

COOPERATIVES BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to repeal the *Primary Producers' Cooperative Associations Act 1923* and the *Cooperative and Other Societies Act 1967* and replace them with modern legislation adopting the core consistent provisions which are found in the Victorian *Co-operatives Act 1996* which all States and Territories in Australia have agreed, in principle, to adopt.

The Bill introduces cooperative principles and active membership requirements, enables cooperatives to have wider corporate powers, facilitates cooperatives engaging in interstate membership and cross-border fundraising, establishes an adequate enforcement regime and enhances directors' duties, facilitates and regulates take-overs, mergers, transfer of engagements, arrangements and reconstruction provisions, it allows for winding-up and charges and introduces requirements for disclosure to members when cooperatives are formed and where shares and debentures are issued.

Reasons for the Bill

For some time cooperatives have been agitating for modern cooperatives legislation. In its report the Brady Committee of Inquiry into Non-Bank Financial Institutions and Related Financial Processes noted that cooperatives had been arguing that existing legislation was antiquated and did not provide a suitable framework in the current commercial and social environment. The cooperatives submitted that their activities were hamstrung by the inadequacies of the legislation. They recommended the establishment of uniform cooperative legislation in Queensland. They proposed that the legislation be less regulatory and interventionist and that standards of financial accountability, akin to those in the Companies Code, be included.

It was also recognised at a national level that there was a lack of consistency between the legislation of the States and Territories in the cooperatives area. As a result, a working party of the Standing Committee of Attorneys-General was established which recommended that cooperatives legislation of each State and Territory should contain an “interstate division” which would provide for the interstate registration of cooperatives wishing to carry on business outside their “home State”. There would also be uniform regulatory provisions for those cooperatives. This would enable cooperatives to act nationally and trade freely across State/Territory borders. It was also recommended that each State and Territory enter into a Consistent Co-operatives Laws Agreement whereby each jurisdiction would agree to enact cooperatives legislation containing the core consistent provisions. Each jurisdiction would then be free to enact additional provisions in the legislation covering their particular local circumstances.

Any changes to the core consistent provisions would require the approval of a simple majority of the members of the Ministerial Council for Co-operatives Laws.

Another major problem with the existing cooperatives legislation is that cooperatives are subject to the Corporations Law if they wish to have members or issue securities across State/Territory borders. This was recognised as an impediment to cooperatives trading interstate. All jurisdictions propose to have their cooperatives legislation, containing the core consistent provisions, commence by 1 July 1997.

Ways in which the objectives will be achieved in the Bill

The objectives of the Bill will be achieved by adopting core consistent provisions which:-

- require any group forming a cooperative to abide by cooperative principles;
- enable cooperatives to have wider corporate powers, by providing them with the powers of a natural person, a situation equivalent to corporations. These powers are to be exercised within traditional cooperative principles;

- maintain the principle of active member control of cooperatives, including one member one vote which is central to the operation and control of cooperatives;
- ensure cooperatives have similar general standards to those applying to corporations in regard to dealings with, or reporting on, activities concerning third parties. For example, disclosure statements are required to be given to members when cooperatives are formed and shares and debentures are issued;
- provide cooperatives with a clearer range of alternatives with regard to determining the optimal capital structure to best service the needs of members, thereby ensuring cooperatives remain competitive with other forms of incorporation. For example, debentures and subordinated debt are to be available to members and non-members;
- enable cooperatives to merge, transfer engagements or be wholly acquired, but only if the substantial majority of active members, when fully informed, desire this;
- recognise the separate registration and operation of interstate and international cooperative organisations in Queensland and allow Queensland cooperatives to undertake business interstate, such as recruiting members or issuing securities across State/Territory borders, without the unnecessary restrictions of the Corporations Law;
- strengthen the registrar's powers to undertake investigations and enforcement and to ensure that the interests of cooperatives, their members and the public generally are protected;
- distinguish cooperatives clearly from companies and hence make them accountable under their own legislation for the issue of securities (under the supervision of State registrars). This will allow cooperatives to accept members across State borders without a prospectus being issued, subject to meeting adequate disclosure requirements.

Those provisions of the Corporations Law, which previously regulated cross-border membership and fund raising, will be “rolled back” so that fundraising by cooperatives will now be regulated under this legislation.

Fundraising from non-members in the form of debentures and subordinated debt will be regulated by this legislation by applying relevant provisions of the Corporations Law. However, prescribed interests will continue to be regulated by the Corporations Law.

A number of non-core provisions are contained in the Bill. These include:-

- A provision empowering the registrar to approve forms;
- Protection for the Minister, officers or employees of the department from civil liability for any act or omission done honestly and without negligence pursuant to this legislation;
- Inspectors' powers in division 1, part 15 are now modelled on the powers found in other Queensland legislation, although some of the existing provisions in the Victorian Act are retained to maintain consistency with the core consistent provisions.
- Schedule 5 provides transitional provisions bringing cooperatives previously registered under the *Cooperative and Other Societies Act 1967* and the *Primary Producers' Cooperative Associations Act 1923*, under this legislation;
- Schedule 6 provides transitional provisions for trading cooperatives which do not have share capital to be regarded as trading cooperatives for the purposes of this legislation;
- Schedule 7 amends references in other legislation to refer now to this legislation and amends the *Associations Incorporation Act 1981* to provide a means for cooperatives and incorporated associations to change their status. It is also specified that each penalty unit is equivalent to \$100;

Administrative cost to Government

The Bill requires the registrar of cooperatives to keep various registers, such as a register of cooperatives, foreign cooperatives and charges. The registrar will be required to ensure that all cooperatives come within the terms of this legislation within two years of its commencement.

It is difficult to forecast the extent of additional administrative work in implementing the legislation's key requirements. The legislation anticipates

regulations will provide for the levying of various fees, for example, registering a cooperative, lodging various documents with the registrar or searching the register. It is therefore anticipated that the set-up costs for the Government will be minimal.

Consistency with fundamental legislative principles

The Bill conforms with fundamental legislative principles with the exception of the following provisions:-

- Sections 10 and 12.
- Section 57.
- Section 157
- Section 393.
- The registrar is empowered to exempt a cooperative from certain provisions of this legislation which is notified by gazette notice and to be regarded as subordinate legislation.

These provisions have been retained as they are core consistent provisions.

Consultation

During the development of the Bill a consultation draft of the Bill was circulated to registered cooperatives, legal and accounting bodies, legal practitioners specialising in cooperatives law, peak industry bodies, other jurisdictions and other Queensland Government departments. Industry is generally supportive of this legislation. While some of industry's concerns have been accommodated, there are other fundamental issues which affect core consistent provisions which cannot be altered. These issues will have to be raised at a national level.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Division 1—Introductory

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

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

Clause 4 sets out the six objects of the Act.

Division 2—Qualified privilege provisions

Clause 5 states that definitions of words used in the Act are found in the dictionary in schedule 8.

Clause 6 expands on the definition of “qualified privilege”.

Division 3—The cooperative principles

Clause 7 sets out the seven cooperative principles under which all cooperatives operate.

Clause 8 provides that the Act is to be interpreted to promote cooperative principles.

Division 4—Application of Corporations Law

Clause 9 excludes the application of the Corporations Law to cooperatives except for those provisions in the Corporations Law described in subclause 2. However, Parts 1.2A (disclosing entities), 7.11 (conduct in relation to securities) and 7.12 (offering securities for subscription or purchase) of the Corporations Law are not excluded from applying to cooperatives except in relation to shares in, debentures of, or deposits with, a cooperative.

Clause 10 provides that provisions of the Corporations Law may be adopted, with or without specified modifications, by this Act or a regulation. Adoption of a provision of the Corporations Law under this Act does not give power to the Australian Securities Commission to administer the adopted provision for this Act.

Clause 11 provides that provisions of the Corporations Law adopted by this Act apply with any modifications that may be necessary or appropriate for the effectual application of the provisions to cooperatives. Further, the definitions of words and expressions contained in the Corporations Law form part of this Act.

Clause 12 provides for the implied adoption of regulations and other provisions of the Corporations Law arising from the application of a provision of the Corporations Law to cooperatives. Further, where an offence is provided in the Corporations Law or its regulations giving rise to a penalty then that penalty provision forms part of this Act for the purpose of fixing the maximum penalty applicable to that offence.

PART 2—FORMATION

Division 1—Types of cooperatives

Clause 13 provides that a cooperative registered under the Act may be either a trading or non-trading cooperative.

Clause 14 requires a trading cooperative to have share capital which gives a return or distribution on surplus or share capital. It also prescribes the minimum number of members necessary to form a trading cooperative.

Clause 15 provides that a non-trading cooperative may or may not have a share capital, but must not give returns or distributions on surplus or share capital other than the nominal value of shares (if any) on winding-up. It also prescribes the minimum number of members required to form a non-trading cooperative.

Division 2—Formation meeting

Clause 16 provides that a formation meeting must be held before a proposed cooperative can be registered, and specifies the matters which must be considered at the meeting and the persons required to attend the meeting.

Division 3—Approval of disclosure statement and rules

Clause 17 provides that a draft disclosure statement (containing the matters specified) of a proposed trading cooperative must be submitted to the registrar of cooperatives (“the registrar”) at least 28 days before the formation meeting is due to be held.

Clause 18 provides that a draft of the rules (in the specified form) proposed for the cooperative must be submitted to the registrar at least 28 days before the formation meeting is due to be held.

Division 4—Registration of proposed cooperative

Clause 19 requires an application for registration of a proposed cooperative to be filed within two months after closure of the formation meeting. It also prescribes the form and content of an application for registration.

Clause 20 provides that when an application for registration of a

proposed cooperative is made the registrar must register the cooperative and its rules if satisfied the requirements for registration which are listed in subclause 2, have been met.

Clause 21 provides that the incorporation of a cooperative takes effect upon the registration of the cooperative and requires the registrar to issue a certificate of registration.

Division 5—Registration of an existing corporation

Clause 22 provides that a corporation may apply to the registrar to be registered as a cooperative under this Act, if the corporation was incorporated or registered under the Corporations Law or under another Act relating to incorporation or registration of corporations.

Clause 23 provides that prior to applying for registration as a cooperative, the corporation must pass a special resolution approving the proposed registration and any alteration to its existing memorandum and articles of association to enable it to comply with this Act. The proposed rules must include active membership requirements; and, if it proposes to be a trading cooperative, an approved disclosure statement must be presented.

Clause 24 provides for the application for registration by a corporation and prescribes the form and content of such an application.

Clause 25 provides that the registrar must register the corporation as a cooperative and register its rules under this Act if satisfied the requirements set out in sub-clause 2 have been met. If so, the corporation must notify the responsible authority of that decision. Registration as a cooperative takes effect only when the corporation ceases to be registered under the law under which it was previously registered.

Clause 26 provides that the registrar must issue a certificate of registration to a corporation which has been registered as a cooperative and must publish notice of the issue of the certificate in the gazette.

Clause 27 provides the corporation is taken to be incorporated under this Act on its registration as a cooperative. This does not prejudice any right of a member in respect of shares held at the time, nor does the change of

registration or incorporation affect the corporation's identity. The corporation is taken to be the same body after registration as a cooperative as it was before, so that no act, matter or thing is affected by the change.

Division 6—Conversion of cooperative

Clause 28 provides that a cooperative may convert from a cooperative with share capital to one without share capital (or vice versa) or from a trading to a non-trading cooperative (or vice versa). Any alteration of the rules for conversion of a cooperative must be approved by special resolution passed by special postal ballot.

Division 7—Appeals

Clause 29 allows the person who submitted a draft disclosure statement to the registrar to appeal to the Supreme Court against the registrar's failure to approve the statement.

Clause 30 allows the person who submitted draft rules to the registrar to appeal to the Supreme Court against the registrar's failure to approve the rules.

Clause 31 allows applicants for registration of a proposed cooperative to appeal to the Supreme Court against the registrar's failure to register the cooperative.

Clause 32 provides that the Supreme Court may make any orders it considers appropriate.

Division 8—General

Clause 33 requires that a proposed cooperative which, or any person who, on its behalf, accepts money for the proposed cooperative before it is registered must hold that money on trust until it is registered. Such funds must be returned if the cooperative is not registered within three months of acceptance of the money.

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

PART 3—LEGAL CAPACITY AND POWERS

Division 1—General powers

Clause 35 describes the effect of incorporation of a cooperative.

Clause 36 provides that, in addition to other powers, a cooperative has power to form or enter into, a partnership, joint venture or other association.

Division 2—Doctrine of ultra vires abolished

Clause 37 provides guidance in the interpretation of this division.

Clause 38 specifies that the purpose of this division is to provide that the doctrine of *ultra vires* does not apply to cooperatives and ensures that the cooperative's officers and members give effect to the provisions of the cooperative's rules relating to the primary activities or powers of the cooperative.

Clause 39 provides that the cooperative has the legal capacity of a natural person and specifies certain powers a cooperative has within and outside the State.

Clause 40 provides that a cooperative's rules may contain restrictions or prohibitions on the exercise by the cooperative of a power, and that the cooperative and any officer contravenes this clause if they exercise a power contrary to an express restriction or prohibition in its rules or stated object in its rules.

Clause 41 provides that the exercise of a power or the doing of an act in contravention of clause 40 is not invalid merely because of the contravention, although this may be asserted or relied on in the specified

types of proceedings listed in subclause 3. Further, if the court has power to grant an injunction restraining an officer or cooperative from engaging in particular conduct, then it may, on application, order the cooperative or officer to pay damages to the applicant.

Division 3—Persons having dealings with cooperatives

Clause 42 provides that a person is entitled to make the assumptions in clause 43 in relation to dealings with a cooperative, and with persons who have, or purport to have, acquired title to property from a cooperative.

Clause 43 lists six assumptions which a person is entitled to make, as provided by clause 42.

Clause 44 provides that a person who knows, or ought to know, that an assumption is incorrect, is not entitled to make that assumption.

Clause 45 provides that a person is not to be considered to have constructive knowledge of a cooperative's rules or documents (other than those relating to registrable charges) filed with the registrar. However, a member of a cooperative does have constructive knowledge of the rules of the cooperative.

Clause 46 provides that a person's entitlement to make assumptions under this division is not affected by the fraudulent conduct of, or forgery by, a person, unless the person attempting to rely on the assumption has actual knowledge of the fraudulent conduct or forgery.

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

Clause 47 provides that a document or proceeding requiring authentication by a cooperative may be authenticated under the common seal of the cooperative.

Clause 48 provides that a cooperative may have one or more official seals, each of which must be a facsimile of the cooperative's common seal, to be used in place of its common seal outside the State where the common

seal is kept.

Clause 49 provides that a document or proceeding may be authenticated by the signature of two people one of whom is a director and the other is a director or officer of a cooperative and need not be under seal.

Clause 50 provides that a cooperative may authorise, by writing under its common seal, a person, as its agent or attorney to execute deeds on its behalf, such authority continuing during the period mentioned in the instrument conferring authority, or until notice of termination of the authority has been given to the person dealing with the agent or attorney. Deeds signed by and under the seal of the agent or attorney or under the official seal of the cooperative bind the cooperative, and the seal has effect as if it was a common seal of the cooperative.

Clause 51 provides that a document executed under the seal of the cooperative is not invalid where a person attesting the affixing of the seal was in any way interested in the matter contained in the document.

Clause 52 provides that a person acting under the authority of a cooperative may make, vary or discharge a contract on behalf of the cooperative.

Clause 53 provides that this division does not affect the operation of a law requiring a consent or sanction to be obtained, or some procedure to be complied with in relation to the making, the varying or discharging of a contract.

Clause 54 provides that this division does not apply to the making, varying or discharging of a contract prior to this Act commencing, but applies otherwise to a cooperative whether it gives its authority before, on or after commencement.

Division 5—Pre-registration contracts

Clause 55 provides that a cooperative will be bound by a contract entered into on behalf of, or for the benefit of, a proposed cooperative if it is registered and it ratifies the contract within a reasonable period after it is made or within any period agreed to by the parties to the contract. A person

will be released from liability under the pre-registration contract if the cooperative enters into another contract in substitution for that contract. However, the person will be liable to pay damages to other parties to the pre-registration contract if a cooperative is not registered or if it does not ratify the contract or enter into a substitute for it within a reasonable period or within the period agreed to by the parties to the contract.

Clause 56 provides that the person who entered into the pre-registration contract may be released from liability and the person giving the release is not entitled to recover damages and the person has no right of indemnity against the cooperative.

Clause 57 provides that this division replaces any rights or liabilities anyone would otherwise have in relation to a pre-registration contract.

PART 4—MEMBERSHIP

Division 1—General

Clause 58 provides for the admission of persons as members of a cooperative.

Clause 59 provides for the admission of cooperatives and other corporations as members of an association.

Clause 60 provides for membership of a federation.

Clause 61 provides that a person must be qualified to be admitted as a member of a cooperative. A person can be admitted if there are reasonable grounds for believing the person will be an active member of the cooperative and if the person is eligible under its rules. The rules must contain provisions imposing a duty on all persons to be active members and explain the consequences of failing to be an active member.

Clause 62 provides that membership of a cooperative may be individual or joint (unless the rules otherwise provide).

Clause 63 provides that a member is precluded from avoiding any

obligation or liability under any contract, deed or other document entered into as a member on the grounds of minority. A person under 18 is not competent to hold any office in a cooperative and is not entitled to vote.

Clause 64 provides that a corporation which is a member of a cooperative may appoint a person to represent it in respect of its membership provided that the person is not currently a member of the cooperative or a representative of another corporation member and that the person is subject to any restriction imposed by the cooperative's rules.

Clause 65 requires a corporation which is a member of a cooperative to notify the board of directors of the cooperative (if requested) of the corporation's shareholders and shareholdings.

Clause 66 prescribes the circumstances under which membership of a cooperative ceases.

Clause 67 provides additional circumstances in which membership of a cooperative with share capital ceases.

Clause 68 prescribes the minimum number of members allowed for cooperatives, associations and federations, and provides that directors of a cooperative who knowingly allow the cooperative to carry on business for more than 28 days after the number of members falls below the minimum, commit an offence.

Division 2—Rights and liabilities of members

Clause 69 provides that rights of membership are not exercisable until the member's name appears on the cooperative's register of members and payment is made and shares are acquired by the member. The board must ensure the name of the person is recorded in the register of members within 28 days of admission to membership.

Clause 70 provides a member of a cooperative with a share capital is liable to the cooperative for any amount unpaid on shares together with any charges payable by the member to the cooperative as required by its rules. A member of a cooperative without share capital is liable for any charges payable by the member to the cooperative as required by its rules.

Clause 71 requires the board of a cooperative to provide copies of its

consolidated rules, applicable special resolutions and the last annual report to each person intending to become a member. There is sufficient compliance if the board of a non-trading cooperative or a trading cooperative, which obtains the registrar's consent, gives notice to the intending member that those documents can be inspected at the registered office of the cooperative.

Clause 72 provides that the rules of a cooperative may require the payment by members of entry fees and regular subscriptions, in which case the cooperative must provide written notice to all intending members, otherwise that person is not liable.

Clause 73 provides that the rules of a cooperative may contain provisions requiring members to have any specified dealings with the cooperative for a fixed period, such as the sale of products through, or to, the cooperative, or obtaining supplies or services through, or from, the cooperative. A contract will therefore be binding on all parties and any rules will be valid, even though the contract or rules will be invalid as being in restraint of trade.

Clause 74 provides for the imposition of a fine by a cooperative on a member for any infringement of the rules of the cooperative, if allowed for in the cooperative's rules, provided notice of intention to impose the fine and the reasons for the fine are given to the member. The member must have a reasonable opportunity to appear or provide a written statement to the board.

Clause 75 provides for charges on certain property of members and former members where a debt is owed to a cooperative, and the set-off of any amount paid towards satisfaction of that debt.

Clause 76 provides for the repayment of the amount paid up on a member's shares when the member is expelled from the cooperative.

Division 3—Death of member

Clause 77 defines a deceased member's "interest" for the purposes of this division.

Clause 78 provides for the transfer of a member's shares or interest in a cooperative on the death of the member.

Clause 79 provides for the transfer of a member's shares or interest in a cooperative on the death of the member, where the total value of the shares or interest is less than \$10,000 (or such higher amount as is prescribed).

Clause 80 provides that the value of the shares or interest of a deceased member is to be determined for the purposes of this division in accordance with the rules of the cooperative.

Clause 81 provides that any transfer of property made by the board of a cooperative in accordance with this division is valid and effectual against any demand made on the cooperative by any other person.

Division 4—Disputes involving members

Clause 82 provides that the rules of a cooperative must set out a grievance procedure, which must allow for the application of natural justice, for dealing with disputes under the rules between members of the cooperative, and between a member and the cooperative.

Clause 83 provides that a member or a cooperative may make application to the Supreme Court for an order declaring and enforcing the rights or obligations of members or the cooperative. The court may refuse the order and make an order for costs in certain specified circumstances.

Division 5—Oppressive conduct of affairs

Clause 84 provides for an extended definition of "member" for the purposes of this division.

Clause 85 provides that this division does not apply in respect of anything done under part 6 (active membership).

Clause 86 specifies who may apply to the Supreme Court for an order under this division.

Clause 87 provides that the Supreme Court may make any order it thinks fit in respect of an application under this division, including, but not limited to, the orders specified.

Clause 88 provides the Supreme Court may make an order if it considers

the cooperative's affairs are oppressive or unfairly prejudicial or unfairly discriminatory against a member, or contrary to the interests of the members as a whole, or there is an act or omission by the cooperative, or a resolution of a class of members, which is oppressive or unfairly prejudicial or unfairly discriminatory against a member or contrary to the interests of the members as a whole.

Clause 89 provides that the Supreme Court need not make an order for the winding-up of a cooperative if the winding-up would unfairly prejudice an oppressed member.

Clause 90 provides that if a cooperative is wound-up under this division, winding-up provisions of this Act apply as if the order for winding-up had been made by the Supreme Court.

Clause 91 provides that if an order under this division makes any alteration to the cooperative's rules it has effect as if it had been made by special resolution, and the cooperative must not make further alteration to the rules inconsistent with the order without leave.

Clause 92 requires an applicant for an order under this division to file a copy of the order with the registrar within 14 days after it is made.

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

Clause 93 specifies who may bring, or intervene in, proceedings on behalf of a cooperative.

Clause 94 provides that a person referred to in clause 93 may apply to the Supreme Court for leave to bring, or to intervene in, proceedings, and specifies the circumstances in which the Court must grant the application.

Clause 95 specifies the persons who may apply to the Supreme Court for an order that they be substituted for a person to whom leave has been granted under clause 94.

Clause 96 provides that ratification or approval of conduct by members does not prevent a person from bringing or intervening in a proceeding with leave under clause 94. It does not have the effect that such a proceeding must be decided in favour of the defendant, or that an application for leave must be refused.

Clause 97 provides that proceedings brought, or intervened in with leave, must not be discontinued, compromised or settled without the leave of the Supreme Court.

Clause 98 empowers the Supreme Court to make orders and give directions in relation to proceedings brought, or intervened in, under this division.

Clause 99 provides that at any time the Supreme Court may make any orders it thinks just about the costs in relation to proceedings brought or intervened in with leave under clause 94 or an application for leave.

PART 5—RULES

Clause 100 describes the effect of the rules of a cooperative as a contract under seal between the cooperative and each member, between the cooperative and each director, the principal executive officer and the secretary, and between a member and each other member, where each person agrees to observe and perform the provisions of the rules.

Clause 101 specifies the required form and content of a cooperative's rules which must set out or otherwise make provision for those matters in schedule 1.

Clause 102 provides that a member can obtain from a cooperative a copy of its rules on payment of the amount required by the rules (provided it does not exceed the fee prescribed under regulation, or, if the rules do not prescribe an amount, payment of \$5.00). A person can obtain a copy of the cooperative's rules from the registrar on payment of the prescribed fee.

Clause 103 provides that a person must not give a false copy of the rules of a cooperative to a member or a person intending to become a member. Further, a person must not alter the cooperative's rules after they are registered and circulate the altered rules representing they have been registered when they have not been.

Clause 104 provides for the approval of model rules by a regulation. In the event that the cooperative's rules do not provide for a matter which is contained in the model rules, then the provision in the model rules is taken

to be included in the cooperative's rules.

Clause 105 provides that the rules of a cooperative cannot be altered except in accordance with this Act.

Clause 106 provides that a proposed alteration of a cooperative's rules must be approved by the registrar before the passing of the resolution to alter the rules. A draft of the proposed alteration must be submitted to the registrar 28 days before notice of the proposed special resolution is given to members, or the resolution is passed by the board.

Clause 107 provides that the rules of a cooperative must be altered by special resolution unless otherwise specified in this Act.

Clause 108 provides the cooperative's rules may be altered by a resolution of the board if the alteration does no more than give effect to a requirement, restriction or prohibition imposed under this Act. In such a case the cooperative must notify its members in writing as soon as practicable after the alteration takes effect, and not later than the date on which notice is given to members of the next annual general meeting after the alteration takes effect.

Clause 109 provides that an alteration of a cooperative's rules does not take effect unless and until it is registered by the registrar.

Clause 110 allows a cooperative to appeal to the Supreme Court against a failure by the registrar to approve an alteration of its rules.

Clause 111 allows a cooperative to appeal to the Supreme Court against the registrar's failure to register an alteration of its rules.

Clause 112 provides the Supreme Court may make such orders as it considers appropriate.

PART 6—ACTIVE MEMBERSHIP

Division 1—Definitions

Clause 113 defines the expression "primary activity".

Clause 114 defines “active membership” for the purposes of the Act.

Clause 115 defines what are active membership provisions and resolutions.

Division 2—Rules to contain active membership provisions

Clause 116 states that a cooperative must have at least one primary activity.

Clause 117 requires the board ensure the cooperative’s rules contain active membership provisions in accordance with this part.

Clause 118 specifies the factors and considerations for determining which of a cooperative’s activities are its primary activities, and for determining an appropriate activity test in relation to each primary activity.

Clause 119 provides for the active membership provisions required of trading cooperatives.

Clause 120 provides that it is sufficient to establish active membership for a non-trading cooperative if it includes provision for payment of a regular subscription by a member to be applied in connection with the primary activity of the cooperative.

Division 3—Active membership resolutions

Clause 121 provides that at least 21 days notice must be given to members of a meeting in which an active member’s resolution is to be proposed and that the notice must specify whether the member is eligible to vote, specify the full text of the resolution and contain a copy of clause 125. If the notice states that a person is ineligible to vote, the member may, after endeavouring to settle the matter with the cooperative, apply to the registrar for a decision as to their eligibility.

Clause 122 specifies that the only members who are eligible to vote on an active membership resolution are those members who would be active members if the resolution had already taken effect.

Clause 123 specifies that if a board is meeting to consider a proposal to

submit an active membership resolution to a meeting, a director is eligible to vote only if he or she would be eligible to vote on the resolution at the meeting, or, if less than two directors are eligible to vote, then all directors are eligible to vote on the proposal at the board at the meeting.

Clause 124 provides that this division does not affect other entitlements of members.

Division 4—Cancellation of membership of inactive members

Clause 125 provides the board may cancel the membership of a member if their whereabouts are not known for at least three years or the member is not an active member during the past three years or as stated by the rules. A person may apply to the Supreme Court if their membership has been cancelled.

Clause 126 provides that if a cooperative has share capital, the board must declare the member's shares forfeited at the same time as the member's membership is cancelled under clause 125.

Clause 127 provides that, if the board of a cooperative fails to cancel a membership as required by this part, a director who did not use all due diligence to prevent that failure commits an offence.

Clause 128 provides that cancellation of a membership may be deferred by the board for a period of up to one year in specified circumstances.

Clause 129 provides that cancellation of a member's membership is prohibited in certain specified circumstances.

Clause 130 provides that the board must give at least 28 days notice to a member of its intention to declare their membership cancelled; however, notice is not required if the member's whereabouts are unknown and the amount required to be repaid to the member for the cancelled membership does not exceed \$50.

Clause 131 empowers the Supreme Court to order against the cancellation of a membership.

Clause 132 requires a cooperative to repay certain amounts to a former member or otherwise apply those amounts within one year after the cancellation of the membership; if a former member is re-admitted to

membership any amount held by the cooperative may be applied towards the cost of admission to membership if requested by the member.

Clause 133 provides for the accrual of interest when amounts owed to a former member are applied as a deposit with the cooperative or the cooperative allots or issues debentures to the former member in satisfaction of the amount owed.

Clause 134 provides for a deposit or debenture to which an amount due to a former member is transferred under this division is to be repaid to the former member, if the board considers that the repayment would not adversely affect the cooperative's financial position. In any event, the amount must be repaid within ten years after cancellation of membership.

Clause 135 requires a cooperative to keep a register of cancelled memberships.

Division 5—Entitlements of former members of trading cooperatives

Clause 136 provides that this division applies only to trading cooperatives.

Clause 137 provides that former shareholders are to be regarded as shareholders for certain purposes.

Clause 138 provides for the entitlements of a former member whose shares have been forfeited within 5 years of a merger of, or a transfer of engagements by, the cooperative of which they were a member.

Clause 139 provides for the set-off of amounts repaid to a person under clause 132 (repayment of amounts owing because of cancelled membership) or clause 134 (repayment of deposits and debentures) against any entitlement of the person under clause 138.

Clause 140 provides for the entitlement of former members to any distribution from the reserves of the cooperative that takes place within 5 years after the person's membership was cancelled.

Clause 141 provides that a regulation may exempt a cooperative from a provision of this division.

PART 7—SHARES

Division 1—Nature of share

Clause 142 describes the nature of a share or other interest in a cooperative.

Division 2—Disclosure

Clause 143 requires the board of a trading cooperative to provide a member with a disclosure statement, containing specified information, before shares are issued to the member.

Division 3—Issue of shares

Clause 144 provides the share capital of a cooperative varies in amount according to the nominal value of shares subscribed which must be of a fixed amount as specified in the cooperative's rules. It allows a cooperative to have more than one class of share, provided the shareholding and rights of shareholders comply with cooperative principles. Except as provided in this part or part 4, shares must not be issued to a non-member.

Clause 145 provides that a share must not be allotted unless at least 10% of the nominal value of the share has been paid.

Clause 146 states that a cooperative must not issue shares at a discount.

Clause 147 allows a trading cooperative to issue shares at a premium, which may be in the form of cash or other valuable consideration and any premium received on those shares must be transferred to a share premium account which is regarded as paid-up share capital.

Clause 148 provides a share may be held by two or more persons jointly, unless the cooperative's rules provide otherwise.

Clause 149 provides that the board of a trading cooperative, if its rules allow, may require a member to take up, or subscribe for, additional shares

under a proposal approved by special resolution. The proposal must have a disclosure statement and other specified information.

Clause 150 provides that the rules of a trading cooperative may authorise the issue of bonus shares to members if its assets have been sold at a profit or revalued at a greater value than that disclosed prior to the revaluation in the books. This does not apply if the assets were acquired for resale at a profit.

Clause 151 places a number of restrictions on the issuing of bonus shares by a cooperative.

Clause 152 specifies the content of the notice which must be given to members of the meeting or postal ballot at which a special resolution is to be proposed for the approval of a bonus share issue.

Division 4—Beneficial and non-beneficial interest in shares

Clause 153 provides that notice of non-beneficial ownership of shares (where this is reasonably expected) must be given at the time of the transfer of those shares.

Clause 154 provides for the notification of non-beneficial ownership of shares where this was not notified at the time of transfer.

Clause 155 provides that, where notice of non-beneficial ownership has been given under clause 153, but on registration of the transfer the transferee holds some or all of those shares beneficially, notice of that fact must be given to the cooperative.

Clause 156 requires notification of a change in the nature of a person's shareholding.

Clause 157 provides rebuttable evidence that, for the purposes of this division, a person is presumed to have been aware of a circumstance of which an employee or agent of the person was aware.

Clause 158 specifies certain circumstances in which non-beneficial ownership of shares will be presumed.

Clause 159 requires the noting of beneficial and non-beneficial interests in a cooperative's register of members.

Clause 160 provides for the registration of a trustee, executor or administrator as the holder of a share in a cooperative previously held by a person who has died.

Clause 161 provides for the registration of an administrator as the holder of a share in a cooperative previously held by a person who has become mentally or physically incapable.

Clause 162 provides for the registration of the Official Trustee in Bankruptcy as the holder of a share in a cooperative previously held by a person who has become bankrupt.

Clause 163 provides for the liability of persons registered as holders of shares under clauses 160, 161 and 162.

Clause 164 provides for the noting in the register of members, with the consent of the cooperative, of shares held on trust.

Clause 165 provides that no notice of a trust is to be entered on a register except as provided in this division.

Division 5—Sale or transfer of shares

Clause 166 provides restrictions on the sale or transfer of shares.

Clause 167 provides for the transfer of shares on the death of a member to an administrator or executor or to another person with consent of the board.

Clause 168 prohibits the sale or transfer of a share which would result in the purchaser or transferee having in excess of 20% (or a lower percentage specified in the rules of a cooperative) of the total share capital of the cooperative.

Clause 169 provides that a transfer of shares is not effective until registered.

Division 6—Repurchase of shares

Clause 170 provides for the purchase and repayment of member's shares by a cooperative up to a sum of 5% of nominal value of issued capital if provided for by the rules.

Clause 171 provides that the board, if it is of the opinion that the payment of the repurchase price would adversely affect the financial position of the cooperative, may apply an amount owed under clause 170 as a deposit or allot or issue debentures in satisfaction of the amount.

Clause 172 requires a cooperative to cancel any share purchased by or forfeited to the cooperative.

PART 8—VOTING

Division 1—Voting entitlements

Clause 173 applies this part to all voting whether at meetings or in ballots.

Clause 174 provides that the voting right attaches to membership and not to shareholding. Generally each member has only one vote. A member of an association or federation may have up to 5 votes if the rules allow. Joint members have only one vote between them.

Clause 175 provides for voting by proxy, if allowed by the rules. Only an active member or a representative of a component cooperative or association in the case of an association or federation can act as proxy for not more than 10 members.

Clause 176 places a restriction on the voting entitlement under a power of attorney.

Clause 177 places a restriction on voting by representatives of a corporation.

Clause 178 provides that inactive members are not entitled to vote.

Clause 179 prohibits a person from controlling the exercise of the right to vote of a member.

Clause 180 provides that a member of a cooperative is not entitled to vote if another person has a relevant interest in any share held by the member or in the right to vote of the member.

Clause 181 provides that a representative of a member is entitled to receive notices of meetings, to vote and is eligible to be elected to the board of directors.

Clause 182 provides that other rights and duties of members are not affected by ineligibility to vote.

Clause 183 provides that any vote of a disentitled member is to be disregarded.

Division 2—Resolutions

Clause 184 provides that, except as otherwise provided, decisions by a cooperative are to be determined by ordinary resolution.

Clause 185 provides that an ordinary resolution is passed by a simple majority at a general meeting or by a postal ballot.

Clause 186 specifies when a special resolution is passed. 28 days notice of a proposed special resolution must be given to the registrar.

Clause 187 specifies how a majority obtained at a meeting or by postal ballot is to be ascertained.

Clause 188 permits the registrar to disallow a proposed special resolution before it is passed.

Clause 189 provides for proof by declaration of the passing of a special resolution at meetings and by postal ballot.

Clause 190 provides that a special resolution passed at a meeting has effect from the date it is passed. A special resolution passed by a special postal ballot has effect from the date it is registered.

Clause 191 requires the filing of special resolutions with the registrar for registration. This clause and clause 190 do not apply to a special resolution altering the rules of a cooperative.

Clause 192 requires the registrar to register a special resolution if satisfied that the cooperative has complied with the Act and that the special resolution is not contrary with the Act.

Division 3—Postal Ballots

Clause 193 provides the holding of postal ballots must be held according to the rules.

Clause 194 provides for the holding of special postal ballots and requires 21 days notice must be given. A disclosure statement approved by the registrar must be sent to each member.

Clause 195 specifies the circumstances in which a special postal ballot is required.

Clause 196 provides that at least 20% of the active members can requisition a postal ballot which must be held within 2 months after the requisition is served. If the special resolution is not passed, the cooperative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot.

Clause 197 describes the expenses that are to be considered to constitute the “expenses involved in holding the ballot” for the purposes of clause 196.

Division 4—Meetings

Clause 198 provides that the first annual general meeting must be held within 19 months of incorporation and the second or any subsequent meeting must be held within 5 months after the close of the financial year or such other time as approved by the registrar or prescribed by regulation.

Clause 199 provides that a special general meeting can be convened at any time by the board.

Clause 200 requires the giving of 14 days notice to members of each general meeting.

Clause 201 makes provision for the quorum for a meeting of a cooperative to be specified in its rules and provides that business cannot be transacted without a quorum present.

Clause 202 provides for the manner of determining a question for decision at a general meeting. It is generally decided by a majority of

members present in person at the meeting and voting by a show of hands with the chairman exercising a second or casting vote if required, unless the Act or the rules provide otherwise.

Clause 203 provides for the convening of a general meeting by the board on the requisition of at least 20% of active members or any lesser percentage specified in the rules. The meeting must be held within 2 months of the requisition and if it is not held, the requisitioning members may convene the meeting.

Clause 204 provides for the entering and confirming of minutes of each general meeting, board meeting and sub-committee meeting. The minutes of each general meeting must be available for inspection by members.

PART 9—MANAGEMENT AND ADMINISTRATION OF COOPERATIVES

Division 1—The board

Clause 205 provides that the business of a cooperative is to be managed by a board of directors which may exercise all the powers of the cooperative other than those that must be exercised by the cooperative in general meeting.

Clause 206 provides the first directors are to be elected at the formation meeting or if it was a corporation incorporated under another Act, the directors of that corporation will be the first directors of the cooperative. Casual vacancies can be filled by the board. Subsequent appointments are made in accordance with the rules of the cooperative.

Clause 207 specifies the qualification of directors. A person must be a member of the cooperative or a representative of a corporation member or an employee or a person qualified as provided by the rules. An employee of the cooperative or a person qualified by the rules is classed as an 'independent director'. For every independent director, the cooperative must have at least three member directors.

Clause 208 provides that the auditor or his partner employee or employer cannot act as a director or directly or indirectly take part in or be concerned with the management of a cooperative. It also provides that a person convicted of a specified offence cannot act as a director or take part in the management of a cooperative without leave of the Court.

Clause 209 provides for the holding of board meetings at least every three months. The quorum is 50% and it may be held using any technology allowed by the board. It allows for the appointment and removal of the chairperson to be provided for by the rules.

Clause 210 provides for the transaction of business by the board outside board meetings by the circulation of papers among all the directors. A resolution in writing approved in writing by a majority of the board is taken to be a decision of the board.

Clause 211 provides for the appointment of deputy directors.

Clause 212 allows the board to delegate the exercise of specified functions (other than the power of delegation) to a director or committee.

Clause 213 provides for the removal from and vacation of office of a director in accordance with the rules. It also lists a number of circumstances for which the office of director is vacated.

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

Clause 214 defines “officer” for the purposes of this division.

Clause 215 requires officers of cooperatives to act honestly in the exercise of their powers and the discharge of the duties of their office.

Clause 216 specifies the standard of care and diligence required of officers of cooperatives. It adopts the ‘reasonable person’ test.

Clause 217 prohibits the improper use of information or position by officers of cooperatives to gain an advantage for themselves or for any other person.

Clause 218 provides for the recovery of damages by a cooperative from a person who has contravened this division, whether or not the person has been convicted of an offence.

Clause 219 provides that this division does not affect other legal duties and liabilities relating to a person's office or employment in relation to a cooperative.

Clause 220 provides that any provision for exempting any officer or auditor of a cooperative against any liability that by law would otherwise attach, other than a contract of insurance, is void.

Clause 221 adopts and applies the provisions of sections 589 to 598 and 1307 of the Corporations Law in respect of cooperatives. These sections deal with offences committed by officers and have the effect of putting the cooperative officers under the same obligations as company officers.

Division 3—Restrictions on directors and officers

Clause 222 restricts directors' remuneration for services as a director to fees, concessions and other benefits that are approved at a general meeting of the cooperative.

Clause 223 prohibits officers from obtaining certain financial accommodation from the cooperative.

Clause 224 provides for financial accommodation to directors and associates of directors.

Clause 225 restricts directors of certain cooperatives from selling land to the cooperative.

Clause 226 provides that a cooperative must not enter into a management contract unless that contract has first been approved by special resolution.

Division 4—Declaration of interests

Clause 227 requires directors to declare the nature and extent of any interest in contracts or proposed contracts with the cooperative.

Clause 228 requires a declaration under this division to be recorded in the minutes.

Clause 229 provides that this division does not affect other laws or rules restricting a director from having any interest in contracts with the cooperative.

Clause 230 specifies certain interests which need not be declared.

Division 5—Accounts and audit

Clause 231 defines “entity” and “control” for the purposes of this division as having the same meanings as they have under the Corporations Law.

Clause 232 specifies requirements for accounts and accounting records of a cooperative and provides for a regulation to be made detailing the requirements.

Clause 233 provides that the registrar, by gazette notice, may grant exemptions from all or specified provisions of the regulations made for the purposes of this part.

Clause 234 requires directors to make certain disclosures required by the regulations.

Clause 235 provides qualified privilege for auditors and persons who publish documents prepared by auditors.

Clause 236 provides for the financial year of a cooperative to end on the day in each calendar year that is provided for in the rules and allows this date to be altered.

Division 6—Registers, records and returns

Clause 237 specifies the registers to be kept by cooperatives.

Clause 238 specifies where the registers of a cooperative must be kept.

Clause 239 provides for the inspection of registers by members and entitles the member to obtain a copy of entries either without charge or on payment of a fee prescribed by the rules.

Clause 240 restricts the use of information contained in a cooperative's registers.

Clause 241 requires the giving of notice to the registrar of the appointment of a director, principal executive officer or secretary of the cooperative.

Clause 242 requires a cooperative to send to the registrar within the required period in each year an annual report containing the matters specified.

Clause 243 requires a cooperative to provide a list of members at the request of the registrar.

Clause 244 requires a cooperative to provide a special return at the request of the registrar.

Division 7—Name and registered office

Clause 245 specifies the required components of a cooperative's name. It must contain the words 'cooperative' or 'co-op' and the word 'limited' or the abbreviation 'ltd' must be the last word of the name.

Clause 246 allows the use of certain abbreviations or elaborations of a cooperative's name.

Clause 247 requires the name of a cooperative to appear on its seal, advertisements and business documents.

Clause 248 provides for the change of name of a cooperative by special resolution.

Clause 249 requires a cooperative to have a registered office where it must have its name displayed. Notification of change of registered office must be given to the registrar within 28 days of the change.

PART 10—FUNDS AND PROPERTY

Division 1—Power to raise money

Clause 250 includes a definition of “financial accommodation” for the purposes of this division. It includes the obtaining of credit and the borrowing or raising of money by any means.

Clause 251 allows requirements and restrictions on fund raising by a cooperative to be controlled by regulation.

Clause 252 restricts the ability to take deposits to those cooperatives which were authorised to do so prior to the commencement of this Act.

Clause 253 provides that members are not required to see to the application of money provided to the cooperative by way of loan or deposit.

Clause 254 empowers the registrar to give directions to a cooperative in relation to the obtaining by the cooperative of financial accommodation.

Clause 255 allows a cooperative to incur subordinated debt. Subordinated debt is a hybrid debt equity instrument. It may be treated as a form of equity provided it is structured appropriately. The debt must be subordinated to all other unsecured creditors and rank before the claims of all member shareholders of the cooperative on a winding-up. The debt must not be redeemable at the initiative of the lender without the prior consent of the registrar. The debt is capable of being treated as property of the cooperative to be applied according to normal principles under the Corporations Law in satisfaction of the cooperative’s liabilities upon a winding-up. If a subordinated debt is to be used to raise additional bank funding or to give comfort in existing bank arrangements, the subordinated debt must be for a minimum period of seven years in accordance with the Reserve Bank definition of subordinated debt.

Clause 256 provides that the provisions of parts 1.2A, 7.11 and 7.12 of the Corporations Law are adopted and apply to and in respect of debentures of a cooperative, except when an issue of debentures is made by a cooperative solely to members or solely to members and employees.

Clause 257 requires a cooperative to provide a disclosure statement, containing the specified matters, where an issue of debentures is solely to members or solely to members and employees of the cooperative.

Clause 258 provides that a debenture of a cooperative cannot be sold or transferred except with the consent of the board and under the rules of the cooperative.

Clause 259 adopts and applies section 1051 of the Corporations Law in relation to debentures issued by a cooperative to any of its members so that a cooperative has power to reissue redeemed debentures.

Clause 260 provides that a cooperative may require its members to lend money, with or without security, to the cooperative, under a proposal approved by special resolution of the cooperative. A disclosure statement is required. When approved, the proposal is binding on members other than those members who resign on passing of the special resolution.

Clause 261 provides for the rate of interest payable on a compulsory loan under clause 260.

Division 2—Charges

Clause 262 gives effect to schedule 3 (Registration etc of Charges) and specifies those mortgages, charges and encumbrances to which the schedule does not apply.

Division 3—Receivers and other controllers of property of cooperatives

Clause 263 gives effect to schedule 4 (Receivers, and other controllers, of property of cooperatives).

Division 4—Disposal of surplus from activities

Clause 264 allows a cooperative to retain all or any part of its surplus arising in any year from its business for the benefit of the cooperative.

Clause 265 provides that the rules of a cooperative may authorise the cooperative to apply a specified proportion of its surplus for any charitable purpose. The rules of a trading cooperative may authorise the cooperative to

apply a part of its surplus for supporting any activity approved by the cooperative.

Clause 266 provides for the distribution by a trading cooperative of surplus or reserves to members as a rebate on the basis of business done or by the issue of bonus shares or by the issue of a limited dividend. Subclause (2) does not apply to the issue of bonus shares to members under subclause (1)(b).

Clause 267 provides for the crediting of a part of a cooperative's surplus to a person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the cooperative.

Division 5—Acquisition and disposal of assets

Clause 268 Division 5 requires specified major transactions to be approved by special resolution by means of special postal ballot. These transactions relate to the sale or lease of a cooperative's undertaking, acquisition or disposal of property to a director or employee or relative of such person or acquisition or disposal of property which affects the activities which a cooperative carries on.

PART 11—RESTRICTIONS ON THE ACQUISITION OF INTERESTS IN COOPERATIVES

Division 1—Restrictions on share and voting interests

Clause 269 provides that this part applies only to trading cooperatives.

Clause 270 requires a person to give notice to a cooperative of a relevant interest, or the cessation of a relevant interest, in the right to vote of a member of the cooperative, within 5 business days after becoming aware of that fact.

Clause 271 requires a person to give notice to a cooperative of a

substantial share interest, a substantial change in a substantial share interest, or a cessation of a substantial share interest in the cooperative, within 5 business days after becoming aware of that fact.

Clause 272 specifies the requirements for notices under this division.

Clause 273 specifies the maximum permissible level of a relevant interest in shares of a cooperative of 20% of the nominal value of share capital. The registrar, by gazette notice, may specify a higher percentage for a particular person or cooperative. The cooperative may increase the maximum percentage by special resolution by special postal ballot with approval of the registrar.

Clause 274 provides that shares held in contravention of this division are declared to be forfeited by the board of the cooperative to the extent necessary to remedy the contravention.

Clause 275 specifies that the board of a cooperative may in response to a suspected contravention of clause 270 refuse to register any share transfer involving the person or suspend any specified rights or entitlements a person may have.

Clause 276 specifies that the Supreme Court may make an order with respect to a contravention of clause 270 on application of the cooperative or the registrar.

Clause 277 requires a cooperative to inform the registrar that a person has a relevant interest which exceeds 20% of the nominal value of the issued share capital or that there has been a change in the number of shares in which that person holds a relevant interest.

Clause 278 requires a cooperative to keep a register of notifiable interests which must be open for inspection by any member or person.

Clause 279 requires an unlisted company (within the meaning of the Corporations Law) that is a member of a cooperative to furnish to the cooperative a list of the company's shareholders and persons with relevant interests and associates of those persons within 28 days after the end of each financial year of the company and within 28 days after a request by the registrar.

Clause 280 provides that a member is still liable to repay a loan to the cooperative despite having a relevant interest in shares in contravention of this division.

Clause 281 describes the extent of the operation of this division including

outside of Australia.

Clause 282 allows the registrar by gazette notice to grant exemptions from the operation of this division.

Division 2—Restrictions on certain share offers

Clause 283 specifies the share offers to which this division applies.

Clause 284 requires an offer to which this division applies to be approved by special resolution by special postal ballot and by the registrar.

Clause 285 prohibits offers referred to in clause 283(1)(a) to (d) if they discriminate between active members and inactive members.

Clause 286 provides that offers to which this division applies must first be submitted to the board of the cooperative. The board must within 28 days or such extended period set by the registrar consider the offer.

Clause 287 prohibits the public announcement of a proposed takeover involving the conversion of a cooperative to a company where the person making the announcement knows that the announcement is false, is recklessly indifferent as to whether it is true or false, or has no reasonable grounds for believing that the performance of obligations arising from the announcement is possible .

Clause 288 provides that for offers involving the conversion of a cooperative to a company the disclosure statement must contain details of relevant interests to be acquired by directors and other material information to make a decision.

Clause 289 provides that where an offer to purchase shares in a cooperative is made in contravention of this division the person is not entitled to be registered as the holder of the shares and if the transfer of shares is registered the person is not entitled to vote.

Clause 290 allows the registrar, by gazette notice, to grant exemptions from all or specified provisions of this division and clause 194 (Special postal ballots).

PART 12—MERGER, TRANSFER OF ENGAGEMENTS, WINDING-UP

Division 1—Mergers and transfers of engagements

Clause 291 provides that this division does not apply to a merger or transfer of engagements to which part 14 (Foreign cooperatives) applies.

Clause 292 provides that any 2 or more cooperatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this division.

Clause 293 provides that a proposed merger must be approved by special resolution by special postal ballot or, if the registrar consents, by board resolution.

Clause 294 requires each cooperative to send to each of its members a disclosure statement approved by the registrar at least 21 days before the ballot papers must be returned by members voting in the special postal ballot required by clause 293. The registrar may, by gazette notice, exempt a cooperative from complying with this section.

Clause 295 provides for the making of an application to the registrar for approval of a merger or transfer of engagements.

Clause 296 provides that the registrar must approve a merger pursuant to an application under this division if satisfied that the division has been complied with, the proposed rules may reasonably be approved, the certificates of registration are surrendered and there is no good reason why the merger should not be registered.

Clause 297 provides that the registrar must approve a transfer of engagements pursuant to an application under this division if satisfied that the division has been complied with, the rules of the transferee cooperative are adequate, the certificate of registration is surrendered and there is no good reason why the transfer should not take effect.

Clause 298 provides for a transfer of engagements by direction of the registrar, with the approval of the Minister. The necessary grounds are referred to in clause 328.

Division 2—Transfer of incorporation

Clause 299 defines “new body” and “transfer” for the purposes of this division.

Clause 300 provides for an application for transfer of incorporation of a cooperative to a company, incorporated association, building society, credit union, friendly society, cooperative housing society or corporation under a law prescribed under a regulation.

Clause 301 provides that a proposed application under clause 300 must be approved by special resolution by special postal ballot. A regulation may exempt a cooperative from compliance with this clause or clause 194.

Clause 302 provides that on the transfer of a cooperative under this division the cooperative ceases to be registered as a cooperative under this Act.

Clause 303 provides that the memorandum or articles of association or rules adopted for a transfer of incorporation under this division must not impose a greater or different liability on the members of the new body who were members of the cooperative.

Clause 304 provides that a certificate of registration or incorporation of the new body is evidence that all the registration or incorporation requirements of this division have been complied with.

Clause 305 provides that the new body is the same entity as the corporation constituted by the cooperative. Division 6 (Effect of merger etc. on property, liabilities etc.) also applies to a transfer under this division.

Division 3—Winding-up

Clause 306 provides that a cooperative may be wound-up voluntarily or by the Supreme Court or on a certificate of the registrar.

Clause 307 provides for winding-up on a registrar’s certificate only if necessary grounds referred to in clause 328 exist. The liquidator need not be a registered liquidator.

Clause 308 provides that the provisions of parts 5.4 to 5.7 of the Corporations Law are adopted and apply to the winding-up or dissolution of a cooperative. Parts 5.4 to 5.7 cover winding-up in insolvency, winding-up

by the Court on other grounds, winding-up in insolvency or by the Court, voluntary winding up, winding-up generally and winding-up bodies other than companies.

Clause 309 provides that voluntary winding-up of a cooperative must be by creditors' voluntary winding-up or by a special resolution by special postal ballot. A regulation may exempt a cooperative from compliance with this section or clause 194.

Clause 310 provides that a members' voluntary winding-up commences when the result of a special postal ballot is noted in the minute book.

Clause 311 provides for the distribution of surplus property on a winding-up of a non-trading cooperative as required by the rules.

Clause 312 provides that a vacancy in the office of liquidator (in the case of a voluntary winding-up) may be filled by the registrar.

Clause 313 provides that a member, creditor or liquidator may apply to the Supreme Court for review of the remuneration of a liquidator.

Clause 314 provides for the liability of a member to contribute in a winding-up where their membership is cancelled under part 6 (Active membership) or where their shares are purchased under clause 170 (Purchase and repayment of shares) within 2 years before the commencement of the winding-up.

Division 4—Administration of cooperative—adoption of Corporations Law

Clause 315 provides that the provisions of part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) and division 3 part 5.9 (Provisions applying to various kinds of external administration) of the Corporations Law are adopted and apply to and in respect of a cooperative as if it were a company.

Division 5—Appointment of administrator

Clause 316 provides for the appointment of an administrator by the registrar, by written notice, only if the grounds referred to in clause 328 exist.

Clause 317 describes the effect of the appointment of an administrator on

the directors and contracts of a cooperative and provides that the administrator has the functions of the board.

Clause 318 provides for the revocation of appointment of an administrator by the registrar and requires the administrator to submit a report to the registrar showing how the administration was carried out.

Clause 319 provides that the expenses of an administration are payable out of the funds of the cooperative.

Clause 320 provides that an administrator is liable for any loss incurred by the cooperative due to fraud, dishonesty, negligence or wilful failure to comply with the Act or the cooperative's rules by the administrator.

Clause 321 provides the registrar with additional powers where the registrar has appointed directors of a cooperative under clause 318.

Clause 322 provides for a stay of proceedings against a cooperative where the registrar has appointed an administrator to conduct the cooperative's affairs, except with leave of the Supreme Court.

Clause 323 requires an administrator to report to the registrar if requested to do so by the registrar.

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

Clause 324 provides for the application of this division to a merger of cooperatives under this part.

Clause 325 provides for the application of this division to a transfer of engagements of a cooperative to another cooperative under division 1.

Clause 326 provides for the application of this division to a transfer of incorporation under division 2.

Clause 327 describes the effect of an event to which this division applies (as provided for in clauses 324, 325 and 326) on the property, liabilities etc of the relevant bodies.

Division 7—Miscellaneous

Clause 328 specifies the grounds for a winding-up on the certificate of the registrar under clause 307, a transfer of engagements by direction of the registrar under clause 298 and the appointment of an administrator by the registrar under division 5. The registrar must not certify under this section as to a matter unless the matter has been proved to the registrar's satisfaction.

Clause 329 provides that the provisions of part 5.7A (Reciprocity with other jurisdictions) of the Corporations Law are adopted and apply to a cooperative.

Clause 330 provides that the provisions of part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company other than section 588G) of the Corporations Law are adopted and apply to a cooperative.

**PART 13—ARRANGEMENTS AND
RECONSTRUCTIONS**

Division 1—General requirements

Clause 331 provides that for a compromise or arrangement to be binding it must be approved by order of the Supreme Court and agreed to by a majority of creditors (whose claims amount to at least 75% of the claims concerned) present at a Court ordered meeting or, if the arrangement is between members and the cooperative, agreed to by the members concerned by special resolution by special postal ballot.

Clause 332 provides for a meeting of creditors ordered by the Supreme Court on application of the cooperative or any member or any creditor or the liquidator.

Clause 333 provides for the Supreme Court to make an order under this division if notice of the hearing of the application is given to the registrar and the registrar has had a reasonable opportunity to examine the

compromise or arrangement and draft explanatory statement and to make submissions to the Court.

Clause 334 provides that where the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement the results are to be aggregated.

Clause 335 specifies persons who are disqualified from administering a compromise or arrangement approved under this Act except with the leave of the Supreme Court.

Clause 336 provides for the application of schedule 4, sections 16, 18(2) and (4), 19, 23 and 25 and the adoption and application of section 536 (Supervision of liquidators) of the Corporations Law, to persons appointed to administer a compromise or arrangement.

Clause 337 requires a cooperative to ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is annexed to each future copy of the cooperative's rules.

Clause 338 requires the directors of a cooperative in respect of which a compromise or arrangement has been proposed and if members of the cooperative by resolution direct to instruct the accountants or solicitors or both named in the resolution to report on proposals and make available any report.

Clause 339 empowers the Supreme Court to restrain further proceedings in respect of a cooperative that has proposed a compromise or arrangement with any of its creditors.

Clause 340 provides that the Supreme Court need not approve a compromise or arrangement unless it is satisfied that the compromise or arrangement has not been proposed to avoid the operation of part 11, division 2 (Restrictions on certain share offers) and the registrar has no objections.

Division 2—Explanatory statements

Clause 341 provides that an explanatory statement, containing the specified information, must be sent with every notice to creditors convening the court-ordered meeting, or to members for the purpose of the conduct of

the special postal ballot. Advertisements of such meetings must contain an explanatory statement or details of how creditors can obtain copies of the statement.

Clause 342 provides for the explanatory statement referred to in clause 341 to be approved by the registrar and for the statement to specify material interests and the effect on those interests.

Clause 343 provides that a contravention of this division constitutes an offence.

Clause 344 provides that the Supreme Court may make a range of orders in the case of a compromise or arrangement connected with the reconstruction or merger of a cooperative.

Division 3—Acquisition of shares of dissenting shareholders

Clause 345 defines “dissenting shareholder” and “excluded shares” for the purposes of this division.

Clause 346 provides that the division applies to a scheme or contract involving a transfer of shares in a cooperative to a person if the scheme or contract has within 4 months of the offer been approved by the holders of at least 90% of the nominal value of the shares concerned.

Clause 347 provides for the acquisition of shares by giving a compulsory acquisition notice to a dissenting shareholder within 2 months after the offer is approved.

Clause 348 specifies certain restrictions to the application of clause 347 where the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares to be transferred under the scheme.

Clause 349 provides that remaining shareholders in the transferor cooperative may require the transferee to acquire the holders’ shares.

Clause 350 provides for the transfer of shares following the sending of a compulsory acquisition notice and instrument of transfer, subject to any Supreme Court order to the contrary.

Clause 351 provides for the disposal of the consideration received for shares compulsorily acquired. Amounts and property held in trust for at least 2 years must be paid or consideration transferred to the registrar to be dealt with under part 9.7 (Unclaimed property) of the Corporations Law with any changes prescribed under a regulation.

Division 4—Miscellaneous

Clause 352 requires a person appointed to administer a compromise or arrangement to file written notice with the registrar of the appointment.

Clause 353 empowers the Supreme Court, when an application is made to it under this part, to require certain reports concerning the proposed compromise or arrangement to be given to it.

Clause 354 describes the effect of an out-of-jurisdiction compromise or arrangement on creditors of a foreign cooperative whose debts are recoverable by action in a court of this State.

Clause 355 requires the jurisdiction of the Supreme Court under this part to be exercised in harmony with its jurisdiction under the Corporations Law.

Clause 356 allows the registrar (or the registrar's representative) to appear and be heard in any proceedings under this part.

PART 14—FOREIGN COOPERATIVES

Division 1—Introductory

Clause 357 contains a number of definitions for the purposes of this part.

Clause 358 provides for the declaration of a law of a State other than Queensland as a cooperatives law for the purposes of this part, if the law substantially corresponds to stated provisions of this Act.

Division 2—Registration of foreign cooperatives

Clause 359 provides that a foreign cooperative must not carry on business in Queensland until it is registered under this part.

Clause 360 specifies what constitutes carrying on business by a foreign cooperative within the State of Queensland.

Clause 361 provides for an application for registration as a foreign cooperative by a participating cooperative.

Clause 362 provides for an application for registration as a foreign cooperative by a non-participating cooperative.

Clause 363 provides that a non-participating cooperative is not eligible for registration unless the registrar is satisfied as to certain matters in relation to the cooperative's rules.

Clause 364 provides that a foreign cooperative is eligible for registration if the name it proposes to use in Queensland is not likely to be confused with the name of a corporation or a registered Queensland business name.

Clause 365 requires the registrar to register a foreign cooperative, if satisfied that it is eligible for registration, and issue a certificate of registration.

Clause 366 applies the Act and regulations to foreign cooperatives registered under this part as if they were cooperatives.

Clause 367 specifies certain changes within the foreign cooperative's rules or management of which the registrar must be notified within 28 days of the alteration, to enable the register to be maintained.

Clause 368 requires the lodgment by a foreign cooperative of a balance sheet within 6 months (or such longer period as allowed by the registrar) of the end of each of its financial years, and enables further information to be sought by the registrar in certain circumstances.

Clause 369 requires a foreign cooperative to notify the registrar within 7 days of ceasing to carry on business as a cooperative in Queensland, and provides for cancellation of the foreign cooperative after 1 year from the date of notice .

Clause 370 provides for the issue of a certificate of compliance by the registrar to a cooperative that proposes to apply to be registered as a foreign cooperative in another participating state.

Division 3—Mergers and transfers of engagements

Clause 371 defines “appropriate registrar” for the purposes of this division.

Clause 372 provides for a merger of, or transfer of engagements between, a Queensland cooperative and a participating cooperative. It also provides for the merger of, or transfer of engagements between, a Queensland cooperative and a non-participating cooperative if it results in a Queensland cooperative being formed.

Clause 373 specifies the requirements that must be complied with before an application can be made under this division. It also provides for a merger of, or transfer of engagements between, cooperatives on the resolution of the board in certain circumstances.

Clause 374 requires that a disclosure statement, containing the specified matters, be sent to each member by each cooperative prior to the passing of the special resolution approving the merger or transfer of engagements. The registrar may exempt, by gazette notice, the Queensland cooperative or foreign cooperative from complying with this section.

Clause 375 provides for the making of an application to the Queensland registrar for approval of a merger or transfer of engagements under this division.

Clause 376 provides for the approval of a merger under this division by the Queensland registrar. On approval the registrar must cancel registration of the Queensland cooperative involved in the merger, and in the case where the merger results in a Queensland cooperative, register the merged cooperative and issue a certificate.

Clause 377 provides for the approval of a transfer of engagements under this division by the Queensland registrar.

Clause 378 describes the effect of a merger or transfer of engagements under this division and includes definitions for the purpose of this division.

Clause 379 provides that this division applies instead of certain other provisions of the Act, which pertain to mergers and transfer of engagements between Queensland cooperatives.

PART 15—SUPERVISION AND PROTECTION OF COOPERATIVES

Division 1—Supervision and inspection

Clause 380 contains certain definitions for the purposes of this part.

Clause 381 provides that, in this part, “cooperative” includes subsidiaries, foreign cooperatives and cooperative ventures.

Clause 382 provides for the appointment of inspectors for the purposes of the Act. The chief executive may appoint a person with the necessary expertise or experience, or a person having satisfactorily completed an approved training course, to be an inspector.

Clause 383 provides that the registrar and investigators have and may exercise all the functions of an inspector.

Clause 384 requires the chief executive to give each inspector an identity card and also prescribes the contents of the card.

Clause 385 provides that an inspector may exercise a power in relation to someone only if the inspector first produces his identity card for the other person’s inspection or the identity card is made clearly visible to the other person.

Clause 386 provides that the powers of an inspector are subject to the directions of the registrar and may be limited by a regulation or under condition of appointment or by written notice.

Clause 387 provides for the inspector’s appointment conditions to be contained in the instrument of appointment. It also prescribes when the inspector’s appointment terminates.

Clause 388 provides the circumstances when an inspector may enter a place.

Clause 389 provides for the procedure to be adopted by an inspector intending to ask an occupier of a place to consent to the inspector or other inspector entering the place. A court may presume that the occupier did not consent if no acknowledgment is evidenced in writing.

Clause 390 provides that inspectors may by notice in the approved form, require certain persons to appear, answer questions and produce documents. It is specified when a person is considered to be involved in the activities of the cooperative.

Clause 391 provides that inspectors have power to search for evidence of a contravention of the Act, search for relevant documents and the power to require persons involved with the activities of the cooperative to answer questions or provide information on premises that the inspector is authorised to enter.

Clause 392 specifies the functions of inspectors in relation to taking possession or making copies of documents. An inspector may require any person to make a statement about the relevant documents. While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document, to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

Clause 393 provides that a person is not excused from making a statement on the grounds that the statement might tend to incriminate them, but the statement is not admissible against them in criminal proceedings other than proceedings under this division.

Clause 394 provides for the form and content of an application by an inspector to a magistrate for a warrant to enter a place. The application must be sworn and state the grounds on which the warrant is sought.

Clause 395 provides for the procedures to be followed where an application for a warrant is made other than in person in circumstances of urgency or where the inspector is at a remote location. It also makes provision that a police officer may accompany an inspector executing a search warrant issued under this section.

Clause 396 describes the general powers and procedures to be exercised by an inspector after entering a place to undertake an inspection. The inspector may require a person in the place, to give the inspector reasonable help to exercise his powers contained in this clause.

Clause 397 provides an inspector with the power to seize a thing if they reasonably believe the thing is evidence of an offence against this Act and if seizure of the thing is consistent with the purpose of entry as told to the occupier.

Clause 398 provides the procedure for the inspector to issue a receipt for any things seized.

Clause 399 provides the procedure and timing for the return of a seized thing to its owner.

Clause 400 empowers an inspector to require the name and address of a person found by an inspector committing an offence against this Act.

Clause 401 provides for penalty provisions for persons knowingly giving false or misleading statements to an inspector.

Clause 402 empowers an inspector to require a person to produce to the inspector, for inspection, a document this Act requires the person to hold or keep. The inspector may keep the document to make an extract or a copy and must return the document to the person as soon as practicable after taking an extract or copy.

Clause 403 provides for penalty provisions for persons knowingly giving false or misleading documents to the registrar or an inspector.

Clause 404 provides for penalty provisions for persons obstructing an inspector, or a person helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse. It also sets out the procedures to be adopted by the inspector.

Clause 405 provides for the admissibility into evidence of copies or extracts of records relating to the affairs of a cooperative.

Clause 406 relates to documents containing privileged legal communications, and allows a legal practitioner to refuse to comply with a requirement under clauses 390 or 392 under certain circumstances.

Clause 407 provides for the giving of assistance by police to inspectors. A police officer has, while acting in aid of an inspector, all the functions of an inspector.

Division 2—Inquiries

Clause 408 contains definitions of “affairs”, “costs”, “investigator” and “involved person” for the purposes of this division.

Clause 409 provides for the appointment by the Minister of investigators to hold an inquiry into the affairs of a cooperative under certain circumstances.

Clause 410 specifies the powers of investigators including the giving of notices in the approved form, administering an oath or affirmation and taking possession of documents.

Clause 411 provides for the examination of “involved persons” by investigators. It also provides for a lawyer acting for “involved persons” to be in attendance during the examination.

Clause 412 provides for privilege of an involved person who is a legal practitioner, and prescribes the procedures applying to the supply or non-supply of documents.

Clause 413 creates a number of offences by involved persons including the refusal or failure to comply, knowingly giving false evidence or misleading material and knowingly making false or misleading statements.

Clause 414 creates a number of offences relating to documents, including concealment, destruction of documents or the documents being sent out of the State.

Clause 415 provides for the admissibility into evidence of a record of an examination made under clause 411.

Clause 416 provides for interim and final reports to be made by an investigator to the registrar. It provides that a report by an investigator may be accompanied by any documents acquired during the investigation and prescribes the registrar’s manner of dealing with such documents.

Clause 417 provides for the institution of legal proceedings following an inquiry under this division.

Clause 418 provides for the admissibility into evidence of an investigator’s report on the certification by the registrar.

Clause 419 provides for the payment of the costs of an inquiry under this division.

Division 3—Prevention of fraud etc.

Clause 420 prohibits the falsification of the records of a cooperative.

Clause 421 prohibits the obtaining of any property of a cooperative by fraud or misappropriation of the assets of a cooperative. It also provides that if a person is found guilty, they must, if ordered by the court, return the property and repay all money improperly applied.

Clause 422 prohibits the offering or paying of a commission, fee or reward to an officer of a cooperative in connection with a transaction of the cooperative.

Clause 423 prohibits an officer from accepting such commission, fee or reward. It also prescribes that a person found guilty under this section, is liable to make good to the cooperative double the value received.

Clause 424 prohibits the making of false statements in or in relation to any application, request or demand for money made to or of any cooperative.

Division 4—Miscellaneous powers of the registrar

Clause 425 provides for the calling by the registrar of a special meeting or the holding of an inquiry, on the application of a majority of members of the board or not less than one third of the members of a cooperative.

Clause 426 provides for the holding of a special meeting. It also prescribes that the registrar must give notice to members of the holding of the special meeting, as the registrar considers appropriate (despite any provision contained in the cooperative's rules).

Clause 427 provides for the payment of expenses of a special meeting called or an inquiry held under this division.

Clause 428 allows the registrar, without any application, to hold a special inquiry into a cooperative.

Clause 429 provides for the calling by the registrar of a special meeting following an inquiry under this division.

Clause 430 allows the registrar to require information and evidence from an applicant in relation to any application for registration or approval under the Act.

Clause 431 allows the registrar to extend or abridge any time for doing anything required to be done by a cooperative under the Act, the regulations or the rules of a cooperative.

Clause 432 empowers the registrar to intervene in any proceedings relating to a matter arising under the Act or the regulations. It also prescribes the conditions under which the registrar may be represented at any proceeding.

PART 16—ADMINISTRATION OF THIS ACT

Division 1—The registrar and other staff, and registers

Clause 433 provides for the chief executive to be the registrar of cooperatives.

Clause 434 specifies the registrar's functions.

Clause 435 provides for the appointment of a deputy registrar and assistant registrars, which may exercise any of the functions conferred on the registrar.

Clause 436 allows the registrar to delegate any of his/her functions including this power of delegation.

Clause 437 establishes a register of cooperatives, foreign cooperative and cooperative charges which must include records of documents relating to cooperatives, that are specified by the registrar by gazette notice.

Clause 438 requires the registrar to keep the register of cooperatives and any other registers considered necessary which must be kept in the form the registrar considers appropriate.

Clause 439 provides for the disposal of records by the registrar. It provides documents are to be destroyed after certain time limits, subject to the *Libraries and Archives Act 1988*.

Clause 440 provides for the inspection of the register and the obtaining of copies of documents kept by the registrar, by the public for a prescribed fee.

Clause 441 allows the registrar to indicate to an applicant for an approval under the Act that the approval is considered to have been granted at the end of a specified period unless the applicant is otherwise notified.

Clause 442 provides that a document is not considered to be filed unless all required information is provided and the fee (if any) paid.

Clause 443 provides for filing of documents by facsimile or electronic transmission. It also provides that the registrar may require a person to produce and file the originals.

Clause 444 empowers the registrar to reject or refuse to register documents under certain circumstances. Upon refusal to register the registrar may request that the documents be appropriately amended or completed as the case may be.

Division 2—Protection from liability

Clause 445 provides protection from liability for the Minister and an officer or employee of the department.

Division 3—Evidence

Clause 446 provides that certificates of registration issued under the Act are conclusive evidence of incorporation and that all requirements for registration have been complied with.

Clause 447 provides for the issue of certificates by the registrar certifying that certain matters have or have not been done or that certain requirements of the Act have or have not been complied with.

Clause 448 provides for the admissibility into evidence of records kept by a cooperative. It also prescribes that a document purporting to be a record kept by a cooperative is, unless the contrary is proved, taken to be a record kept by the cooperative under a requirement of this Act.

Clause 449 provides that minutes purporting to be minutes of the business transacted at a meeting are evidence that the business recorded was transacted at the meeting and that the meeting was duly convened and held.

Clause 450 provides that official certificates and other documents signed by or bearing the seal of the registrar are to be received in evidence without further proof.

Clause 451 provides that judicial notice is to be taken of the registrar's signature.

Clause 452 provides that a copy of a cooperative's rules verified by statutory declaration by the secretary of the cooperative to be a true copy of the rules is evidence of the rules.

Clause 453 provides that the registers of a cooperative are evidence of the particulars inserted therein.

PART 17—OFFENCES AND PROCEEDINGS

Clause 454 provides that officers and directors involved in a contravention of the Act or the regulations by a cooperative are taken to have contravened the same provision.

Clause 455 provides that notice is to be given to each member of a cooperative of a conviction for an offence against this Act by the cooperative or an officer within 28 days after the conviction is recorded.

Clause 456 imposes obligations of confidentiality, with specified exceptions, on persons involved in the administration of this or the former Act.

Clause 457 provides that the making of false or misleading statements in a document required for the purposes of the Act or filed with the registrar is an offence. Also a person must not, from a document required for the purposes of this Act or filed with the registrar, omit or authorise the omission of, anything knowing that the omission makes the document misleading in a material particular.

Clause 458 creates a further offence for a continuing failure to do a required act after conviction.

Clause 459 provides that a contravention by a cooperative of the Act, or its rules in making, guaranteeing or raising any loan or receiving any deposit does not affect the civil rights and liabilities of any person, but the money becomes immediately payable.

Clause 460 provides for the issuing of injunctions by the Supreme Court on the application of the registrar or an affected person on certain specified grounds. It provides that the Court may grant an interim injunction and may discharge or vary an injunction under this section.

Clause 461 provides that proceedings for an offence under the Act may be instituted at any time within 3 years after the alleged commission of the offence.

PART 18—GENERAL

Clause 462 requires the registrar to register a dissolution of a cooperative and cancel the registration of the cooperative as soon as practicable after a cooperative is dissolved or has otherwise ceased to exist.

Clause 463 provides for the service of documents on a cooperative. It also prescribes the method of service of documents on a foreign cooperative.

Clause 464 provides for the service of documents on a member of a cooperative, and permits a non-trading cooperative to give notice by publishing in a newspaper circulating in the area served by the cooperative, if it so desires.

Clause 465 provides for the reciprocal exchange of information between State registrars. A reciprocal arrangement with another State under this clause is an arrangement made between the Minister and a representative of the government of the other State, permitting the provision of information or documents relating to a cooperative to be transmitted between officials of the cooperative registry.

Clause 466 requires translations of documents that are not in English that are required to be furnished or lodged.

Clause 467 provides for the registrar to approve forms for use under this Act.

Clause 468 provides for the making of regulations under the Act. A regulation may provide for how to file documents and the payment of fees and late filing fees.

PART 19—REPEALS, AMENDMENT, SAVINGS AND TRANSITIONAL

Clause 469 repeals the *Cooperative and Other Societies Act 1967*.

Clause 470 repeals the *Primary Producers' Cooperative Associations Act 1923*.

Clause 471 gives effect to schedules 5 and 6 (savings and transitional provisions).

Clause 472 provides for the amendment of other Acts, as specified in schedule 7.

SCHEDULE 1

Matters For Which Rules Must Make Provision

This gives effect to clause 101.

Clause 1 provides that the rules of all cooperatives must set out or provide for those matters which are listed in subclauses (a) to (x), such as: the name of the cooperative; active membership provisions; the rights and liabilities of members; charges, subscriptions, fines or forfeitures imposed

on members; grievance procedures for settling disputes; any restrictions on the powers of the cooperative and the board; directors' requirements; the quorum and procedure of board meetings; custody and use of seal; how the funds of the cooperative are to be managed; custody of securities; provision for auditing of the cooperative's accounts; the conduct of general and special meetings and postal ballots; the manner for altering the rules and how the cooperative may be wound-up. Subclause (y) allows other matters to be prescribed under regulation and subclause (z) allows the cooperative to include other matters that appear necessary or desirable.

Clause 2 provides that in addition to those matters specified in clause 1, the rules of the cooperative with a share capital must set out or provide for each of those matters set out in subclauses (a) to (h) including: the nominal value of each share in a cooperative; the terms on which shares (excluding bonus shares) are issued; distribution of any surplus for a trading cooperative; the allocation of deficiency on winding-up; provision for the forfeiture of shares on expulsion or failure to pay any subscription and how shares are to be transferred. Subclause (i) allows other matters to be prescribed under regulation.

Clause 3 provides that in addition to those matters specified in clauses 1 and 2 the rules of a non-trading cooperative must provide that there is to be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding-up and for the manner of distributing surplus property at winding-up.

SCHEDULE 2

Relevant Interests, Associates, Related Bodies

Part 1—Relevant Interests

This part provides an expanded definition of the expression “relevant interests” in schedule 8. This has application in regard to the restriction on

voting rights under part 8 (voting) and part 11 (restrictions on the acquisition of interests in cooperatives).

Clause 1 applies certain terminology for the purposes of this part.

Clause 2 provides that a person who has power to vote in respect of a right to vote or has power to dispose of a share has a relevant interest in the right to vote or in the share.

Clause 3 provides that if a corporation has power to vote in respect of a right to vote or power to dispose of a share then a person is to be considered under this part to have the same powers as the body has if the body or its directors act under directions, instructions or the wishes of the person or a person has a controlling interest in the body.

Clause 4 provides that if a corporation or associate of a corporation has power to vote in respect of a right to vote or power to dispose of a share then a person is considered to have the same power as the body or associate if the person or associate of the person has power to vote in respect of a right to vote attached to not less than 20% of the voting shares in the body.

Clause 5 provides that if a person has entered into an agreement or has a right enforceable against another person or has granted to another person an option with respect to an issued share or right to vote which the other person has a relevant interest then on performance of that agreement or enforcement of the right or exercise of the option then that person is considered to have a relevant interest in the share or right to vote.

Clause 6 provides that if a corporation is considered to have a relevant interest in a share or right to vote under clause 5 that person is considered for the purpose of this part to have a relevant interest if the corporation or its directors act under the direction, instruction or wishes of the person or the person has a controlling interest in the corporation or the person has not less than 20% of the voting shares in the corporation.

Clause 7 provides that it is immaterial under this part whether or not the power to vote is express or implied or formal or informal or is exercisable by one person or jointly with others or cannot be related to a particular share or can be made subject to a restraint or restriction.

Clause 8 provides that a corporation can be considered to have a relevant interest in a share or right to vote arising from membership of the body itself.

Clause 9 provides that a relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes money lending and that person has authority to exercise powers as holder of the relevant interest because of the security given in the ordinary course of business in connection with money lending.

Clause 10 excludes relevant interests where the share or right is subject to a trust and the person has the relevant interest as a trustee of the trust.

Clause 11 excludes relevant interests of a person in a share or right to vote if the person's ordinary business includes dealing in securities and that person has authority to exercise power as the holder of the interest only because of the instructions from another person to dispose of the share on the other person's behalf in the ordinary course of that business.

Clause 12 disregards a relevant interest of a person who has been appointed, except where value or consideration is given, to vote as a proxy or representative at a meeting of a corporation.

Clause 13 excludes a relevant interest of a person in a share or right to vote where a person holds office prescribed under a regulation.

Clause 14 provides that regulations may exempt a relevant interest in a share from the application of the Act.

Clause 15 provides for the effect of this schedule.

Clause 16 provides a relevant interest in a share or a right to vote in respect of a corporation other than a cooperative is to be construed under the *Corporations Law*.

Part 2—Associates

This part provides an expanded definition of the word "associate" in schedule 8. It has application to part 11 (restrictions on the acquisition of interests in cooperatives) and part 1, schedule 2.

Clause 17 limits the application of this part.

Clause 18 provides that associates of a corporation include directors or secretaries, a related corporation or a director or secretary of a related corporation.

Clause 19 provides for matters that relate to voting rights. It applies to agreements where one of the persons has all the power to exercise or control directly or indirectly or influence substantially the exercise of any voting power attached to shares in the body or for the purpose of controlling or influencing the composition of the body's board or the conduct of affairs of the body or under which any other person will or may require shares in the body which the other has a relevant interest or under which one or more persons may be required to dispose of shares in the body under the other's directions.

Clause 20 expands on the application of an associate of a person.

Clause 21 provides that a person is not an associate of another person where one gives advice to the other or acts on the other's behalf in carrying out functions attaching to a professional capacity or business relationship or gives specific instructions to acquire shares on that client's behalf in the ordinary course of business which includes dealing with securities or one has made an offer to another under part 11 or one has been appointed by the other to vote as a proxy or representative at a meeting of the corporation.

Part 3—Related Bodies

This part provides an expanded definition of the expression "related body" in part 2, schedule 2.

Clause 22 provides an expanded application of a related corporation.

SCHEDULE 3

REGISTRATION ETC. OF CHARGES

This gives effect to clause 262. This schedule provides for: the notification of charges; the registration of and priority of charges; the effect of certain charges against a liquidator, administrator or other person; the assignment, variation or satisfaction of charges.

Part 1—Preliminary

Clauses 1-3 contains definitions for the purposes of this schedule and stipulates that documents are taken to be lodged when they are received at the office of the registrar by an officer authorised to receive them.

Part 2—Registration

Division 1—Charges

Clauses 4-12 contains details of which charges this schedule applies to and expressly excludes the following:-

- a charge, or a lien over property, arising by operation of law;
- a pledge of a personal chattel or a marketable security;
- a charge created in relation to a negotiable instrument;
- a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business;
- a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

Division 2—Notice of Charge

Clauses 13-17 provides for the methodology of lodgment of notice of a charge and lists the detail required to be furnished to the registrar within 45 days after the creation of the charge. It details the operation of priority provisions in respect of issuing debentures.

Division 3—Registration

Clauses 18-25 empowers the registrar to keep a register of cooperative charges. It stipulates that the register must record certain details of the charge and provisional registration can be undertaken in circumstances where stamp duty has not been paid or if all particulars have not been supplied. Once all details have been supplied and duty paid the provisional registration of the charge is withdrawn and the charge becomes registered. The register must contain particulars of any assignment or variation of the charge.

Division 4—Certain charges void against liquidator or administrator

Clauses 26-31 contains definitions relative to the operation of this division and details certain charges void against a liquidator or administrator.

Division 5—Certain charges in favour of persons void

Clauses 32-35 contains definitions relative to the operation of this division and details certain charges in favour of persons are void.

Division 6—Assignment, variation or satisfaction of charges

Clauses 36-37 provides for the registration of a variation to a registered charge in certain circumstances and also provides for the release of the property or part of the property from the charge, on either the total satisfaction or partial satisfaction of the charge.

Division 7—General

Clauses 38-44 deals with the circumstances when the lodgment of notice

is made by persons other than the cooperative, and it stipulates that the cooperative must keep at its registered office a copy of the documents relating to charges together with a register of charges.

PART 3—ORDER OF PRIORITY

Division 1—General

Clauses 45-46 contains certain definitions for the purposes of this part and deals with the priority of charges.

Division 2—Priority rules

Clauses 47-49 contains the general priority rules in relation to registered charges.

SCHEDULE 4

RECEIVERS, AND OTHER CONTROLLERS, OF PROPERTY OF COOPERATIVES

This gives effect to clause 263.

Clause 1 contains certain definitions for the purposes of this schedule.

Clause 2 provides that the schedule applies to a receiver of property appointed after the commencement even if the appointment arose out of a transaction entered into or an act or thing done before the commencement.

Clause 3 provides for persons not qualified to be a receiver.

Clause 4 provides that the Supreme Court may declare whether a controller is validly acting.

Clause 5 provides for the liability of a controller.

Clause 6 provides for the liability of a controller under a pre-existing agreement about property used by a cooperative.

Clause 7 provides for the powers of a receiver.

Clause 8 provides that a controller has a duty of care in exercising a power of sale.

Clause 9 provides that the Supreme Court may authorise the managing controller to dispose of property despite a prior charge.

Clause 10 provides for the power of a receiver to carry on business of the cooperative during a winding-up.

Clause 11 provides for the duties of a controller in relation to financial institution accounts and accounting records of the cooperative.

Clause 12 requires the managing controller to report within 2 months about the cooperative's affairs.

Clause 13 requires the receiver to report to the registrar where it appears that a person connected with the management of the cooperative may be guilty of an offence.

Clause 14 provides that the registrar or the Supreme Court may inquire into the performance of the controller and the Court may order the controller to pay compensation.

Clause 15 provides that the controller may apply to the Supreme Court for directions.

Clause 16 provides that the Supreme Court may fix the remuneration of the receiver.

Clause 17 provides that a controller has qualified privilege in certain cases.

Clause 18 provides on the appointment of a receiver or controller the registrar must be notified and the appointment notified in the gazette.

Clause 19 provides that a statement that a receiver or other controller is acting must appear after the name of a cooperative in public documents.

Clause 20 provides for officers to report to a controller about the cooperative's affairs.

Clause 21 allows the controller to require reports from associated persons.

Clause 22 allows the controller to inspect the books of the cooperative.

Clause 23 requires the controller to lodge accounts with the registrar.

Clause 24 provides for the payment of certain debts out of property subject to a floating charge, in priority to claims under the charge.

Clause 25 provides for enforcement by the Supreme Court of the controller's duty to make returns.

Clause 26 allows the Supreme Court to remove the controller for misconduct.

Clause 27 allows the Supreme Court to remove a redundant controller.

Clause 28 sets out the effect of clauses 26 and 27 of the schedule.

SCHEDULE 5

SAVINGS AND TRANSITIONAL

This gives effect to clause 471.

Clause 1 defines “transferred cooperative” as a corporation which is taken under this schedule to be a cooperative, association or federation registered under this Act.

Clause 2 is a savings provision in that persons, things or circumstances appointed or created under the *Cooperative and Other Societies Act 1967* or the *Primary Producers’ Cooperative Associations Act 1923* continues to have the same status, operation and effect.

Clause 3 provides that a federation or league of societies and primary producers associations under the *Cooperative and Other Societies Act 1967* or a federation under the *Primary Producers’ Cooperative Associations Act 1923* is taken to be an association registered under this Act. Also a society under the *Cooperative and Other Societies Act 1967* or an association under

the *Primary Producers' Cooperative Associations Act 1923* is taken to be a cooperative registered under this Act. Those transferred cooperatives have the same legal entity with the same rules, directors and membership as they had immediately before commencement of this Act.

Clause 4 provides that if a meeting to form a society under the *Cooperative and Other Societies Act 1967* or an association or federation under the *Primary Producers' Cooperative Associations Act 1923* has been held before the Act commences but it has not registered then those Acts will continue to apply to their formation and upon registration it is taken to be a cooperative registered under this Act and will be the same legal entity with the same rules, directors and membership. Further, any certificate issued under those Acts is taken to be a certificate issued under this Act.

Clause 5 provides for the continued application of various provisions of the *Cooperative and Other Societies Act 1967* and *Primary Producers' Cooperative Associations Act 1923* to amalgamated societies or amalgamated associations which shall be the same legal entity with the same name, rules, directors and membership. Further, any certificates issued under those Acts is taken to be a certificate issued under this Act.

Clause 6 provides that various provisions of the *Cooperative and Other Societies Act 1967* and *Primary Producers' Cooperative Associations Act 1923* will apply to applications by a society or association to amalgamate which upon registration will be taken to be a cooperative registered under this Act and will be the same legal entity with the same name, rules, directors and membership. Further, any certificates issued under those Acts will be taken to be a certificate issued under this Act.

Clause 7 provides various provisions of the *Cooperative and Other Societies Act 1967* and *Primary Producers' Cooperative Associations Act 1923* continue to apply to a conversion of an association or company into a society or society or company into an association and upon registration the bodies will be taken to be a cooperative registered under this Act and will be the same legal entity with the same name rules, directors and membership. Further, any certificate issued under those Acts will be taken to be a certificate issued under this Act.

Clause 8 provides that a transferred cooperative must bring its rules into conformity with this Act within two years after its commencement unless the registrar grants a further period for a particular cooperative otherwise the

rules will be invalid. If there is an inconsistency between the rules of the cooperative in respect of the procedure for altering its rules and a provision of the Act then the Act prevails. This provision does not affect part 3 division 2 (abolition of doctrine of ultra vires) in respect of the rules of a transferred cooperative.

Clause 9 provides that the registrar may by written notice to the transferred cooperative require it to alter its rules in the manner and within the time stated in the notice. If the cooperative fails to alter its rules then the registrar may alter the rules.

Clause 10 provides that the board of directors of a transferred cooperative must comply with the active membership requirements in part 6 within two years of commencement or such further period as the registrar allows.

Clause 11 provides that a special resolution of a transferred cooperative has not been registered under the *Cooperative and Other Societies Act 1967* or *Primary Producers' Cooperative Associations Act 1923* may be registered under this Act.

Clause 12 provides that any certificate or document issued or registered or filed or given to a registrar under the *Cooperative and Other Societies Act 1967* or *Primary Producers' Cooperative Associations Act 1923* has effect under this Act.

Clause 13 provides that various accounts provisions in the *Cooperative and Other Societies Act 1967* and *Primary Producers' Cooperative Associations Act 1923* continue to apply to a transferred cooperative for the financial year in which this Act commences so that part 9, divisions 5 and 6 of this Act will be excluded for that financial year.

Clause 14 provides that prior to this Act commencing a transferred cooperative has commenced to be wound-up or dissolved under the *Cooperative and Other Societies Act 1967* or *Primary Producers' Cooperative Associations Act 1923* then that Act will continue to apply.

Clause 15 provides that if prior to this Act commencing an inspection or inquiry has commenced under the *Cooperative and Other Societies Act 1967* or *Primary Producers' Cooperative Associations Act 1923* then those provisions continue to apply.

Clause 16 provides that the registrar under the *Cooperative and Other*

Societies Act 1967 is appointed deputy registrar under this Act. The person holding office as registrar under the *Primary Producers' Cooperative Associations Act 1923* is appointed as assistant registrar under this Act.

Clause 17 provides that references in any other Act or document to the *Cooperative and Other Societies Act 1967* or *Primary Producers' Cooperative Associations Act 1923* may, if the context allows, be taken to be a reference to this Act. Further, any reference in any other Act or document to a society under the *Cooperative and Other Societies Act 1967* or association or federation under the *Primary Producers' Cooperative Associations Act 1923* may, if the context permits, be taken to be a reference to a cooperative or association registered under this Act.

Clause 18 provides any credit in the capital reserve fund under the *Cooperative and Other Societies Act 1967* is taken to form part of the general reserves of a transferred cooperative.

Clause 19 provides that the registrar must issue a certificate of registration under this Act on written application from a transferred cooperative provided it surrenders to the registrar its certificate of registration under the previous law or satisfies the registrar the certificate has been lost or destroyed.

Clause 20 provides that securities registered under the *Primary Producers' Cooperative Associations Act 1923* is taken to be a charge registered under this Act.

Clause 21 provides that if a society under the *Cooperative and Other Societies Act 1967* has passed a special resolution before the Act commences to convert itself or amalgamate with a company under the *Corporations Law* but which has not been registered as, or amalgamated with, a company then that Act will continue to apply. Similarly, if an association under the *Primary Producers' Cooperative Associations Act 1923* has passed a special resolution before this Act commences to be registered as a company under the *Corporations Law* but it has not been registered then that Act will continue to apply.

Clause 22 provides that a corporation exempted from the operation of the *Primary Producers' Cooperative Associations Act 1923* prior to this Act commencing, may continue carrying on business as a foreign cooperative without registration provided it becomes registered as a foreign cooperative under this Act within two years.

Clause 23 provides an exemption for persons who have a relevant share interest in a cooperative which exceed the maximum permissible level of 20% in clause 273, prior to this Act commencing.

SCHEDULE 6

TRANSITIONAL PROVISIONS FOR TRADING COOPERATIVES WITHOUT SHARE CAPITAL

This allows certain transferred cooperatives under schedule 5 which were immediately prior to this Act registered under the *Primary Producers' Cooperative Associations Act 1923* and which do not have share capital to be regarded as trading cooperatives for the purposes of this Act.

Clause 1 provides that the purpose of this schedule is to make additional transitional provisions for certain trading cooperatives that do not have share capital.

Clause 2 provides that this schedule will apply despite clause 137 (former shareholders to be taken to be share holders for certain purposes) and clause 138 (entitlements of former shareholders on mergers etc.).

Clause 3 defines “cooperative without share capital” as a transferred cooperative under schedule 5 which prior to the Act commencing was registered under the *Primary Producers' Cooperative Associations Act 1923* and has no issued share capital.

Clause 4 provides that a cooperative without share capital is taken to be a trading cooperative.

Clause 5 provides that clause 14(1) and (2) (trading cooperatives) does not apply to a cooperative with a share capital.

Clause 6 provides that in addition to those matters specified in schedule 1 the rules for a trading cooperative without share capital must state or provide for how surplus is to be distributed, the allocation of a deficiency on the winding-up of the cooperative and any other matters prescribed by regulation.

Clause 7 makes consequential changes to clauses 137 and 138 by deleting any reference to shares or share holding interest which is replaced with membership or similar words to that effect.

SCHEDULE 7—ACTS AMENDED

There are a number of Acts which regulate the affairs of cooperatives and associations outside the *Primary Producers' Cooperative Associations Act 1923* and *Cooperative and Other Societies Act 1967*. This schedule provides for consequential amendments by updating various terms and references in those Acts.

Associations Incorporation Act 1981

Clauses 1-9 Definitions of “cooperative” and “Cooperatives Act” have been inserted in the *Associations Incorporation Act 1981*. The heading to part 11 of the *Associations Incorporation Act 1981* has been deleted and a new heading to part 11 has been inserted to reflect that the provisions in part 11 now deal with the change in status of incorporated associations, cooperatives and friendly societies. Division 1 provides further definitions. The provisions for incorporation of eligible friendly societies which are found in sections 97 to 105 have been retained under the new division 2. A new division 3 provides for the incorporation of cooperatives. Also division 4 has been created to allow incorporated associations to transfer and become registered as cooperatives. A new division 5 heading has been created containing general provisions applying to those entities under part 11 of that Act. These provisions concern the financial year and deal with persons providing false or misleading information or false, misleading or incomplete documents to the chief executive.

Amendments have been made to substitute references to the *Cooperatives Act 1997* in the *Corporations (Queensland) Act 1990*, the *Dairy Industry Act 1993*, the *Financial Intermediaries Act 1996*, the *Fruit Marketing Organisation Act 1923*, the *Industrial Development Act 1963*,

the *Primary Producers' Organisation and Marketing Act 1926*, the *Saw Mills Licensing Act 1936* and the *Stamp Act 1894*.

Section 5(1) of the *Penalties and Sentences Act 1992* has been amended to specify that for the purposes of the *Cooperatives Act 1997* each penalty unit is \$100. This is a departure from the normal amount prescribed under the *Penalties and Sentences Act 1992*. The increase in the penalty unit is required to ensure it is in line with the penalty regimes of other States and Territories.

SCHEDULE 8—DICTIONARY

This contains a number of definitions for the purposes of the Act.