (a) a member of the firm who is not a registered
29 company auditor;
- 30 (b) a person who has ceased to be —
- 31 (i) a member of an audit firm; or
32 (ii) a director of an audit company; or

- 1 (iii) a professional employee of an audit
2 company.
- 3 (2) For the purposes of subsection (1), the target provisions
4 are the provisions of the Corporations Act Part 2M.4
5 Division 3 (as applying under Division 12 of this Part).
- 6 (3) The exemption may —
7 (a) be expressed to be subject to conditions; and
8 (b) be indefinite or limited to a specified period;
9 and
10 (c) if indefinite, be expressed to commence on a
11 specified date.
- 12 (4) The application must be —
13 (a) in writing and signed by the applicant; and
14 (b) lodged with the Registrar.
- 15 (5) The Registrar must give the applicant written notice of
16 the granting, revocation or suspension of the
17 exemption.

18 **244ZZH. Exemptions: classes of non-auditor members**

- 19 (1) The Registrar may, by order published in the *Gazette* in
20 respect of a specified class of audit firms or audit
21 companies, exempt any of the following from all or
22 specified requirements of the target provisions referred
23 to in subsection (2) —
24 (a) members of firms who are not registered
25 company auditors;
26 (b) persons who have ceased to be —
27 (i) members of audit firms; or
28 (ii) directors of audit companies; or
29 (iii) professional employees of audit
30 companies.

- 1 (2) For the purposes of subsection (1), the target provisions
2 are the provisions of the Corporations Act Part 2M.4
3 Division 3 (as applying under Division 12 of this Part).
- 4 (3) The exemption may —
- 5 (a) be expressed to be subject to conditions; and
6 (b) be indefinite or limited to a specified period;
7 and
8 (c) if indefinite, be expressed to commence on a
9 specified date.

10 **244ZZI. Exemptions: criteria for exemptions for non-auditor**
11 **members etc.**

12 To grant an exemption under section 244ZZG or
13 244ZZH, the Registrar must be satisfied that
14 complying with the relevant requirements of the target
15 provisions would —

- 16 (a) make the financial report or other reports
17 misleading; or
18 (b) be inappropriate in the circumstances; or
19 (c) impose unreasonable burdens.

20 **244ZZJ. Exemptions from regulations**

- 21 (1) The Registrar may, by order published in the *Gazette*,
22 exempt —
- 23 (a) a specified co-operative, a specified person or
24 firm proposed to be appointed as an auditor, or
25 a specified director or auditor of a co-operative;
26 or
27 (b) a specified class of co-operatives, a specified
28 class of persons or firms proposed to be
29 appointed as auditors, or a specified class of
30 directors or auditors of co-operatives,
- 31 from compliance with a provision of regulations made
32 for the purposes of this Part.

-
- 1 (2) The exemption may —
- 2 (a) be expressed to be subject to conditions; and
- 3 (b) be indefinite or limited to a specified period;
- 4 and
- 5 (c) if indefinite, be expressed to commence on a
- 6 specified date.

7 **244ZZK. Registrar’s power to modify the operation of**

8 **section 324DA of Corporations Act**

- 9 (1) On an application made in accordance with this
- 10 section, the Registrar may —
- 11 (a) declare that the Corporations Act
- 12 section 324DA(1) (as applying under
- 13 Division 12 of this Part) applies to a registered
- 14 company auditor, in relation to the audit of an
- 15 audited body or a class of audited bodies, as if
- 16 the references in that subsection to 5 successive
- 17 financial years were references to —
- 18 (i) 6 successive financial years; or
- 19 (ii) 7 successive financial years;
- 20 or
- 21 (b) declare that the Corporations Act
- 22 section 324DA(2) (as applying under
- 23 Division 12 of this Part) applies to a registered
- 24 company auditor, in relation to the audit of an
- 25 audited body or a class of audited bodies during
- 26 a particular period of 7 successive financial
- 27 years, as if the reference in that subsection to 5
- 28 out of 7 successive financial years were a
- 29 reference to 6 out of 7 successive financial
- 30 years.
- 31 (2) The following persons may apply for the declaration —
- 32 (a) the registered company auditor;

- 1 (b) a firm or company on whose behalf the
2 registered company auditor acts or would act in
3 relation to the audit or audits,
- 4 and if the application is made by a firm or company,
5 the declaration has effect only in relation to activities
6 undertaken by the registered company auditor on
7 behalf of that firm or company.
- 8 (3) The application must be —
9 (a) in writing; and
10 (b) signed by the applicant; and
11 (c) lodged with the Registrar.
- 12 (4) If the application is made by a registered company
13 auditor who engages, or is to engage, in audit activities
14 on behalf of a firm or company, the application must
15 include the firm's or company's written consent to the
16 application.
- 17 (5) If the application is made by a firm or company in
18 relation to a registered company auditor, the
19 application must include the registered company
20 auditor's written consent to the application.
- 21 (6) To make a declaration under subsection (1), the
22 Registrar must be satisfied that, without the
23 modification, the Corporations Act Part 2M.4
24 Division 4 (as applying under Division 12 of this Part)
25 would impose an unreasonable burden on —
26 (a) a registered company auditor; or
27 (b) a firm or company that is applying for the
28 declaration; or
29 (c) the audited body or bodies in relation to which
30 the application was made.
- 31 (7) In deciding for the purposes of subsection (6) whether,
32 without the modification, the Corporations Act

1 Part 2M.4 Division 4 (as applying under Division 12 of
2 this Part) would impose an unreasonable burden on a
3 person referred to in that subsection, the Registrar is to
4 have regard to —

- 5 (a) the nature of the audited body or bodies,
6 including whether the activity in which the
7 audited body or bodies engage is such that
8 specialist knowledge about that activity is
9 necessary to carry out the audit properly; and
10 (b) the availability of other registered company
11 auditors capable of providing satisfactory audit
12 services for the audited body or bodies; and
13 (c) any other matters which the Registrar considers
14 relevant.

- 15 (8) The Registrar must give the applicant written notice of
16 the making, revocation or suspension of the
17 declaration.

18 **244ZZL. Auditor to notify co-operative of declaration**

- 19 (1) If a registered company auditor plays a significant role
20 in the audit of a co-operative in reliance on a
21 declaration by the Registrar under section 244ZZK, the
22 auditor must give the co-operative written notice of the
23 declaration.

24 Penalty for this subsection: a fine of \$500.

- 25 (2) The notice must specify —
26 (a) the name of the registered company auditor;
27 and
28 (b) the additional financial years for which the
29 registered company auditor is, because of the
30 declaration under section 244ZZK, eligible to
31 play a significant role in the audit of the
32 co-operative.

- 1 (3) The notice must be given —
- 2 (a) as soon as practicable after the declaration is
- 3 made if the auditor has been appointed before
- 4 the declaration is made; or
- 5 (b) before the auditor is appointed if the declaration
- 6 is made before the auditor is appointed.

7 **244ZZM. Amendment, suspension or revocation of**

8 **exemption**

- 9 (1) The Registrar may, by order published in the *Gazette*,
- 10 amend, suspend or revoke an exemption granted under
- 11 this Division.
- 12 (2) The power to suspend or revoke an exemption granted
- 13 under section 244ZZD, 244ZZE, 244ZZG or 244ZZH
- 14 can be exercised if the Registrar is satisfied that the
- 15 criteria for the grant of the exemption are no longer
- 16 satisfied.

17 **Division 15 — Miscellaneous**

18 **244ZZN. Disclosure by directors**

19 The directors of a co-operative must make the

20 disclosures about the affairs of the co-operative and of

21 an entity that the co-operative controls that are required

22 by the regulations.

23 Penalty: a fine of \$2 000.

24 **244ZZO. Contravention by directors of a provision of this**

25 **Part**

- 26 (1) A director of a co-operative contravenes this subsection
- 27 if they fail to take all reasonable steps to comply with
- 28 or to secure compliance with —
- 29 (a) section 244I, 244J, 244V(1) or (2), 244W(2),
- 30 244ZB, 244ZC, 244ZD, 244ZE or 244ZF; or

- 1 (b) the Corporations Act section 318 as applying
2 under section 244ZA of this Act.

3 Note for this subsection: This is a civil penalty provision (see section 482A).

- 4 (2) A person commits an offence if they contravene
5 subsection (1) and the contravention is dishonest.

6 Penalty for this subsection: a fine of \$200 000, or
7 imprisonment for 5 years, or both.
8

9 **86. Section 250 amended**

- 10 (1) Delete section 250(1)(a) to (c) and insert:
11

- 12 (a) sections 111AS and 283I are taken to be
13 deleted;
14

- 15 (2) After section 250(2) insert:
16

- 17 (3A) The following provisions of the Corporations Act, as
18 they apply under this section, are civil penalty
19 provisions under this Act and are not civil penalty
20 provisions under that Act —

- 21 (a) section 674(2) and (2A);
22 (b) section 675(2) and (2A);
23 (c) section 1041A;
24 (d) section 1041B(1);
25 (e) section 1041C(1);
26 (f) section 1041D;
27 (g) section 1043A(1) and (2).
28

29 **87. Section 251 deleted**

- 30 Delete section 251.

1 **88. Section 252 amended**

2 (1) In section 252(2) delete “73(2) or 127(1).” and insert:

3

4 73(2), 127(2) or 164(1).

5

6 (2) After section 252(2) insert:

7

8 (3A) Before issuing to a person debentures to which this
9 section applies, a co-operative must —

10 (a) inform the person in writing that the person is
11 entitled to receive a disclosure statement on
12 request to the co-operative; and

13 (b) give the person a disclosure statement if the
14 person requests it.

15

16 (3) In section 252(3) delete “Before issuing to a person debentures
17 to which this section applies, that person may request a
18 disclosure statement,” and insert:

19

20 For the purposes of subsection (3A), the disclosure statement is
21 a statement,

22

23 (4) After section 252(4) insert:

24

25 (5) The Registrar may, by order published in the *Gazette*,
26 exempt a co-operative or class of co-operatives from
27 complying with this section.

28 (6) An exemption may be granted unconditionally or
29 subject to conditions.

30

1 **89. Sections 253A and 253B inserted**

2 After section 252 insert:

3

4 **253A. Restrictions on advertising and publicity**

5 (1) A person must not —

6 (a) advertise; or

7 (b) publish a statement that directly or indirectly
8 refers to,

9 an offer, or intended offer, of debentures in a
10 co-operative unless a disclosure statement relating to
11 the debentures is approved by the Registrar under
12 section 252.

13 Penalty for this subsection: a fine of \$1 000.

14 (2) A person does not contravene subsection (1) by
15 publishing an advertisement or statement if they
16 publish it in the ordinary course of business of —

17 (a) publishing a newspaper or a magazine; or

18 (b) broadcasting by radio or television,

19 and the person did not know and had no reason to
20 suspect that its publication would amount to a
21 contravention of that subsection.

22 (3) Despite *The Criminal Code* section 23B(2), it is
23 immaterial for the purposes of subsection (1) that any
24 event occurred by accident.

25 **253B. Application money to be held on trust**

26 (1) If a person offers debentures for issue under a
27 disclosure statement, the person must hold —

28 (a) all application money received from people
29 applying for debentures under the disclosure
30 statement; and

s. 90

- 1 (b) all other money paid by them on account of the
2 debentures before they are issued,
3 in trust under this section for the applicants until the
4 debentures are issued or the money is returned to the
5 applicants.
6 Penalty for this subsection: a fine of \$2 500, or
7 imprisonment for 6 months, or both.
- 8 (2) If the application money needs to be returned to an
9 applicant, the person must return the money as soon as
10 practicable.
11 Penalty for this subsection: a fine of \$2 500, or
12 imprisonment for 6 months, or both.
- 13 (3) Despite *The Criminal Code* section 23B(2), it is
14 immaterial for the purposes of subsections (1) and (2)
15 that any event occurred by accident.
16

17 **90. Section 254 amended**

18 In section 254 delete “section 124(1)(b) or” and insert:
19
20 section
21

22 **91. Section 255 amended**

- 23 (1) In section 255(1) delete “the co-operative.” and insert:
24
25 the co-operative passed by a special postal ballot.
26
- 27 (2) In section 255(3)(c) delete “special resolution,” and insert:
28
29 special resolution by a special postal ballot,
30

1 **92. Section 257 amended**

2 In section 257(1) delete “co-operative capital unit (*CCU*) is”
3 and insert:

4
5 *co-operative capital unit* is
6

7 **93. Section 261 amended**

8 Delete section 261(a) and insert:

- 9
10 (a) either (as specified in the rules) —
11 (i) each holder of a CCU is entitled to one
12 vote only at a meeting of the holders of
13 CCUs; or
14 (ii) each holder of a CCU is entitled to one
15 vote per CCU held at a meeting of the
16 holders of CCUs;
17

18 **94. Section 271 amended**

19 Delete section 271(3) and insert:

- 20
21 (3) The amount of a rebate payable to a member under
22 subsection (2)(a) may be applied —
23 (a) in payment for the issue to the member of
24 bonus shares, with the consent of the member;
25 or
26 (b) as a loan to the co-operative —
27 (i) with the consent of the member; or
28 (ii) if the rules of the co-operative authorise
29 the amount of a rebate payable to a
30 member under subsection (2)(a) to be
31 applied as a loan to the co-operative.

s. 95

- 1 (4) The amount of a dividend payable to a member under
2 subsection (2)(c) may be applied —
3 (a) in payment for the issue to the member of
4 bonus shares, with the consent of the member;
5 or
6 (b) as a loan to the co-operative —
7 (i) with the consent of the member; or
8 (ii) if the rules of the co-operative authorise
9 the amount of a dividend payable to a
10 member under subsection (2)(c) to be
11 applied as a loan to the co-operative.
12 (5) A loan to the co-operative authorised by the rules (as
13 referred to in subsection (3)(b)(ii) or (4)(b)(ii)) is
14 repayable at call and must bear interest at a rate not
15 lower than the rate prescribed by the regulations.
16

17 **95. Section 273 amended**

- 18 (1) In section 273(2):
19 (a) delete “Unless otherwise provided by the rules, a” and
20 insert:
21 A
22 A
23 A
24 (b) in paragraph (c) delete “activities.” and insert:
25 activities;
26 activities;
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(c) after paragraph (c) insert:

(d) dispose of an asset, if the disposal would result —

(i) in the co-operative ceasing to carry on an activity referred to in subsection (3A); or

(ii) in the ability of the co-operative to carry on an activity referred to in subsection (3A) being substantially impaired.

(2) After section 273(2) insert:

(3A) Subsection (2)(d) applies to an activity of a co-operative if —

(a) the activity is a primary activity of the co-operative; and

(b) under rules of the co-operative referred to in section 111(a) or regulations made for the purposes of section 111(b), the use or support of the activity, or the maintenance of a relationship or an arrangement with the co-operative for carrying on the activity, can be sufficient to establish active membership of the co-operative.

s. 96

1 (3) In section 273(3) delete “an offence unless the person satisfies
2 the court that he or she used all due diligence to prevent the
3 contravention by the co-operative.” and insert:
4

5 an offence, if the person —

6 (a) was in a position to influence the conduct of the
7 co-operative in relation to the commission of
8 the offence by it; and

9 (b) did not use all due diligence to prevent the
10 commission of the offence by it.
11

12 (4) After section 273(4) insert:
13

14 (5) An exemption may be granted unconditionally or
15 subject to conditions.
16

17 **96. Section 284 amended**

18 Delete section 284(3) and insert:
19

20 (3) The register must be open for inspection by a member
21 of the co-operative in accordance with section 232.
22

23 **97. Section 288 amended**

24 (1) In section 288 delete “The Registrar” and insert:
25

26 (1) The Registrar
27

1 (2) At the end of section 288 insert:

2

3 (2) An exemption may be granted unconditionally or
4 subject to conditions.

5

6 **98. Section 289 amended**

7 (1) In section 289:

8 (a) delete “This Division” and insert:

9

10 (1) This Division

11

12 (b) in paragraph (d) delete “offer.” and insert:

13

14 offer;

15

16 (c) after paragraph (d) insert:

17

18 (e) an offer that would lead to the offeror having a
19 substantial share interest in the co-operative, or
20 to a substantial change taking place in a
21 substantial share interest the offeror has in the
22 co-operative, were the offeror to be registered
23 (immediately after the offer is made) as the
24 holder of the shares that are the subject of the
25 offer.

26

27 (2) At the end of section 289 insert:

28

29 (2) In subsection (1)(e), *substantial share interest* and
30 *substantial change* have the same meanings as they
31 have in section 276.

32

s. 99

1 **99. Section 290 replaced**

2 Delete section 290 and insert:

3

4 **290. Requirements to be satisfied before offer can be**
5 **made**

6 (1) A person must not make an offer to which this Division
7 applies unless the making of the offer has been
8 approved —

9 (a) by special resolution passed by a special postal
10 ballot; and

11 (b) by the Registrar.

12 (2) Despite subsection (1), an offer referred to in
13 section 289(1)(e) can be made even if it has not been
14 approved as referred to in subsection (1) if it is made in
15 circumstances stated in, and in accordance with the
16 requirements of, the regulations.
17

18 **100. Section 291 amended**

19 In section 291 delete “289(a) to (d)” and insert:

20

21 289(1)(a) to (e)
22

23 **101. Section 293 amended**

24 (1) In section 293(2) delete the Penalty and insert:

25

26 Penalty for this subsection: a fine of \$20 000, or
27 imprisonment for 5 years, or both.
28

1 (2) In section 293(3) delete the Penalty and insert:

2

3 Penalty for this subsection: a fine of \$10 000, or
4 imprisonment for 2 years, or both.

5

6 **102. Section 296 amended**

7 (1) In section 296 delete “The Registrar” and insert:

8

9 (1) The Registrar

10

11 (2) At the end of section 296 insert:

12

13 (2) An exemption may be granted unconditionally or
14 subject to conditions.

15

16 **103. Section 300 amended**

17 Delete section 300(5) and insert:

18

19 (5) The Registrar may grant an approval or an exemption
20 under this section unconditionally or subject to
21 conditions.

22

23 **104. Section 306 amended**

24 (1) After section 306(1) insert:

25

26 (2A) An application cannot be made under section 305 in
27 respect of a co-operative without share capital
28 unless —

29 (a) the application is made at least 2 weeks after a
30 notice has been published in a newspaper
31 circulating generally in the district in which the

s. 105

- 1 registered office of the co-operative is situated
2 advising of the proposal to submit the proposed
3 special resolution to members of the
4 co-operative; and
- 5 (b) either —
- 6 (i) in the case where the new body will
7 have share capital — all the members of
8 the co-operative will have an equal
9 shareholding; or
- 10 (ii) in any case — the Registrar approves in
11 writing the making of the application.
12
- 13 (2) Delete section 306(3) and insert:
- 14
- 15 (3) The Registrar may, by order published in the *Gazette*,
16 exempt a co-operative from compliance with a
17 provision of this section or section 186 in relation to a
18 matter to which this section applies.
- 19 (4) An exemption may be granted unconditionally or
20 subject to conditions.
21

22 **105. Section 309 amended**

- 23 After section 309(4) insert:
- 24
- 25 (5) If —
- 26 (a) section 131(2) applies to rules of a
27 co-operative; and
- 28 (b) those rules provide for a period shorter than
29 2 years to apply for the purposes of each of
30 section 132(1)(a), (b) and (c) and
31 section 133(1),
- 32 subsection (2) of this section applies in relation to the
33 co-operative as if the reference in that subsection to

1 2 years were a reference to the shorter period that
2 applies for the purposes of each of section 132(1)(a),
3 (b) and (c) and section 133(1) under those rules.
4

5 **106. Section 315 amended**

6 In section 315 delete “in the same way and in the same
7 circumstances as a company under the Corporations Act may be
8 deregistered.” and insert:
9

10 under —

- 11 (a) the Corporations Act as applying under
12 section 316; or
13 (b) section 482.
14

15 **107. Section 316 replaced**

16 Delete section 316 and insert:
17

18 **316. Application of Corporations Act to winding-up and**
19 **deregistration**

- 20 (1) This section does not apply to the winding-up of a
21 co-operative on the certificate of the Registrar under
22 section 314.
23 (2) The winding-up or deregistration of a co-operative, and
24 a deregistered co-operative, are declared to be applied
25 Corporations legislation matters for the purposes of the
26 *Corporations (Ancillary Provisions) Act 2001* Part 3 in
27 relation to the provisions of the Corporations Act
28 Parts 5.4, 5.4A, 5.4B, 5.5, 5.6 and 5A.1, subject to the
29 modifications set out in Schedule 6 Division 1.

s. 107

- 1 (3) Despite any other provisions of this Act —
- 2 (a) a copy of the special resolution for the
- 3 voluntary winding-up of a co-operative referred
- 4 to in the Corporations Act section 491(2)(a) as
- 5 applying under this section is to be filed with
- 6 the Registrar —
- 7 (i) within the period referred to in that
- 8 paragraph (and not the period of 28 days
- 9 referred to in section 181(2) of this
- 10 Act); or
- 11 (ii) within a longer period approved by the
- 12 Registrar;
- 13 and
- 14 (b) the form of a notice or account required to be
- 15 given or lodged by a liquidator under the
- 16 Corporations Act section 496, 497, 537 or 539
- 17 as applying under this section is the form
- 18 required under the section concerned but with
- 19 any necessary modifications (and not a form
- 20 approved under this Act); and
- 21 (c) the quorum for the meeting referred to in the
- 22 Corporations Act section 509 as applying under
- 23 this section is the quorum referred to in that
- 24 section (and not a quorum determined under
- 25 section 193 of this Act); and
- 26 (d) the time when a voluntary winding-up is taken
- 27 to commence is to be determined under the
- 28 Corporations Act section 513B as applying
- 29 under this section and is not affected by
- 30 section 180 of this Act.
- 31 (4) The provisions of the Corporations Act applying under
- 32 this section have effect subject to any other sections of
- 33 this Part.
- 34

1 **108. Section 317 amended**

2 Delete section 317(2) and (3) and insert:

3

- 4 (2) When a special postal ballot referred to in
5 subsection (1)(b) is held, the members may, by means
6 of the same ballot, by simple majority —
- 7 (a) appoint one or more liquidators to wind up the
8 affairs and distribute the assets of the
9 co-operative; and
- 10 (b) fix the remuneration to be paid to the liquidator.
- 11 (3) The Registrar may, by order published in the *Gazette*,
12 exempt a co-operative or class of co-operatives from
13 compliance with a provision of this section or
14 section 186.
- 15 (4) An exemption may be granted unconditionally or
16 subject to conditions.

17

18 **109. Section 322 amended**

19 After section 322(4) insert:

20

- 21 (5) If —
- 22 (a) section 131(2) applies to rules of a
23 co-operative; and
- 24 (b) those rules provide for a period shorter than
25 2 years to apply for the purposes of each of
26 section 132(1)(a), (b) and (c) and
27 section 133(1),
- 28 subsections (1) and (2) of this section apply in relation
29 to the co-operative as if a reference in those
30 subsections to 2 years were a reference to the shorter
31 period that applies for the purposes of each of

s. 110

1 section 132(1)(a), (b) and (c) and section 133(1) under
2 those rules.
3

4 **110. Part 12 Division 4 heading replaced**

5 Delete the heading to Part 12 Division 4 and insert:
6

7 **Division 4 — Administration**
8

9 **111. Part 12 Division 4 Subdivision 1 inserted**

10 At the beginning of Part 12 Division 4 insert:
11

12 **Subdivision 1 — Introductory**

13 **323A. Operation of this Division**

14 This Division provides 2 methods for the
15 administration of a co-operative, as follows —

- 16 (a) administration under the Corporations Act as
17 applying under Subdivision 2;
18 (b) administration under Subdivision 3.
19

20 **112. Part 12 Division 4 Subdivision 2 heading inserted**

21 Before section 323 insert:
22

23 **Subdivision 2 — Administration under Corporations Act**
24

25 **113. Section 323 amended**

26 In section 323:

- 27 (a) delete paragraph (a);

- 1 (b) delete paragraph (c) and insert:
2
- 3 (ca) a reference in section 436D to “section 436A,
4 436B or 436C” is to be read as including a
5 reference to section 324 of this Act;
- 6 (cb) a reference in section 436E(4)(a) or 448B to an
7 administrator is to be read as not including a
8 reference to an administrator appointed under
9 section 324 of this Act;
- 10 (cc) a reference in section 440D(2)(b) to prescribed
11 proceedings is to be read as a reference to
12 proceedings prescribed by regulations under
13 this Act;
- 14 (cd) section 444GA is taken to include a provision
15 to the effect that the section has effect subject
16 to Part 7 Division 5 of this Act;
- 17 (ce) section 446B is taken to be deleted;
- 18 (c) the reference in section 600H(2) to a
19 compromise or arrangement under Part 5.1 is to
20 be read as a reference to a compromise or
21 arrangement under Part 13 of this Act;
22

23 **114. Section 324A inserted**

24 After section 323 insert:
25

26 **324A. Appointment of administrator by Registrar in case**
27 **of insolvency**

- 28 (1) The Registrar may appoint a person as an administrator
29 for the purposes of the Corporations Act Part 5.3A (as
30 applying under this Subdivision) if the Registrar is of
31 the opinion that the co-operative is insolvent or likely
32 to become insolvent at some future time.

s. 115

- 1 (2) The person appointed by the Registrar must be a
2 registered liquidator (as defined in the Corporations
3 Act section 9), but the Registrar may appoint a person
4 who is not a registered liquidator if the Registrar forms
5 the view that the likely costs of administration by a
6 registered liquidator are excessive taking into account
7 the known assets of the co-operative and the expected
8 extent of debt of the co-operative.

9 **115. Part 12 Division 5 heading replaced**

10 Delete the heading to Part 12 Division 5 and insert:

11

12 **Subdivision 3 — Administration: alternative procedure**

13

14 **116. Section 324B inserted**

15 Before section 324 insert:

16

17 **324B. Operation of this Division**

18 (1) The provisions of the Corporations Act applying under
19 Subdivision 2 do not apply to the appointment of an
20 administrator under this Subdivision or to an
21 administrator so appointed.

22 (2) This Subdivision does not apply to the appointment of
23 an administrator under section 324A or to an
24 administrator so appointed.

25

26 **117. Section 325 amended**

27 In section 325(3) delete “Division.” and insert:

28

29 Subdivision.

30

1 **118. Section 326 amended**

2 In section 326(4) delete “ records.” and insert:

3

4 books.

5

6 **119. Section 336 amended**

7 In section 336(1)(b) delete “co-operative under Division 5;” and
8 insert:

9

10 co-operative by the Registrar under Division 4 Subdivision 3;

11

12 **120. Section 337 amended**

13 (1) In section 337(1):

14

(a) delete paragraph (a);

15

(b) in paragraph (b) delete “290, as applied under
16 section 225 of this Act, is to be read with any
17 modifications prescribed by the regulations;” and insert:

18

19 290 is to be read as a reference to the appropriate
20 provision of Part 10A Division 2 of this Act;

21

22

(c) after paragraph (b) insert:

23

24

(ca) section 588G is to be read as if item 2 of the
25 table to section 588G(1A) were deleted;

25

s. 120

1
2

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

(cb) section 588G is to be read as if item 3 of the table to section 588G(1A) read as follows —

repaying share capital	when the obligation to repay share capital is effective
receiving the resignation of a member under the rules of the co-operative	when the resignation is effective
expelling a member	when the expulsion occurs

(cc) section 588G is to be read as if a reference (however expressed) in item 4 or 5 of the table to section 588G(1A) to redeemable preference shares were a reference to CCUs;

(cd) a reference (however expressed) in section 588V or 588W to a corporation that is the holding company of a company is to be read as if —

- (i) the reference to a corporation were a reference to a co-operative; and
- (ii) the reference to “the holding company” were a reference to that co-operative; and
- (iii) the reference to “a company” were a reference to a company that is a subsidiary of that co-operative (and accordingly that reference to a company

1 is not to be read as a reference to a
2 co-operative);
3 (ce) a reference in section 588Z(b) to 23 June 1993
4 is to be read as a reference to
5 1 September 2010;
6

7 (2) Delete section 337(2) and insert:
8

9 (2) The Corporations Act section 588G(2) as applying
10 under this section is a civil penalty provision under this
11 Act and is not a civil penalty provision under that Act.
12

13 **121. Section 344 amended**

14 In section 344:

15 (a) in paragraph (b) delete “person; and” and insert:
16

17 person.
18

19 (b) delete paragraph (c).

20 **122. Section 346 amended**

21 After section 346(2) insert:
22

23 (3) Despite *The Criminal Code* section 23B(2), it is
24 immaterial for the purposes of subsection (2) that any
25 event occurred by accident.
26

27 **123. Section 359 amended**

28 Delete section 359(3)(b) and (c).

s. 124

1 **124. Part 14 heading replaced**

2 Delete the heading to Part 14 and insert:

3

4 **Part 14 — Participating co-operatives**

5

6 **125. Section 365 deleted**

7 Delete section 365.

8 **126. Section 366 amended**

9 (1) In section 366(1):

10 (a) delete “Part, a foreign co-operative” and insert:

11

12 Part and without limiting the definition of *carry on*
13 *business* in section 4 in its application to a participating
14 co-operative, a participating co-operative

15

16 (b) in paragraph (b) delete “State; or” and insert:

17

18 State.

19

20 (c) delete paragraph (c).

21 (2) Delete section 366(2).

22 **127. Section 367 deleted**

23 Delete section 367.

1 **128. Section 368 amended**

2 (1) In section 368(1) delete “foreign co-operative authorised under
3 this Part to carry on business in this State” and insert:

4
5 participating co-operative
6

7 (2) In section 368(2):

8 (a) delete “foreign co-operatives” and insert:

9
10 participating co-operatives
11

12 (b) in paragraph (g) delete “co-operative capital units” and
13 insert:

14
15 CCUs
16

17 (3) In section 368(3) delete “foreign” and insert:

18
19 participating
20

21 **129. Part 14 Division 2 heading replaced**

22 Delete the heading to Part 14 Division 2 and insert:

23
24 **Division 2 — Participating co-operatives carrying on**
25 **business in this State**
26

s. 130

1 **130. Section 370 amended**

2 (1) In section 370(1) delete “after notifying the Registrar in
3 accordance with section 372 that the participating co-operative
4 intends to carry on business in this State.” and insert:

5

6 unless it ceases to be so authorised under section 376.

7

8 (2) In section 370(2) delete “State.” and insert:

9

10 jurisdiction.

11

12 (3) Delete section 370(3).

13 **131. Sections 372 to 374 replaced**

14 Delete sections 372 to 374 and insert:

15

16 **372. Existing foreign co-operatives**

17 (1) This section applies to a body that —

18 (a) immediately before the commencement of the
19 *Co-operatives Amendment Act 2015*
20 section 130 is, or is taken under section 371 to
21 be, a foreign co-operative authorised under this
22 Part to carry on business in this State; and

23 (b) is not registered or incorporated under a
24 corresponding co-operatives law.

25 (2) The co-operative is taken to be a participating
26 co-operative authorised under this Part to carry on
27 business in this State, and this Part applies with all
28 necessary modifications.
29

1 **132. Section 376 amended**

2 In section 376:

3 (a) delete “foreign co-operative” and insert:

4

5 participating co-operative

6

7 (b) in paragraph (b) delete “section 377; or” and insert:

8

9 section 377.

10

11 (c) delete paragraphs (c) and (d).

12 Note: The heading to amended section 376 is to read:

13 **When participating co-operative not authorised to carry on**
14 **business**

15 **133. Section 377 amended**

16 (1) In section 377(1):

17 (a) delete “foreign co-operative” and insert:

18

19 participating co-operative

20

21 (b) delete paragraphs (b) to (d) and insert:

22

23 (b) that the co-operative has, after notice from the
24 Registrar, failed to comply with —

25 (i) provisions of this Act or of a
26 corresponding co-operatives law
27 applicable to the co-operative; or

28 (ii) provisions of the rules of the
29 co-operative;

30 (c) that the co-operative has contravened a
31 direction given to it under section 380E.

32

s. 134

- 1 (2) In section 377(4) delete “foreign co-operative” and insert:
2
3 participating co-operative
4
- 5 (3) In section 377(5) delete “foreign co-operative,” and insert:
6
7 participating co-operative,
8
- 9 (4) After section 377(6) insert:
10
- 11 (7) The Registrar may, on application or otherwise, by
12 notice given to a participating co-operative, revoke a
13 decision of the Registrar to give a written notice to the
14 co-operative under subsection (5) withdrawing its
15 authority to carry on business in this State.
- 16 (8) If a notice is given to a participating co-operative under
17 subsection (7), the co-operative is taken to be
18 authorised to carry on business in this State on and
19 from the date the notice is given to the co-operative or
20 a later date specified in the notice.
21

22 **134. Sections 378 and 379 replaced**

23 Delete sections 378 and 379 and insert:
24

25 **378. Appeal against Registrar’s decision under s. 377(5)**

26 A participating co-operative may appeal to the
27 Supreme Court against a decision of the Registrar to
28 give a written notice to the co-operative under
29 section 377(5) withdrawing its authority to carry on
30 business in this State.

1 **379. Application of Act and regulations to participating**
2 **co-operatives**

3 (1) A participating co-operative that is authorised under
4 this Part to carry on business in this State must comply
5 with the provisions of this Act that are prescribed by
6 the regulations.

7 (2) The provisions prescribed for the purposes of
8 subsection (1) —

9 (a) apply with all necessary modifications and any
10 modifications prescribed by the regulations;
11 and

12 (b) are in addition to the provisions of this Part and
13 any other provisions of this Act that are
14 expressed to apply to participating
15 co-operatives.
16

17 **135. Section 380 replaced**

18 Delete section 380 and insert:
19

20 **380A. False copies of rules of participating co-operative**

21 (1) A person who gives to a member of a participating
22 co-operative or to a person intending or applying to
23 become a member of a participating co-operative a
24 copy of any rules or any alterations of rules, other than
25 those which have been registered under the relevant
26 corresponding co-operatives law, representing that they
27 are binding on the members of the participating
28 co-operative is guilty of an offence.

29 Penalty for this subsection: a fine of \$1 000.

s. 135

- 1 (2) A person who alters any of the rules of a participating
2 co-operative after they have been registered under the
3 relevant corresponding co-operatives law and circulates
4 them representing that they have been so registered
5 when they have not been is guilty of an offence.
6 Penalty for this subsection: a fine of \$1 000.

7 **380B. False copies of documents of participating**
8 **co-operatives**

- 9 (1) A person who, in purported compliance with a
10 provision of the relevant corresponding co-operatives
11 law that corresponds to section 68 —
12 (a) gives a person intending or applying to become
13 a member of a participating co-operative a
14 document as a copy of —
15 (i) a special resolution of the co-operative;
16 or
17 (ii) the most recent financial information
18 reported to members of the co-operative
19 under Part 10A;
20 and
21 (b) knows or ought to know that, in a material
22 respect, it is not a true copy of the resolution or
23 information; and
24 (c) does not indicate to that person that it is not a
25 true copy,

26 is guilty of an offence.

27 Penalty for this subsection: a fine of \$1 000.

- 28 (2) A person who, in purported compliance with a
29 provision of the relevant corresponding co-operatives
30 law that corresponds to section 68 —
31 (a) makes available for inspection by a person
32 intending or applying to become a member of a

- 1 participating co-operative a document as a copy
2 of —
- 3 (i) a special resolution of the co-operative;
4 or
- 5 (ii) the most recent financial information
6 reported to members of the co-operative
7 under Part 10A;
- 8 and
- 9 (b) knows or ought to know that, in a material
10 respect, it is not a true copy of the resolution or
11 information; and
- 12 (c) does not indicate to that person that it is not a
13 true copy,

14 is guilty of an offence.

15 Penalty for this subsection: a fine of \$1 000.

16 **380C. Restrictions on advertising and publicity: shares in**
17 **participating co-operatives**

- 18 (1) A person must not advertise, or publish a statement that
19 directly or indirectly refers to, an offer, or intended
20 offer, of shares in a participating co-operative that is a
21 distributing co-operative (within the meaning of the
22 relevant corresponding co-operatives law of another
23 jurisdiction) unless —
- 24 (a) a current disclosure statement relating to the
25 shares is registered with the Registrar for the
26 other jurisdiction under a provision of that
27 corresponding co-operatives law that
28 substantially corresponds to section 137A; and
- 29 (b) any other applicable requirements specified in
30 regulations for the purposes of this section are
31 complied with.

32 Penalty for this subsection: a fine of \$1 000.

s. 135

- 1 (2) Subsection (1) applies in relation to shares in a
2 distributing co-operative only if the shares are offered,
3 or intended to be offered, to persons who are not
4 shareholders in the co-operative.
- 5 (3) A person does not contravene subsection (1) by
6 publishing an advertisement or statement if they
7 publish it in the ordinary course of a business of —
8 (a) publishing a newspaper or magazine; or
9 (b) broadcasting by radio or television,
10 and the person did not know and had no reason to
11 suspect that its publication would amount to a
12 contravention of that subsection.
- 13 (4) Despite *The Criminal Code* section 23B(2), it is
14 immaterial for the purposes of subsection (1) that any
15 event occurred by accident.
- 16 **380D. Restrictions on advertising and publicity:**
17 **debentures or CCUs in participating co-operatives**
- 18 (1) A person must not advertise, or publish a statement that
19 directly or indirectly refers to, an offer, or intended
20 offer, of debentures or CCUs in a participating
21 co-operative unless —
22 (a) a disclosure statement relating to the debentures
23 or CCUs is approved under a provision of the
24 relevant corresponding co-operatives law of
25 another jurisdiction that corresponds to
26 section 252 by the Registrar for the other
27 jurisdiction; and
28 (b) any other applicable requirements specified in
29 regulations for the purposes of this section are
30 complied with.
- 31 Penalty for this subsection: a fine of \$1 000.

- 1 (2) A person does not contravene subsection (1) by
2 publishing an advertisement or statement if they
3 publish it in the ordinary course of a business of —
4 (a) publishing a newspaper or magazine; or
5 (b) broadcasting by radio or television,
6 and the person did not know and had no reason to
7 suspect that its publication would amount to a
8 contravention of that subsection.
- 9 (3) Despite *The Criminal Code* section 23B(2), it is
10 immaterial for the purposes of subsection (1) that any
11 event occurred by accident.

12 **380E. Registrar's directions about participating**
13 **co-operative obtaining financial accommodation**

- 14 (1) The Registrar may, if the Registrar considers it is in the
15 interests of a participating co-operative's members, by
16 written notice served on the co-operative, give a
17 direction to the co-operative as to the way in which it is
18 to exercise its functions in connection with the
19 activities of the co-operative in obtaining financial
20 accommodation in this State.
- 21 (2) A direction under subsection (1) may make provision
22 for any one or more of the following matters —
23 (a) requiring the co-operative to stop obtaining
24 financial accommodation or to stop obtaining
25 financial accommodation in a particular way;
26 (b) requiring the co-operative to repay in
27 accordance with the direction all or part of
28 financial accommodation obtained;
29 (c) requiring the co-operative to re-finance in a
30 specified way financial accommodation repaid
31 in accordance with the Registrar's direction;

s. 135

- 1 (d) the way in which the co-operative is permitted
2 to invest or use the proceeds of financial
3 accommodation it obtains.
- 4 (3) The Registrar must give the co-operative written notice
5 of the reasons for making the direction.
- 6 (4) Within 28 days of receiving the direction, the
7 co-operative may apply to the Supreme Court for a
8 review of that decision.
- 9 **380. Name and place of origin to appear on business and**
10 **other documents of participating co-operative**
- 11 (1) In this section —
- 12 *business document*, of a participating co-operative,
13 means a document that is issued, signed or endorsed by
14 or on behalf of the co-operative and is —
- 15 (a) a business letter, statement of account, invoice
16 or order for goods or services; or
- 17 (b) a bill of exchange, promissory note, cheque or
18 other negotiable instrument; or
- 19 (c) a receipt or letter of credit issued by the
20 co-operative; or
- 21 (d) a document belonging to a class prescribed by
22 the regulations as a class of business document.
- 23 (2) A participating co-operative must ensure its name, the
24 jurisdiction of its registration and any other information
25 prescribed by the regulations appear in legible
26 characters —
- 27 (a) on each seal of the co-operative; and
- 28 (b) in all notices, advertisements and other official
29 publications of the co-operative; and
- 30 (c) in all its business documents.
- 31 Penalty for this subsection: a fine of \$2 000.

- 1 (3) An officer of a participating co-operative or a person
2 on its behalf must not —
- 3 (a) use any seal of the co-operative; or
4 (b) issue or authorise the issue of a notice,
5 advertisement or other official publication of
6 the co-operative; or
7 (c) sign or authorise to be signed on behalf of the
8 co-operative any business document of the
9 co-operative,
- 10 in or on which the co-operative's name or place of
11 origin does not appear in legible characters.
12 Penalty for this subsection: a fine of \$2 000.
- 13 (4) A director of a participating co-operative must not
14 knowingly authorise or permit a contravention of this
15 section.
16 Penalty for this subsection: a fine of \$2 000.
- 17 (5) Despite *The Criminal Code* section 23B(2), it is
18 immaterial for the purposes of subsection (2) that any
19 event occurred by accident.
20

21 **136. Section 381 amended**

- 22 (1) In section 381:
23 (a) delete “The Registrar” and insert:
24
- 25 (1) The Registrar
26

s. 137

1 (b) delete “public documents, held by the Registrar relating
2 to a co-operative, including a foreign co-operative.” and
3 insert:

4
5 documents, held by the Registrar relating to a
6 co-operative or a participating co-operative.
7

8 (2) At the end of section 381 insert:

9
10 (2) Subsection (1) applies regardless of whether a
11 reciprocal arrangement referred to in section 485 exists
12 and regardless of the terms of such an arrangement.
13

14 **137. Sections 382 and 383 deleted**

15 Delete sections 382 and 383.

16 **138. Section 384 amended**

17 In section 384 delete “registrar by or under a co-operatives
18 law.” and insert:

19
20 Registrar by or under a corresponding co-operatives law.
21

22 Note: The heading to amended section 384 is to read:

23 **Functions conferred on Registrar under corresponding**
24 **co-operatives law**

25 **139. Section 385A inserted**

26 At the end of Part 14 Division 3 insert:

27
28 **385A. Registrar may exempt participating co-operatives**

29 (1) The Registrar may, by order published in the *Gazette*,
30 exempt a participating co-operative or a class of

1 participating co-operatives from any requirement of
2 this Act.

3 (2) An exemption under subsection (1) may be given only
4 if the Registrar considers that it is appropriate to do so
5 having regard to the corresponding co-operatives law
6 of each jurisdiction in which a participating
7 co-operative to which the exemption will apply is
8 registered.

9 (3) An exemption may be granted unconditionally or
10 subject to conditions.
11

12 **140. Section 386 amended**

13 (1) In section 386(1):

14 (a) delete “foreign co-operative” and insert:

15
16 participating co-operative
17

18 (b) delete paragraph (a).

19 (2) In section 386(2) and (3) delete “foreign co-operative” and
20 insert:

21
22 participating co-operative
23

24 **141. Section 387 amended**

25 (1) In section 387(1) delete “foreign co-operative” and insert:

26
27 participating co-operative
28

s. 142

1 (2) In section 387(2) delete “Schedule 6.” and insert:

2

3 Schedule 6 Division 2.

4

5 (3) In section 387(4) delete “foreign co-operative” and insert:

6

7 participating co-operative

8

9 Note: The heading to amended section 387 is to read:

10 **Application of Corporations Act to winding-up of participating**
11 **co-operatives**

12 **142. Section 388 amended**

13 (1) In section 388(1) delete “foreign co-operative” and insert:

14

15 participating co-operative

16

17 (2) In section 388(2) delete “the co-operative or” and insert:

18

19 the participating co-operative or

20

21 Note: The heading to amended section 388 is to read:

22 **Outstanding property of participating co-operatives**

23 **143. Part 14 Division 5 heading replaced**

24 Delete the heading to Part 14 Division 5 and insert:

25

26 **Division 5 — Mergers and transfers of engagements**
27 **affecting participating co-operatives**

28

1 **144. Section 389 amended**

2 (1) In section 389 insert in alphabetical order:

3

4 *assets* means any legal or equitable estate or interest
5 (whether present or future and whether vested or
6 contingent) in real or personal property of any
7 description (including money) and includes securities,
8 choses in action and documents;

9 *liabilities* means liabilities, debts and obligations
10 (whether present or future and whether vested or
11 contingent);

12

13 (2) In section 389 in the definition of *appropriate Registrar*
14 paragraph (b) delete “co-operatives law of the participating
15 State” and insert:

16

17 corresponding co-operatives law of the participating jurisdiction

18

19 (3) In section 389 in the definition of *State co-operative* delete
20 “State, other than a foreign co-operative;” and insert:

21

22 State;

23

24 **145. Section 390 amended**

25 Delete section 390(2).

26 **146. Section 391 amended**

27 (1) Delete section 391(2).

s. 147

1 (2) In section 391(3)(b) delete “in the case of a merger or transfer
2 affecting a participating co-operative, the participating” and
3 insert:

4
5 the participating
6

7 **147. Section 392 amended**

8 (1) In section 392(1) delete “foreign co-operative” and insert:

9
10 participating co-operative
11

12 (2) In section 392(3):

13 (a) in paragraphs (a), (b) and (c) delete “foreign
14 co-operative” and insert:

15
16 participating co-operative
17

18 (b) in paragraph (f) delete “co-operatives law of the
19 participating State” and insert:

20
21 corresponding co-operatives law of the participating
22 jurisdiction
23

24 (3) In section 392(4) and (5) delete “foreign co-operative” and
25 insert:

26
27 participating co-operative
28

1 **148. Section 393 amended**

2 (1) In section 393(1) delete “Registrar for the participating State
3 concerned” and insert:

4
5 participating Registrar
6

7 (2) Delete section 393(2)(b).

8 **149. Section 394 amended**

9 (1) Delete section 394(1)(d) and (e) and insert:

10
11 (d) the certificate of registration of the participating
12 co-operative has been surrendered to the
13 Registrar for the participating jurisdiction
14 concerned; and
15

16 (2) In section 394(2) and (4) delete “co-operatives law of the
17 participating State” and insert:

18
19 corresponding co-operatives law of the participating jurisdiction
20

21 **150. Section 395 amended**

22 (1) Delete section 395(1)(d) and (e).

23 (2) In section 395(2) delete “co-operatives law of the participating
24 State” and insert:

25
26 corresponding co-operatives law of the participating jurisdiction
27

s. 151

1 **151. Section 396 amended**

2 In section 396(1) delete the definitions of:

3 *assets*

4 *liabilities*

5 **152. Part 15 Division 1A inserted**

6 At the beginning of Part 15 insert:

7

8 **Division 1A — Examining a person about a**
9 **co-operative**

10 **398A. Application of Corporations Act: court-directed**
11 **examinations**

12 A co-operative is declared to be an applied
13 Corporations legislation matter for the purposes of the
14 *Corporations (Ancillary Provisions) Act 2001* Part 3 in
15 relation to the Corporations Act Part 5.9 Division 1.
16

17 **153. Part 15 Division 1 heading replaced**

18 Delete the heading to Part 15 Division 1 and insert:

19

20 **Division 1 — Supervision and inspection**
21

22 **154. Section 398 amended**

23 (1) In section 398 delete “this Part — ” and insert:

24

25 this Division —
26

1 (2) In section 398 delete the definition of *chief executive officer*
2 (*DOCEP*).

3 (3) In section 398 in the definition of *relevant document* delete
4 “records” and insert:

5

6 books

7

8 **155. Section 399 amended**

9 In section 399:

10 (a) delete “Part” and insert:

11

12 Division

13

14 (b) in paragraphs (a) and (b) delete “foreign co-operative;”
15 and insert:

16

17 participating co-operative;

18

19 (c) in paragraph (d) delete “foreign co-operative,” and insert

20

21 participating co-operative,

22

23 Note: The heading to amended section 399 is to read:

24 **Co-operative includes subsidiaries, participating co-operatives**
25 **and co-operative ventures**

26 **156. Section 400 amended**

27 In section 400:

28 (a) in paragraph (a) delete “(DOCEP)” and insert:

29

30 of the department

31

s. 157

1 (b) in paragraph (b) delete “(DOCEP).” and insert:
2
3 of the department.
4

5 **157. Section 412 amended**

6 (1) Delete section 412(4) and insert:
7

8 (4) The magistrate may issue the warrant only if satisfied
9 there are reasonable grounds —
10 (a) for suspecting the affairs or activities of a
11 co-operative are being managed or conducted at
12 the place; or
13 (b) for suspecting there are relevant documents at
14 the place; or
15 (c) for suspecting —
16 (i) there is a particular thing or activity that
17 may provide evidence of an offence
18 against this Act; and
19 (ii) that thing or activity is at the place, or
20 may be at the place, within the next
21 7 days.
22

23 (2) In section 412(5)(b) delete “the offence” and insert:
24

25 the suspected offence (if any)
26

27 **158. Section 415 amended**

28 In section 415(3) delete the Penalty and insert:
29

30 Penalty for this subsection: a fine of \$2 000.
31

1 **159. Section 419 amended**

2 In section 419(5) delete the Penalty and insert:

3

4 Penalty for this subsection: a fine of \$2 000.

5

6 **160. Section 420 amended**

7 In section 420(1) delete the Penalty and insert:

8

9 Penalty for this subsection: a fine of \$12 000, or
10 imprisonment for one year, or both.

11

12 **161. Section 421 amended**

13 In section 421(2) delete the Penalty and insert:

14

15 Penalty for this subsection: a fine of \$12 000, or
16 imprisonment for one year, or both.

17

18 **162. Section 422 amended**

19 In section 422(1) delete the Penalty and insert:

20

21 Penalty for this subsection: a fine of \$12 000, or
22 imprisonment for one year, or both.

23

24 **163. Section 423 amended**

25 In section 423(2) delete the Penalty and insert:

26

27 Penalty for this subsection: a fine of \$12 000, or
28 imprisonment for one year, or both.

29

s. 164

1 **164. Section 427 amended**

2 (1) In section 427(1):

3 (a) delete “(DOCEP)” (1st occurrence) and insert:

4

5 of the department

6

7 (b) delete “(DOCEP)” (2nd occurrence).

8 (2) In section 427(2) delete “(DOCEP)” and insert:

9

10 of the department

11

12 **165. Section 431 amended**

13 In section 431(1) delete the Penalty and insert:

14

15 Penalty for this subsection: a fine of \$24 000, or
16 imprisonment for 2 years, or both.

17

18 **166. Section 432 amended**

19 In section 432 delete the Penalty and insert:

20

21 Penalty: a fine of \$12 000, or imprisonment for one
22 year, or both.

23

24 **167. Section 438 replaced**

25 Delete section 438 and insert:

26

27 **438. Falsification of books**

28 (1) An officer, former officer, employee, former employee,
29 member or former member of a co-operative who

- 1 engages in conduct that results in the concealment,
2 destruction, mutilation or falsification of —
- 3 (a) any securities of or belonging to the
4 co-operative; or
- 5 (b) any books affecting or relating to the affairs of
6 the co-operative; or
- 7 (c) any record required to be sent, kept or delivered
8 under this Act,
- 9 is guilty of an offence.
- 10 Penalty for this subsection: a fine of \$10 000, or
11 imprisonment for 2 years, or both.
- 12 (2) Where matter that is used or intended to be used in
13 connection with the keeping of any books affecting or
14 relating to affairs of a co-operative is recorded or
15 stored in an illegible form by means of a mechanical
16 device, an electronic device or any other device, a
17 person who —
- 18 (a) records or stores by means of that device matter
19 that the person knows to be false or misleading
20 in a material particular; or
- 21 (b) engages in conduct that results in the
22 destruction, removal or falsification of matter
23 that is recorded or stored by means of that
24 device, or has been prepared for the purpose of
25 being recorded or stored, or for use in
26 compiling or recovering other matter to be
27 recorded or stored by means of that device; or
- 28 (c) having a duty to record or store matter by
29 means of that device, fails to record or store
30 matter by means of that device —
- 31 (i) with intent to falsify any entry made or
32 intended to be compiled, wholly or in

s. 168

- 1 part, from matter so recorded or stored;
2 or
3 (ii) knowing that the failure so to record or
4 store the matter will render false or
5 misleading in a material particular other
6 matter so recorded or stored,
7 is guilty of an offence.
8 Penalty for this subsection: a fine of \$10 000, or
9 imprisonment for 2 years, or both.
10 (3) It is a defence to a charge arising under subsection (1)
11 or (2)(b) if the defendant proves that the defendant
12 acted honestly and that in all the circumstances the act
13 or omission constituting the offence should be excused.
14

15 **168. Section 449 amended**

16 In section 449(1) delete “co-operative by this Act, or” and
17 insert:

18
19 co-operative or a participating co-operative by this Act or by a
20 co-operative by
21

22 **169. Section 452 amended**

23 In section 452(1) delete the definition of *department*.

24 **170. Section 454 amended**

25 Delete section 454(1) and insert:

- 26
27 (1) The Registrar is to keep a register of co-operatives, in
28 addition to the Register of Co-operatives Charges
29 established under Schedule 3 clause 18.
30

1 **171. Part 16 Division 4 deleted**

2 Delete Part 16 Division 4.

3 **172. Part 17 heading replaced**

4 Delete the heading to Part 17 and insert:

5

6 **Part 17 — Legal proceedings and other matters**

7 **Division 1 — Offences, enforcement and remedies**

8

9 **173. Section 474 deleted**

10 Delete section 474.

11 **174. Section 476 amended**

12 (1) In section 476(4):

13 (a) delete paragraph (b) and insert:

14

15 (b) for the purposes of any proceedings under this
16 Act or a corresponding co-operatives law or of
17 an inquiry authorised by legislation of this State
18 or of another jurisdiction; or

19

20 (b) after paragraph (c) insert:

21

22 (da) under a requirement imposed under legislation
23 of this State or of another jurisdiction; or

24

25 (2) In section 476(5):

26 (a) after paragraph (a) insert:

27

28 (ba) the Registrar or a participating Registrar; or

29

s. 175

- 1 (b) in paragraph (g) delete “State, or of a Territory,
2 administers a law of the State or Territory” and insert:
3
4 jurisdiction, administers a law of the jurisdiction
5

6 **175. Section 478 amended**

7 Delete section 478(5) and insert:
8

- 9 (5) The maximum penalty for the further offence is the
10 penalty worked out by multiplying \$50 by the number
11 of days in the further offence period.
12

13 **176. Section 480A inserted**

14 After section 479 insert:
15

16 **480A. Order against person concerned with co-operative**

- 17 (1) In this section —
18 *eligible applicant*, in relation to a co-operative,
19 means —
20 (a) the Registrar; or
21 (b) a liquidator or provisional liquidator of the
22 co-operative; or
23 (c) an administrator of the co-operative; or
24 (d) an administrator of a deed executed by the
25 co-operative under the Corporations Act as
26 applying under section 323; or
27 (e) a person authorised in writing by the Registrar
28 to make an application under this section in
29 relation to the co-operative.

-
- 1 (2) Subject to subsection (3), where, on application by an
2 eligible applicant, the Supreme Court is satisfied
3 that —
- 4 (a) a person is guilty of fraud, negligence, default,
5 breach of trust or breach of duty in relation to a
6 co-operative; and
- 7 (b) the co-operative has suffered, or is likely to
8 suffer, loss or damage as a result of the fraud,
9 negligence, default, breach of trust or breach of
10 duty,
- 11 the court may make such order or orders as it thinks
12 appropriate against or in relation to the person
13 (including either or both of the orders specified in
14 subsection (4)) and may so make an order against or in
15 relation to a person even though the person may have
16 committed an offence in respect of the matter to which
17 the order relates.
- 18 (3) The Supreme Court must not make an order against a
19 person under subsection (2) unless the court has given
20 the person the opportunity —
- 21 (a) to give evidence; and
- 22 (b) to call witnesses to give evidence; and
- 23 (c) to bring other evidence in relation to the
24 matters to which the application relates; and
- 25 (d) to employ, at the person's own expense, a legal
26 practitioner to put to the person, or to any other
27 witness, such questions as the court considers
28 just for the purpose of enabling the person to
29 explain or qualify any answers or evidence
30 given by the person.

s. 177

- 1 (4) The orders that may be made under subsection (2)
2 against a person include —
3 (a) an order directing the person to pay money or
4 transfer property to the co-operative; and
5 (b) an order directing the person to pay to the
6 co-operative the amount of the loss or damage.
- 7 (5) Nothing in this section prevents any person from
8 instituting any other proceedings in relation to matters
9 in respect of which an application may be made under
10 this section.
11

12 **177. Section 481 replaced**

13 Delete section 481 and insert:
14

15 **481A. Undertakings**

- 16 (1) The Registrar may accept a written undertaking given
17 by a person in connection with a matter relating to a
18 contravention of this Act or where the Registrar has
19 reasonable grounds to believe there may be a
20 contravention of this Act.
- 21 (2) Without limiting subsection (1), the Registrar may
22 accept a written undertaking given by the person that
23 the person will do either or both of the following —
24 (a) refrain from conduct that constitutes a
25 contravention of this Act;
26 (b) take action to prevent or remedy a
27 contravention of this Act.
- 28 (3) The person may withdraw or vary an undertaking at
29 any time, if the person has first obtained the consent of
30 the Registrar.

- 1 (4) The consent of the Registrar is required for the
2 purposes of subsection (3) even if the undertaking
3 purports to authorise a withdrawal or variation of the
4 undertaking without that consent.
- 5 (5) If the Registrar accepts an undertaking given by a
6 person, the Registrar must not proceed against the
7 person in respect of the conduct specified in the
8 undertaking, unless it appears to the Registrar that the
9 person has contravened the undertaking.
- 10 (6) Subsection (5) does not apply to an application by the
11 Registrar for an order under section 481C.

12 **481B. Offence of contravention of undertaking**

13 A person who contravenes an undertaking accepted by
14 the Registrar commits an offence.

15 Penalty: a fine of \$6 000.

16 **481C. Enforcement order on application with consent of
17 person giving undertaking**

- 18 (1) The Registrar, with the consent of the person who gave
19 an undertaking, may apply, at any time, to the Supreme
20 Court for an order directing the person to comply with
21 the undertaking.
- 22 (2) On an application under subsection (1), the Supreme
23 Court may by order direct the person to comply with
24 the undertaking.
- 25 (3) This section does not limit section 481D.

26 **481D. Enforcement orders after contravention of
27 undertaking**

- 28 (1) If the Supreme Court is satisfied, on the application of
29 the Registrar, that a person has contravened an

s. 177

- 1 undertaking accepted by the Registrar, the court may
2 make any or all of the following orders —
- 3 (a) an order prohibiting the person from engaging
4 in specified conduct;
- 5 (b) an order directing the person to take specified
6 action to comply with the undertaking;
- 7 (c) an order directing the person to pay to the
8 Registrar an amount up to the amount of any
9 financial benefit that the person has obtained
10 directly or indirectly and that is reasonably
11 attributable to the contravention of the
12 undertaking;
- 13 (d) any order that the court considers appropriate
14 directing the person to compensate any other
15 person who has suffered loss, injury or damage
16 as a result of the contravention of the
17 undertaking;
- 18 (e) any other order that the court considers
19 appropriate.
- 20 (2) The Supreme Court may make an interim order under
21 subsection (1)(a) pending final determination of the
22 application.
- 23 (3) The Supreme Court may, on the application of the
24 Registrar or the person in respect of whom the order
25 was made, vary or discharge an order under
26 subsection (1)(a).
- 27 (4) An order under subsection (1)(a) may be made subject
28 to such conditions as the Supreme Court thinks
29 appropriate.
- 30 (5) The Supreme Court must not make an order under this
31 section (other than an interim order) unless satisfied on
32 the balance of probabilities that proper grounds for the
33 order have been established.

- 1 (6) If a co-operative or other corporation is found to have
2 contravened an undertaking, each officer of the
3 co-operative or other corporation is taken to have so
4 breached the undertaking if the officer knowingly
5 authorised or permitted the breach, and the Supreme
6 Court may make, against the officer, all or any of the
7 orders specified in subsection (1) that the court thinks
8 appropriate.

9 **481E. Copy of undertaking**

10 The Registrar must give a copy of an undertaking
11 under section 481A to the person who gave the
12 undertaking.

13 **481F. Registration of undertakings**

- 14 (1) The Registrar must register each undertaking in the
15 register of co-operatives.
- 16 (2) The register of co-operatives must include the
17 following —
- 18 (a) the name and address of the person who gave
19 the undertaking;
- 20 (b) the date of the undertaking;
- 21 (c) a copy of the undertaking.
- 22 (3) The Registrar may withhold information relating to an
23 undertaking from inclusion in the register of
24 co-operatives if the Registrar is satisfied that —
- 25 (a) the information consists of personal details of
26 an individual not involved in a contravention or
27 possible contravention to which the undertaking
28 relates; or
- 29 (b) the information is commercial-in-confidence;
30 or

s. 177

- 1 (c) disclosure of the information would be against
2 the public interest.
- 3 (4) If information is withheld under this section from
4 inclusion in the register of co-operatives, the register
5 must include a statement that information has been
6 withheld in relation to the undertaking concerned and
7 of the grounds on which it has been withheld.
- 8 (5) For the purposes of this section, information is
9 *commercial-in-confidence* if —
- 10 (a) its disclosure would place a person at a
11 substantial commercial disadvantage in relation
12 to present or potential contractual negotiations
13 or arrangements; or
- 14 (b) it is of a kind prescribed by the regulations as
15 being commercial-in-confidence.

16 **481G. Double jeopardy**

- 17 If —
- 18 (a) an act or omission constitutes an offence under
19 this Act and under a corresponding
20 co-operatives law of a participating jurisdiction;
21 and
- 22 (b) the offender has been punished for that offence
23 under the corresponding co-operatives law of
24 the participating jurisdiction,
- 25 the offender is not liable to be punished for the offence
26 under this Act.

27 **481H. Time limit for starting proceedings for offence**

- 28 (1) In this section —
- 29 *relevant day* means the day on which the
30 *Co-operatives Amendment Act 2015* section 177 comes
31 into operation.

1 (2) Proceedings for an offence under this Act that is
2 alleged to have been committed on or after the relevant
3 day can be instituted no later than 5 years after the
4 alleged commission of the offence.

5 (3) Proceedings for an offence under this Act that is
6 alleged to have been committed before the relevant day
7 can be instituted no later than 3 years after the alleged
8 commission of the offence.

9 **481I. Authorisation to start proceedings for offence**

10 Proceedings for an offence under this Act may be
11 started only by the Registrar or a person authorised in
12 writing by the Registrar to start the proceedings.

13 **481. Proceedings for recovery of fine or penalty imposed**
14 **by rules**

15 Proceedings for the recovery of any fine or penalty
16 imposed by the rules of a co-operative may be
17 instituted only by the co-operative.
18

19 **178. Part 17 Divisions 2 and 3 inserted**

20 At the end of Part 17 insert:
21

22 **Division 2 — Civil consequences of contravening civil**
23 **penalty provisions**

24 **482A. Terms used**

25 In this Division —

26 *civil penalty provision* means a provision referred to in
27 section 482B;

28 *compensation order* means an order under
29 section 482E;

- 1 *pecuniary penalty order* means an order under
2 section 482D.
- 3 **482B. Declarations of contravention**
- 4 (1) If the Supreme Court is satisfied that a person has
5 contravened one of the following provisions, it must
6 make a declaration of contravention —
- 7 (a) section 207(2);
8 (b) section 208(1);
9 (c) section 208(2);
10 (d) section 209(1);
11 (e) section 209(2);
12 (f) section 210(1);
13 (g) section 210(3);
14 (h) section 244ZZO(1);
15 (i) without limiting paragraph (h) —
16 (i) section 244W(2);
17 (ii) the Corporations Act section 318 as
18 applying under section 244ZA of this
19 Act;
- 20 (j) any of the following provisions of the
21 Corporations Act relating to debentures as
22 applying under section 250 of this Act —
- 23 (i) section 674(2);
24 (ii) section 674(2A);
25 (iii) section 675(2);
26 (iv) section 675(2A);
27 (v) section 1041A;
28 (vi) section 1041B(1);
29 (vii) section 1041C(1);
30 (viii) section 1041D;

- 1 (ix) section 1043A(1);
2 (x) section 1043A(2);
3 (k) the Corporations Act section 588G(2) as
4 applying under section 337 of this Act.
- 5 (2) A declaration of contravention must specify the
6 following —
7 (a) the court that made the declaration;
8 (b) the civil penalty provision that was
9 contravened;
10 (c) the person who contravened the provision;
11 (d) the conduct that constituted the contravention.

12 **482C. Declaration of contravention is conclusive evidence**

13 A declaration of contravention is conclusive evidence
14 of the matters referred to in section 482B(2).

15 **482D. Pecuniary penalty orders**

- 16 (1) The Supreme Court may order a person to pay a
17 pecuniary penalty of up to \$200 000 if —
18 (a) a declaration of contravention by the person has
19 been made under section 482B; and
20 (b) the contravention —
21 (i) materially prejudices the interests of the
22 co-operative or its members; or
23 (ii) materially prejudices the co-operative's
24 ability to pay its creditors; or
25 (iii) is serious.
- 26 (2) The penalty is a civil debt payable to the Registrar on
27 behalf of the State.

s. 178

- 1 (3) The Registrar and the State may enforce the order as if
2 it were an order made in civil proceedings against the
3 person to recover a debt due from the person.
- 4 (4) The debt arising from the order is taken to be a
5 judgment debt.
- 6 **482E. Compensation orders**
- 7 (1) The Supreme Court may order a person to compensate
8 a co-operative for damage suffered by the co-operative
9 if —
- 10 (a) the person has contravened a civil penalty
11 provision in relation to the co-operative; and
12 (b) the damage resulted from the contravention.
- 13 (2) The order must specify the amount of the
14 compensation.
- 15 (3) A compensation order may be made under this
16 section —
- 17 (a) whether or not a declaration of contravention
18 has been made under section 482B; and
19 (b) whether or not the person has been convicted of
20 an offence for contravening the civil penalty
21 provision.
- 22 (4) In determining the damage suffered by the co-operative
23 for the purposes of making a compensation order,
24 profits made by any person resulting from the
25 contravention are to be included.
- 26 (5) A compensation order may be enforced as if it were a
27 judgment of the Supreme Court.

- 1 **482F. Who may apply for a declaration or order**
- 2 (1) The Registrar may apply for a declaration of
3 contravention, a pecuniary penalty order or a
4 compensation order.
- 5 (2) The co-operative may apply for a compensation order.
- 6 (3) The co-operative may intervene in an application for a
7 declaration of contravention or a pecuniary penalty
8 order in relation to the co-operative.
- 9 (4) If a co-operative intervenes under subsection (3), the
10 co-operative is entitled to be heard on all matters other
11 than whether the declaration or order should be made.
- 12 (5) No person may apply for a declaration of
13 contravention, a pecuniary penalty order or a
14 compensation order unless permitted by this section.
- 15 (6) An application for a compensation order may be made
16 whether or not a declaration of contravention has been
17 made under section 482B.
- 18 **482G. Time limit for application for a declaration or order**
- 19 Proceedings for a declaration of contravention, a
20 pecuniary penalty order, or a compensation order, may
21 be started no later than 6 years after the contravention.
- 22 **482H. Civil evidence and procedural rules for declarations
23 and civil penalty orders**
- 24 The Supreme Court must apply the rules of evidence
25 and procedure for civil matters when hearing
26 proceedings for —
- 27 (a) a declaration of contravention; or
28 (b) a pecuniary penalty order.

1 **482I. Civil proceedings after criminal proceedings**

2 The Supreme Court must not make a declaration of
3 contravention or a pecuniary penalty order against a
4 person for a contravention if the person has been
5 convicted of an offence constituted by conduct that is
6 substantially the same as the conduct constituting the
7 contravention.

8 **482J. Criminal proceedings during civil proceedings**

- 9 (1) Proceedings for a declaration of contravention or
10 pecuniary penalty order against a person are stayed
11 if —
- 12 (a) criminal proceedings are started or have already
13 been started against the person for an offence;
14 and
- 15 (b) the offence is constituted by conduct that is
16 substantially the same as the conduct alleged to
17 constitute the contravention.
- 18 (2) The proceedings for the declaration or order may be
19 resumed if the person is not convicted of the offence.
- 20 (3) If the person is convicted of the offence, the
21 proceedings for the declaration or order are dismissed.

22 **482K. Criminal proceedings after civil proceedings**

23 Criminal proceedings may be started against a person
24 for conduct that is substantially the same as conduct
25 constituting a contravention of a civil penalty provision
26 regardless of whether —

27 (a) a declaration of contravention has been made
28 against the person; or

29 (b) a pecuniary penalty order has been made
30 against the person; or

-
- 1 (c) a compensation order has been made against
2 the person; or
3 (d) the person has been disqualified from managing
4 co-operatives under Part 9 Division 2A.

5 **482L. Evidence given in proceedings for penalty not**
6 **admissible in criminal proceedings**

- 7 (1) Evidence of information given or evidence of
8 production of documents by an individual is not
9 admissible in criminal proceedings against the
10 individual if —
11 (a) the individual previously gave the evidence or
12 produced the documents in proceedings for a
13 pecuniary penalty order against the individual
14 for a contravention of a civil penalty provision
15 (whether or not the order was made); and
16 (b) the conduct alleged to constitute the offence is
17 substantially the same as the conduct that was
18 claimed to constitute the contravention.
19 (2) Subsection (1) does not apply to a criminal proceeding
20 in respect of the falsity of the evidence given by the
21 individual in the proceedings for the pecuniary penalty
22 order.

23 **482M. Relief from liability for contravention of civil**
24 **penalty provision**

- 25 (1) In this section —
26 *eligible proceedings* —
27 (a) means proceedings for a contravention of a
28 civil penalty provision, including —
29 (i) proceedings under section 482E; and

s. 178

- 1 (ii) proceedings under the Corporations Act
2 section 588M or 588W as applying
3 under section 337 of this Act;
- 4 and
- 5 (b) does not include proceedings for an offence,
6 except so far as the proceedings relate to the
7 question of whether the Supreme Court should
8 make an order under —
- 9 (i) section 482E; or
- 10 (ii) the Corporations Act section 588K as
11 applying under section 337 of this Act.
- 12 (2) If —
- 13 (a) eligible proceedings are brought against a
14 person; and
- 15 (b) in the proceedings it appears to the Supreme
16 Court that the person has, or may have,
17 contravened a civil penalty provision but
18 that —
- 19 (i) the person has acted honestly; and
- 20 (ii) having regard to all the circumstances of
21 the case (including, where applicable,
22 those connected with the person's
23 appointment as an officer, or
24 employment as an employee, of a
25 co-operative), the person ought fairly to
26 be excused for the contravention,
- 27 the Supreme Court may relieve the person either
28 wholly or partly from a liability to which the person
29 would otherwise be subject, or that might otherwise be
30 imposed on the person, because of the contravention.
- 31 (3) In determining under subsection (2) whether a person
32 ought fairly to be excused for a contravention of the

- 1 Corporations Act section 588G as applying under
2 section 337 of this Act, the matters to which regard is
3 to be had include, but are not limited to —
- 4 (a) any action the person took with a view to
5 appointing an administrator of the co-operative;
6 and
 - 7 (b) when that action was taken; and
 - 8 (c) the results of that action.
- 9 (4) If a person thinks that eligible proceedings will or may
10 be begun against them, they may apply to the Supreme
11 Court for relief.
- 12 (5) On an application under subsection (4), the court may
13 grant relief under subsection (2) as if the eligible
14 proceedings had been begun in the court.
- 15 (6) For the purposes of subsection (2) as applying for the
16 purposes of a case tried by a judge with a jury —
- 17 (a) a reference in that subsection to the Supreme
18 Court is a reference to the judge; and
 - 19 (b) the relief that may be granted includes
20 withdrawing the case in whole or in part from
21 the jury and directing judgment to be entered
22 for the defendant on such terms as to costs as
23 the judge thinks appropriate.
- 24 (7) Nothing in this section limits, or is limited by,
25 section 482N.

26 **Division 3 — Miscellaneous**

27 **482N. Power to grant relief**

- 28 (1) If, in any civil proceeding against a person to whom
29 this section applies for negligence, default, breach of

s. 178

- 1 trust or breach of duty in a capacity as such a person, it
2 appears to the Supreme Court —
- 3 (a) that the person is or may be liable in respect of
4 the negligence, default or breach but that the
5 person has acted honestly; and
- 6 (b) that, having regard to all the circumstances of
7 the case, including those connected with the
8 person's appointment, the person ought fairly to
9 be excused for the negligence, default or
10 breach,
- 11 the Supreme Court may relieve the person either
12 wholly or partly from liability on such terms as the
13 court thinks fit.
- 14 (2) Where a person to whom this section applies has
15 reason to apprehend that any claim will or might be
16 made against the person in respect of any negligence,
17 default, breach of trust or breach of duty in a capacity
18 as such a person —
- 19 (a) the person may apply to the Supreme Court for
20 relief; and
- 21 (b) the Supreme Court has the same power to
22 relieve the person as it would have had under
23 subsection (1) if it had been a court before
24 which proceedings against the person for
25 negligence, default, breach of trust or breach of
26 duty had been brought.
- 27 (3) Where a case to which subsection (1) applies is being
28 tried by a judge with a jury, the judge after hearing the
29 evidence may —
- 30 (a) if he or she is satisfied that the defendant ought
31 pursuant to that subsection to be relieved either
32 wholly or partly from the liability sought to be
33 enforced against the person, withdraw the case
34 in whole or in part from the jury; and

- 1 (b) forthwith direct judgment to be entered for the
2 defendant on such terms as to costs or
3 otherwise as the judge thinks proper.
- 4 (4) This section applies to a person who is —
- 5 (a) an officer or employee of a co-operative; or
6 (b) an auditor of a co-operative, whether or not the
7 person is an officer or employee of the
8 co-operative; or
9 (c) an expert in relation to a matter —
10 (i) relating to a co-operative; and
11 (ii) in relation to which the civil proceeding
12 has been taken or the claim will or
13 might arise;
14 or
15 (d) a receiver, receiver and manager, liquidator or
16 other person appointed or directed by the
17 Supreme Court to carry out any duty under this
18 Act in relation to a co-operative.

19 **482O. Irregularities**

- 20 (1) In this section, unless the contrary intention appears —
- 21 (a) a reference to a proceeding under this Act is a
22 reference to any proceeding whether a legal
23 proceeding or not; and
24 (b) a reference to a procedural irregularity includes
25 a reference to —
26 (i) the absence of a quorum at a meeting of
27 a co-operative, at a meeting of directors
28 or creditors of a co-operative, or at a
29 joint meeting of creditors and members
30 of a co-operative; and
31 (ii) a defect, irregularity or deficiency of
32 notice or time.

s. 178

- 1 (2) A proceeding under this Act is not invalidated because
2 of any procedural irregularity unless the Supreme
3 Court is of the opinion that the irregularity has caused
4 or may cause substantial injustice that cannot be
5 remedied by any order of the court and by order
6 declares the proceeding to be invalid.
- 7 (3) A meeting held for the purposes of this Act, or a
8 meeting notice of which is required to be given in
9 accordance with the provisions of this Act, or any
10 proceeding at such a meeting, is not invalidated only
11 because of the accidental omission to give notice of the
12 meeting or the non-receipt by any person of notice of
13 the meeting, unless the Supreme Court, on the
14 application of the person concerned, a person entitled
15 to attend the meeting or the Registrar, declares
16 proceedings at the meeting to be void.
- 17 (4) A meeting held for the purposes of this Act, or a
18 meeting notice of which is required to be given in
19 accordance with the provisions of this Act, or any
20 proceeding at such a meeting, is not invalidated only
21 because of the inability of a person to access the notice
22 of meeting, unless the Supreme Court, on the
23 application of the person concerned, a person entitled
24 to attend the meeting or the Registrar, declares
25 proceedings at the meeting to be void.
- 26 (5) If a member does not have a reasonable opportunity to
27 participate in a meeting of members, or part of a
28 meeting of members, held at 2 or more venues, the
29 meeting will only be invalid on that ground if —
30 (a) the Supreme Court is of the opinion that —
31 (i) a substantial injustice has been caused
32 or may be caused; and
33 (ii) the injustice cannot be remedied by any
34 order of the Supreme Court;
35 and

- 1 (b) the Supreme Court declares the meeting or
2 proceeding (or that part of it) invalid.
- 3 (6) Subject to the following provisions of this section but
4 without limiting the generality of any other provision
5 of this Act, the Supreme Court may, on application by
6 any interested person, make all or any of the following
7 orders, either unconditionally or subject to such
8 conditions as the court imposes —
- 9 (a) an order declaring that any act, matter or thing
10 purporting to have been done, or any
11 proceeding purporting to have been instituted
12 or taken, under this Act or in relation to a
13 co-operative is not invalid by reason of any
14 contravention of a provision of this Act or a
15 provision of the constitution of a co-operative;
- 16 (b) an order directing the rectification of any
17 register kept by the Registrar under this Act;
- 18 (c) an order relieving a person in whole or in part
19 from any civil liability in respect of a
20 contravention of a kind referred to in
21 paragraph (a);
- 22 (d) an order extending the period for doing any act,
23 matter or thing or instituting or taking any
24 proceeding under this Act or in relation to a
25 co-operative (including an order extending a
26 period where the period concerned ended
27 before the application for the order was made)
28 or abridging the period for doing such an act,
29 matter or thing or instituting or taking such a
30 proceeding,
- 31 and may make such consequential or ancillary orders
32 as the court thinks fit.
- 33 (7) An order may be made under subsection (6)(a) or (c)
34 notwithstanding that the contravention referred to in

s. 178

- 1 the paragraph concerned resulted in the commission of
2 an offence.
- 3 (8) The Supreme Court must not make an order under this
4 section unless it is satisfied —
- 5 (a) in the case of an order referred to in
6 subsection (6)(a) —
- 7 (i) that the act, matter or thing, or the
8 proceeding, referred to in that paragraph
9 is essentially of a procedural nature; or
- 10 (ii) that the person or persons concerned in
11 or party to the contravention acted
12 honestly; or
- 13 (iii) that it is just and equitable that the order
14 be made;
- 15 and
- 16 (b) in the case of an order referred to in
17 subsection (6)(c) — that the person subject to
18 the civil liability concerned acted honestly; and
- 19 (c) in every case — that no substantial injustice has
20 been or is likely to be caused to any person.

21 **482P. Civil proceedings not to be stayed**

22 No civil proceedings under this Act are to be stayed
23 merely because the proceeding discloses, or arises out
24 of, the commission of an offence.

25 **482Q. Standard of proof**

26 Where, in proceedings other than proceedings for an
27 offence, it is necessary to establish, or for the court to
28 be satisfied, for any purpose relating to a matter arising
29 under this Act, that —

- 30 (a) a person has contravened a provision of this
31 Act; or

- 1 (b) default has been made in complying with a
2 provision of this Act; or
3 (c) an act or omission was unlawful by virtue of a
4 provision of this Act; or
5 (d) a person has been in any way, by act or
6 omission, directly or indirectly, knowingly
7 concerned in or party to a contravention of, or a
8 default in complying with, a provision of this
9 Act,
10 it is sufficient if the matter referred to in paragraph (a),
11 (b), (c) or (d) is established, or the court is so satisfied,
12 as the case may be, on the balance of probabilities.
13

14 **179. Section 482 amended**

15 In section 482(1) delete “section 315,” and insert:

16

17 the provisions of the Corporations Act as applying under
18 section 316,
19

20 **180. Section 483 amended**

21 (1) Delete section 483(1) to (3) and insert:

22

- 23 (1) A document may be served on a co-operative or a
24 participating co-operative —
25 (a) by posting it to the registered office of the
26 co-operative or participating co-operative; or
27 (b) by leaving it at the registered office of the
28 co-operative or participating co-operative with
29 a person who appears to have reached 16 years
30 of age; or

s. 180

- 1 (c) if a liquidator or administrator of the
2 co-operative or participating co-operative has
3 been appointed — by post; or
- 4 (d) if a liquidator or administrator of the
5 co-operative or participating co-operative has
6 been appointed by the Registrar —
- 7 (i) if the liquidator or administrator (as the
8 case may be) is registered with ASIC —
9 by leaving it at the address of the office
10 of the liquidator or administrator (as the
11 case may be) in the most recent notice
12 of that address lodged with ASIC; or
- 13 (ii) if the liquidator or administrator (as the
14 case may be) is not registered with
15 ASIC — by leaving it at the address of
16 the office of the liquidator or
17 administrator (as the case may be) in the
18 most recent notice of that address
19 lodged with the Registrar;
- 20 or
- 21 (e) if a liquidator or administrator of the
22 co-operative or participating co-operative has
23 been appointed by someone else — by leaving
24 it at the address of the office of the liquidator or
25 administrator (as the case may be) in the most
26 recent notice of that address lodged with ASIC.
- 27 (2) For the purpose of serving a document under this
28 section by post, it is properly addressed if it is
29 addressed to the registered office of the co-operative or
30 the participating co-operative.
31

- 1 (2) In section 483(4) delete “foreign co-operative” and insert:
2
3 participating co-operative
4

5 **181. Section 484 amended**

6 After section 484(2) insert:
7

- 8 (3) Subsection (2) does not apply in relation to reports
9 provided to members under section 244V.
10

11 **182. Section 485 amended**

12 (1) Delete section 485(1) and insert:
13

- 14 (1) If a reciprocal arrangement with another jurisdiction or
15 country is in force, the Registrar —
16 (a) may, at the request of the appropriate official of
17 the other jurisdiction or country, give the
18 official information or documents relating to a
19 co-operative or a participating co-operative;
20 and
21 (b) may ask the appropriate official of the other
22 jurisdiction or country to give the Registrar
23 documents or information relating to an
24 organisation that, under the arrangement, is an
25 organisation corresponding to a co-operative or
26 a participating co-operative.
27

28 (2) In section 485(2):

- 29 (a) delete “State or a Territory” and insert:
30

31 jurisdiction or country
32

s. 183

- 1 (b) delete “State or the Territory” and insert:
2
3 jurisdiction or country
4

5 **183. Section 487 replaced**

6 Delete section 487 and insert:
7

8 **487. Disclosure statements**

9 A disclosure statement under this Act may only include
10 a statement by a person, or a statement said in the
11 disclosure statement to be based on a statement by a
12 person, if —

- 13 (a) the person has consented to the statement being
14 included in the disclosure statement in the form
15 and context in which it is included; and
16 (b) the disclosure statement states that the person
17 has given this consent; and
18 (c) the person has not withdrawn this consent
19 before the disclosure statement is approved by,
20 or registered with, the Registrar.
21

22 **184. Section 489A inserted**

23 After section 488 insert:
24

25 **489A. Approvals to be in writing**

26 Unless otherwise provided, an approval by the
27 Registrar under this Act is to be given in writing.
28

1 **185. Schedule 3 clause 1 amended**

2 In Schedule 3 clause 1 in the definition of *co-operative* delete
3 “registered under Part 14;” and insert:

4

5 authorised to carry on business in this State under Part 14 before the
6 commencement of the *Co-operatives Amendment Act 2015*
7 section 130;

8

9 **186. Schedule 3 clause 32 amended**

10 In Schedule 3 clause 32 in the definition of *officer* delete “of a
11 foreign co-operative,” and insert:

12

13 of a foreign co-operative authorised to carry on business in this State
14 under Part 14 before the commencement of the *Co-operatives*
15 *Amendment Act 2015* section 130,

16

17 **187. Schedule 3 clause 39 amended**

18 In Schedule 3 clause 39(1) and (2) delete “Penalty:” and insert:

19

20 Penalty for this subclause:

21

22 **188. Schedule 3 clause 41 amended**

23 In Schedule 3 clause 41(7) delete “Penalty:” and insert:

24

25 Penalty for this subclause:

26

1 **189. Schedule 4 clause 1 amended**

2 (1) In Schedule 4 clause 1 delete the definition of *property* and
3 insert:

4
5 *property*, of a co-operative, means —

6 (a) in the case of a co-operative to which section 372
7 applies — property within Australia or an external
8 Territory; or

9 (b) otherwise — property within or outside Australia;
10

11 (2) In Schedule 4 clause 1 in the definition of *co-operative* delete
12 “foreign co-operative registered under Part 14;” and insert:

13
14 participating co-operative;
15

16 (3) In Schedule 4 clause 1 in the definition of *officer*:

17 (a) delete “foreign co-operative,” and insert:

18
19 participating co-operative,
20

21 (b) delete “foreign co-operative;” and insert:

22
23 participating co-operative;
24

25 **190. Schedule 4 clause 20 amended**

26 In Schedule 4 clause 20 in the definition of *reporting officer*
27 delete paragraphs (a) and (b) and insert:

28
29 (a) in the case of a co-operative — a director or
30 secretary of the co-operative; or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

(b) in the case of a participating co-operative — a local agent of the participating co-operative.

191. Schedule 4 clause 22 amended

In Schedule 4 clause 22 delete “records” and insert:

books

Note: The heading to amended Schedule 4 clause 22 is to read:

Controller may inspect books

192. Schedule 4 clause 23 amended

In Schedule 4 clause 23(5) delete “records” and insert:

books

193. Schedule 5 deleted

Delete Schedule 5.

194. Schedule 6 amended

Delete the reference after the heading to Schedule 6 and insert:

[s. 316 and 387]

1 **195. Schedule 6 Division 1 inserted**

2 At the beginning of Schedule 6 insert:

3

4 **Division 1 — Modifications to Corporations Act provisions**
5 **applying under section 316**

6 **1A. Modifications to winding-up and deregistration**
7 **provisions: co-operatives**

8 The Corporations Act Parts 5.4, 5.4A, 5.4B, 5.5, 5.6 and
9 5A.1 apply with the following modifications —

- 10 (a) section 461(h) is to be read as if the words “ASIC
11 has stated in a report prepared under Division 1 of
12 Part 3 of the ASIC Act that, in its opinion:” were
13 deleted and the words “the Registrar has, because of
14 an inquiry held under the *Co-operatives Act 2009*
15 (Western Australia) Part 15 Division 2 or 4, stated
16 that:” were inserted;
- 17 (b) section 462(2)(h) does not apply;
- 18 (c) a reference in section 464 to an investigation under
19 the ASIC Act Part 3 Division 1 is to be read as a
20 reference to an investigation or inquiry under this
21 Act;
- 22 (d) section 470(3) is to be read as if the words “order,
23 and subsection 1274(2) applies in relation to the
24 document containing those particulars and to the
25 office copy as if they were documents lodged with
26 ASIC.” were deleted and the word “order.” were
27 inserted;
- 28 (e) section 495 is to be read as being subject to
29 section 317 of this Act;
- 30 (f) section 513B is to be read as if the following
31 paragraph were inserted after paragraph (d) —
- 32 (da) if, when the resolution was passed, a
33 winding-up of the co-operative on the
34 certificate of the Registrar was already in

- 1 progress — on the date that certificate was
2 given; or
- 3 (g) section 516 is to be read as if “together with any
4 charges payable by the member to the co-operative
5 in accordance with the rules” were inserted after
6 “past member”;
- 7 (h) section 521 is to be read as being subject to
8 section 322 of this Act;
- 9 (i) section 542(3) is to be read as if —
- 10 (i) in paragraph (c) the word “direct.” were
11 deleted and the words “direct; and”
12 inserted; and
- 13 (ii) the following paragraph were inserted after
14 paragraph (c) —
- 15 (d) for a winding-up on a certificate of
16 the Registrar under the
17 *Co-operatives Act 2009* (Western
18 Australia) section 314 — with the
19 consent of the Registrar.
- 20 (j) a reference in section 544 to dealing with money
21 under Part 9.7 is to be read as a reference to dealing
22 with money under the Corporations Act Part 9.7 as
23 applying under section 359 of this Act;
- 24 (k) a reference in section 565, 566 or 567 to
25 23 June 1993 is to be read as a reference to
26 1 September 2010;
- 27 (l) section 580 is to be read as if the definition of
28 external administration matter were deleted and the
29 following definition inserted —
- 30 ***external administration matter*** means a matter
31 relating to a winding-up of a co-operative under the
32 *Co-operatives Act 2009* (Western Australia) Part 12
33 Division 3 of or a participating co-operative under
34 Part 14 Division 4 of that Act.
- 35 (m) a reference in those Parts to a registered liquidator
36 is to be read as including a reference to a person

s. 196

- 1 approved or appointed by the Registrar as a
2 liquidator of a co-operative;
- 3 (n) a reference in those Parts to any provision of
4 Part 2F.1 is to be read as a reference to the
5 appropriate provision of Part 4 Division 5 of this
6 Act;
- 7 (o) those Parts are to be read subject to sections 67
8 and 322 of this Act for the purposes of determining
9 the liability of members and former members to
10 contribute on a winding-up of a co-operative;
- 11 (p) a reference in section 601AA or 601AB to ASIC
12 database is to be read as a reference to the register
13 of co-operatives kept under section 454 of this Act;
- 14 (q) section 601AB(1A) does not apply;
- 15 (r) a reference in section 601AC(1)(a) to
16 section 413(1)(d) is to be read as a reference to
17 section 352(3)(d) of this Act;
- 18 (s) a reference in section 601AE to crediting an amount
19 to a special account (within the meaning of the
20 *Public Governance, Performance and*
21 *Accountability Act 2013* (Commonwealth)) is to be
22 read as a reference to crediting an amount to a
23 special purpose account (as defined in the *Financial*
24 *Management Act 2006* section 3);
- 25 (t) any other modifications, within the meaning of the
26 *Corporations (Ancillary Provisions) Act 2001*
27 Part 3, that are prescribed by the regulations.
28

29 **196. Schedule 6 Division 2 heading inserted**

30 Before Schedule 6 clause 1 insert:
31

32 **Division 2 — Modifications to Corporations Act provisions**
33 **applying under section 387**
34

1 **197. Schedule 6 clause 1 amended**

2 In Schedule 6 clause 1:

- 3 (a) delete paragraph (a);
- 4 (b) in paragraph (e) delete “foreign co-operative,” and insert:
- 5
- 6 participating co-operative,
- 7
- 8 (c) in paragraph (h) delete “523 and 524” and insert:
- 9
- 10 523, 524 and 544
- 11
- 12 (d) after paragraph (k) insert:
- 13
- 14 (la) a reference in section 565, 566 or 567 to
- 15 23 June 1993 is to be read as a reference to
- 16 1 September 2010;
- 17 (lb) section 580 is to be read as if the definition of
- 18 external administration matter were deleted and the
- 19 following definition inserted —
- 20 *external administration matter* means a matter
- 21 relating to a winding-up of a co-operative under the
- 22 *Co-operatives Act 2009* (Western Australia) Part 12
- 23 Division 3 of or a participating co-operative under
- 24 Part 14 Division 4 of that Act.
- 25
- 26 (e) in paragraph (m) delete “76 and 331” and insert:
- 27
- 28 67 and 322
- 29

30 Note: The heading to amended Schedule 6 clause 1 is to read:

31 **Modifications to winding-up provisions: participating**

32 **co-operatives**

s. 198

1 **198. Various references to “co-operative capital unit” amended**

2 In the provisions listed in the Table:

3 (a) delete “co-operative capital unit” and insert:

4

5 CCU

6

7 (b) delete “co-operative capital units” and insert:

8

9 CCUs

10

11

Table

s. 9(2)(h) and (3)	s. 39(2)(b)
s. 73(2)(c)	s. 127(2)(b)
s. 128(1)(b), (2) and (4)	s. 129(1) and (2)
s. 134(1)(b)	s. 144(4)(e)
s. 164(1)(b), (3), (4) and (5)	s. 352(3)(b)

12

13

Notes:

14

1. The heading to amended section 128 is to read:

15

Interest on deposits, debentures and CCUs

16

2. The heading to amended section 129 is to read:

17

Repayment of deposits and redemption of debentures and CCUs

18

3. The heading to amended section 164 is to read:

19

Deposit, debentures or CCUs instead of payment when share repurchased

20

1 **199. Various references to “foreign co-operative” amended**

2 In the provisions listed in the Table:

3 (a) delete “foreign co-operative” (each occurrence) and
4 insert:

5
6 participating co-operative

7

8 (b) delete “**foreign co-operatives**” and insert:

9

10 **participating co-operatives**

11

12

Table

s. 352(1) def. of <i>co-operative</i>	s. 362(1)
s. 369	s. 375
Heading to Part 14 Division 4	s. 385(1) and (2)
s. 397(1) and (2)	

13

Note:

14

1. The heading to amended section 369 is to read:

15

Operation of participating co-operatives in this State

16

2. The heading to amended section 375 is to read:

17

Name of participating co-operative

s. 200

1 **200. Various penalties amended**

2 In the provisions listed in the Table delete “Penalty:” and insert:

3

4 Penalty for this subsection:

5

6

Table

s. 33(2)	s. 65(1)
s. 66(2)	s. 100(1) and (2)
s. 181(3)	s. 216(3)
s. 217(3)	s. 230(1)
s. 232(6) and (7)	s. 236
s. 237(2)	s. 238(5) and (7)
s. 242(1)	s. 243(1), (2) and (3)
s. 273(2) and (3)	s. 275(1) and (2)
s. 276(1), (2) and (3)	s. 304(8)
s. 345(1)	s. 346(2)
s. 351(1)	s. 402(3)
s. 425(4)	s. 430(3)
s. 433(4)	s. 439(1) and (2)

7

s. 441(1)	s. 442(1)
s. 476(2)	s. 477(1), (2), (3) and (4)

