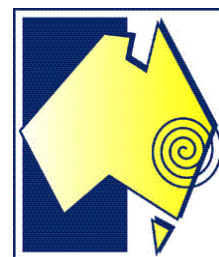


Co-operatives National Law Review
Policy Branch
NSW Fair Trading
P.O. Box 972
PARRAMATTA 2124



**Co-operative
Federation of
NSW Ltd**

*207 Duns Creek Rd
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Australia*

February 25, 2010

Dear Sir/Madam

www.coopsnsw.coop

The Co-operative Federation of NSW Ltd has pleasure in providing a submission in response to the release of the proposed Co-operatives National Law. The Federation is the peak body for co-operatives in NSW. A sector working party was convened by the Federation to consider the draft legislation, however the tight time frame meant that it was not possible to study every section in detail. The comments in the attached annexure arise from the consideration of those sections that were covered.

We strongly believe that a balance must be achieved between the advantages that can come with more Corporations Act principles in the draft and the need to give priority to “the co-operative difference.” In saying this, it must be remembered that directors of co-operatives have a more complex role than those of companies, being required to look to members interests, not just to the bottom line of the co-operative. Co-operatives are membership entities rather than investment vehicles. In relation to member access to information, it should be noted that co-operatives are more like public companies than small companies, even though their financial size may suggest otherwise.

We would particularly like to see the removal of the barriers caused by inter-state trading registration requirements. We also hope to see more consistent legislation across those borders, with national regulations and national model rules. We wish to maintain our identity as co-operatives with a hyphen.

We are keen to be consulted in the development of the Regulations, Model Rules and our suggested model set of financial statements to be issued for the guidance of small co-operatives. One of the key points to be set in the Regulations is the definition of small co-operative. This is a complex issue and we feel that it is imperative that the sector is involved in resolving it.

We welcome any follow-up queries that you may have with regard to this submission, where our comments are not clear enough.

Yours sincerely

Helen McCall
Executive Officer

Annexure to submission to the Co-operatives National Law review

1. CONDUCTING BUSINESS ACROSS JURISDICTIONS

Impact Statement 6.3.4

The legislation envisages co-operatives still being required to register before trading in other jurisdictions.

Comment: It should be possible to allow co-operatives to operate without barriers.

Recommendation:

Adopt the possible alternative option where co-operatives in participating jurisdictions simply operate wherever they wish, without the need to register beforehand.

2. NAMES AND REGISTRATION

Co-operatives in participating jurisdictions can have similar or identical names, as can companies. This is because there is no central register of names in Australia.

Comment: Government departments, banks, etc, often require a registration number and do not understand that co-operatives, though corporates, do not have an ARBN. Co-operatives wishing to trade in other jurisdictions can find their name is not directly transferable.

Recommendation:

Establish a central or common register of co-operatives across all jurisdictions to prevent duplication of names and to facilitate ease of identification – preferably by inclusion in an existing national numbering system, such as ARBN.

3. FINANCIAL REPORTING

Section 3309(4)

Small co-operatives are not required to prepare any financial accounting statements, unless required in their rules or by direction by the members or Registrar.

Comment: Small co-ops should at a minimum have to prepare financial accounting statements for members that include a balance sheet and profit & loss report; the current number and status of members; and whether or not the statements have been subject to review. They must also be required to make a declaration regarding



solvency and compliance with the Act. Small co-operatives are public entities where generally an arms' length relationship between members and management of co-operatives means that members are not aware of the results of operations, unlike small companies which generally have close holdings.

Recommendation:

- That minimum reporting be required of all small co-operatives and that the reports be distributed to or made available to members ie insert a new s3309(4)(c)
- That a model set of financial statements be issued for guidance.

4. AUDIT OF SMALL CO-OPERATIVES

Part 3.3

Draft requires audit of small co-operatives if required by Rules or by direction from the Registrar or members.

Comment: Small co-operatives are public entities needing review of financial activities by an independent person. (There is generally an arms' length relationship between members and management of co-operatives, unlike small companies which generally have close holdings making this oversight unnecessary.) It is appropriate to always have a review, for the protection of directors and of members.

Recommendation:

That the draft be adjusted to require an audit for those small co-operatives where neither the Rules, members or the Registrar specify the need for an audit. A definition is needed of the qualifications required to perform the review – it is not appropriate that the person needs to be a company auditor. The minimum review steps required should also be specified and set out in the regulations, with exemptions to be approved by the Registrar.

5. TABLING OF REPORTS TO MEMBERS

Section 3326

There is no requirement for small co-operatives to table reports at an AGM.

Comment: Directors should be required to lay before members at the AGM the financial accounting statements prepared for members. Small co-operatives are public entities where generally an arms' length relationship between members and management means that members are not aware of the results of operations, unlike small companies which generally have close holdings.



Recommendation:

The requirement that reports that have been prepared for members must be laid before the AGM should be added to the section or another section be inserted.

6. DIRECTORS DUTIES - HONESTY

Section 3118

This section requires directors and officers to act honestly.

Comment: There is a need to amend the draft to bring it into line with the Corporations Act on which it was initially based. It is clear that the duty of good faith needs to be extended to raise the threshold past the requirement of mere ‘honesty’ to ‘good faith in the best interests of the co-operative and for a proper purpose’ as is stated in s181 of the Corporations Act. This would allow the courts to look further at the conduct of a director to judge business decisions or inaction on more criteria than just honesty. The differences in the draft and the Corporations Act could possibly result in different outcomes regarding breach of duties for directors of co-operatives and directors of companies in the same circumstances.

Recommendation:

The draft should reflect the provisions of s181 of the Corporations Act so as to afford the same protection to directors of co-operatives as is given to directors of companies and to increase the low threshold from ‘honesty’ alone.

7. DIRECTORS DUTIES – DUE DILIGENCE

Section 3119

The duty of care and diligence that is imposed upon directors.

Comment: There is a need to amend the draft to bring it into line with the Corporations Act on which it was initially based. Under s 180 (2) of the Corporations Act, the defence to this duty is known as the business judgement rule, where a business judgement means any decision to take or not take action in respect of a matter relevant to the business operations of the company. This provides that a director who makes a business judgement is taken not to have breached the duty of care and diligence in specific circumstances. Directors of co-operatives need to have the same type of protection afforded to them as the directors of companies.

Recommendation:

This section needs to be updated to include the business judgement defence in s180(2) of the Corporations Act.



8. VOTING

Section 3202, old s176(3) omitted

The old section said that rules must not restrict the voting rights of members.

Comment: This prohibition is a good idea.

Recommendation:

Reinstate “Except as otherwise provided in this Division, the rules of a co-operative must not contain a provision that restricts the voting rights of members.”

9. QUALIFICATIONS OF DIRECTORS

Section 3103

The Section refers to a prospective director being a member.

Comment: Inactive members should not be qualified as directors.

Recommendation:

The section should use the term “active member.”

10. THE HYPHEN IS MISSING OUT OF CO-OPERATIVE

Throughout the documentation, co-operative is not spelt in the traditional manner but without the hyphen.

Comment:

Traditionally co-operatives in Australia have always used the hyphen in the word, both generically and in individual co-operative names. Internationally, the International Co-operative Alliance uses the hyphen in English language material. Many other non-English speaking countries also use the hyphen when publishing English language material, even though their native tongue may not involve the hyphen.

Such a major change to the way a sector sees itself should not come from legislative reform. The only usage that does not have a hyphen in Australia is the cooperative research centres; presumably the concept originated in the USA where the alternative spelling is used. Trying to change the spelling of co-operatives would lead to confusion due to existing usage in other legislation, Regulations and forms eg the Corporations Act. The cost to the sector to change every letterhead, business card, form, sign and website would be significant and presumably has not been factored into the costs of implementation in the Impact Statement. Trademarks that use the name of co-operatives would involve costly changes.



Recommendation:

Tradition, history and usage in Australia should be recognised, with the hyphen retained in all instances of co-operative in the legislation.

11. NATIONAL AND LOCAL REGULATIONS

Sections 1203 & 1205

Each jurisdiction is empowered to have local regulations which may or may not correspond with other jurisdictions. It would also appear that they are empowered not to adopt the national regulations at all.

Comment: It was expected that uniform legislation would result from the Ministerial deliberations.

Recommendation:

- That it be policy that regulations endeavour to be the same across jurisdictions, thus achieving the uniformity sought by the sector.
- That the sector be actively engaged in the development of the regulations.

12. MODEL RULES

Section 2310

Model rules will be issued by the Registrar.

Comment: Model rules should be national, to increase uniformity.

Recommendation:

- That model rules be part of the national regulations.
- To ensure user-friendly documents, the sector should be consulted in the preparation of the model rules.

13. INITIAL RULES AND THE MODEL RULES

Section 2107(3)

If a matter required by Schedule 1 is omitted from the draft initial rules, the Registrar may approve the relevant model rule.

Comment: This takes the decision making process away from the intending members of the proposed co-operative.



Recommendation:

That the Registrar be required to advise of the missing rule and the intending members be given the opportunity to either adopt the relevant model rule or propose their own.

14. APPROVAL OF INITIAL RULES

Section 2107(6)

Initial rules are assumed to be approved unless informed by the Registrar that they are not.

Comment: It is not practical to wait until five days before the Formation Meeting to find out if the rules are to be rejected and that therefore the meeting can not go ahead.

Recommendation:

The Registrar needs to advise whether or not the rules are approved, within a reasonable period, at least not less than 14 days before the scheduled meeting. This may require an extension of the time required under s2106(1).

15. CHANGES TO MODEL RULES

Section 2311 & 2310(3) & 2312

Co-operatives can adopt a model rule permanently or can adopt model rules as they change from time to time. If the latter, when they change, the change takes effect 28 days from the date of publication, without any adoption necessary by the co-operative.

Comment: There are no requirements to ensure sufficient information is provided to members and others so that they are properly informed when rules have changed.

Recommendation:

That co-operatives which have adopted model rules as they change from time to time must lodge a copy of the new consolidated rules with the Registrar within 28 days of the change to the model rules and make these available to their members.



16. PRIOR APPROVAL REQUIRED FOR ALTERATION OF RULES

Section 2306 & 2118(3)

Approval, alteration or refusal must be in writing but no time limit for the issue of this notice is placed on the Registrar.

Comment: Until the response of the Registrar to the alteration is received, the board can not act to advise members of the proposed alteration in a notice of meeting. Therefore a time limit must be imposed, to enable co-operatives be able to proceed.

Recommendation:

That the Registrar be required to respond to an application to approve an alteration of rules as soon as is practicable, but in any event within 21 days.

17. DISCLOSURE STATEMENTS

Section 2108

The disclosure statement aims to inform the prospective member of the nature and extent of their financial involvement or liability as a member.

Comment: This wording omits the important difference between companies and co-operatives - members of co-operatives do not primarily look at their co-operative as an investment but are more interested in the membership relationship. The disclosure statement should take this into account by requiring a statement to clarify this difference.

Recommendation:

The disclosure statement should include a declaration as to why the entity is a co-operative and a description of what difference that makes to the member.

18. CONTENT OF DISCLOSURE STATEMENTS

Section 2402(1), (2) & 2108 & 3224

Contents of disclosure statements are set out in 2108, for formations of co-operatives. 2402 relates to maintaining current disclosure statements.

Comment: Section 2108 is designed for formations and not everything is appropriate for disclosure statements required to be current at all other times. The attempt to simplify the Act has actually made it less clear for the user.

Recommendation:

More clarity is required regarding what is contained in each disclosure statement - each instance within the Act should clearly lay out the contents of the statement required for approval.



19. SPECIAL RESOLUTIONS

Section 3215

Postal and general meeting special resolutions and special postal ballot resolutions now require the same 75% majority to pass.

Comment: It is not considered appropriate that the change should be made, in the circumstances of co-operative democracy.

Recommendation:

Retain the different 66⅔%, 66⅔% and 75% majority requirements.

20. DECISION AT MEETINGS (COUNTING VOTES)

Section 3232

A poll can be called for by those present, if less than five; at least 5% of those present; a person who is a proxy for 2 or more others; or the chair. A person holding 2 or more proxies can only exercise 1 proxy on a show of hands.

Comment: This is unnecessarily complex. The existing provisions in s201 should be maintained, with the addition of the capacity for the Chair to call for a poll and those present, if less than five. There is a tendency to complicate the exercise of proxies, even when allowed in the Rules.

Recommendation:

That 3232(3) subsections (iii) and (iv) be removed together with subsection (2).

21. INTEREST IN VOTING RIGHT

Section 3209 & 3202

The problem of a member not being able to vote if another person has an interest in his share or right to vote has not been resolved.

Comment: Members caught in this conundrum still have to resort to appeal. A formula should be provided in the law, to avoid most appeals.

Recommendation:

- Section 3209(4) should be added to say “provided that 3209 does not apply in respect of joint members or joint shareholders or to a situation where a corporate member has a director or shareholder who is also a member”.
- Also the co-operative should have the right to appeal on behalf of a specified member or members.



22. APPEAL MECHANISMS

The old Act contained numerous appeal mechanisms (to the Registrar and the Council) that were affordable.

Comment: It is not apparent where appeals will be made to, under the proposed draft. As co-operatives are generally small enterprises it is imperative that appeals be economically possible under the new regime.

Recommendation:

That appeal mechanisms be instituted that make it economically possible for co-operatives and their members to be able to avail themselves of the right, where necessary.

23. DEFINITION OF FEDERATION

Section 1201 Definitions

The draft defines Associations as a group of co-operatives and Federations as a group of Associations.

Comment: All States currently have a Federation as the peak body which is made up of co-operatives. Because of the size of the sector there are no further aggregations.

Recommendation:

That there be no definition of Associations or Federations in terms which will restrict usage or conflict with current practice.

24. REGISTERED OFFICE

Section 3151

The notice of the registered office must be public and conspicuous.

Comment: This is not appropriate for all small co-operatives, which as we know make up most of the sector.

Recommendation:

That recognition be given to the changing business environment such that a physical registered office address is required for official communications purposes but that it not be required to be public and conspicuous.



25. INSPECTION OF CO-OPERATIVE REGISTERS

Section 3139

The Section requires registers to be available for inspection by members at all reasonable hours.

Comment: The requirement to go to an office (perhaps geographically distant) can make it difficult for some members to access information. On the other hand, privacy and possible misuse of information must be kept in mind, when considering provision of copies.

Recommendation:

That the Board be empowered to provide copies where access to the office is impractical, such as in s2535.

26. EMPLOYEE DIRECTORS

Section 3103(1)

Employees seem to be assumed to be non-members. An employee who is a member is therefore not eligible to be elected as a director.

Comment: The rules of a co-operative should decide whether or not employees can be directors. The draft provides the protection that the majority must be members.

Recommendation:

Section 3103 should be redrafted as follows

- (1) 3103(1) A person is not qualified to be a director of a co-operative unless he or she is:
 - (a) an active member of the co-operative (other than an employee of the co-operative) (*a member director*), or
 - (b) a representative of a corporation that is an active member of the co-operative (*a member director*); or
 - (c) an employee of the co-operative who may or may not be a member of the co-operative who is entitled by the rules of the co-operative to be a director (*an employee director*) or
 - (d) a person qualified as provided by the rules of the co-operative, who is not a member of the co-operative (*a non-member director*).
- (2) Subject to (4) a majority of directors must be member directors.
- (3) Subsection (2) does not prevent the rules a co-operative requiring that a greater number of directors than a majority must be member directors.
- (4) Where the majority of members of a co-operative are employees of the co-operative, an employee of the co-operative is qualified to be a member director notwithstanding subsection (1)(a)
- (5) A person who is a disqualified person under Section 3109 can not be a candidate for election as a director.



27. BUSINESS OUTSIDE BOARD MEETINGS

Section 3105(6)

The Section appears to say that a physical meeting must be held within 28 days of a circulating resolution.

Comment: The use of the words “minutes of the meetings” makes a circulating resolution not binding until passed at a subsequent meeting. Presumably it was intended to say “minute book.”

Recommendation:

Section 3105(6) should be changed to say: “A resolution approved under this section must be entered in the appropriate books within 28 days after being approved, and confirmed at and signed by the chairperson of the next meeting.”

28. EFFECT OF SPECIAL RESOLUTION

Section 3218

A special resolution, other than one requiring a special postal ballot, has effect from the date it is passed.

Comment: Section 2309 says that a special resolution to alter the Rules does not take effect until it is registered. Section 3220 enables the Registrar to refuse to register a special resolution – even though it has already come into effect and in fact may have been acted upon.

Recommendation:

Section 3218(1) should say “A special resolution, other than a special resolution changing the rules, has effect from the date it is passed.” All other special resolutions should take effect when passed and so must be registered by the Registrar when lodged.

29. DISPOSAL OF ASSETS

Section 3430(1)

The Section refers to dealing with the prescribed percentage of the “total book value” of the undertaking.

Comment: The old Section used the term “total value”. This new term means that intangibles are not included, which is not appropriate.

Recommendation:

Retain the terminology of “total value”.



30. NUMBERING OF RULES

Section 2302(2)

The rules must be divided into paragraphs numbered consecutively.

Comment: The draft should not be so restrictive.

Recommendation:

That the requirement be that paragraphs are numbered in a logical manner.

31. NAME OF CO-OPERATIVES

Section 3145(4) & 3150

Entities incorporated under this law must use the word co-operative in their name but those incorporated under other laws must not use it.

Comment: Section 255(6) of the old Act allowed the Registrar to exempt co-operative entities incorporated under other legislation to use the word co-operative in their name. As many co-operatives in Australia are incorporated under other legislation, it is important to allow them to be recognised for their co-operative character.

Recommendation:

Allow the Registrar to exempt “entities that are trading or carrying on business for the purpose of promoting the interests of its members in accordance with co-operative principles.”

32. CO-OPERATIVE PRINCIPLES

Section 1301

The section lays out the principles as though they are immutable.

Comment: The wording needs to reflect the fact that the principles are internationally defined and may change from time to time.

Recommendation:

That the International Co-operative Alliance be mentioned, as it is in s6 of the old Act, indicating that the principles adopted in Australia are those that are adopted internationally.



33. SMALL CO-OPERATIVES – AUDIT NOT REQUIRED

Section 3315(2)

The Section states that an audit is not required if the report is prepared in response to a direction that does not require an audit.

Comment: The Section is ambiguous in regard to audits required by the rules.

Recommendation:

That the phrase “unless required in the Rules of the co-operative” be added.

34. REGULAR SUBSCRIPTIONS

Section 2516(2)

The statement “or as otherwise determined by the rules of the co-operative” has been omitted from the definition of the calculation.

Comment:

This restricts the calculation to only that which has been defined in the section.

Recommendation:

That the statement “or may be otherwise determined in accordance with the rules of the co-operative” be inserted at the end of the subsection.

35. TRANSFER ON DEATH

Section 2437

Section specifies action to be taken regarding shares on the death of a member.

Comment: Membership status of legal representative is not clearly dealt with. Eg. If at the time of death the member had been inactive for ten months but the rules require forfeiture after 12 months of inactivity, then the personal representative has two months to reactivate membership or have the directors cancel membership.

Recommendation:

Need to specify that the legal representative of a member will take the member’s membership status at the time of death, whilst allowing housing co-operatives to set eligibility criteria for family members of deceased co-operative members.



36. ALTERATION OF RULES BY RESOLUTION OF THE BOARD

Omitted old s112(1)(b)

It is now only possible for a board resolution to give effect to the Law, not where the Registrar is satisfied that member approval is not necessary.

Comment: It is useful to allow the Registrar to exercise discretion where time and money can be saved by avoiding unnecessary processes.

Recommendation:

Reinstate the discretion of the Registrar for appropriate changes.

37. APPLICATION OF CORPORATIONS ACT ON DEBENTURE ISSUES

Section 3407

The Corporations Act provisions are applied directly.

Comment: Previously the Registrar had power to exempt a co-operative from any of these provisions, as may be appropriate when regard is given to the difference between companies and co-operatives.

Recommendation:

That Registrar's discretion to exempt, conditionally or unconditionally, be reinstated.

38. UNEQUAL DIVIDEND RATES

Old s153 omitted

This section allowed the rules to authorise different rates of dividend according to how many shares were held or on business done. It also specified that dividends, rebates and bonuses should first be applied against any unpaid subscriptions or calls.

Comment: This section provided more alternatives for co-operatives when dealing with payments to members.

Recommendation:

That the section be retained.



39. SHARES IN EXCHANGE FOR PROPERTY

Old s154 omitted

Section allowed rules to authorise real or personal property to be received by the co-operative in payment for shares.

Comment: The Section provided useful flexibility to co-operatives in their interactions with members.

Recommendation:

That the section be retained.

40. PURCHASE AND REPAYMENT OF SHARES

Section 2441(3)

Previously a repayment of more than 5% could be granted on appeal to Council. Now a special resolution can allow this.

Comment: Passing a special resolution can be expensive and difficult.

Recommendation:

The Registrar should have the power to provide this exemption.

41. NON-DISCLOSURE OF RELEVANT INTEREST/INSTRUCTIONS

Old ss157-162 omitted

Shareholders were required to advise the co-operative of non-beneficial ownership of shares.

Comment: The Sections are needed to protect co-operatives from takeovers by preventing transfers of shares to non-beneficial owners.

Recommendation:

Reinstate the omitted Sections.



42. NON-BENEFICIAL INTERESTS IN REGISTER

Old s163 omitted

The section required the entry of non-beneficial holdings in the register.

Comment: Reinstatement of old ss157-162 will provide information to enter in register.

Recommendation:

Reinstate the omitted Section.

43. WHEN SPECIAL POSTAL BALLOT REQUIRED

Section 3225

Section no longer requires a special postal ballot for takeovers.

Comment: The provision is needed to protect co-operatives from takeovers. It is unclear why it has been removed.

Recommendation:

Reinstate the requirement for a postal ballot on takeover.

44. CANCELLATION OF MEMBERSHIP PROHIBITED

Section 2617(1)(a)

The phrase ‘.. or there are reasonable grounds for suspecting that the co-operative is insolvent’ have been removed from the situations in which cancellation of membership is prohibited.

Comment: Given that co-operatives may operate when insolvency may be a risk, the removal of this protection for members may disadvantage them.

Recommendation:

Reinsert the omitted words ‘.. or there are reasonable grounds for suspecting that the co-operative is insolvent’.



45. INTEREST ON DEPOSITS, DEBENTURES, CCUS AND COMPULSORY LOANS

Section 2621(3), 3414(2) and 2442

The member has the power to agree to a lower interest rate (or none) where the debt arises out of a cancelled share or a compulsory loan but not on the repurchase of shares by the co-operative.

Comment: The member should always have the power to negotiate a lower or nil rate of interest.

Recommendation:

Insert a subsection equivalent to s2621(3) in 2442.

46. REDUCTION OF PERIOD OF REPAYMENT

Old s136(6) omitted

The repayment period to the former member could be reduced if it was reasonable.

Comment: The omission of this Section removes this possibility. The Section should include the opportunity to appeal to the Registrar for a reduced repayment period.

Recommendation:

That s2622 be adjusted to include the power to appeal to the Registrar.

47. REMOVAL/VACATION OF OFFICE

Section 3108(2)(d)

Removal of a director by members now takes a special resolution, not an ordinary resolution.

Comment: This would mean that a director can not be removed at a meeting without notice of a special resolution. It would also mean that it would be difficult to remove a director at all, due to the problems of passing a special resolution.

Recommendation:

That an ordinary resolution be required to remove a director.



48. RECOVERY OF DAMAGES

Section 3121 and old s224 omitted

Section 224 allowed the Court to make a decision on compensation at the same time as convicting for a contravention of the duties of directors, officers and employees.

Comment: Removing this power adds greatly to the costs for a co-operative, hence making compensation an unrealistic achievement.

Recommendation:

Leave the power in old s224 in the draft.

49. REGISTERS REQUIRED

Section 3137 (b) & (c)

There is a register required for funds received by the co-operative in the form of loans, securities, debentures and deposits. There is a second register required of the names of people who have given funds to the co-operative in the form of loans or deposits, securities or debentures.

Comment: The reason for requiring two registers that appear to have the same content is unclear. Perhaps one is a list of names and the other of loans, for privacy reasons, but in a time of computerised records, this is unnecessary.

Recommendation:

Ambiguity of subsections needs to be clarified.

50. NATIONAL CONSULTATION STAKEHOLDERS

Impact Statement 7.2

Co-operatives Australia is not recognized as a stakeholder.

Comment: The National organisation (which has had meetings with the National Working Party which drove this draft) should be in the list of stakeholders.

Recommendation:

Add Co-operatives Australia to list of stakeholders for national consultation.



51. APPLICATION OF SURPLUS TO OTHER PERSONS

Section 3429(1)

Part of the co-operative's surplus may be distributed to a non-member.

Comment: The old section restricted this to circumstances where the rules authorised such action. This is taking the decision away from members.

Recommendation:

Retain "if authorised by its rules". Ensure this is covered by regulations, if there are still co-operatives affected.

52. MINUTES AND MINUTE BOOKS

Section 3234

Minutes must be signed by the Chair of the next meeting.

Comment: Suggest that the Corporations Act is more flexible, with s251A(2) allowing the chair of the meeting or the next meeting to sign the minutes. The draft does not specify where to retain the minute books.

Recommendation:

- Amend subsection (1) to allow the chair to sign the minutes.
- Insert a subsection specifying where the minute books should be maintained – or amend the list of registers in Division 6.

53. NOTICE OF BONUS SHARES

Section 2419

Certain steps must be undertaken to pass a special resolution to issue bonus shares out of a profit from sale or revaluation of assets not acquired for resale at a profit.

Comment: The preamble should specify that this section relates to bonus shares under s2417 and not other issues out of surpluses, to avoid confusion.

Recommendation:

Insert additional words in the preamble.



54. POSTAL BALLOT RESULTS

Section 3223(2)

The result of the ballot must be properly recorded.

Comment: The term used is “minutes”; a less confusing way to say this would be to require that the result be recorded in the minute book.

Recommendation:

Use the clearer term “Minute book” not “minutes.”

55. MEMBERSHIP AND SHARES

Part 2.4 & 2.5

The Part relating to membership appears after the Part relating to shares.

Comment: An important concept in co-operatives is that membership is what counts – it determines your voting rights and your right to own shares. Before you can own a share you must be a member. The draft has this relationship back-to-front. As the draft is attempting to lay the law out in a more organised and logical manner, it should get this foundation correct.

Recommendation:

Swap the numbering of the two Parts.

56. SERVICE OF NOTICE ON MEMBER

Section 8202

The Section requires a notice to be provided in writing to the member in person or by mail or, if the member’s whereabouts are unknown, the co-operative is non-distributing or the Registrar permits, published in a newspaper.

Comment: Members of non-distributing co-operatives have as much right to information on their membership as distributing co-operative members. There is no reason why it should be considered appropriate that they not be personally informed of any matters requiring notice.

Recommendation:

Remove 8202(2)(c)(i).



57. SHARE PURCHASE – IN LIEU TREATMENT

Section 2442(3)(b) and old s173(3)(b)

This section deals with deposits, debentures and CCUs issued instead of repayment of capital when shares are repurchased.

Comment: Subsection (b) refers to a co-operative without share capital – presumably the section was copied erroneously from s135(2)(b).

Recommendation:

Remove the inappropriate subsection.

58. RESTRICTION ON BONUS SHARE ISSUES

Section 2418 (c)

Section appears to restrict the issue of bonus shares to the same class as those from which they were derived.

Comment: This would mean a bonus issue could not be used for an initial issue of a new class of shares. It is unnecessarily restrictive on board decision making.

Recommendation:

The Section needs to be clear and should not involve the apparent restriction.

59. RESTRICTION ON BONUS SHARE ISSUES IN A CERTAIN PERIOD

Section 2418(d)

There is a restriction on the nominal value of bonus shares that may be issued in any year.

Comment: The Section is ambiguous, as it is not clear whether this means a calendar year or any twelve month period.

Recommendation:

That the words “in any year” be altered to “within any period of twelve months”.



60. DEFINITION OF SMALL CO-OPERATIVE

Section 1201 Definitions

There is no mention of “small” co-operative in the definitions section.

Comment: Section 1201 should provide a one-stop-shop for definitions of terms used in the legislation.

Recommendation:

That the Section state that “small” co-operative is defined in the regulations.

61. CONTENT OF INITIAL DISCLOSURE STATEMENT

Section 2108(2)(c) and (d)

There is a requirement for a declaration of capital required for the co-operative and capital required for the co-operative at the time of formation.

Comment: It is unclear why (d) has been added.

Recommendation:

That the ambiguity be corrected.

62. QUALIFICATION FOR MEMBERSHIP

Old s64(2) omitted

Statement that the board is under a duty to ensure that those not qualified are not admitted has been omitted.

Comment: The statement may appear to be redundant but it makes the duty very clear to directors.

Recommendation:

That the statement be reinserted.



63. TIMING OF ANNUAL GENERAL MEETINGS

Section 3228

The section requires that the first AGM be held within eighteen months of incorporation but also requires that every calendar year contain an AGM and this must be no more than five months from year end.

Comment: The timing of the first AGM is to be determined by the date of incorporation but must always occur within the calendar year of incorporation – it is never possible to use the 18 month period, as is intended.

Recommendation:

Subsection (2) should be subject to subsection (1).

64. SUBORDINATED DEBT

Section 1201 Definitions

Definition has been omitted.

Comment: All terms of this type should be defined in the one section, for efficiency of use.

Recommendation:

Transfer definition from 3406(2) to this section, or at least cross-reference to it.

65. DEBENTURE DEFINITION

Section 1201 Definitions

The term “chase in action” is used.

Comment: The term is not easily understood by non-legal people.

Recommendation:

A phrase in simplified language should replace the term or at least an explanation of the term.



66. UNPAID BORROWINGS EFFECT ON VOTING

Old s180 omitted

Special section for unknown number of co-operatives.

Comment: Needs to be covered by Regulations.

Recommendation:

Ensure that this is covered in the Regulations if there are still co-operatives affected.

