

SOUTH AUSTRALIA

CO-OPERATIVES ACT 1983

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1994.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Arrangement
4. Interpretation
5. Subsidiaries, holding co-operatives and related corporations
6. Repeal and transitional provisions

PART 2 ADMINISTRATION

DIVISION 1—THE COMMISSION

7. Administration by the Commission
8. Inspection of documents
9. General powers of the Commission
10. Annual report

DIVISION 2—THE CO-OPERATIVES ADVISORY COUNCIL

11. The Advisory Council
12. Functions of the Council

DIVISION 3—POWER OF INSPECTION, ETC.

13. Extension of powers of inspection and special investigation to co-operatives

PART 3 REGISTRATION OF CO-OPERATIVES

DIVISION 1—REGISTRATION

14. Manner in which application for registration is to be made
15. Registration of co-operative
16. Liability of members

DIVISION 2—AMALGAMATION

17. Amalgamation

DIVISION 3—RULES

18. Rules binding on co-operative and its members
19. Alteration of rules

DIVISION 4—VOTING RIGHTS OF MEMBERS

20. Voting rights of members

DIVISION 5—NAME

21. Name of registered co-operative

Co-operatives Act 1983

DIVISION 6—POWERS

22. Powers of a registered co-operative

DIVISION 7—TRANSACTIONS

23. Manner in which contracts may be made
24. Limitation of doctrine of *ultra vires*
25. Abolition of doctrine of constructive notice in relation to registered co-operatives

**PART 4
MANAGEMENT OF CO-OPERATIVES**

DIVISION 1—THE COMMITTEE OF MANAGEMENT

26. Management of registered co-operatives
27. Disclosure of interest
28. Voting on a contract in which a director has an interest
29. Certain persons not to manage co-operatives
30. Duties of officers

DIVISION 2—PROSPECTUSES AND REGISTRATION OF CHARGES

31. Prospectuses and registration of charges

DIVISION 3—REGISTERED OFFICE AND REGISTERS

32. Registered office
33. Registers

DIVISION 4—ANNUAL GENERAL MEETING

34. Annual general meeting

DIVISION 5—EXPULSION OF MEMBERS

35. Expulsion of members of a registered co-operative

DIVISION 6—SALE OF SUBSTANTIAL ASSETS

36. Sale of substantial assets

**PART 5
ACCOUNTS AND AUDIT**

DIVISION 1—PRELIMINARY

37. Preliminary

DIVISION 2—ACCOUNTS

38. Accounts to be kept
39. Financial years of groups
40. Surplus and deficiency account, balance-sheet, group accounts and directors' statements
41. Directors' reports
42. Directors' reports for holding co-operatives
43. Matters applicable to directors' reports
44. Rounding off of amounts in accounts and reports

- 45. Group accounts not to be issued, etc., until receipt of subsidiaries' accounts, etc.
- 46. Members of co-operative entitled to balance-sheet, etc.
- 47. Accounts and reports to be laid before annual general meeting
- 48. Lodgment of periodic return
- 49. Failure to comply with this Division

DIVISION 3—AUDIT

- 50. Qualifications of auditors
- 51. Appointment of auditors
- 52. Nomination of auditors
- 53. Removal and resignation of auditors
- 54. Effect of winding-up on office of auditor
- 55. Fees and expenses of auditors
- 56. Powers and duties of auditors as to reports on accounts
- 57. Auditors and subsidiaries
- 58. Obstruction of auditor

PART 6

RECEIVERSHIP, OFFICIAL MANAGEMENT, WINDING UP, ETC.

DIVISION 1—ARRANGEMENTS AND RECONSTRUCTIONS, RECEIVERS AND MANAGERS, AND OFFICIAL MANAGEMENT

- 59. Application of certain provisions of Companies (South Australia) Code

DIVISION 2—TRANSFER OF ACTIVITIES

- 60. Transfer of activities

DIVISION 3—WINDING UP AND DISSOLUTION

- 61. Application of Companies (South Australia) Code to winding up of co-operative
- 62. Winding up of society under repealed Act
- 63. Outstanding property to vest in Commission

PART 7

MISCELLANEOUS

- 64. Right of appeal
- 64A. Appointment of secretary
- 65. Falsification of reports, etc.
- 66. Minutes of meetings
- 67. Inspection of minute books
- 68. Options not to be allowed
- 69. Restriction on offering shares, etc., for public subscription
- 69A. Proxies
- 70. Interest on share capital
- 71. Name of co-operative to be printed, etc., on documents
- 71A. Misrepresentation as to registration under this Act
- 72. Co-operative must notify Commission of changes in certain particulars
- 73. Evidentiary provision
- 74. Service upon registered co-operatives
- 75. General penalty for contravention of Act
- 76. Investigations
- 77. Summary proceedings
- 78. Fees to be paid to the Commission
- 79. Payment of moneys into General Revenue
- 80. Regulations

CO-OPERATIVES ACT 1983

being

Co-operatives Act 1983 No. 39 of 1983
[Assented to 16 June 1983]¹

as amended by

Co-operatives Act Amendment Act 1984 No. 101 of 1984 [Assented to 20 December 1984]

Co-operatives Act Amendment Act 1988 No. 83 of 1988 [Assented to 1 December 1988]

Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]²

¹ Came into operation 1 June 1985: *Gaz.* 23 May 1985, p. 1690.

² Came into operation 1 January 1994: s. 2.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to make provision for the registration, incorporation, administration and control of co-operatives; to repeal the Industrial and Provident Societies Act 1923-1982; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Co-operatives Act 1983*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement

3. This Act is arranged as follows:

PART 1—PRELIMINARY

PART 2—ADMINISTRATION

DIVISION 1—THE COMMISSION

DIVISION 2—THE CO-OPERATIVES ADVISORY COUNCIL

DIVISION 3—POWER OF INSPECTION, ETC.

PART 3—REGISTRATION OF CO-OPERATIVES

DIVISION 1—REGISTRATION

DIVISION 2—AMALGAMATION

DIVISION 3—RULES

DIVISION 4—VOTING RIGHTS OF MEMBERS

DIVISION 5—NAME

DIVISION 6—POWERS

DIVISION 7—TRANSACTIONS

PART 4—MANAGEMENT OF CO-OPERATIVES

DIVISION 1—THE COMMITTEE OF MANAGEMENT

DIVISION 2—PROSPECTUSES AND REGISTRATION OF CHARGES

DIVISION 3—REGISTERED OFFICE AND REGISTERS

DIVISION 4—ANNUAL GENERAL MEETING

DIVISION 5—EXPULSION OF MEMBERS

DIVISION 6—SALE OF SUBSTANTIAL ASSETS

PART 5—ACCOUNTS AND AUDIT

DIVISION 1—PRELIMINARY

DIVISION 2—ACCOUNTS

DIVISION 3—AUDIT

PART 6—RECEIVERSHIP, OFFICIAL MANAGEMENT, WINDING UP, ETC.

DIVISION 1—ARRANGEMENTS AND RECONSTRUCTIONS, RECEIVERS AND MANAGERS, AND OFFICIAL MANAGEMENT

DIVISION 2—TRANSFER OF ACTIVITIES

DIVISION 3—WINDING UP AND DISSOLUTION

PART 7—MISCELLANEOUS

Co-operatives Act 1983

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**the Commission**" means the Corporate Affairs Commission;

"**co-operative**" means a society which—

- (a) is formed, wholly or in part, on the basis of the principles of co-operation; and
- (b) has as one of its objects the carrying on of an industry, business or trade;

"**the Court**" means the Supreme Court of South Australia;

"**director**" of a co-operative means—

- (a) any person occupying or acting in the position of member of the committee of management; and
- (b) any person in accordance with whose direction or instructions the members of the committee of management of the co-operative are accustomed to act;

"**executive officer**" of a co-operative means any person, by whatever name called and whether or not he is a director of the co-operative, who is concerned, or takes part, in the management of the co-operative;

"**financial year**" means—

- (a) in relation to a registered co-operative that is incorporated after the commencement of this Act—a period commencing on the date of incorporation of the co-operative and expiring, by determination of the co-operative, on either—
 - (i) the next succeeding thirtieth day of June; or
 - (ii) the anniversary of the date of the incorporation of the co-operative,and thereafter any period (not exceeding twelve months) determined by the co-operative to be its financial year; or
- (b) in relation to a registered co-operative which was registered under the repealed Act immediately before the commencement of this Act—any period (not exceeding twelve months) determined by the co-operative to be its financial year; or
- (c) in any event, in the absence of a determination by the co-operative of a period as its financial year—any period of twelve months commencing on the first day of July and ending on the next succeeding thirtieth day of June;

"**officer**" of a registered co-operative means—

- (a) a director of the co-operative; or

- (b) the secretary of the co-operative; or
- (c) the executive officer (if any) of the co-operative; or
- (d) the holder of any other office established by the rules of the co-operative;

"**the principles of co-operation**" means the principles referred to in subsection (2);

"**registered address**" of a registered co-operative means the address in the State of the co-operative last notified to the Commission under this Act;

"**registered company auditor**" means a registered company auditor as defined by the *Companies (South Australia) Code*;

"**the repealed Act**" means the *Industrial and Provident Societies Act 1923-1982* repealed by this Act;

"**the rules**" of a co-operative means the constitution and rules of the co-operative (including any provision as to the name of the co-operative);

"**special resolution**" of a registered co-operative means a resolution passed at a duly convened meeting of the members of the co-operative if—

- (a) at least twenty-one days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the co-operative; and
- (b) it is passed by a majority of not less than three-quarters of the total number of members of the co-operative who, being entitled to do so, vote personally or by proxy at the meeting.

(2) A society shall, for the purposes of this Act, be regarded as having been formed on the basis of the principles of co-operation if the following conditions are satisfied;

- (a) membership of the society must be available without artificial restriction and without social, political, racial or religious discrimination to all who desire to make use of the services of the society and are willing to accept the responsibilities of membership; and
- (b) the affairs of the society must be administered on a fair and democratic basis; and
- (c) limitations must be imposed by the rules of the society upon—
 - (i) the amount of share capital that may be held by or on behalf of a member; and
 - (ii) the interest payable to members on share capital; and
- (d) any surplus arising from the operations of the society must be applied for the benefit of the society or distributed in a fair and equitable manner amongst its members.

Co-operatives Act 1983

(3) Nothing in subsection (2)(c)(ii) shall prevent the rules of the society, in imposing limitations upon the interest payable to members on share capital, from providing that, within those limits, such interest may be fixed by the members of the society upon the recommendation of its directors.

(4) For the purposes of this Act, a co-operative is eligible to be registered under this Act if—

- (a) it is formed on the basis of the principles of co-operation; or
- (b) although not formed entirely in accordance with the principles of co-operation, the Commission is satisfied that there are special reasons why the co-operative should be registered under this Act.

(5) A co-operative is not a company for the purposes of the *Companies (Acquisition of Shares) (South Australia) Code*.

(6) For the purposes of this Act, a reference to a modification, when used in relation to the application of a provision or provisions of the *Companies (South Australia) Code* under this Act, includes a reference to an addition or exclusion.

Subsidiaries, holding co-operatives and related corporations

5. (1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of a co-operative if—

- (a) the co-operative—
 - (i) controls the composition of the board of directors of the corporation; or
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation; or
 - (iii) holds more than one-half of the issued share capital of the corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the corporation is a subsidiary of any other corporation that is the co-operative's subsidiary (including a corporation that is a subsidiary of such a corporation by virtue of the *Companies (South Australia) Code*).

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by a co-operative, the composition of a corporation's board of directors shall be taken to be controlled by a co-operative if the co-operative, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the co-operative, can appoint or remove all or a majority of the directors, and for the purposes of this provision the co-operative shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by the co-operative of such power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of the co-operative.

(3) In determining whether a corporation is a subsidiary of a co-operative—

(a) any shares held or power exercisable by the co-operative in a fiduciary capacity shall be treated as not held or exercisable by it; and

(b) subject to paragraph (c), any shares held or power exercisable—

(i) by any person as a nominee for the co-operative (except where the co-operative is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of the co-operative, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by the co-operative; and

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded.

(4) Where a corporation is the subsidiary of a co-operative, the co-operative and the corporation shall be deemed to be related corporations for the purposes of this Act.

Repeal and transitional provisions

6. (1) The *Industrial and Provident Societies Act 1923-1982* is repealed.

(2) Every society that was, immediately before the commencement of this Act, a society registered under the repealed Act shall, upon the commencement of this Act, be deemed to be a co-operative registered under this Act, and the rules of the former registered society shall, subject to alteration under this Act, be the rules of the co-operative as registered at the commencement of this Act.

(3) Where an application for the registration of a society was made under the repealed Act, but the society had not, at the commencement of this Act, been registered, the proceedings for registration of the society may be continued and completed under the repealed Act as if this Act had not been enacted.

(4) Where a registered co-operative was, immediately before the commencement of this Act, a society registered under the repealed Act—

(a) Part 5 shall not apply in respect of a financial year of the co-operative that is the first such financial year to end after the commencement of this Act; and

(b) the provisions of the repealed Act relating to accounts and audit continue to apply to the co-operative in respect of that financial year.

Co-operatives Act 1983

**PART 2
ADMINISTRATION**

DIVISION 1—THE COMMISSION

Administration by the Commission

7. (1) Subject to subsection (2), the Commission shall be responsible for the administration of this Act.

(2) The Commission shall, in relation to the administration of this Act, be subject to the control and direction of the Minister.

Inspection of documents

8. (1) For the purposes of this Act, the Commission shall keep, in such form as it thinks fit—

- (a) a register of incorporated co-operatives; and
- (b) such other registers as the Commission thinks fit.

(2) A person may, on payment of the prescribed fee—

- (a) inspect a register kept by the Commission under this Act; or
- (b) inspect any document held or registered by the Commission under this Act; or
- (c) obtain from the Commission—
 - (i) a certified copy of, or extract from, an entry in a register kept under this Act or the repealed Act; or
 - (ii) a certified copy of a certificate of incorporation, or an acknowledgment of registration, issued or given under this Act or the repealed Act; or
 - (iii) a certified copy of, or extract from, any document held or registered by the Commission under this Act, or held or registered under the repealed Act.

General powers of the Commission

9. (1) The Commission may, upon the application of a co-operative, an officer of a co-operative or a person authorised by a co-operative to make an application under this section—

- (a) extend any limitation of time prescribed by or under this Act, whether or not the prescribed period had expired; or
- (b) exempt the co-operative or any officer of the co-operative from the obligation to comply with any provision of this Act.

(2) An application under subsection (1) of this section may be granted by the Commission upon such conditions as it thinks fit.

(3) Where a co-operative, or an officer of a co-operative, contravenes or fails to comply with a condition imposed by the Commission under subsection (2), the co-operative, or the officer (as the case may be) shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(4) The Commission may, at any time, by instrument in writing, revoke or vary an extension or exemption under subsection (1).

Annual report

10. (1) The Commission shall, on or before the thirty-first day of December in each year, deliver to the Minister a report on the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament within fourteen sitting days of its receipt by him.

DIVISION 2—THE CO-OPERATIVES ADVISORY COUNCIL

The Advisory Council

11. (1) There shall be a council entitled the "Co-operatives Advisory Council".

(2) The Council shall consist of a Chairman and not less than four and not more than eight other members appointed by the Governor on the nomination of the Minister.

(3) The members of the Council shall hold office upon terms and conditions determined by the Governor.

(4) Subject to the regulations, the procedures of the Council shall be as determined by the Council.

Functions of the Council

12. The Council shall advise the Minister upon—

- (a) the regulations made or proposed to be made under this Act; and
- (b) the model rules for co-operatives; and
- (c) action that should be taken to promote or assist in the formation of co-operatives; and
- (d) action that should be taken to improve the operation of co-operatives; and
- (e) any other matters referred to the Council for advice.

DIVISION 3—POWER OF INSPECTION, ETC.

Extension of powers of inspection and special investigation to co-operatives

13. The provisions of the *Companies (South Australia) Code* relating to inspection (Division 1 of Part 2) and special investigations (Part 7) extend, with such modifications as may be necessary for the purpose or as may be prescribed, to registered co-operatives as if a registered co-operative were a corporation as defined in the Code.

Co-operatives Act 1983

**PART 3
REGISTRATION OF CO-OPERATIVES**

DIVISION 1—REGISTRATION

Manner in which application for registration is to be made

14. (1) An application for the registration of a co-operative must be made to the Commission in the prescribed manner and form by a person duly authorised by the co-operative to apply for registration.

(2) The application must be accompanied by—

(a) a copy of the rules of the co-operative; and

(b) a statutory declaration made by the applicant verifying—

(i) that he is authorised by the co-operative to apply for registration; and

(ii) the particulars contained in the application; and

(iii) that the copy of the rules of the co-operative which accompanies the application is a true copy; and

(c) a copy of any instrument of trust that relates to the co-operative; and

(d) the prescribed fee.

Registration of co-operative

15. (1) If, upon an application for registration duly made under this Part, the Commission is satisfied—

(a) that the co-operative is eligible to be registered under this Act; and

(b) that the rules of the co-operative conform with the requirements of this Act; and

(c) that the name of the co-operative—

(i) complies with the requirements of this Act; and

(ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and

(iii) is not undesirable as a name for a registered co-operative; and

(iv) conforms with any direction of the Minister relating to the names of registered co-operatives,

the Commission shall, subject to subsection (2), register the co-operative and its rules, and issue a certificate of incorporation in respect of the co-operative.

- (2) The Commission may decline to register a co-operative under this Act if, in its opinion—
- (a) it would be more appropriate for the co-operative to be registered under some other Act; or
 - (b) the rules of the co-operative contain oppressive or unreasonable provisions affecting the rights of members.
- (3) Upon incorporation under this section—
- (a) the corporate name of the co-operative shall be the name set forth in the certificate of incorporation; and
 - (b) the co-operative becomes a body corporate with perpetual succession and a common seal and is capable, in its corporate name, of suing and being sued; and
 - (c) all real and personal property held by any person for or on behalf of the co-operative shall be vested in and held by the co-operative subject to any trusts that may affect that property; and
 - (d) all rights and liabilities (whether certain or contingent) exercisable against members or officers of the co-operative in their capacity as such immediately before the incorporation of the co-operative become rights and liabilities of the registered co-operative.
- (4) The Registrar-General shall—
- (a) upon the application of a co-operative in which any estate or interest in land has vested by virtue of this section; and
 - (b) upon production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the co-operative.

Liability of members

16. (1) A member of a registered co-operative is not liable, except as may be provided by the rules of the co-operative, for the debts and liabilities of the co-operative.

(2) This section does not apply in respect of debts or liabilities incurred by or on behalf of a co-operative prior to incorporation.

DIVISION 2—AMALGAMATION

Amalgamation

- 17.** (1) Any two or more registered co-operatives—
- (a) may, by special resolution passed by each co-operative, resolve to amalgamate; and
 - (b) may, not later than one month after those resolutions have been passed, apply to the Commission for amalgamation as a single registered co-operative.

Co-operatives Act 1983

(2) An application under subsection (1)—

- (a) must be made in the prescribed form; and
- (b) must be accompanied by a copy of the special resolution passed by each of the registered co-operatives supporting the amalgamation; and
- (c) must be accompanied by a copy of the rules of the co-operative proposed to be formed by the amalgamation; and
- (d) must be accompanied by such certificates and other documents as may be prescribed; and
- (e) must be accompanied by the prescribed fee.

(3) The applicants shall, at the request of the Commission, supply it with such further documents or information as the Commission may require.

(4) Where the Commission is satisfied—

- (a) that the co-operative proposed to be formed by the amalgamation is eligible to be registered under this Act; and
- (b) that the rules of that co-operative conform with the requirements of this Act; and
- (c) that the name of that co-operative—
 - (i) complies with the requirements of this Act; and
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and
 - (iii) is not undesirable as a name for a registered co-operative; and
 - (iv) conforms with any direction of the Minister relating to the names of registered co-operatives,

the Commission shall, subject to subsection (5), register the co-operative and its rules and issue a certificate of incorporation in respect of the co-operative.

(5) The Commission may decline to register a co-operative under subsection (4) if, in its opinion—

- (a) it would be more appropriate for the proposed registered co-operative to be registered under some other Act; or
- (b) the rules of the proposed co-operative contain oppressive or unreasonable provisions affecting the rights of members.

- (6) Upon registration of a co-operative under subsection (4)—
- (a) the co-operative becomes a body corporate with perpetual succession and a common seal and is capable, in its corporate name, of suing and being sued; and
 - (b) any registered co-operative that was a party to the application for amalgamation is dissolved; and
 - (c) the property of the co-operatives that were parties to the application for amalgamation becomes the property of the registered co-operative formed by the amalgamation; and
 - (d) the rights and liabilities (whether certain or contingent) of the co-operatives that were parties of the application for amalgamation become rights and liabilities of the registered co-operative formed by the amalgamation.
- (7) The Registrar-General shall—
- (a) upon the application of a registered co-operative in which any estate or interest in land has vested by virtue of this section; and
 - (b) upon production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the co-operative.

(8) A reference in a will or other instrument to a co-operative that is a party to an amalgamation under this section shall, after the amalgamation, be construed as a reference to the co-operative formed by the amalgamation.

DIVISION 3—RULES

Rules binding on co-operative and its members

18. The rules of a registered co-operative shall bind the co-operative and all members of the co-operative.

Alteration of rules

19. (1) Where it is intended to alter the rules of a registered co-operative—

- (a) the alteration must be approved by a special resolution of the co-operative; and
- (b) the notice of the intention to propose the special resolution must be accompanied by a memorandum that states, in relation to each rule that would be altered if the resolution were passed—
 - (i) the reason for the proposed alteration; and
 - (ii) the effect of the proposed alteration.

(2) Where a registered co-operative has, under subsection (1), resolved to alter its rules, it shall apply to the Commission, not later than one month after passing the resolution, for registration of the proposed alteration.

Co-operatives Act 1983

(3) An application for registration of a proposed alteration of the rules of a registered co-operative—

- (a) must be in the prescribed form; and
- (b) must have annexed to it—
 - (i) a copy of the special resolution of the co-operative; and
 - (ii) a copy of the explanatory memorandum required under subsection (1)(b); and
- (c) must be accompanied by the prescribed fee.

(4) Subject to subsection (5), the Commission shall—

- (a) register the alteration; and
- (b) where the alteration is to change the name of a registered co-operative—cancel the registration of the superseded name; and
- (c) issue a certificate to the registered co-operative that the alteration has been registered.

(5) An alteration shall not be registered under subsection (4)—

- (a) in the case of a change of name—unless the Commission is satisfied that the new name—
 - (i) complies with the requirements of this Act; and
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name; and
 - (iii) is not undesirable as a name for a registered co-operative; and
 - (iv) conforms with any direction of the Minister relating to the names of registered co-operatives; or
- (b) in any other case—if, in the opinion of the Commission, it contains an oppressive or unreasonable provision affecting the rights of members of the co-operative.

(6) The alteration shall come into force upon registration.

(7) If an officer of the registered co-operative fails to take all reasonable steps to comply with, or to secure compliance with, this section, he is guilty of an offence.

Penalty: One thousand dollars.

DIVISION 4—VOTING RIGHTS OF MEMBERS

Voting rights of members

20. (1) Subject to the rules of a registered co-operative, each member of the co-operative who is present personally or by proxy at a meeting of the members of the co-operative is entitled to one vote, and no more than one vote, on any question arising for decision at that meeting.

(2) No rule of a registered co-operative that has the effect of—

- (a) conferring on any member of the co-operative a right to more than one vote on a question arising for decision at a meeting of the co-operative; or
- (b) denying or depriving any member of the co-operative a right to vote at a meeting of members of the co-operative,

shall be valid unless specifically approved by the Minister.

(3) An approval under subsection (2) may be given upon such conditions as the Minister thinks fit.

(4) This section does not apply to invalidate any rule of a co-operative that is registered at the commencement of this Act.

(5) Where a share in a registered co-operative does not confer on the holder a right to vote at a meeting of members of the co-operative any—

- (a) application form for the share; or
- (b) share scrip; or
- (c) share certificate,

issued by the co-operative in relation to that share shall contain a statement that the share does not confer voting rights at meetings of members of the co-operative.

DIVISION 5—NAME

Name of registered co-operative

21. (1) The following provisions apply in relation to the name of a registered co-operative—

- (a) the word "Limited" must appear at the end of the name;
- (b) the name must include the word "Co-operative" or "Society" or both;
- (c) where the word "Society" appears in the name of a co-operative, it must appear as the penultimate word.

(2) The following abbreviations in relation to the name of a registered co-operative are authorised—

- (a) the abbreviation to "Ltd." of the word "Limited"; and

Co-operatives Act 1983

- (b) the abbreviation to "Co-op." of the word "Co-operative"; and
- (c) the abbreviation to "Soc." of the word "Society".

DIVISION 6—POWERS

Powers of a registered co-operative

22. For the purpose of carrying out its objects a registered co-operative may, subject to this Act and its rules—

- (a) acquire, hold, deal with, and dispose of, real or personal property; and
- (b) administer property on trust; and
- (c) open and operate bank accounts; and
- (d) invest its moneys—
 - (i) in any security in which trust moneys may, by Act of Parliament, be invested; or
 - (ii) in any other manner authorised by the rules of the co-operative; and
- (e) borrow money upon such terms and conditions as the co-operative thinks fit; and
- (f) give such security for the discharge of liabilities incurred by the co-operative as the co-operative thinks fit; and
- (g) appoint agents to transact business of the co-operative on its behalf; and
- (h) enter into any other contract or transaction it considers necessary or desirable.

DIVISION 7—TRANSACTIONS

Manner in which contracts may be made

23. (1) Contracts may be made by or on behalf of a registered co-operative as follows:

- (a) a contract which, if made between private persons, would be required to be in writing under seal may be made by the co-operative under its common seal;
- (b) a contract which, if made between private persons, would be required to be in writing signed by the parties to be charged may be made on behalf of the co-operative in writing by any person acting under its authority, express or implied;
- (c) a contract which, if made between private persons, would be valid although made by parol only may be made by parol on behalf of the co-operative by any person acting under its authority, express or implied.

(2) A contract may be varied or rescinded by or on behalf of a registered co-operative in the same manner as it is authorised to be made.

Limitation of doctrine of *ultra vires*

24. (1) A contract made with a registered co-operative is not invalid by reason of any deficiency in the capacity of the co-operative to enter into, or carry out, the contract unless the person contracting with the co-operative has actual notice of the deficiency.

(2) A registered co-operative that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.

(3) This section does not prejudice an action by a member of a registered co-operative to restrain the co-operative from entering into or carrying out a transaction that lies beyond the powers conferred on the co-operative by this Act or its rules.

Abolition of doctrine of constructive notice in relation to registered co-operatives

25. It shall not be presumed that a person dealing with a registered co-operative, or an agent of a registered co-operative, has notice of the rules of the co-operative, or of any other document registered by, or lodged with, the Commission in relation to the co-operative.

Co-operatives Act 1983

**PART 4
MANAGEMENT OF CO-OPERATIVES**

DIVISION 1—THE COMMITTEE OF MANAGEMENT

Management of registered co-operatives

26. (1) The business of a registered co-operative shall be managed and controlled by a committee of management.

(2) The committee of management may, subject to the rules of the co-operative, transact any business of the co-operative.

(3) The committee of management of a registered co-operative shall consist of not less than three directors.

(4) A director of a registered co-operative must be a natural person.

(5) No person shall be precluded from being appointed as a director of a registered co-operative by reason of the fact that he is a member of a class of persons for whose benefit the co-operative is established.

(6) Subject to the rules of a registered co-operative, no employee of the co-operative shall be precluded by reason of that employment from being appointed as a director of the co-operative.

Disclosure of interest

27. (1) A director of a registered co-operative who has any direct or indirect pecuniary interest in a contract or proposed contract made by, or in the contemplation of, the committee of management shall, as soon as he becomes aware of his interest, disclose the nature and extent of his interest to the committee.

Penalty: One thousand dollars.

(2) For the purposes of subsection (1), a director has a pecuniary interest in a contract or proposed contract made by, or in the contemplation of, the committee of management, if—

- (a) the director; or
- (b) a body corporate of which the director is a director or a member of the governing body;
or
- (c) a proprietary company in which the director is a shareholder; or
- (d) a beneficiary of a trust of which the director is a trustee,

may receive a direct or indirect pecuniary benefit or suffer a direct or indirect pecuniary detriment as a result of the decision of the committee of management.

(3) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact—

- (a) that the director is an employee of the registered co-operative; or

- (b) that the director has the pecuniary interest in common with all or a substantial proportion of the members of the registered co-operative.

(4) Where a director of a registered co-operative discloses a pecuniary interest in a contract or proposed contract in accordance with this section, or his interest is not such as need be disclosed under this section—

- (a) the contract is not liable to be avoided by the co-operative on any ground arising from the fiduciary relationship between the director and the co-operative; and
- (b) the director is not liable to account for profits derived from the contract.

Voting on a contract in which a director has an interest

28. (1) A director of a registered co-operative who has any direct or indirect pecuniary interest in a contract or proposed contract made by, or in the contemplation of, the committee of management, shall not take part in any decision of the committee with respect to that contract (but may, subject to complying with the other provisions of this Division, take part in any deliberations of the committee with respect to that contract).

Penalty: One thousand dollars.

(2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the director is a member of a class of persons for whose benefit the co-operative is established.

Certain persons not to manage co-operatives

29. (1) A person who is disqualified under the provisions of the *Companies (South Australia) Code* from being a director of a company is disqualified under this Act from being a director of, or from taking part in any way in the management of, a registered co-operative without the leave of the Court.

Penalty: Five thousand dollars or imprisonment for one year, or both.

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Duties of officers

30. (1) An officer of a registered co-operative shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

Penalty—

- (a) in a case where paragraph (b) does not apply—Five thousand dollars; or
- (b) where the offence was committed with intent to deceive or defraud—Twenty thousand dollars or imprisonment for five years, or both.

(2) An officer of a registered co-operative shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.

Penalty: Five thousand dollars.

Co-operatives Act 1983

(3) An officer or employee of a registered co-operative, or a former officer or employee of a registered co-operative, shall not make improper use of information acquired by virtue of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the co-operative.

Penalty: Twenty thousand dollars or imprisonment for five years, or both.

(4) An officer or employee of a registered co-operative shall not make improper use of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the co-operative.

Penalty: Twenty thousand dollars or imprisonment for five years, or both.

(5) Where—

- (a) a person is convicted of an offence under this section; and
- (b) the court is satisfied that the co-operative has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which he is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the co-operative of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

(6) Where a person contravenes or fails to comply with a provision of this section, the registered co-operative may, whether or not the person has been convicted of an offence under this section in relation to that contravention or failure to comply, recover from the person as a debt due to the co-operative by action in any court of competent jurisdiction—

- (a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit; and
- (b) if the co-operative has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

DIVISION 2—PROSPECTUSES AND REGISTRATION OF CHARGES

Prospectuses and registration of charges

31. (1) Subject to subsection (2), the provisions of the *Companies (South Australia) Code* relating to—

- (a) prospectuses (Division 1 of Part 4); and
- (b) registration of charges (Division 9 of Part 4),

extend, with such modifications as may be necessary for the purpose or as may be prescribed, to registered co-operatives as if a registered co-operative were a corporation as defined in the Code.

(2) The Commission may, on the application of a registered co-operative, exempt it from any of the provisions referred to in subsection (1)(a).

(3) An exemption under subsection (2) may be granted on such conditions as the Commission thinks fit.

DIVISION 3—REGISTERED OFFICE AND REGISTERS

Registered office

32. A registered co-operative shall, as from the day of its incorporation, have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public in accordance with—

- (a) the rules; and
- (b) any relevant regulation.

Registers

33. (1) A registered co-operative shall cause to be kept at its registered office—

- (a) a register of directors, secretaries, members and shares; and
- (b) a register of any loans raised, securities given and deposits (if any) received by the co-operative; and
- (c) a register of any loans made by the co-operative and of any securities taken by the co-operative; and
- (d) such other registers as may be prescribed.

Penalty: Five hundred dollars.

(2) Subject to subsection (3), an officer of a registered co-operative shall, at the request of any person who has paid the prescribed fee, make available for inspection by that person—

- (a) any register that the co-operative is required to keep under this section; and
- (b) any audited accounts that the co-operative is required to have prepared under this Act.

Penalty: Five hundred dollars.

(3) Any entry in a register that relates to a loan issued, or a deposit received, by a registered co-operative from a member shall only be available for inspection by that member, by an officer of the co-operative in the performance of the duties of his office, or by any other person authorised or permitted under this Act, or any other Act, to inspect the register.

DIVISION 4—ANNUAL GENERAL MEETING

Annual general meeting

34. (1) Subject to subsection (2), a registered co-operative shall hold an annual general meeting within the period of five months after the end of the financial year of the co-operative.

Penalty: One thousand dollars.

Co-operatives Act 1983

(2) A registered co-operative may hold its first annual general meeting at any time within the period of eighteen months after its incorporation.

(3) The rules of a registered co-operative—

(a) must provide for the calling of an annual general meeting under this Act; and

(b) must provide for the conduct of, and order of business at, an annual general meeting; and

(c) must specify the number of members of the co-operative which shall constitute a quorum at an annual general meeting; and

(d) must provide for notice—

(i) of an annual general meeting; and

(ii) of the business to be conducted at an annual general meeting,

to be posted or served on all members of the co-operative at least fourteen days before the date of the annual general meeting; and

(e) must provide for the taking of proper minutes of all proceedings at an annual general meeting.

DIVISION 5—EXPULSION OF MEMBERS

Expulsion of members of a registered co-operative

35. A registered co-operative shall not expel any person from membership of the co-operative unless he has been given a reasonable opportunity to be heard by the committee of management.

DIVISION 6—SALE OF SUBSTANTIAL ASSETS

Sale of substantial assets

36. (1) Where a registered co-operative or a subsidiary of a registered co-operative proposes to dispose of an asset and, if the proposal were carried into effect, the co-operative would cease to carry on a particular industry, business or trade or its capacity to carry on a particular industry, business or trade would be materially impaired—

(a) the disposal must be approved by special resolution of the co-operative; and

(b) the notice of intention to propose the special resolution must be accompanied by—

(i) a memorandum prepared by the directors stating the reason for the proposed disposal; and

(ii) copies of reports, valuations and other material from qualified, independent experts sufficient to establish that the consideration to be received for the asset is a fair consideration.

(2) Where the prospective purchaser of an asset to which subsection (1) applies is a member of the co-operative, the purchaser shall not vote on the question of whether a resolution approving the disposal should be passed.

Co-operatives Act 1983

**PART 5
ACCOUNTS AND AUDIT****DIVISION 1—PRELIMINARY****Preliminary**

37. (1) In this Part, unless the contrary intention appears—

"**accounting records**" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and books and records which record such entries, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

"**accounts**" includes balance-sheets, and statements, reports and notes, other than auditors' reports or directors' reports, attached to or intended to be read with accounts or balance-sheets

"**current liability**", in relation to accounts or group accounts, means a liability that would in the ordinary course of events be payable within twelve months after the end of the financial year to which the accounts or group accounts relate;

"**group**", in relation to a holding co-operative, means the holding co-operative and the corporations that are subsidiaries of the holding co-operative;

"**group accounts**", in relation to a holding co-operative, means—

- (a) a set of consolidated accounts for the group in relation to which that co-operative is the holding co-operative; or
- (b) two or more sets of consolidated accounts together covering that group; or
- (c) separate accounts for each corporation in that group; or
- (d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group;

"**holding co-operative**" means a registered co-operative that is the holding co-operative of a corporation;

"**non-current liability**" means a liability that is not a current liability.

(2) Section 544 of the *Companies (South Australia) Code* (a provision relating to the form and evidentiary value of books) extends, with such modifications as may be necessary for the purpose, to the keeping and preparation of accounting records or accounts under this Part as if—

- (a) a reference in that section to books were a reference to accounting records or accounts under this Part; and
- (b) a registered co-operative were a corporation as defined in the Code.

DIVISION 2—ACCOUNTS

Accounts to be kept

38. (1) A registered co-operative shall—

(a) keep such accounting records as correctly record and explain the transactions of the co-operative (including any transactions as trustee) and the financial position of the co-operative; and

(b) keep its accounting records in such a manner as will enable—

(i) the preparation from time to time of true and fair accounts of the co-operative; and

(ii) the accounts of the co-operative to be conveniently and properly audited in accordance with this Act.

(2) A registered co-operative shall retain the accounting records kept under this section for a period of seven years after the completion of the transactions to which they relate.

(3) A registered co-operative shall keep the accounting records at such a place or places as its directors think fit.

(4) Where any of the accounting records of a registered co-operative are kept at a place outside the State, the co-operative shall keep at a place within the State determined by the directors such information as would enable true and fair accounts and any documents or reports required by this Act to be attached to the accounts to be prepared.

(5) The accounting records of a registered co-operative shall be kept in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language.

(6) The Court may, on application by a director of a registered co-operative, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the co-operative.

(7) A registered co-operative shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the co-operative and by any other person authorised or permitted by or under this Act to inspect the accounting records of the co-operative.

(8) Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (6), he shall not disclose to a person other than the director on whose application the order was made any information acquired by him in the course of his inspection.

Financial years of groups

39. (1) Subject to this section, the directors of a holding co-operative shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding co-operative coincides with the financial year of the holding co-operative.

Co-operatives Act 1983

(2) The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than twelve months after the date on which the subsidiary became a subsidiary of the holding co-operative.

(3) Subject to any order by the Commission under this section, where the financial year of a holding co-operative and the financial year of each of its subsidiaries coincide, the directors of the holding co-operative shall at all times take such action as is necessary to ensure that the financial year of the holding co-operative or any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(4) Where the directors of a holding co-operative are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding co-operative, they may apply in writing to the Commission for an order authorising the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding co-operative.

(5) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding co-operative, signed by not less than two directors and stating the reasons for seeking the order.

(6) The Commission may require the directors making the application to supply such information relating to the operations of the holding co-operative, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

(7) The Commission may engage a registered company auditor to investigate and report to it on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding co-operative of which the applicants are directors.

(9) The Commission may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as it thinks fit, and shall serve a copy of the order on the holding co-operative.

(10) Where the applicants are aggrieved by an order made by the Commission, the applicants may, within two months after the service of the order upon the holding co-operative, appeal against the order to the Court.

(11) The Court shall determine the appeal and, in determining the appeal, may make any order that the Commission had power to make on the original application and may exercise any of the powers that the Commission might have exercised in relation to the original application.

(12) Where the directors of a holding co-operative have applied to the Commission for an order under this section, subsection (1) shall be deemed not to apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(13) Where an order is made authorising a subsidiary to have or to adopt a financial year that does not coincide with that of its holding co-operative, compliance with the terms of the order of the Commission (including any limitations or conditions set out in the order), or, where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, shall be deemed to be compliance with the provisions of subsection (1) in relation to the subsidiary.

(14) Where an application for an order by the Commission under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been withdrawn or dismissed, the time within which the directors of the holding co-operative are required to comply with the provisions of subsection (1) in relation to the subsidiary shall be deemed to be the period of twelve months after the date upon which notice of refusal by the Commission is served on the holding co-operative, or, where there has been an appeal that has been dismissed, the period of twelve months after the determination of the appeal.

(15) Where the directors of a holding co-operative have applied to the Commission for an order under this section, and the application has been refused and the appeal (if any) arising out of the refusal has been dismissed, the directors of the holding co-operative are not entitled to make an application under this section with respect to the subsidiary within three years after the refusal of the firstmentioned application or, where there was an appeal, after the dismissal of the appeal, unless the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

Surplus and deficiency account, balance-sheet, group accounts and directors' statements

40. (1) The directors of a registered co-operative shall, not less than fourteen days before an annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period within which it is required by section 34 to be held, not less than fourteen days before the end of that period, cause to be made out—

- (a) an account that gives a true and fair view of the result of the operations of the co-operative during the last financial year; and
- (b) an account (being a balance-sheet) that gives a true and fair view of the state of affairs of the co-operative as at the end of that financial year.

(2) Where, at the end of a financial year of a registered co-operative, the co-operative is a holding co-operative, the directors of the co-operative shall, not less than fourteen days before the next annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period after the end of that financial year within which it is required by section 34 to be held, not less than fourteen days before the end of that period, cause to be made out group accounts—

- (a) that give a true and fair view of the result of the operations of the co-operative and its subsidiaries for their respective last financial years; and
- (b) that give a true and fair view of the state of affairs of the co-operative and its subsidiaries as at the end of their respective last financial years,

so far as those matters concern members of the holding co-operative.

(3) The directors of a registered co-operative shall take reasonable steps to ensure that the accounts of the co-operative and, if it is a holding co-operative for which group accounts are required, the group accounts are audited as required by this Part not less than fourteen days before the annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period within which it is required by section 34 to be held, not less than fourteen days before the end of that period.

Co-operatives Act 1983

(4) The directors of a registered co-operative shall cause to be attached to, or endorsed upon, the accounts or group accounts in relation to the co-operative the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors in accordance with section 56.

(5) The directors shall, before the account and balance-sheet referred to in subsection (1) are made out, take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the co-operative and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the co-operative at an amount that, having regard to its value to the co-operative as a going concern, exceeds the amount that it would have been reasonable for the co-operative to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(6) Without affecting the generality of the preceding provisions of this section, the directors of a registered co-operative shall ensure that the accounts of the co-operative and, if it is a holding co-operative for which group accounts are required, the group accounts comply with such of the prescribed requirements as are relevant to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the co-operative shall add such information and explanations as will give a true and fair view of those matters.

(7) The directors of a registered co-operative shall cause to be attached to any accounts required to be laid before a co-operative at its annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than two directors stating whether, in the opinion of the directors—

- (a) the accounts give a true and fair view of the result of the operations of the co-operative for the financial year and the state of affairs of the co-operative as at the end of the financial year; and
- (b) there are reasonable grounds to believe that the co-operative will be able to pay its debts as and when they fall due.

(8) The directors of a registered co-operative that is a holding co-operative shall cause to be attached to group accounts of the co-operative required to be laid before the co-operative at its annual general meeting, before the auditor reports on the group accounts under this Part, a statement made in accordance with a resolution of the directors of the co-operative and signed by not less than two directors stating whether, in the opinion of the directors, the group accounts are drawn up so as to give a true and fair view of the result of the operations of the co-operative and its subsidiaries for their respective last financial years and the state of affairs of the co-operative and its subsidiaries as at the end of their respective last financial years (so far as they concern members of the co-operative).

Directors' reports

41. The directors of a registered co-operative, other than a co-operative to which section 42 applies, shall, not less than fourteen days before the annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period within which it is required by section 34 to be held, not less than fourteen days before the end of that period, cause to be made out in respect of the last financial year of the co-operative a report, made in accordance with a resolution of the directors and signed by not less than two of the directors stating—

- (a) the names of the directors in office at the date of the report; and
- (b) the principal activities of the co-operative in the course of the financial year and any significant change in the nature of those activities during that period; and
- (c) where, at any time during the financial year, the co-operative was a holding co-operative—the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary not being a wholly-owned subsidiary, the extent of the co-operative's interest in the subsidiary; and
- (d) the amounts and particulars of any material transfers to or from reserves or provisions during the financial year; and
- (e) any amount that the directors recommend should be paid or credited to members, and any amounts that have been paid, credited or declared, by way of surplus or rebate since the end of the previous financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or section 42; and
- (f) details of the share capital accounts of the co-operative at the commencement of and at the end of the financial year and the amounts (if any) of capital held by the co-operative that have been invested, withdrawn, or for which the co-operative has received notice of withdrawal, during the financial year; and
- (g) whether the directors, before the accounts were made out, took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and

Co-operatives Act 1983

- (h) whether, at the date of the report, the directors are aware of any circumstances that would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent and, if so, giving particulars of the circumstances; and
- (i) whether the directors, before the accounts were made out, took reasonable steps to ascertain whether any current assets, other than current assets to which paragraph (g) applies, were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the co-operative and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (j) whether, at the date of the report, the directors are aware of any circumstances that would render the values attributed to current assets in the accounts misleading and, if so, giving particulars of the circumstances; and
- (k) whether there exists at the date of the report—
 - (i) any charge on the assets of the co-operative that has arisen since the end of the financial year and secures the liabilities of any other person and, if so, giving particulars of the charge and, so far as practicable, of the amounts secured; and
 - (ii) any contingent liability that has arisen since the end of the financial year and, if so, stating the general nature of the liability and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the co-operative could become liable in respect of the liability; and
- (l) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of twelve months after the end of the financial year, being a liability that, in the opinion of the directors, will or may substantially affect the ability of the co-operative to meet its obligations when they fall due and, if so, giving particulars of that liability; and
- (m) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts that would render any amount stated in the accounts misleading and, if so, giving particulars of the circumstances; and
- (n) whether the results of the co-operative's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect of that item, transaction or event, if known or reasonably ascertainable; and
- (o) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the co-operative's operations for the next succeeding financial year and, if so, giving particulars of the item, transaction or event.

Directors' reports for holding co-operatives

42. The directors of a registered co-operative that, at the end of its last financial year, was a holding co-operative shall, not less than fourteen days before the annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period within which it is required by section 34 to be held, not less than fourteen days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors, and signed by not less than two of them stating—

- (a) the names of the directors of the co-operative in office at the date of the report; and
- (b) the principal activities of the corporations in the group in the course of the financial year and any significant change in the nature of those activities during that period; and
- (c) the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary not being a wholly-owned subsidiary, the extent of the co-operative's interest in the subsidiary; and
- (d) the amounts and particulars of any material transfers to or from reserves or provisions of a corporation in the group during the financial year; and
- (e) any amount that the directors of the co-operative recommend should be paid or credited to members, and any amounts that have been paid, credited or declared, by way of surplus or rebate since the end of the previous financial year of the co-operative, indicating which of those amounts (if any) have been shown in a previous report under this subsection or section 41; and
- (f) the amount (if any) of surplus, rebate or dividends paid to or declared in favour of the co-operative by each of the subsidiaries since the end of the previous financial year and up to the date of the report, except so far as the surplus, rebate or dividends are shown in the group accounts in accordance with the regulations in force for the time being under section 40(6); and
- (g) details of the share capital accounts of each of the corporations in the group and, in relation to each corporation, the amounts (if any) of capital that have been invested, withdrawn, or for which notice of withdrawal has been received, during the financial year; and
- (h) whether, so far as debts owing to the co-operative are concerned, the directors of the co-operative, before accounts were made out, took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and
- (i) whether, at the date of the report, the directors of the co-operative are aware of any circumstances that would render the amount written off for bad debts, or the amount of the provision for doubtful debts, in the group inadequate to any substantial extent and, if so, giving particulars of the circumstances; and

Co-operatives Act 1983

- (j) whether the directors of the co-operative, before the accounts were made out, took reasonable steps to ascertain whether any current assets of the co-operative, other than current assets to which paragraph (h) applies, were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the co-operative and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (k) whether, at the date of the report, the directors of the co-operative are aware of any circumstances that would render the values attributed to current assets in the group accounts misleading and, if so, giving particulars of the circumstances; and
- (l) whether there exists at the date of the report—
 - (i) any charge on the assets of any corporation in the group that has arisen since the end of the financial year and secures the liabilities of any other person and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured; and
 - (ii) any contingent liability of any corporation in the group that has arisen since the end of that financial year and, if so, stating the general nature of the liability and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the corporation could become liable in respect of the liability; and
- (m) whether any contingent or other liability of any corporation in the group has become enforceable, or is likely to become enforceable, within the period of twelve months after the end of the financial year, being a liability that, in the opinion of the directors of the co-operative, will or may substantially affect the ability of the corporation to meet its obligations as and when they fall due and, if so, giving particulars of that liability; and
- (n) whether, at the date of the report, the directors of the co-operative are aware of any circumstances, not otherwise dealt with in the report or group accounts, that would render any amount stated in the group accounts misleading and, if so, giving particulars of the circumstances; and
- (o) whether the results of the operations of the group or of a corporation in the group during the financial year were, in the opinion of the directors of the co-operative, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect of that item, transaction or event, if known or reasonably ascertainable; and
- (p) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors of the co-operative, to affect substantially the results of the operations of any corporation in the group for the next succeeding financial year and, if so, giving particulars of the item, transaction or event.

Matters applicable to directors' reports

43. (1) In sections 41 and 42 the expression "any item, transaction or event of a material and unusual nature" includes but is not limited to—

- (a) any change in accounting principles adopted since the last report; and
- (b) any material change in the method of valuation of the whole or any part of the trading stock; and
- (c) any material item appearing in the accounts or group accounts for the first time or not usually included in the accounts or group accounts; and
- (d) any absence from the accounts or group accounts of any material item usually included in the accounts or group accounts.

(2) The directors of a registered co-operative shall state in any report under sections 41 and 42 whether, since the end of the previous financial year, a director of the co-operative has received or become entitled to receive a benefit, other than—

- (a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the company is a holding co-operative, the group accounts, in accordance with the regulations made for the purposes of section 40(6); or
- (b) the fixed salary of a full-time employee of the co-operative or of a related corporation,

by reason of a contract made by the co-operative or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.

Rounding off of amounts in accounts and reports

44. (1) The regulations may make provision permitting every registered co-operative, or every registered co-operative included in a class of co-operatives specified in the regulations, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Act, in substitution for an amount that the co-operative would, but for this section, be required or permitted to set out in the accounts or report, an amount ascertained in accordance with the regulations but not being an amount that is more than five hundred dollars greater or less than the firstmentioned amount.

(2) For the purposes of subsection (1), the insertion of zero shall be deemed to be the insertion of an amount.

Group accounts not to be issued, etc., until receipt of subsidiaries' accounts, etc.

45. (1) Subject to subsection (6), the directors of a holding co-operative shall not cause to be made out the group accounts referred to in section 40(3) or make the report referred to in section 42 unless they have received from each subsidiary its accounts, the statements required under section 40 and the directors' report in accordance with section 41.

(2) The directors of a holding co-operative shall take all reasonable steps to ensure that, when they make their report under section 42, they will have available to them a report that—

- (a) has been made by the directors of each subsidiary; and

Co-operatives Act 1983

(b) represents the state of affairs of the subsidiary not more than one month earlier than the date on which the report of the directors of the holding co-operative is made.

(3) Where a subsidiary of a holding co-operative is incorporated outside the State, it is sufficient compliance with this section if the directors of the holding co-operative receive from the subsidiary accounts and reports corresponding with those required under this section and in accordance with the law of the place of incorporation of the subsidiary.

(4) The directors of a subsidiary shall, at the request of the directors of the holding co-operative, supply all such information as is required for the preparation of group accounts of the holding co-operative and its subsidiaries, and of the report of the directors of the holding co-operative.

(5) The directors of a holding co-operative are, unless they know or have reason to suspect that any matter in any accounts, report or information furnished by the directors of a subsidiary is false or misleading, entitled to rely on the accounts, report or information for the purpose of the preparation of the group accounts and their report so far as they relate to the affairs of the subsidiary.

(6) Where the directors of a holding co-operative, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation of the group accounts and the directors' report of the group, they may cause to be made out the group accounts and make the directors' report without incorporating in, or including with, those group accounts, or incorporating in, or including with, that directors' report, the firstmentioned accounts, report or other information relating to the subsidiary but with such qualifications and explanations as are necessary to prevent the group accounts and report from being misleading.

(7) Where the directors of a holding co-operative have caused to be made out the group accounts and have made the directors' report in accordance with subsection (6), they shall send to the members of the holding co-operative, within one month after receiving the accounts, report or other information from the directors of the subsidiary, a copy of the accounts and report or a statement embodying the other information, as the case may be, together with a statement by the directors of the holding co-operative containing such qualifications and explanations of the group accounts and of their report as are necessary having regard to the accounts, report or information received from the subsidiary.

Members of co-operative entitled to balance-sheet, etc.

46. A registered co-operative shall, not less than 14 days before each annual general meeting or, if no such meeting is held within the period within which it is required by section 34 to be held, not less than 14 days before the end of that period, send to all members of the co-operative—

(a) a copy of all accounts required by section 40(1), accompanied by—

(i) a copy of the statement required by section 40(7); and

(ii) a copy of the directors' report required by section 41; and

(iii) a copy of the auditor's report or reports required by section 56; and

- (b) if it is a holding co-operative, a copy of group accounts required by section 40(2), accompanied by—
 - (i) a copy of the statement required by section 40(8); and
 - (ii) a copy of the directors' report required by section 42; and
 - (iii) a copy of the auditor's report or reports required by section 56.

Accounts and reports to be laid before annual general meeting

47. The directors of a registered co-operative shall cause to be laid before each annual general meeting of the co-operative held in accordance with section 34—

- (a) a copy of the accounts made out in accordance with section 40(1) for the last financial year of the co-operative; and
- (b) in the case of a registered co-operative that, at the end of its last financial year before the relevant annual general meeting, was not a holding co-operative—a copy of the directors' report made out in accordance with section 41 in respect of that financial year; and
- (c) in the case of a registered co-operative that, at the end of its last financial year before the relevant annual general meeting, was a holding co-operative—a copy of the group accounts made out in accordance with section 40(2) in relation to that financial year and a copy of the directors' report made out in accordance with section 42 in respect of that financial year; and
- (d) a copy of any auditor's report required by section 40(4) to be attached to the accounts or group accounts of the co-operative; and
- (e) a copy of the statement by the directors required by section 40(8) to be attached to the accounts or group accounts of the co-operative.

Lodgment of periodic return

48. The directors of a registered co-operative shall, not later than one month after an annual general meeting of the co-operative or, if no annual general meeting of the co-operative is held within the period within which it is required by section 34 to be held, not later than one month after the end of that period, cause to be lodged with the Commission such periodic returns containing accounts and other information relevant to the financial affairs of the co-operative as the regulations may require.

Failure to comply with this Division

49. (1) Subject to the succeeding provisions of this section, if a registered co-operative or a director of a registered co-operative fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the preceding provisions of this Division, the co-operative and any director who is in default are each guilty of an offence.

Penalty—

- (a) in a case to which paragraph (b) does not apply—five thousand dollars; or

Co-operatives Act 1983

- (b) if the offence was committed with intent to deceive or defraud—twenty thousand dollars or imprisonment for five years, or both.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a registered co-operative or group accounts of a holding co-operative by reason of an omission from the accounts or group accounts, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 40 to be dealt with in the accounts or group accounts, as the case may be.

(3) If, after the expiration of the period within which any accounts of a registered co-operative or any report of the directors of a registered co-operative is or are required by section 40, 41 or 42 to be made out, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with section 40, 41 or 42, proof of the failure to produce the accounts or report as required by the notice is *prima facie* evidence that the accounts or report were not made out within that period.

DIVISION 3—AUDIT**Qualifications of auditors**

50. (1) Subject to this section, a person shall not—

- (a) consent to be appointed as auditor of a registered co-operative; or
- (b) act as auditor of a registered co-operative; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a registered co-operative,

if—

- (d) the person is not a registered company auditor; or
- (e) the person is not ordinarily resident in the State; or
- (f) the person is indebted in an amount exceeding five thousand dollars to the co-operative or to a related corporation; or
- (g) the person—
 - (i) is an officer of the co-operative; or
 - (ii) is a partner, employer or employee of an officer of the co-operative; or
 - (iii) is a partner or employee of an employee of an officer of the co-operative.

(2) Subject to this section, a firm shall not—

- (a) consent to be appointed as auditor of a registered co-operative; or

- (b) act as auditor of a registered co-operative; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a registered co-operative,

unless—

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in the State; and
- (e) where the business name under which the firm is carrying on business is not registered under the *Business Names Act 1963-1981*—there has been lodged with the Commission a return in the prescribed form showing, in relation to each member of the firm, his full name and his address as at the time when the firm so consents, acts or prepares a report; and
- (f) no member of the firm is indebted in an amount exceeding five thousand dollars to the co-operative or to a related corporation; and
- (g) no member of the firm is—
 - (i) an officer of the co-operative; or
 - (ii) a partner, employer or employee of an officer of the co-operative; or
 - (iii) a partner or employee of an employee of an officer of the co-operative; and
- (h) no officer of the co-operative receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) The Commission may, upon application of a registered co-operative or a person authorised by a co-operative to make an application under this subsection, grant an exemption from the requirements of subsection (1)(d), (1)(e) or 2(d).

(4) An exemption under subsection (3) may be granted upon such conditions as the Commission thinks fit and may, at any time, by instrument in writing, be revoked or varied by the Commission.

(5) For the purposes of subsections (1) and (2), a person shall be deemed to be an officer of a registered co-operative if—

- (a) he is an officer of a related corporation; or
- (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of twelve months, been an officer or promoter of the co-operative or of a related corporation.

(6) For the purposes of this section, a person shall not be taken to be an officer of a registered co-operative by reason only of his being or having been the liquidator of that co-operative or of a related corporation.

Co-operatives Act 1983

(7) For the purposes of this section, a person shall not be taken to be an officer of a registered co-operative by reason only of his having been appointed as auditor of that co-operative or of a related corporation or, for any purpose relating to taxation, a public officer of a corporation or by reason only of his being or having been authorised to accept on behalf of the co-operative or a related corporation service of process or any notices required to be served on the co-operative or related corporation.

(8) The appointment of a firm as auditor of a registered co-operative shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.

(9) Where a firm that has been appointed as auditor of a registered co-operative is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both—

- (a) a person who was deemed under subsection (8) to be an auditor of the co-operative and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the co-operative as from the day of his retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person there is no member of the firm who is a registered company auditor, section 53 does not apply to that resignation; and
- (b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the co-operative as from the date of his admission; and
- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the co-operative,

but nothing in this subsection affects the operation of subsection (2).

(10) Except as provided by subsection (9), the appointment of the members of a firm as auditors of a registered co-operative that is deemed by subsection (8) to have been made by reason of the appointment of the firm as auditor of the co-operative is not affected by the dissolution of the firm.

(11) A report or notice that purports to be made or given by a firm appointed as auditor of a registered co-operative shall not be taken to be duly made or given unless it is signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(12) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a registered co-operative or prepares a report required by this Act to be prepared by an auditor of a registered co-operative, each member of the firm is guilty of an offence.

(13) A person shall not—

- (a) if he has been appointed auditor of a registered co-operative—knowingly disqualify himself while the appointment continues from acting as auditor of the co-operative; or

- (b) if he is a member of a firm that has been appointed auditor of a registered co-operative—knowingly disqualify the firm while the appointment continues from acting as auditor of the co-operative.

(14) For the purposes of this section—

"officer of a co-operative" includes—

- (a) an employee of the co-operative;
- (b) a receiver, or receiver manager, of the property or part of the property of the co-operative;
- (c) an official manager or deputy official manager of the co-operative.

Appointment of auditors

51. (1) Within one month after the date on which a registered co-operative is incorporated, the directors of the co-operative shall appoint, unless the co-operative at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the co-operative.

(2) A person or firm appointed as auditor of a registered co-operative under subsection (1) holds office, subject to this Division, until the first annual general meeting of the co-operative.

(3) A registered co-operative shall—

- (a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the co-operative; and
- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the co-operative, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(4) A person or firm appointed as auditor under subsection (3) holds office until death or removal or resignation from office in accordance with section 53 or until ceasing to be capable of acting as auditor by reason of section 50(1) or (2).

(5) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the co-operative, if there is no surviving or continuing auditor of the co-operative, the directors shall, unless the co-operative at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A registered co-operative or the directors of a registered co-operative shall not appoint a person or firm as auditor of the co-operative unless that person or firm has, before the appointment, consented by notice in writing given to the co-operative or to the directors to act as auditor and has not withdrawn his or its consent by notice in writing given to the co-operative or to the directors.

Co-operatives Act 1983

(8) A notice under subsection (7) given by a firm shall be signed in the firm named and in his own name by a member of the firm who is a registered company auditor.

(9) If a registered co-operative appoints a person or firm as auditor of the co-operative in contravention of subsection (7), the purported appointment does not have any effect and the co-operative and any officer of the co-operative who is in default are each guilty of an offence.

(10) Where an auditor of a registered co-operative is removed from office at a general meeting in accordance with section 53—

- (a) the co-operative may at that meeting (without adjournment), by a resolution passed by a majority of members of the co-operative as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with section 52(3); or
- (b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a date not earlier than twenty days and not later than thirty days after the day of the meeting and the co-operative may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the co-operative from a member of the co-operative at least fourteen clear days before the date to which the meeting is adjourned.

(11) If after the removal from office of an auditor of a registered co-operative the co-operative fails to appoint another auditor under subsection (10), the co-operative shall, within seven days after the failure, notify the Commission accordingly, whereupon the Commission shall, unless there is another auditor of the co-operative whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor or auditors of the co-operative a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(12) Subject to subsection (11), if a registered co-operative does not appoint an auditor when required by this Act to do so, the Commission may, on the application in writing of a member of the co-operative, appoint as auditor or auditors of the co-operative a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(13) A person or firm appointed as auditor of a registered co-operative under subsection (5), (10), (11) or (12) holds office, subject to this Division, until the next annual general meeting of the co-operative.

(14) If a director of a registered co-operative falls to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (5), he is guilty of an offence.

Nomination of auditors

52. (1) Subject to this section, a registered co-operative is not entitled to appoint a person or firm as auditor of the co-operative at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his or its nomination as auditor was given to the co-operative by a member of the co-operative—

- (a) before the meeting was convened; or
- (b) not less than twenty-one days before the meeting.

(2) If a registered co-operative purports to appoint a person or firm as auditor of the co-operative in contravention of subsection (1), the purported appointment is of no effect and the co-operative and any officer of the co-operative who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a registered co-operative is received by the co-operative, whether for appointment at a meeting or an adjourned meeting referred to in section 51(10) or at an annual general meeting, the co-operative shall—

- (a) not less than seven days before the meeting; or
- (b) at the time notice of the meeting is given,

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the co-operative and to each person entitled to receive notice of general meetings of the co-operative.

Removal and resignation of auditors

53. (1) An auditor of a registered co-operative may be removed from office by special resolution at a general meeting of the co-operative, but not otherwise.

(2) Where notice of a special resolution to remove an auditor is given, the co-operative shall forthwith send a copy of the notice to the auditor and lodge a copy of the notice with the Commission.

(3) Within seven days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the co-operative and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the co-operative at its expense to every member of the co-operative to whom notice of the meeting is sent.

(4) Unless the Commission on the application of the co-operative otherwise orders, the co-operative shall send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) Upon the removal from office of an auditor of a registered co-operative, the co-operative shall forthwith give to the Commission notice in writing of the removal.

(6) An auditor of a registered co-operative may, by notice in writing given to the co-operative, resign as auditor of the co-operative if—

- (a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the auditor gave the notice to the Commission, notified the co-operative in writing of the application to the Commission; and
- (b) the auditor has received the consent of the Commission.

Co-operatives Act 1983

(7) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (6), notify the auditor and the co-operative whether it consents to the resignation of the auditor.

(8) A statement made by an auditor in an application to the Commission under subsection (6) or in answer to an inquiry by the Commission relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

(9) A person aggrieved by the refusal of consent by the Commission to the resignation of an auditor of a registered co-operative may, within one month after the date of the refusal, appeal to the Court from the refusal, and thereupon the Court, after giving the co-operative an opportunity to be heard, may confirm or reverse the refusal and may make such further order as it thinks just.

(10) Subject to any order of the Court under subsection (9) and to subsection (11), the resignation of an auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation; or
- (b) on the date on which the Commission gives its consent to the resignation; or
- (c) on the date (if any) fixed by the Commission for the purpose,

whichever last occurs.

(11) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of section 50(2)(d) of acting as auditor of a registered co-operative, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the co-operative) give reasonable notice to the co-operative of his retirement or withdrawal and upon receipt of the notice by the co-operative the office of auditor of the co-operative becomes vacant.

(12) Within fourteen days after the receipt of a notice of resignation, retirement or withdrawal from an auditor of a registered co-operative or, where an auditor of a registered co-operative is removed from office, within fourteen days after the removal, the co-operative shall lodge a notice of the resignation, retirement or withdrawal, or removal, in the prescribed form with the Commission.

Effect of winding-up on office of auditor

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

- (a) a special resolution is passed for the voluntary winding-up of the co-operative; or
- (b) an order is made by the Court for the winding-up of the co-operative; or
- (c) the co-operative is wound up on the certificate of the Minister.

Fees and expenses of auditors

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

Powers and duties of auditors as to reports on accounts

56. (1) An auditor of a registered co-operative shall report to the members on the accounts required to be laid before the co-operative at the annual general meeting and on the co-operative's accounting records and other records relating to those accounts and, if it is a holding co-operative for which group accounts are required, shall also report to the members on the group accounts.

(2) A report by an auditor of a registered co-operative under subsection (1) shall be furnished by the auditor to the directors of the co-operative in sufficient time to enable the co-operative to comply with the requirements of section 46 in relation to that report.

(3) An auditor shall, in a report under this section, state—

(a) whether the accounts and, if the co-operative is a holding co-operative for which group accounts are required, the group accounts are in his opinion properly drawn up—

(i) so as to give a true and fair view of the matters required by section 40 to be dealt with in the accounts and, if there are group accounts, in the group accounts; and

(ii) in accordance with the provisions of this Act; and

(b) whether the accounting records and other records and the registers required by this Act to be kept by the co-operative and, if it is a holding co-operative, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with the provisions of this Act or, in the case of a subsidiary incorporated in another State or Territory, in accordance with the provisions of the law of that State or Territory; and

(c) in the case of group accounts—

(i) the names of the subsidiaries (if any) of which he has not acted as auditor; and

(ii) whether he has examined the accounts and auditor's reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether separately or consolidated with other accounts) in the group accounts; and

(iii) whether he is satisfied that the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for that purpose; and

(iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (4), and, if so, particulars of the qualification or comment; and

Co-operatives Act 1983

- (d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and
- (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(4) It is the duty of an auditor of a registered co-operative to form an opinion as to each of the following matters:

- (a) whether he has obtained all the information and explanations that he required; and
- (b) whether proper accounting records and other records, including registers, have been kept by the co-operative as required by this Act; and
- (c) whether the returns received from branch offices of the co-operative are adequate; and
- (d) where the co-operative is a holding co-operative—whether the procedures and methods used by the co-operative and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and
- (e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether he agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts,

and he shall state in his report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(5) An auditor of a registered co-operative has a right of access at all reasonable times to the accounting records and other records, including registers of the co-operative, and is entitled to require from any officer of the co-operative such information and explanations as he desires for the purposes of audit.

(6) An auditor of a holding co-operative for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding co-operative, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(7) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if a member so requires, be read before the co-operative at the annual general meeting, and shall be open to inspection by a member at any reasonable time.

(8) An auditor of a registered co-operative or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the co-operative and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that he attends on any part of the business of the meeting that concerns the auditor in his capacity as auditor, and is entitled so to be heard notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.

(9) If an auditor of a registered co-operative becomes aware that the co-operative or the directors has or have made default in complying with section 34 or the provisions of section 47 relating to the laying of accounts or group accounts before the annual general meeting of the co-operative, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a copy of the accounts or group accounts and of his report on the accounts or group accounts.

(10) Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of his duties as auditor of a registered co-operative, is satisfied that—

- (a) there has been a contravention of, or failure to comply with, any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or group accounts or by bringing the matter to the notice of the directors of the co-operative,

he shall immediately report the matter to the Commission by notice in writing.

Auditors and subsidiaries

57. (1) Notwithstanding that a subsidiary of a registered co-operative may be exempt from appointing an auditor under the *Companies (South Australia) Code* the accounts and accounting records of any subsidiary of a registered co-operative shall be audited in accordance with the provisions of this Part.

(2) Where a subsidiary of a registered co-operative has not appointed an auditor to audit its accounts and accounting records under this Part, the auditor of the holding co-operative shall be the auditor of the subsidiary.

Obstruction of auditor

58. (1) An officer of a registered co-operative who refuses or fails without lawful excuse to allow an auditor of the co-operative access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the co-operative in his custody or control, or to give any information or explanation as and when required under those provisions or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

(2) An auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of a holding co-operative of the corporation access, in accordance with the provisions of this Act, to any accounting records and other records of the corporation in his custody or control, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

Penalty: Ten thousand dollars or imprisonment for two years, or both.

Co-operatives Act 1983

**PART 6
RECEIVERSHIP, OFFICIAL MANAGEMENT, WINDING UP, ETC.**

DIVISION 1—ARRANGEMENTS AND RECONSTRUCTIONS, RECEIVERS AND MANAGERS, AND OFFICIAL MANAGEMENT

Application of certain provisions of Companies (South Australia) Code

59. The provisions of the *Companies (South Australia) Code* relating to—

- (a) arrangements and reconstructions; and
- (b) receivers and managers; and
- (c) official management,

extend, with such modifications as may be necessary for the purpose or as may be prescribed, to registered co-operatives as if a registered co-operative were a company as defined in the Code.

DIVISION 2—TRANSFER OF ACTIVITIES

Transfer of activities

60. (1) A registered co-operative may, in pursuance of a special resolution, request the Commission to transfer its undertaking to a body corporate incorporated under some other Act.

(2) Upon receipt of a request under subsection (1), the Commission may, by instrument published in the *Gazette*, transfer the undertaking of the co-operative to the body corporate specified in the request.

(3) Upon the publication of an order under subsection (2)—

- (a) the registered co-operative is dissolved; and
- (b) the property of the registered co-operative becomes the property of the body corporate referred to in the order; and
- (c) the rights and liabilities of the registered co-operative (whether certain or contingent) become rights and liabilities of the body corporate referred to in the order.

DIVISION 3—WINDING UP AND DISSOLUTION

Application of Companies (South Australia) Code to winding up of co-operative

61. (1) Subject to the succeeding provisions of this Division, a registered co-operative may be wound up—

- (a) voluntarily; or
- (b) by the Court; or
- (c) upon a certificate of the Minister issued upon the recommendation of the Commission.

(2) The provisions of Part 12 of the *Companies (South Australia) Code* extend, with such modifications as may be necessary for the purpose or as may be prescribed, to the winding up and dissolution of registered co-operatives as if a registered co-operative were a company as defined in the Code.

(3) The grounds upon which the Minister may issue a certificate for the winding up of a registered co-operative are as follows:

- (a) the registration of the co-operative has been obtained by mistake or fraud; or
- (b) the co-operative has ceased to be administered on the basis of the principles of co-operation; or
- (c) the co-operative has not traded for a period of six months or more; or
- (d) there are insufficient directors to form a quorum of directors; or
- (e) there are less than three members of the co-operative; or
- (f) serious irregularities have occurred in the management of the co-operative or the administration of its affairs; or
- (g) the co-operative has, after notice by the Commission of any breach of this Act or the rules of the co-operative, failed, within the time referred to in the notice, to remedy the breach; or
- (h) the period, if any, fixed for the duration of the co-operative by its rules has expired; or
- (i) it is just and equitable that the co-operative should be wound up.

(4) A certificate of the Minister under this section shall state the date of the commencement of the winding up of the co-operative.

(5) The Commission may appoint a registered company liquidator to act as liquidator in relation to a winding up by the Minister under this section.

(6) Notice of a decision by the Commission to appoint a liquidator under this section shall be published in the *Gazette*.

(7) The reasonable costs of a winding up shall be payable out of the property of the co-operative.

(8) A member of a registered co-operative is not liable, except as may be provided in the rules of the co-operative, for the costs, charges and expenses of a winding up of the co-operative.

Winding up of society under repealed Act

62. Where, at the commencement of this Act, an order or a resolution for the winding up of a society registered under the repealed Act has been made or passed, the proceedings for the winding up of the society may be continued and completed under the repealed Act as if this Act had not been enacted.

Co-operatives Act 1983

Outstanding property to vest in Commission

63. Any outstanding property of a society that has been dissolved, and its registration cancelled, under the repealed Act shall vest by force of this section in the Commission.

**PART 7
MISCELLANEOUS**

Right of appeal

64. (1) A person aggrieved by a decision or order of the Commission under this Act may appeal to the Court against that decision or order.

(2) This section does not confer a right of appeal in respect of an act, decision or order against which a right of appeal exists by virtue of some other provision of this Act.

(3) An appeal under this section must be instituted within one month (or such longer period as may be allowed by the Court) from the date of the act, decision or order to which the appeal relates.

(4) Upon the hearing of an appeal under this section, the Court may—

(a) vary or reverse the decision or order of the Commission and make such consequential or ancillary orders as may be just in the circumstances; or

(b) uphold the decision or order of the Commission and dismiss the appeal.

Appointment of secretary

64A. (1) A registered co-operative shall have at least one secretary.

(2) Subject to the rules of a co-operative, a secretary of a registered co-operative shall be appointed by the directors.

(3) A person is not capable of being a secretary of a registered co-operative unless he is a natural person who has attained the age of eighteen years.

(4) The secretary, or one of the secretaries, must be a person who ordinarily resides in the State.

(5) If default is made in complying with the provisions of this section, the registered co-operative and any director who is in default are each guilty of an offence.

Falsification of reports, etc.

65. A person who knowingly makes a false entry in any account, register, record, return or report that is required by this Act to be kept or made shall be guilty of an offence.

Penalty: Ten thousand dollars or imprisonment for twelve months or both.

Minutes of meetings

66. (1) Every registered co-operative shall cause—

(a) accurate minutes of all proceedings of general meetings and of meetings of its committee of management to be entered in books kept for that purpose; and

(b) those minutes to be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

Co-operatives Act 1983

(2) Any minute so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and signed, then, until the contrary is proved—

(a) the meeting shall be deemed to have been duly held and convened; and

(b) all proceedings held at the meeting shall be deemed to have been duly held; and

(c) all appointments of officers or liquidators made at the meeting shall be deemed to be valid.

(4) If default is made in complying with this section the co-operative and every officer of the co-operative who is in default shall be guilty of an offence.

Penalty: One hundred dollars.

Inspection of minute books

67. (1) The books containing the minutes of proceedings of any general meeting and of a meeting of the committee of management of a registered co-operative shall be kept by the co-operative at its registered office, and, in the case of the books containing the minutes of proceedings of general meetings, shall be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in writing in that behalf to the co-operative with a copy of any minutes of a general meeting at a charge provided for in the rules.

(3) If any copy required under this section is not so furnished the co-operative and every officer of the co-operative who is in default shall be guilty of an offence.

Penalty: One hundred dollars.

Options not to be allowed

68. A registered co-operative shall not at any time offer or grant to a person an option to have issued to him shares in the co-operative.

Restriction on offering shares, etc., for public subscription

69. Section 552 of the *Companies (South Australia) Code* relating to offering shares for subscription or purchase extend, with such modifications as may be necessary for the purpose or as may be prescribed, to registered co-operatives as if—

(a) references in that section to shares were references to shares of a registered co-operative; and

(b) a registered co-operative were a corporation as defined in the Code.

Proxies

69A. Subject to the rules of a registered co-operative, a member of the co-operative who is entitled to attend and vote at a meeting of the members of the co-operative is entitled to appoint another person as his proxy to attend and vote instead of the member at the meeting.

Interest on share capital

70. Interest on share capital shall not be paid or credited to members of a registered co-operative unless the directors have authorised the payment or credit and it has been approved by the members in general meeting.

Name of co-operative to be printed, etc., on documents

71. A registered co-operative shall cause its name to be legibly printed, stamped or endorsed on every notice, advertisement, bill of exchange, receipt or other document given, published, drawn or issued by the co-operative.

Penalty: Two hundred dollars.

Misrepresentation as to registration under this Act

71A. A person shall not, in order to gain an advantage for himself or any other person, falsely represent that a body is a co-operative registered under this Act.

Co-operative must notify Commission of changes in certain particulars

72. A registered co-operative shall notify the Commission in writing of—

- (a) any change in the address of the registered office of the co-operative; or
- (b) any change in the membership of the committee of management of the co-operative; or
- (c) any change in any prescribed particulars,

not later than one month after the alteration or change is made.

Penalty: Two hundred dollars.

Evidentiary provision

73. (1) An apparently genuine document purporting to be under the seal of the Commission and to be a copy of an acknowledgement of registration under the repealed Act or a certificate of incorporation of a registered co-operative under this Act shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the incorporation of the co-operative on the date specified in the document.

(2) An apparently genuine document purporting to be a copy of any document registered or lodged under this Act or the repealed Act and to be certified by the Commission as a true copy of such a document, shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of that document.

(3) An apparently genuine document purporting to be a copy of, or extract from, a record kept by a registered co-operative, and to be verified by an officer of the co-operative authorised by the committee of management for the purpose, shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of, or extract from, that record.

(4) An apparently genuine document purporting to bear the common seal of a registered co-operative shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the co-operative.

Co-operatives Act 1983

(5) A certificate purporting to be under the seal of the Commission and certifying that a registered co-operative has, or has not, complied with a requirement of this Act as to the filing or lodging of any document or return, or the giving of any notice, shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matters so certified.

Service upon registered co-operatives

74. Service of any process, notice or other document may be effected upon a registered co-operative—

- (a) by serving the process, notice or other document on any director, or any other officer, of the co-operative; or
- (b) by leaving the process, notice or other document at the registered address of the co-operative.

General penalty for contravention of Act

75. (1) A person who contravenes or fails to take all reasonable steps to comply with a provision of this Act shall be guilty of an offence against this Act.

(2) Where a co-operative or person is guilty of an offence against this Act and a penalty or punishment is not expressly provided for the offence, the co-operative or person shall be liable on conviction to a penalty not exceeding two thousand dollars.

Investigations

76. Sections 541 and 542 of the *Companies (South Australia) Code* extend, with such modifications as may be necessary for the purpose or as may be prescribed, to registered co-operatives as if a registered co-operative were a corporation as defined in the Code.

Summary proceedings

77. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) A complaint for an offence against this Act may be made—

- (a) by the Commission; or
- (b) by an officer or employee of the Commission; or
- (c) with the consent of the Minister, by any person.

(3) Notwithstanding any other Act, proceedings for an offence under this Act may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(4) In any proceedings for an offence against this Act an allegation in the complaint—

- (a) that a co-operative is or was at a specified time incorporated under this Act; or
- (b) that the defendant is or was at a specified time an officer of a co-operative named in the complaint; or
- (c) that any meeting of the members of a co-operative required by a specified provision of this Act to be held has not been held as required by that provision; or

- (d) that the complainant is an officer or employee of the Commission,

shall be deemed to be proved in the absence of proof to the contrary.

(5) A document purporting to be a consent of the Minister given under this section shall, in the absence of proof to the contrary, be proof of the consent.

Fees to be paid to the Commission

78. (1) Where a fee is payable to the Commission for or in respect of the lodging of a document with the Commission and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid to the Commission.

- (2) Notwithstanding subsection (1), the Commission may—

- (a) waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable under this Act; and
- (b) refund, in whole or in part, any fee paid under this Act.

Payment of moneys into General Revenue

79. (1) All moneys received for fees payable under this Act shall be paid into the General Revenue of the State.

(2) The Commission shall keep account of all moneys received or disbursed by the Commission under this Act.

(3) The Auditor-General may at any time, and shall at least once a year, audit the accounts kept by the Commission under this Act.

Regulations

80. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe model rules with a view to their adoption by registered co-operatives, or co-operatives intending to apply for registration under this Act; and
- (b) prescribe any form for the purposes of this Act; and
- (c) prescribe, and provide for the payment of, fees; and
- (d) require registered co-operatives, or specified classes of registered co-operatives, to furnish periodic or other returns to the Commission containing information required by the regulations; and
- (e) authorise the destruction of specified classes of documents lodged under the repealed Act or with the Commission under this Act; and
- (f) prescribe penalties, not exceeding five hundred dollars, for breach of, or non-compliance with, any regulation.

Co-operatives Act 1983

APPENDIX**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4(1):	definition of "special resolution" amended by 101, 1984, s. 2(a)
Section 4(6):	inserted by 101, 1984, s. 2(b)
Section 6(4):	inserted by 101, 1984, s. 3
Section 10:	substituted by 101, 1984, s. 4
Section 13:	amended by 101, 1984, s. 5
Section 15(1):	amended by 101, 1984, s. 6
Section 16:	substituted by 101, 1984, s. 7
Section 17(4):	amended by 101, 1984, s. 8
Section 19(5):	amended by 101, 1984, s. 9
Section 20(1):	amended by 101, 1984, s. 10(a)
Section 20(2):	amended by 101, 1984, s. 10(b)
Section 24(3):	amended by 101, 1984, s. 11
Section 28(1):	amended by 101, 1984, s. 12
Section 29:	redesignated as s. 29(1) by 101, 1984, s. 13
Section 29(2):	inserted by 101, 1984, s. 13; repealed by 75, 1993, s. 6
Section 31(1):	amended by 101, 1984, s. 14
Section 37(1):	definition of "holding co-operative" amended by 101, 1984, s. 15(a)
Section 37(2):	substituted by 101, 1984, s. 15(b)
Section 46:	substituted by 83, 1988, s. 2
Section 50(3):	amended by 83, 1988, s. 3
Section 59:	amended by 101, 1984, s. 16
Section 61(2):	substituted by 101, 1984, s. 17(a)
Section 61(8):	inserted by 101, 1984, s. 17(b)
Section 64A:	inserted by 101, 1984, s. 18
Section 69:	amended by 101, 1984, s. 19
Section 69A:	inserted by 101, 1984, s. 20
Section 71A:	inserted by 101, 1984, s. 21
Section 76:	substituted by 101, 1984, s. 22