

South Australia

## **Co-operatives Variation Regulations 2005**

under the *Co-operatives Act 1997*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Co-operatives Variation Regulations 2005*.

#### **2—Commencement**

These regulations come into operation on the day on which they are made.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### **Part 2—Variation of *Co-operatives Regulations 1997***

#### **4—Variation of Schedule 2A—Modification of applied provisions**

- (1) Schedule 2A, clause 1(1)—after the definition of *financial year* insert:
  - inspector* means an inspector appointed under Part 15 of the Act;
- (2) Schedule 2A, clause 2—after "all notes" insert:
  - (other than those modified by the table below)
- (3) Schedule 2A, clause 2, table—before the entry relating to Part 2F.3 insert:

section 198F

Strike out "company" wherever occurring and substitute in each case "co-operative".

- (4) Schedule 2A, clause 2, table—after the entry relating to section 247D insert:
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|-----------------|---|
| section 249K(1) | Strike out "company" wherever occurring and substitute in each case "co-operative". |
| section 249V(1) | Strike out "company's" and substitute "co-operative's".                             |
| section 250T(1) | Strike out "company's" and substitute "co-operative's".                             |
- (5) Schedule 2A, clause 2, table, entries relating to sections 287(3) and 288(2)—delete the entries and substitute:
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|-------------|--|
| section 287 | Insert after subsection (3) the following subsection:<br><p>(4) An inspector may, by notice in writing, specify a period within which the translation must be made available to the inspector.</p> |
| section 288 | Insert after subsection (2) the following subsection:<br><p>(3) An inspector may, by notice in writing, specify a period within which the hard copy must be made available to the inspector.</p>   |
- (6) Schedule 2A, clause 2, table—after the entry relating to section 300(1)(c) insert:
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|-------------------------|---|
| section 300(1)(ca)(i)   | Strike out "company, registered scheme or disclosing entity" and substitute "co-operative". |
| section 300(1)(ca)(ii)  | Strike out "company, disclosing entity or registered scheme" and substitute "co-operative". |
| section 300(1)(ca)(iii) | Strike out "company" wherever occurring and substitute in each case "co-operative".         |
- (7) Schedule 2A, clause 2, table, entry relating to section 300(8)(a)—delete "subsection 241(2) or (3)" and substitute:  
subsection 199A(2) or (3)
- (8) Schedule 2A, clause 2, table, entry relating to section 300(8)(b) and the second entry relating to section 300(8)—delete the entries
- (9) Schedule 2A, clause 2, table—after the entry relating to section 300(12) and (13) insert:
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| section 300(14) | Strike out "company" wherever occurring and substitute in each case "co-operative". |
| section 300(15) | Strike out "company" wherever occurring and substitute in each case "co-operative". |
- (10) Schedule 2A, clause 2, table—after the entry relating to section 300A(1)(b) insert:
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| section 300A(1)(ba)(iv) | Strike out "company" wherever occurring and substitute in each case "co-operative".<br><br>Strike out "companies" wherever occurring and substitute in each case "co-operatives". |
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(11) Schedule 2A, clause 2, table—after the entry relating to section 300A(1)(c) insert:

section 300A(1AA)	Strike out "company's" wherever occurring and substitute in each case "co-operative's".
section 300A(1AB)	Strike out "company's" and substitute "co-operative's". Strike out "company" wherever occurring and substitute in each case "co-operative".
section 300A(1B)	Strike out "company" wherever occurring and substitute in each case "co-operative".

(12) Schedule 2A, clause 2, table—after the entry relating to section 307(d) insert:

section 307B(1)(c)(ii)	Strike out "ASIC" and substitute "the Commission".
section 307B(3)(b)(ii)	Strike out "ASIC" and substitute "the Commission".
section 307B(6)	Strike out "ASIC" and substitute "The Commission".
section 307B(7)	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 307C(1)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 307C(1)(c)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 307C(1)(d)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 307C(3)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 307C(3)(c)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 307C(3)(d)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 307C(5)(a)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".

(13) Schedule 2A, clause 2, table, entries relating to sections 311 and 311(a)—delete these entries and substitute:

section 311(1)(a)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 311(1)(c)	Strike out "ASIC" and substitute "the Commission".
section 311(2)(a)(i)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 311(2)(c)	Strike out "ASIC" and substitute "the Commission".

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| section 311(3)(b)(i) | Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".  |
| section 311(3)(d)    | Strike out "ASIC" and substitute "the Commission".  |
| section 311(4)       | Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".  |
| section 311(4)(b)    | Strike out "company, registered scheme or disclosing entity" wherever occurring and substitute in each case "co-operative". |
- (14) Schedule 2A, clause 2, table—after the entry relating to section 314(1)(c) insert:
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| section 314(4) | Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".                                 |
| section 314(5) | Strike out "company, registered scheme or disclosing entity" wherever occurring and substitute in each case "co-operative". |
- (15) Schedule 2A, clause 2, table, entry relating to section 318(5)—delete the entry and substitute:
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| section 318 | Insert after subsection (5) the following subsection:<br><p style="margin-left: 40px;">(6) In this section—<br/><i>prescribed debenture holder</i> means a person who holds debentures of a co-operative but is not a member of the co-operative.</p> |
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- (16) Schedule 2A, clause 2, table, entry relating to section 323B(a)—delete "section 323B(a)" and substitute:
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| section 323B(1)(a) |  |
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- (17) Schedule 2A, clause 2, table—after the entry relating to Division 8 (section 323DA) insert:
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| Division 9 (section 323EA to 323EM) | Strike out "ASIC" wherever occurring and substitute in each case "the Commission" or "The Commission" (as the case requires).<br><br>Strike out "ASIC's" wherever occurring and substitute in each case "the Commission's". |
| section 323EA(1)                    | Strike out "company, disclosing entity or registered scheme" and substitute "co-operative".   |
| section 323EA(2)                    | Strike out "company, the disclosing entity or the responsible entity of the registered scheme" and substitute "co-operative".   |
- (18) Schedule 2A, clause 2, table, all entries relating to section 324—delete the entries and substitute:
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| Division 1 heading | Strike out "company or registered scheme" and substitute "co-operative". |
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section 324AA	Strike out "company or a registered scheme" and substitute "co-operative".  Strike out "company or registered scheme" and substitute "co-operative".
section 324AB	Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
section 324AB(2)	Strike out "company or scheme" and substitute "co-operative".
section 324AB(4)	Strike out "the Corporations legislation" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324AC	Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
section 324AC(2)	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 324AD(1)	Strike out "company or registered scheme" and substitute "co-operative".
section 324AE	Strike out "company or registered scheme" and substitute "co-operative".
section 324AE(b)(iii)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324AF	Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
section 324BA	Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
section 324BA(a)(iii)	Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".
section 324BB	Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
section 324BB(1)(a)(iii)	Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".
section 324BB(2)(a)(iii)	Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".

- section 324BB(6) Strike out subsection (6) and substitute:
- (6) The firm satisfies this subsection if—
    - (a) the business name under which the firm is carrying on business is registered under the *Business Names Act 1996* of South Australia; or
    - (b) a return (in a form approved by the Commissioner for the purpose) has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report.
- section 324BC Strike out "company or registered scheme" wherever occurring and substitute in each case "co-operative".
- section 324BC(1)(a)(iii) Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".
- section 324BC(2)(a)(iii) Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".
- section 324BC(3)(a)(iii) Strike out "this Act" and substitute "the provisions of the Corporations Act adopted by or under the Act".
- section 324BD(1) Strike out subsection (1) and substitute:
- (1) An individual who is not a registered auditor may be appointed as an auditor of a co-operative if the Commission—
    - (a) is satisfied that the individual is suitably qualified or experienced; and
    - (b) approves the individual for the purposes of the provisions of the Corporations Act adopted by or under the Act in relation to the audit of the co-operative's financial reports.
  - (1a) An appointment under subsection (1) is subject to such terms and conditions as are specified in the approval under subsection (1)(b).
- section 324BD(2)(a) Strike out "company's" and substitute "co-operative's".

section 324BD(2)(b)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324BD (3) and (4)	Strike out "company" wherever occurring and substitute in each case "co-operative"
section 324BD(3)	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CA	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CA(1A), Note 2	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company) or 331AAA(2A) or (2C) (registered scheme)".
section 324CA(6)(a)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324CB	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CB(1A), Note 2	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company)".  Strike out "(registered scheme)".
section 324CB(7)(a)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324CC	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CC(1A), Note 2	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company)".  Strike out "(registered scheme)".
section 324CC(7)	Strike out "this Act" and substitute "the Act (including provisions of the Corporations Act adopted by or under the Act)".
section 324CD(2), table	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 324CE	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CE(1A), Note	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company)".  Strike out "(registered scheme)".
section 324CF	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".

section 324CF(1A), Note	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company)".  Strike out "(registered scheme)".
section 324CG	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 324CG(1A), Note	Strike out "public company or a registered scheme" and substitute "co-operative".  Strike out "(public company)".  Strike out "(registered scheme)".
section 324CH(1), table, item 6	Strike out "company" first and second occurring and substitute in each case "co-operative".
section 324CL	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 324CL(2)	Strike out "ASIC" first and third occurring and substitute in each case "the Commission".  Strike out "ASIC" second occurring and substitute "The Commission".
section 324CM(1)(a)	Strike out "company or registered scheme" and substitute "co-operative".
section 324CM(1)(c)	Strike out "company or scheme" and substitute "co-operative".
section 324CM(2)(a)	Strike out "company or a registered scheme" and substitute "co-operative".
section 324CM(2)(c)	Strike out "company or scheme" and substitute "co-operative".
section 324CM(3)(d)	Strike out "company or a registered scheme" and substitute "co-operative".
section 324CM(3)(f)	Strike out "company or scheme" and substitute "co-operative".
Division 6 heading	Strike out "companies" and substitute "co-operatives".
Division 6 Subdivision A heading	Strike out "company" and substitute "co-operative".
 (19) Schedule 2A, clause 2, table, entries relating to section 327, 327(1A) and 328—delete the entries and substitute:	
section 327A(1)	Strike out "public company" and substitute "co-operative".  Strike out "company" second, third and fourth occurring and substitute in each case "co-operative"
section 327A(2)	Strike out "company's" and substitute "co-operative's".
section 327A(3)	Strike out "company" and substitute "co-operative".
section 327B(1)	Strike out "public company" and substitute "co-operative".

section 327B(1)(a) and (b)	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 327B(2A), (2B), (2C), (3) and (4)	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 327B	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 327C(1)	Strike out "public company" and substitute "co-operative".  Strike out "company" second and third occurring and substitute in each case "co-operative".
section 327C(2)	Strike out "company's" and substitute "co-operative's".
section 327C(3)	Strike out "public company" and substitute "co-operative".
section 327D(1)	Strike out "company" and substitute "co-operative".
section 327D(2)	Strike out "company" first and third occurring and substitute in each case "co-operative".
section 327D(3)	Strike out "company" second, fourth, fifth, sixth and eighth occurring and substitute in each case "co-operative".
section 327D(5)	Strike out "company's" and substitute "co-operative's".
section 327E(1)	Strike out "public company" and substitute "co-operative".
section 327E(2), (3), (4) and (5)	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 327E(6)	Strike out "company's" and substitute "co-operative's".
section 327E	Strike out "ASIC" wherever occurring and substitute in each case "the Commission".
section 327F(1)	Strike out "ASIC" first occurring and substitute "The Commission".  Strike out "company" wherever occurring and substitute in each case "co-operative".  Strike out "ASIC" second occurring and substitute "the Commission".
section 327F(2)	Strike out "company" second and third occurring and substitute "co-operative".
section 327G(1)	Strike out "ASIC" and substitute "The Commission".  Strike out "company" second occurring and substitute "co-operative".
section 327G(2)	Strike out "ASIC" first occurring and substitute "The Commission".  Strike out "company" wherever occurring and substitute in each case "co-operative".  Strike out "ASIC" second occurring and substitute "the Commission".

section 327G(3)	Strike out "ASIC" first occurring and substitute "The Commission".  Strike out "company" wherever occurring and substitute in each case "co-operative".  Strike out "ASIC" second and third occurring and substitute in each case "the Commission".
section 327H	Strike out "public company" and substitute "co-operative".
section 327H(a)	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 327I	Strike out "company" wherever occurring and substitute in each case "co-operative".
section 328A(1)	Strike out "company, the directors of a company or the responsible entity of a registered scheme" and substitute "co-operative or the directors of a co-operative".  Strike out "company" fourth occurring and substitute "co-operative".  Strike out "the company, the directors or the responsible entity of the scheme" and substitute "the co-operative or the directors of the co-operative".
section 328A(3)	Strike out "company" wherever occurring and substitute in each case "co-operative".  Strike out "company's" and substitute "co-operative's".
section 328A(4)	Strike out "company, directors of a company or the responsible entity of a registered scheme appoints" and substitute "co-operative or the directors of a co-operative appoint".  Strike out "company" fourth occurring and substitute "co-operative".
section 328A(4)(b)	Strike out "company or responsible entity" wherever occurring and substitute in each case "co-operative".
section 328B(1)	Strike out subsection (1) and substitute:  <ol style="list-style-type: none"><li>(1) Subject to this section, a co-operative may appoint an individual, firm or company as auditor of the co-operative at its AGM only if a member of the co-operative gives the co-operative written notice of the nomination of the individual, firm or company for appointment as auditor—<ol style="list-style-type: none"><li>(a) before the meeting is convened; or</li><li>(b) not less than 21 days before the meeting.</li></ol></li></ol> <p>This subsection does not apply if an auditor is removed from office at the AGM.</p>

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| section 328B(2)            | Strike out "company" first, third, fourth and fifth occurring and substitute in each case "co-operative". |
| section 328B(3)            | Strike out "company" first, third and fourth occurring and substitute in each case "co-operative".        |
| section 328B(3)(b) and (c) | Strike out "company" wherever occurring and substitute in each case "co-operative".                       |
- (20) Schedule 2A, clause 2, table, entry relating to Division 1A (sections 331AA to 331AE)—delete the entry
- (21) Schedule 2A, clause 2, table, entry relating to section 344(1)— delete the entry and substitute:
- |                |   |
|----------------|---|
| section 344(1) | Strike out subsection (1) and substitute: <ul style="list-style-type: none"><li>(1) A director of a co-operative contravenes this section if the director fails to take all reasonable steps to comply with, or to secure compliance with—<ul style="list-style-type: none"><li>(a) Part 2M.2 or 2M.3; or</li><li>(b) if the co-operative, or a director or auditor of the co-operative, has been granted an exemption, or the co-operative is of a class of co-operatives that has been granted an exemption, from specified provisions of Part 2M.2 or 2M.3—a provision of those Parts from which the co-operative or director or auditor is not exempt or a condition attached to the exemption.</li></ul></li></ul> |
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### **5—Variation of Schedule 3—Prescribed information relating to proposed compromise or arrangement**

Schedule 3, clause 3(9)—delete "subclause (12)(a) and (c)" and substitute:  
subclause (8)(a) and (c)

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 1 December 2005

No 246 of 2005

OCBA001/05