

30 General savings

Subject to this Act and the Co-operatives National Law (Victoria), each person, thing and circumstance appointed or created under the **Co-operatives Act 1996** or existing or continuing under that Act immediately before the commencement of relevant provisions of the Co-operatives National Law (Victoria) continues to have the same status, operation and effect as it would have had if this Act had not been enacted.

Appendix Co-operatives National Law

This Appendix sets out the Co-operatives National Law. It is divided into Chapters and Schedules, which are briefly summarised below.

Chapter 1 Preliminary

This Chapter sets out the principles used by a co-operative organisation. The principles are those agreed by the International Co-operative Alliance and incorporated into Recommendation 193 of the International Labour Organization. The Chapter contains interpretation provisions and also sets out the relationship between the Co-operatives National Law and the Corporations Act. The provisions of the Corporations Act that are applied throughout the Co-operatives National Law are collected in a note and cross-referenced in tabular form along with relevant modifications for ease of reference.

Chapter 2 Formation, powers and constitution of co-operatives

This Chapter provides the mechanism for incorporating a co-operative and specifies the legal powers of the incorporated body as well as the legal assumptions that underpin a co-operative's dealings with third parties. It identifies the matters that must be included in the rules of a co-operative and authorises the Registrar of Co-operatives to publish model rules that a co-operative can adopt. The Chapter also sets out the nature of share capital of a co-operative and establishes the legal notions of membership and active membership. Member rights and obligations as well as the circumstances in which membership is cancelled and any rights accompanying cancellation are dealt with in the Chapter.

Chapter 3 Management and operation of co-operatives

This Chapter deals with corporate governance of a co-operative. Matters such as the board as the managing organ, directors and their duties and meetings are included. Matters relating to financial reporting and auditing are contained in the Chapter along with provisions governing fundraising from members and the public.

Chapter 4 Structural and other events for co-operatives

This Chapter deals with corporate structural events such as external administration, mergers, schemes of arrangement and transfers of incorporation. Relevant provisions of the Corporations Act are applied and modified to achieve consistency of treatment in most external administration processes. Special provisions for caretaker-type administration and administrative powers of the Registrar of Co-operatives leading to a winding up are also located here.

Chapter 5 Participating co-operatives

This Chapter replaces the existing system of multiple registration to enable cross-border trade by co-operatives with a mutual recognition scheme for co-operatives from jurisdictions that participate in the Co-operatives National Law scheme.

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Chapter 6 Supervision and protection of co-operatives

This Chapter establishes the powers of the Registrar of Co-operatives, inspectors and special investigators and the procedures that must be used when conducting an investigation. The Co-operatives National Law will introduce consistent powers and procedures across jurisdictions. If necessary, however, a particular jurisdiction will be able to modify provisions in this Chapter to account for local circumstances.

Chapter 7 Legal proceedings and other matters

This Chapter establishes nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions, and the use of evidence in proceedings.

Chapter 8 General

This Chapter deals with administrative and other miscellaneous matters such as those relating to the office of Registrar of Co-operatives, the service and filing of documents, and the making of National Regulations.

Schedules

Schedule 1 sets out the matters that must be addressed in the rules of a co-operative.

Schedule 2 defines terms used in provisions that regulate interests and control in shares of a co-operative.

Schedule 3 contains savings and transitional provisions.

Schedule 4 sets out interpretation provisions that are nationally consistent and are used in place of the interpretation legislation in each jurisdiction.

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Part 1.3 The co-operative principles

10 Co-operative principles

Annexure

The co-operative principles are the following principles:

1 Voluntary and open membership

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

2 Democratic member control

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

3 Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of the capital is usually the common property of the co-operative. They usually receive limited compensation (if any) on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes:

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

4 Autonomy and independence

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

5 Education, training and information

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

6 Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7 Concern for the community

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

Note. The co-operative principles are those adopted by the International Co-operative Alliance.

11 Interpretation to promote co-operative principles

In the interpretation of a provision of this Law, a construction that would promote the co-operative principles is to be preferred to a construction that would not promote the co-operative principles.

Chapter 3 Management and operation of co-operatives

Part 3.1 Management

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Division 1 The board

172 Board of directors

- (1) Subject to this Law and the rules of the co-operative, the business of a co-operative is to be managed by a board of directors.
- (2) The board must consist of at least 3 directors (not counting alternates of directors) and at least 2 of the directors must be ordinarily resident in Australia.
- (3) The board of directors may exercise all the powers of the co-operative that are not, by this Law or the rules of the co-operative, required to be exercised by the co-operative in general meeting.
- (4) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

173 Election of directors

- (1) Except as provided in subsections (2)–(4), the directors of a co-operative are to be elected in the way specified in the rules of the co-operative.
- (2) The first directors of:
 - (a) a co-operative formed under this Law are to be elected at its formation meeting; or
 - (b) a co-operative that was a corporation incorporated under another law are to be the directors in office at the date of registration under this Law.
- (3) If authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.
- (4) A motion approving or nominating 2 or more persons for election as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be made has first been agreed to by the meeting without any vote being given against it.
- (5) If a resolution is passed following a motion in contravention of subsection (4):
 - (a) the resolution is void; and
 - (b) there is no provision for the automatic re-election of retiring directors in default of another election.
- (6) This section does not apply to a resolution amending the rules of a co-operative to prevent the election of 2 or more directors by ballot.
- (7) A nomination for election or appointment to the office of a director must give details of the qualifications and experience of the person nominated.
- (8) Unless this Law or the rules of a co-operative otherwise provide, a director is eligible for re-election at the end of his or her term of office.

174 Qualification of directors

- (1) A person is not qualified to be a director of a co-operative unless he or she is:

- (a) a person who is an active member of the co-operative or a representative of a corporation that is an active member of the co-operative (a member director); or
- (b) a person who is qualified as provided by the rules of the co-operative (a non-member director) and who is not an active member of the co-operative.

Note. A non-member director either is not a member of the co-operative or is an inactive member of the co-operative.

- (2) The majority of directors must be member directors.
- (3) Subsection (2) does not prevent the rules of a co-operative requiring that a greater number of directors than a majority must be member directors.
- (4) An employee of a co-operative is not precluded from being a member director or non-member director of the co-operative if he or she is otherwise qualified.

175 Meeting of board of directors

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

176 Transaction of business outside meetings

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

177 Alternate directors

- (1) In the absence of a director from a meeting of the board, a person appointed by the board under the rules of the co-operative concerned to act as an alternate for the director (an alternate director) may act in the place of the director.
- (2) The rules of the co-operative may include provisions regulating the term of office, vacation of or removal from office, and remuneration of an alternate director.

178 Delegation by board

If authorised by the rules of the co-operative, the board may, by resolution, delegate the board's functions (other than this power of delegation) stated in the resolution:

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

179 Removal from and vacation of office

- (1) The directors hold office, must retire, and may be removed from office, as provided by the rules of the co-operative.
- (2) A director vacates office in the circumstances (if any) provided in the rules of the co-operative and in any of the following cases:
 - (a) if the director is a disqualified person under section 181;
 - (b) if the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave;
 - (c) if the director resigns the office of director by written notice given by the director to the co-operative;
 - (d) if the person ceases to hold the qualification because of which the person was qualified to be a director;
 - (e) if an administrator of the co-operative's affairs is appointed under Part 4.1;
 - (f) if the director is removed from office under section 180.

180 Removal from office by resolution (cf Corporations Act s 203D)

- (1) A co-operative may by ordinary resolution remove a director from office despite anything in:
 - (a) the rules of the co-operative; or
 - (b) an agreement between the co-operative and the director; or
 - (c) an agreement between any or all members of the co-operative and the director.
- (2) Notice of intention to move the resolution must be given to the co-operative at least 2 months before the meeting is to be held. However, subject to subsection (3), if the co-operative calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- (3) At least 21 days notice must be given of a meeting of the members of the co-operative at which a resolution will be moved:
 - (a) to remove a director from office; or
 - (b) to appoint a director in place of a director removed from office.

- (4) The co-operative must give the director a copy of the notice as soon as practicable after it is received.

Maximum penalty: \$500.

- (5) The director is entitled to put his or her case to members by:
- (a) giving the co-operative a written statement for circulation to members (see subsections (6) and (7)); and
 - (b) speaking to the motion at the meeting.
- (6) The written statement is to be circulated by the co-operative to members by:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

The co-operative contravenes this subsection if it does not comply with this subsection.

Maximum penalty: \$500.

- (7) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.
- (8) If a person is appointed to replace a director removed under this section, the time at which:
- (a) the replacement director; or
 - (b) any other director;

is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.

- (9) An offence based on subsection (4) or (6) is an offence of strict liability.

Division 4 Duties and liabilities of directors, officers and employees

Annexure

192 Care and diligence—civil obligation only (cf Corporations Act s 180)

(1) Care and diligence—directors and other officers

A director or other officer of a co-operative must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a co-operative in the co-operative's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the co-operative as, the director or officer.

Note. This subsection is a civil penalty provision (see section 554).

(2) Business judgment rule

A director or other officer of a co-operative who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity in respect of the judgment, if they:

- (a) make the judgment in good faith for a proper purpose (taking into account the co-operative principles where relevant and other relevant matters); and
- (b) do not have a material personal interest in the subject matter of the judgment; and
- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the co-operative.

The director's or officer's belief that the judgment is in the best interests of the co-operative is a rational one unless the belief is one that no reasonable person in their position would hold.

Note. This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Law or under any other laws.

(3) In this section:

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

193 Good faith—civil obligations (cf Corporations Act s 181)

(1) Good faith—directors and other officers

A director or other officer of a co-operative must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the co-operative; and
- (b) for a proper purpose.

Note. This subsection is a civil penalty provision (see section 554).

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

Note 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines “involved” in a contravention.

194 Use of position—civil obligations (cf Corporations Act s 182)

(1) **Use of position—directors, other officers and employees**

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. This subsection is a civil penalty provision (see section 554).

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

Note 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines “involved” in a contravention.

195 Use of information—civil obligations (cf Corporations Act s 183)

(1) **Use of information—directors, other officers and employees**

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. This subsection is a civil penalty provision (see section 554).

(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 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines “involved” in a contravention.

196 Good faith, use of position and use of information—criminal (cf Corporations Act s 184)

(1) **Good faith—directors and other officer**

A director or other officer of a co-operative commits an offence if they:

- (a) are reckless; or
- (b) are intentionally dishonest;

and fail to exercise their powers and discharge their duties:

- (c) in good faith in the best interests of the co-operative; or
- (d) for a proper purpose.

(2) **Use of position—directors, other officers and employees**

A director, other officer or employee of a co-operative commits an offence if they use their position dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the co-operative.

(3) **Use of information—directors, other officers and employees**

A person who obtains information because they are, or have been, a director or other officer or employee of a co-operative commits an offence if they use the information dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the co-operative.

Maximum penalty: \$200,000 or imprisonment for 5 years, or both.

197 Interaction of preceding sections with other laws (cf Corporations Act s 185)

Sections 192–196:

- (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 a duty or in respect of a liability referred to in paragraph (a).

This section does not apply to section 192 (2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of section 192 (1).

198 Indemnification and exemption of officer or auditor(1) **Exemptions not allowed** (cf Corporations Act s 199A (1))

A co-operative or a related corporation must not exempt a person (whether directly or through an interposed entity) from a liability to the co-operative incurred as an officer or auditor of the co-operative.

(2) **When indemnity for liability (other than for legal costs) not allowed** (cf Corporations Act s 199A (2))

A co-operative or a related corporation must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the co-operative:

- (a) a liability owed to the co-operative or a related corporation;
- (b) a liability that is owed to someone other than the co-operative or a related corporation and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

(3) **When indemnity for legal costs not allowed** (cf Corporations Act s 199A (3))

A co-operative or related corporation must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor of the co-operative if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or

- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by the Registrar or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under this Law in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Registrar or a liquidator as part of an investigation before commencing proceedings for the court order.

- (4) **Meaning of outcome of proceedings** (cf Corporations Act s 199A (4))

For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

199 Insurance premiums for certain liabilities of director, secretary, other (cf Corporations Act s 199B)

- (1) A co-operative or a related corporation must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an officer or auditor of the co-operative against a liability (other than one for legal costs) arising out of conduct involving a wilful breach of duty in relation to the co-operative.

Maximum penalty: \$500.

- (2) This section applies to a premium whether it is paid directly or through an interposed entity.
- (3) An offence based on subsection (1) is an offence of strict liability.

200 Certain indemnities, exemptions, payments and agreements not (cf Corporations Act s 199C)

- (1) Sections 198 and 199 do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 198 or 199.

201 Application of Corporations Act—offences by officers of co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.8 of the Corporations Act, subject to the following modifications:

- (a) section 589 (2) and (3) of the Corporations Act are taken to be omitted;
- (b) the reference in section 592 (1) (a) of the Corporations Act to 23 June 1993 is, if the Co-operatives National Law Act of this jurisdiction so provides, to be read as a reference to a date specified in that Act of this jurisdiction for the purposes of this paragraph;
- (c) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

202 Application of Corporations Act—employee entitlements

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to

Part 5.8A of the Corporations Act, subject to the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

203 Directors' remuneration

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A director of a co-operative must not receive remuneration for services as a director other than:

- (a) fees, concessions and other benefits approved at a general meeting of the co-operative; and
- (b) director's travelling and other expenses that the director properly incurs:
 - (i) in attending meetings of the board of directors of the co-operative or any meetings of committees of directors of the co-operative; and
 - (ii) in attending any general meetings of the co-operative.

Maximum penalty: \$24,000 or imprisonment for 2 years, or both.

204 Certain financial accommodation to officers prohibited

- (1) An officer of a co-operative who is not a director of the co-operative must not obtain financial accommodation from the co-operative other than:
 - (a) with the approval of a majority of the directors; or
 - (b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Maximum penalty: \$24,000 or imprisonment for 2 years, or both.

- (2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a co-operative if it is obtained by:
 - (a) a proprietary company in which the officer is a shareholder or director; or
 - (b) a trust of which the officer is a trustee or beneficiary; or
 - (c) a trust of which a corporation is trustee if the officer is a director or other officer of the corporation.
- (3) A co-operative must not give financial accommodation to an officer of the co-operative if:
 - (a) by giving the financial accommodation, the officer would contravene this section; and
 - (b) the co-operative knows or should reasonably know of the contravention.

Maximum penalty (for subsection (3)): \$50,000.

205 Financial accommodation to directors and associates

- (1) A co-operative must not provide financial accommodation to a director, or to a person the co-operative knows or should reasonably know is an associate of a director, unless:
 - (a) the accommodation is:
 - (i) approved under subsection (2); or
 - (ii) given under a scheme approved under subsection (2); or
 - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances; and

- (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Maximum penalty: \$50,000.

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- (2) For the purposes of subsection (1) (a) (i) and (ii), financial accommodation or a scheme is approved if:
 - (a) it is approved by a resolution passed at a general meeting; and
 - (b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.
 - (3) A director or an associate of a director must not obtain financial accommodation given in contravention of subsection (1).

Maximum penalty: \$24,000 or imprisonment for 2 years, or both.

- (4) For the purposes of this section, a concessional rate of interest for a borrower from a co-operative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the co-operative specified in its rules as being entitled to the concession.
- (5) If a director of a co-operative or an associate of a director accepts, in payment of a debt owed by a member of the co-operative to the director or associate, any proceeds of financial accommodation provided to the member by the co-operative, this section has effect as if the financial accommodation has been provided to the director or associate.
- (6) In this section, a reference to:
 - (a) the provision of financial accommodation to a director or an associate of a director; or
 - (b) the obtaining of financial accommodation by a director or an associate of a director; or
 - (c) a debt owed to a director or an associate of a director;

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

- (7) In this section:

associate of a director means:

 - (a) the director's spouse or de facto partner; or
 - (b) a person when acting in the capacity of trustee of a trust under which:
 - (i) the director or director's spouse or de facto partner has a beneficial interest; or
 - (ii) a corporation referred to in paragraph (c) has a beneficial interest; or
 - (c) a corporation if:
 - (i) the director or director's spouse or de facto partner has a material interest in shares in the corporation; and
 - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the corporation.
- (8) For the purposes of this section, a person has a **material interest** in a share in a corporation if:

- (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of the share capital; or
- (b) the person has power to dispose of the share or to exercise control over the disposal of the share; or
- (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

206 Restriction on directors of certain co-operatives selling land to co-operative

A director of a co-operative, the primary activity of which is or includes the acquisition of land to settle or retain people on the land and of providing any community service or benefit, must not sell land to the co-operative except under a special resolution of the co-operative.

Maximum penalty: \$24,000 or imprisonment for 2 years, or both.

207 Management contracts

- (1) A co-operative must not enter into a management contract unless the contract has first been approved by special resolution.
- (2) A management contract entered into in contravention of subsection (1) is void.
- (3) In this section:

management contract means a contract or other arrangement under which:

- (a) a person who is not an officer of the co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not; or
- (b) a co-operative agrees to perform the whole or a substantial part of its functions:
 - (i) in a particular way; or
 - (ii) in accordance with the directions of any person; or
 - (iii) subject to stated restrictions or conditions.

Division 3 Secretary

190 Secretary

- (1) A co-operative must have a secretary.
- (2) The board of the co-operative is to appoint the secretary.
- (3) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.
- (4) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily resides in Australia.

Annexure

191 Responsibility of secretary (cf Corporations Act s 188)

- (1) The secretary of a co-operative contravenes this subsection if the co-operative contravenes a provision of this Law specified in the National Regulations.
Maximum penalty: \$500.
- (2) An offence based on subsection (1) is an offence of strict liability.
- (3) A person does not contravene subsection (1) if they show that they took all reasonable steps to ensure that the co-operative complied with the section.

Division 5 Meetings

252 Annual general meetings (cf Corporations Act s 250N)

- (1) A co-operative must hold its initial annual general meeting within 18 months after its registration.
Maximum penalty: \$1,000 or imprisonment for 3 months, or both.
- (2) A co-operative must hold an annual general meeting at least once in each calendar year after its initial annual general meeting and within 5 months after the end of its financial year.
Maximum penalty: \$1,000 or imprisonment for 3 months, or both.
- (3) An offence based on subsection (1) or (2) is an offence of strict liability.
- (4) An annual general meeting is to be held in addition to any other meetings held by a co-operative in the year.

Annexure

253 Special general meetings

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

254 Notice of meetings

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

Note. Section 239 requires 21 days notice of each special resolution to be considered at a general meeting.

255 Quorum at meetings

- (1) The quorum for a meeting of a co-operative must be stated in the rules of the co-operative.
- (2) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

256 Decision at meetings

- (1) A question for decision at a general meeting of a co-operative is to be decided by a show of hands, unless a poll is required (see subsection (2)).
- (2) The question is to be decided by a poll if a poll is required by the chairperson of the meeting or by any 5 members present at the meeting or represented at the meeting by proxy.
- (3) A person who is a proxy for one or more members may cast only one vote on a question for decision by a show of hands.
- (4) A person who is a proxy for one or more members may cast more than one vote on a question for decision by a poll, unless the rules of the co-operative restrict the number of votes that a proxy may cast.
- (5) In the case of an equality of votes, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded may cast a second vote if the rules of the co-operative so provide.
- (6) This section has effect subject to section 229.

Note. Section 229 deals with voting by proxy.

257 Calling of general meeting on requisition

- Annexure**
- (1) The board of a co-operative must call a general meeting of the co-operative on the written requisition of the number of members who together are able to cast at least 20% (or a lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.
 - (2) A member cannot be a requisitioning member unless the member is an active member.
 - (3) The following provisions apply to a requisition for a general meeting:
 - (a) it must state the objects of the meeting;
 - (b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);
 - (c) it must be served on the co-operative by being filed at the registered office of the co-operative.
 - (4) The meeting must be called and held as soon as practicable and in any case must be held within **63 days after the requisition is served**.
 - (5) If the board does not call the meeting within **21 days after the requisition is served**, the following provisions apply:
 - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;
 - (b) for that purpose, they may ask the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;
 - (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;
 - (d) the meeting called by the requisitioning members must be held within 91 days after the requisition is served;
 - (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the co-operative;
 - (f) any amount required to be paid by the co-operative under paragraph (e) must be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration for their services to any of the directors that were in default.

258 Minutes

- (1) Minutes of each general meeting, board meeting and committee meeting must be entered in the appropriate books within 28 days after the meeting.
- (2) A co-operative must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 - (a) the chairperson of the meeting;
 - (b) the chairperson of the next meeting.
- (3) Minutes must be kept in the English language.

Note. Section 214 makes provision regarding the availability of minutes for inspection.

259 Auditor entitled to notice and other communications (cf Corporations Act s 249K)

- (1) A co-operative must give its auditor:

- (a) notice of a general meeting in the same way that a member of the co-operative is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member of the co-operative is entitled to receive.

Maximum penalty: \$500.

- (2) An offence based on subsection (1) is an offence of strict liability.

260 Auditor's right to be heard at general meetings (cf Corporations Act s 249V)

- (1) A co-operative's auditor is entitled to attend any general meeting of the co-operative.
- (2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (3) The auditor is entitled to be heard even if:
 - (a) the auditor retires at the meeting; or
 - (b) the meeting passes a resolution to remove the auditor from office.
- (4) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

261 Questions and comments by members on co-operative management (cf Corporations Act s 250S)

- (1) The chairperson of an annual general meeting of a co-operative must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the co-operative.

Maximum penalty: \$500.

- (2) An offence based on subsection (1) is an offence of strict liability.

262 Questions by members of auditors at annual general meeting (cf Corporations Act s 250T)

- (1) If a co-operative's auditor or their representative is at the meeting, the chairperson of an annual general meeting of the co-operative must:
 - (a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:
 - (i) the conduct of the audit; and
 - (ii) the preparation and content of the auditor's report; and
 - (iii) the accounting policies adopted by the co-operative in relation to the preparation of the financial statements; and
 - (iv) the independence of the auditor in relation to the conduct of the audit; and
 - (b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor.

Maximum penalty: \$500.

- (2) An offence based on subsection (1) is an offence of strict liability.

- (3) If:

- (a) the co-operative's auditor or their representative is at the meeting; and
- (b) the auditor has prepared a written answer to a written question submitted to the auditor;

the chairperson of the annual general meeting may permit the auditor or their representative to table the written answer to the written question.

- (4) The co-operative must make the written answer tabled under subsection (3) reasonably available to members as soon as practicable after the annual general meeting.

Maximum penalty (for subsection (4)): \$500.

258 Minutes

- (1) Minutes of each general meeting, board meeting and committee meeting must be entered in the appropriate books within 28 days after the meeting.
- (2) A co-operative must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 - (a) the chairperson of the meeting;
 - (b) the chairperson of the next meeting.
- (3) Minutes must be kept in the English language.

Note. Section 214 makes provision regarding the availability of minutes for inspection.

Annexure

Co-operatives National Law Application Act 2013

Division 2 Resolutions

237 Decisions to be by ordinary resolution

Unless this Law or the rules of the co-operative otherwise provide, every question for decision by a co-operative must be decided by ordinary resolution.

238 Ordinary resolutions

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

239 Special resolutions

(1) A **special resolution** is a resolution of a co-operative that is passed:

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

Note 1. A co-operative may by its rules require a higher majority voting percentage on any matter or that specified matters must be passed by postal or special postal ballot.

Note 2. Section 250 enables 20% of members (or a lesser percentage specified in the rules) to require a postal ballot for a special resolution.

(2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Law requires the special resolution to be passed by postal ballot (including a special postal ballot).

(3) A resolution must not be considered to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating:

- (a) the intention to propose the special resolution;

and

- (b) the reasons for proposing the special resolution;

and

- (c) the effect of the special resolution being passed.

240 How majority is ascertained

(1) A resolution is passed by a particular majority at a meeting if that majority of the members of the co-operative who, being entitled to do so, vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

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

241 Declaration of passing of special resolution

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

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

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

242 Effect of special resolution

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

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

Note. Section 446 provides that a members' voluntary winding up of a co-operative starts when the result of the special postal ballot is noted in the minutes by the secretary of the co-operative.

(3) Subsection (2) and sections 243 and 244 do not apply to a special resolution amending the rules of a co-operative.

Note. Part 2.3 deals with amendments to rules and when amendments take effect.

243 Registration of special resolution

(1) A co-operative must, in accordance with subsection (2), file 2 copies of each special resolution passed by the co-operative with the Registrar for registration.

Maximum penalty: \$2,000. (2) The copies must:

(a) be filed within 28 days after the passing of a special resolution or the further period the Registrar allows; and

(b) be signed by a director, the secretary of the co-operative or another authorised representative of the co-operative; and

(c) be accompanied by the filing fee prescribed by:

(i) the National Regulations, unless subparagraph (ii) applies; or

(ii) the local regulations.

Note. See section 444 (4) (a) regarding the period within which a special resolution must be filed with the Registrar in connection with the voluntary winding up of a co-operative.

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

Maximum penalty: \$2,000.

(4) An offence based on subsection (1) is an offence of strict liability.

244 Decision of Registrar on application to register special resolution

(1) If the Registrar is satisfied the co-operative has complied with this Law and the special resolution is not contrary to this Law, the Registrar must register the special resolution and may issue a certificate of registration.

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

(a) may refuse to register the special resolution;

and

(b) must give written notice to the co-operative that the special resolution:

(i) for a special resolution referred to in section 242 (2)—has no effect; and

(ii) in any other case—has no effect as from the date it was passed.

(3) A certificate of registration of a special resolution issued by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, evidence that the resolution was properly passed.

Division 3 Resolution by circulated document

245 Application of Division

This Division applies to a resolution of a co-operative, including a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing, if:

(a) the co-operative has fewer than 50 members;

and

(b) the resolution is required or permitted under this Law or the rules of the co-operative to be passed at a general meeting of the co-operative.

246 Resolution by circulation of document—fewer than 50 members

(1) If all the members of a co-operative have signed a document that sets out the terms of a resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have been passed at a general meeting of the co-operative.

(2) The meeting is taken to have been held:

(a) if all the members signed the document on the one day—on the day the document was signed, at the time the document was signed by the last member to sign; or

- (b) if the members signed the document on different days—on the day, and at the time, the document was signed by the last member to sign.
- (3) The document need not exist as a single document, but may exist in the form of 2 or more documents in identical terms.
- (4) The document is taken to constitute a minute of the general meeting.
- (5) Anything attached to the document and signed by the members signing the document is taken to have been laid before the co-operative at the general meeting.
- (6) The document is **signed** by all members of a co- operative only if the document is signed by each person who was a member of the co-operative at the time the document was signed by the last member to sign.
- (7) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of members of a co-operative given to a document, or to an act, matter or thing, otherwise than at a general meeting of the co- operative.

Part 2.3 Rules

Division 1 Rules of a co-operative

Annexure

55 Effect of rules

- (1) The rules of a co-operative have the effect of a contract under seal:
 - (a) between the co-operative and each member; and
 - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
 - (c) between a member and each other member.
- (2) Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions apply to the person.

56 Content of rules

- (1) The rules of a co-operative must state or otherwise make provision for the matters included in Schedule 1.
- (2) The rules must be divided into consecutively numbered paragraphs.
- (3) The rules may state the objects of the co-operative.
- (4) The rules may adopt by reference all or any of the provisions of the model rules, as provided in Division 2.
- (5) The rules may provide for the imposition of a fine on a member for an infringement of the rules.
- (6) If the rules provide for the imposition of a fine, the rules must state the maximum fine that may be imposed on a member.
- (7) The maximum fine fixed by the rules must not be more than any amount prescribed by the National Regulations as the maximum fine.
- (8) The rules may contain other provisions not inconsistent with this Law.

57 Purchase and inspection of copy of rules

- (1) Any member is entitled to obtain from a co-operative a copy of its rules on payment of the amount required by the rules of the co-operative or, if the rules do not prescribe an amount, on payment of \$5.
- (2) The amount required by the rules must not be more than the fee:
 - (a) prescribed by the National Regulations, unless paragraph (b) applies; or
 - (b) prescribed by the local regulations;for obtaining a copy of the rules from the Registrar.
- (3) Any person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee:
 - (a) prescribed by the National Regulations, unless paragraph (b) applies; or
 - (b) prescribed by the local regulations.

58 False copies of rules

- (1) A person must not give to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or any

amendments of rules, other than those that have been registered, representing that they are binding on the members of the co-operative.

- (2) A person must not amend any of the rules of a co-operative after they have been registered and circulate the amended rules representing that they have been registered when they have not been.

Maximum penalty: \$1,000.

59 Rules can only be amended under this Law

The rules of a co-operative cannot be amended except under this Law.

60 Approval of certain rule amendments

- (1) This section applies to:
 - (a) an amendment of rules that is referred to in subsection (2); and
 - (b) an amendment of rules that are referred to in section 35 (3) relating to the conversion of a non-distributing co-operative to a distributing co-operative.
- (2) The Registrar may, by designated instrument, specify for the purposes of this section classes of amendments that must not be made to the rules of a co-operative without the prior approval of the Registrar, and without limitation may do so by reference to classes or subclasses of matters referred to in Schedule 1.
- (3) A proposed amendment to which this section applies must be approved by the Registrar before the resolution amending the rules is passed by a co-operative or the board of a co-operative.
- (4) A draft of the proposed amendment must be submitted to the Registrar before:
 - (a) the notice of the proposed special resolution amending the rules is given to the members by the co-operative; or
 - (b) the resolution is passed by the board of the co-operative.
- (5) The proposed amendment must:
 - (a) be in accordance with section 56; and
 - (b) be in a form that may reasonably be approved; and
 - (c) be accompanied by a statement stating the reasons for the amendment.
- (6) The Registrar may:
 - (a) approve the amendment as submitted; or
 - (b) approve a different amendment to that submitted; or
 - (c) refuse to approve the amendment; or
 - (d) require the person submitting the draft amendment to give the Registrar any additional information the Registrar reasonably requires, and then act under paragraph (a), (b) or (c).
- (7) Subject to subsection (8), the Registrar approves of the amendment by giving written notice of the approval of the amendment to the person who submitted the draft amendment to the Registrar.
- (8) The Registrar is taken to have approved the proposed amendment (as submitted to the Registrar) at the end of the period of 28 days after it was submitted, unless before the end of that period the Registrar gives written notice to the person who submitted it that the Registrar:
 - (a) has approved a different amendment to that submitted; or

(b) is still considering the matter; or

(c) refuses to approve the proposed amendment.

- (9) The Registrar must give the person who submitted the draft amendment to the Registrar written notice of the reasons for acting under subsection (8) (a) or (c).

Annexure

61 Amendment by special resolution

The rules of a co-operative may only be amended by special resolution unless this Law otherwise provides.

62 Amendment by resolution of board

- (1) The rules of a co-operative may be amended by a resolution passed by the board if the amendment does no more than give effect to a requirement, direction, restriction or prohibition imposed or given under the authority of this Law.
- (2) If the rules of a co-operative are amended under this section, the co-operative must cause the amendment to be notified in writing to its members as soon as practicable after the amendment takes effect and in any event no later than the day when notice of the next annual general meeting of the co-operative after the amendment takes effect is given to the members.

63 Amendment does not take effect until registered

- (1) An amendment of the rules of a co-operative does not take effect unless and until it is registered by the Registrar.
- (2) An application for registration of an amendment must:
- (a) be made in the approved form; and
 - (b) be made within 28 days, or a shorter or longer time prescribed by the National Regulations, after the amendment is made; and
 - (c) be accompanied by a consolidated copy of the rules of the co-operative, including the amendment.
- (3) The Registrar must register the amendment unless:
- (a) the Registrar is satisfied the amendment is contrary to this Law; or
 - (b) the Registrar has other reasonable cause to refuse to register the amendment.
- (4) A certificate of registration of an amendment of the rules of a co-operative given by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or a guarantor of that advance, evidence that the amendment in the rules was properly made.

Division 2 Model rules

64 Model rules

- (1) The National Regulations may prescribe model rules.
- (2) The model rules may make provision for anything for which the rules of a co-operative may make provision.
- (3) A model rule commences on:
- (a) the day occurring 28 days after the date of publication of the National Regulations containing the model rule; or
 - (b) a later day specified in, or ascertained in accordance with, the model rule or the National Regulations.

- (4) A model rule may apply generally or be limited in its application to a specified class of co-operatives.

65 Adoption of model rules

The rules of a co-operative may adopt by reference all or any of the provisions of the model rules:

- (a) as in force from time to time, unless paragraph (b) applies; or
- (b) as in force at a particular time, if the rules so provide.

66 Relationship of this Division to Division 1

If the rules of a co-operative adopt a model rule as in force from time to time and the model rule is amended, Division 1 does not require the amendment (so far as it affects the rules of the co-operative) to be approved or registered before the amendment takes effect in relation to the co-operative.

261 Questions and comments by members on co-operative management (cf Corporations Act s 250S)

(1) The chairperson of an annual general meeting of a cooperative must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the co-operative.

Maximum penalty: \$500.

(2) An offence based on subsection (1) is an offence of strict liability.