

Proposed National Cooperatives Law: Response to public comment

Section	Section Heading	Public Comments	Changes to draft
1.2.1	Definitions	<p><b>Co-operative Federation of NSW:</b> All States currently have a Federation as the peak body which is made up of co-operatives. Because of the size of the sector there are no further aggregations. There should be no definition of Associations or Federations in terms which will restrict usage or conflict with current practice.</p> <p><b>Co-operative Federation of Victoria:</b> Under existing State co-operative legislation, the peak bodies in NSW, Qld, Victoria and WA are recognised as Federations with individual co-operatives as members. Section 1201 Definitions defines Associations as a group of co-operatives and Federations as a group of Associations. The legislation should reflect and reinforce the current reality.</p> <p><b>Co-operative Federation of NSW:</b> Section 1201 should provide a one-stop-shop for definitions of terms used in the legislation. Recommendation: That the Section state that “small” co-operative is defined in the regulations.</p> <p><b>Commonwealth Treasury - on behalf of MINCO:</b> the phrase 'listed securities' is inappropriate - an entity is listed, its securities are quoted</p>	<p>The provisions for associations and federations have been replaced with a single level of aggregated body. For consistency with WA legislation, it is called a co-operative group.</p> <p>Small co-operative definition refers to National Regulations.</p> <p>Terminology has been adjusted to be consistent with Corporations Act noting that a co-operative entity's shares cannot be quoted, only debt securities can be quoted.</p>
1.3.1	Co-operative principles	<p><b>Co-operative Federation of NSW:</b> That the International Co-operative Alliance be mentioned, as it is in s6 of the old Act, indicating that the principles adopted in Australia are those that are adopted internationally.</p>	<p>A note has been inserted explaining that the principles are those adopted by the International Co-operative Alliance.</p>
1.4.1	Excluded matter – co-operatives and foreign co-operatives	<p><b>Commonwealth Treasury - on behalf of MINCO:</b> Paragraph 1401(2)(n) - is this a reference to old Part 7.7 of the Corporations Act? This part was omitted in 2001.</p> <p>Do paragraphs 1401(2)(j) to (l) need to be rationalised? Are the distinctions between them clear?</p> <p>Why is there repeated references to dealing and advising but not to the other triggers for needing an Australian financial services licence - for example, operating a registered managed investment scheme - this appears to be inconsistent with the tenor of paragraph 1401(2)(h) which would have the effect that Chapter 5C would operate of its own accord to managed investment schemes operated by a co-operative.</p>	<p>Final version of exclusion provision includes terminology changes to accommodate participating co-operatives along with other drafting changes after consultation with Treasury. The final version of 1.4.1 received approval from the Ministerial Council on Corporations in January 2011.</p>
2.1.6	Submission of draft rules and draft disclosure	<p><b>Co-operative Development Services:</b> The requirement in 2406(1)(a) that the Registrar be given 28 days notice of a formation meeting is</p>	<p>This provision has been modified to make it clear that the disclosure statement is a <b>formation disclosure statement</b> and is different to the</p>

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	statement to Registrar	unnecessary and compliance may not be possible.	disclosure statement required under 2.4.2.  The requirement to give 28 days notice of a formation meeting has been removed. Adjustments have been made to 2.1.7 and 2.1.8 to ensure that the Registrar has 28 days to consider the rules and disclosure statement submitted for approval.
2.1.7	Provisions relating to and approval of rules	<p><b>Co-operative Federation of NSW:</b> The Registrar should be required to advise of a missing rule and the intending members should be given the opportunity to either adopt the relevant model rule or propose their own.</p> <p><b>Co-operative Federation of Victoria:</b> Section 2107 (3) allows the Registrar to approve a relevant model rule if it is omitted from draft initial rules submitted as required under Schedule 1. This should only occur if the Registrar has advised that the rule is missing and no action has been taken.</p> <p><b>Co-operative Federation of WA:</b> Where a co-operative submits incomplete or non-conforming draft rules, the Registrar should not automatically, or unilaterally adopt model rules or other rules to make the rules complete or conforming. That action should only take place by, or in consultation with, the applicants who once made aware of the defects/omissions in the draft rules may prefer a solution other than that proffered by the Registrar.</p> <p><b>Online survey responses:</b> The Registrar of Co-operatives should have the discretion to approve relevant provisions from model rules. (5 respondents) Model rules should automatically apply for any matters where the proposed rules do not address a required matter. (1 respondent).</p> <p><b>Online survey responses:</b> The Registrar should have the discretion to approve relevant provisions provided the registrar advises the co-operative of their intentions. The section should limit the Registrar to provide a response within a specified time to enable the co-operative to address missing or inadequate rule.</p> <p><b>Co-operative Federation of NSW:</b> The Registrar needs to advise whether or not the rules are approved, within a reasonable period, at least not less than 14 days before the scheduled meeting. This may</p>	<p>This provision has been amended to ensure that the Registrar has at least 28 days to consider the proposed rules and can request further information if required. The rules will be taken to be approved after 28 days if the registrar has not advised that :</p> <ul style="list-style-type: none"> <li>- further time is required; or</li> <li>- modified rules have been approved; or</li> <li>- proposed rules have not been approved.</li> </ul> <p>Note that change to requirement for co-operative to hold formation meeting within 28 days of lodging (formerly 2601) removes problem of needing to provide adequate time for co-operative to address omitted or non-conforming rules</p>

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		require an extension of the time required under s2106(1).	
2.3.6	Approval of alteration of certain rules	<p><b>Co-operative Federation of NSW:</b> the Registrar be required to respond to an application to approve an alteration of rules as soon as is practicable, but in any event within 21 days.</p> <p><b>Co-operative Federation of Victoria:</b> It is our view that the categories specified as those which cannot be changed without requesting approval should be a minimal number and that the provision in the legislation of matters for which the rules must make provision would ensure compliance with the Co-operatives National Law or any other law. Furthermore, there is no provision in the Co-operatives National Law for how long the Registrar may take in approving proposed rule changes that require prior approval. In contrast, in Victoria, the Co-operatives Act does specify a required response period. This is necessary. When the Registrar's approval for proposed rule changes is required (2306 and 2118 (3) the Registrar must be required to respond within a specified time period.</p>	<p>This provision has been amended consistent with changes to 2.1.7. The Registrar has at least 28 days to consider the proposed changes to rules and can request further information if required. The changes to the rules will be taken to be approved after 28 days if the registrar has not advised that :</p> <ul style="list-style-type: none"> <li>- further time is required; or</li> <li>- modified changes to the rules have been approved; or</li> <li>- proposed changes to the rules have not been approved.</li> </ul>
2.3.10	Model rules	<p><b>Co-operative Federation of NSW:</b> Model rules should be part of the national regulations, to increase uniformity. To ensure user-friendly documents, the sector should be consulted in the preparation of the model rules.</p> <p><b>Co-operative Federation of Queensland:</b> Agreement within the administration of the legislation should be reached on a range of standard formats based on the Model Rules and a selection of primary activity test formats that would expect automatic and/or express registration processes so that small and uncomplicated co-operatives could expect set up within company registration timeframes and only require the provision of a standard disclosure statement.</p>	Section 2310 has been amended to enable the National Regulations to prescribe model rules.
2.4.2	Registration of current disclosure statement	<p><b>Co-operative Federation of NSW:</b> More clarity is required regarding what is contained in each disclosure statement - the Act should clearly lay out the contents of the statement required for approval.</p> <p><b>Namoi Cotton:</b> 2402 provides a new Disclosure Statement must be lodged each time a co-operative is required to lodge financial, director's, auditor's reports with the Registrar. Believes this should not be necessary if the Disclosure Statement has not changed.</p>	<p>The required contents for a disclosure statement have been clarified. It must contain the information necessary to ensure prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative, including:</p> <ul style="list-style-type: none"> <li>- the active membership provisions of the proposed co-operative</li> </ul>

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			<p>- the rights and liabilities attaching to shares in the proposed co-operative</p> <p>- any other information that the Registrar directs to be included.</p> <p>Consequential adjustments have been made to s2.4.4 to confirm that a current disclosure statement must be provided to any person intending to acquire shares.</p> <p>Subsection 2.4.2(3)(c) has been omitted. A disclosure statement remains current until a change occurs in the rights or liabilities attaching to any class of shares, or a significant change occurs in the financial position or prospects of the co-operative. The latest financial information must be provided to intending shareholders under s2.5.13 as referred to in 2.4.4.</p>
2.4.16	Members may be required to take up additional shares	<b>Comments</b> made in response to s3215 specifying 75% as the majority required for all special resolutions: see s3.2.15 below.	A proposal to require members to take up additional shares in subsection must be approved by a <b>special postal ballot</b> requiring 75% majority under s3.2.22. A consequential change has been made at this provision and to s3.2.23.
2.4.18	Restrictions on bonus shares	<b>Co-operative Federation of NSW:</b> 2418(d) The Section is ambiguous, as it is not clear whether this means a calendar year or any twelve month period. Recommendation: That the words “in any year” be altered to “within any period of twelve months”.	Subsection 2.4.18(d) has been modified to refer to the 12 month period before the date of issue of the bonus shares.
2.4.19	Notice about bonus shares	<b>Co-operative Federation of NSW:</b> The preamble should specify that this section relates to bonus shares under s2417 and not other issues out of surpluses, to avoid confusion. Recommendation: Insert additional words in the preamble.	The introductory statement has been amended to refer to “a bonus share issue under s2417.
2.4.41	Purchase and repayment of shares	<p><b>Co-operative Federation of SA:</b> s2441(6) should include the word ‘<b>resigned</b>’ to mirror the wording currently in Section 171 (5) of the SA Co-operative Act. CFSA are of the opinion that Subsection (6) should read:</p> <p><i>“This section does not apply if the member has resigned or has been expelled from the Co-operative</i></p>	The requested change to permit a resigning member to obtain a refund of share capital without the restriction of a 5% share capital limit is made and consequential change is required to ensure a process for repayment with adequate protection for the co-operative’s financial position. Consequential amendments are also made to

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		<p><i>or the member's membership has been otherwise cancelled under Part 2.6</i>" CFSA believes this change is essential to exclude members who voluntarily resign from a co-operative because of personal reasons such as requiring to redeem their investment for private purposes, because they may have left the district and are no longer able to utilise a co-operatives services. Any request for purchase of a member's shares would always be subject to the Board's approval.</p> <p><b>Law Council of Australia:</b> Section 2441(6) of the CNL does not include voluntary resignations from the co-operative. The Committee suggests that this be amended to mirror section 171(5) of the South Australia Act which includes resignations in this section. These suggestions, if adopted, would therefore result in a co-operative being able (through its rules) to repurchase the shares of members who have been expelled or who have resigned. Without those types of provisions, forfeiture of a member's shares is a likely consequence.</p> <p>It is appropriate to have power to buy out shares held by members who voluntarily resign from a co-operative because of personal reasons. ... Any request for purchase of a member's shares would always be subject to the Board's approval.</p>	<p>s2.5.19 to provide a method of repayment similar to repayment upon expulsion.</p>
2.5.2	Members of federations of associations	<p><b>Co-operative Federation of NSW:</b> All States currently have a Federation as the peak body which is made up of co-operatives. Because of the size of the sector there are no further aggregations. There should be no definition of Associations or Federations in terms which will restrict usage or conflict with current practice.</p> <p><b>Co-operative Federation of Victoria:</b> Under existing State co-operative legislation, the peak bodies in NSW, Qld, Victoria and WA are recognised as Federations with individual co-operatives as members. Section 1201 Definitions defines Associations as a group of co-operatives and Federations as a group of Associations. The legislation should reflect and reinforce the current reality.</p>	<p>The provisions for associations and federations have been replaced with a single level of aggregated body. For consistency with WA legislation, it is called a co-operative group.</p>
2.5.13	Co-operative to give information to person intending or applying to become a member	<p><b>Co-operative Development Services:</b> Provision should be made to enable persons intending or applying to become a member to receive the documents by post or electronically at their request.</p> <p><b>Namoi Cotton:</b> Namoi Cotton's current registered rules are available on its website. Can this provision be extended to allow referral to its website or the use of email to provide co-operative rules. The issue of use of a</p>	<p>Section 2.5.13 has been amended to enable a co-operative to provide information in an electronic format, including by publication on a website. It is now consistent with provisions for making annual financial reports available to members.</p> <p>Section 2.5.13 has been amended to make it</p>

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		<p>website maybe also extended to disclosure statements and accounts and its application for the entire CNL i.e. when documents (rules, notice of meetings, proxy forms, and disclosure documents) need to be provided to Members or prospective Members.</p> <p><b>Co-operative Development Services:</b> A small coop cannot comply with the requirement in s2514(1)(c) to provide the last annual report unless it has been directed to lodge/prepare one. Suggest this be amended to provide an exemption.</p>	<p>clear that the co-operative must provide the most recent financial information that must be reported to members under Part 3.3. The provisions in Part 3.3 set out different requirements for large and small co-operatives.</p>
2.5.19	Repayment of shares on expulsion	<p><b>Gayndah Packers Co-operative:</b> Gayndah Packers had a rule approved in March 2004 which enabled repayment of shares can be made over a five year period. Gayndah Packers are seeking confirmation that this rule will not be affected by application of the CNL. This comment was made in relation to s2520 but is also relevant to s2441.</p>	<p>Consequential changes are made as a result of the change made to 2.4.41 to exclude resigning members from the limits imposed under s2,4,41. Section 2.5.19 (formerly 2520) includes resigning members with expelled members in considering repayment of share capital. Validity of rules will be a matter for Qld and any required transitional rules.</p>
2.5.34	Co-operative or directors may allow member to inspect books	<p><b>Co-operative Development Services:</b> Clause 2535 appears to contradict clauses 3139 (Inspection of registers and other documents) and 3234 (Minutes). In clause 3139, members can inspect certain registers while clauses 3234(2) and (3) allow members to inspect minutes of general meetings and other meetings if authorised by the rules.</p>	<p>Section 2.5.34 (formerly 2535) continues a provision in current legislation. It provides a capacity for the Board or a general meeting to authorise a member to inspect <b>all books (including all minutes)</b> of the co-operative. This is additional to inspection rights available s3.1.43 which permits a member to inspect specified documents, including minutes of a general meeting. Special reference is made to minutes of board or committee meetings which may be subject to special access under a co-operative's rules.</p>
2.6.19	Order against cancellation	<p><b>Online survey responses:</b> Four respondents agreed there should be a limit of six months for a member to seek an order for reinstatement of their membership under section 2619. One respondent suggested 12 months. One respondent suggested the criteria should be whether the reinstated member would be active.</p>	<p>Section 2619 has been amended so that an application to a <b>designated tribunal</b> for reinstatement must be made within 6 months of the board providing notice of an intention to cancel membership under 2.6.18, terms of reinstatement are clarified.</p>
2.6.26	Entitlements of former	<p><b>Co-operative Development Services:</b> Subsection (1)(a) which refers to</p>	<p>Section 2.6.26(1)(a) has been removed.</p>

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	shareholders on mergers etc	member entitlements where a co-operative becomes a subsidiary of another co-operative. It is not possible for a co-operative to be a subsidiary of another coop. Suggest remove s2626(1)(a).	
3.1.3	Qualification of directors	<p><b>Co-operative Development Services:</b> the words “<i>other than an employee of the co-operative</i>” in sub-clause 3103(1)(a) be deleted and the words “<i>if authorised by the rules of the co-operative,</i>” be added to the beginning of sub-clause 3103(1)(b).</p> <p><b>Co-operative Federation of Victoria:</b> Co-operatives should be able to decide whether or not they have member employee directors. Section 3103 (1) seems to assume that an employee who is a member is not eligible to be a director.</p> <p><b>Co-operative Federation of NSW:</b> Inactive members should not be qualified as directors. The section should use the term “active member.”</p>	Section 3.1.3 has been amended to make it clear that a member director must be an active member. The rules of a co-operative can establish qualifications for non-member directors. It also makes it clear that an employee of a co-operative is not precluded from being a member director or a non-member director.
3.1.5	Transaction of business outside meetings	<b>Co-operative Federation of NSW:</b> Section 3105(6) should be changed to say: “A resolution approved under this section must be entered in the appropriate books within 28 days after being approved, and confirmed at and signed by the chairperson of the next meeting.”	This provision has been amended to make it clear that the record of the circulated decision must be recorded in the minutes of the co-operative within 28 days after the resolution is approved.
3.1.8	Removal from and vacation of office	<p><b>Co-operative Federation of NSW:</b> This would mean that a director cannot be removed at a meeting without notice of a special resolution. It would also mean that it would be difficult to remove a director at all, due to the problems of passing a special resolution.</p> <p>Recommendation: That an ordinary resolution be required to remove a director.</p>	<b>New section 3.1.9</b> provides for removal by an ordinary resolution – subject to special notice consistent with requirements in section 203D of the <i>Corporations Act 2001</i> . Special notice process permit equitable opportunity for directors to put a case.
3.1.21 to 3.1.25	Duties and liabilities of directors	<p><b>Co-operative Federation of NSW:</b> There is a need to amend the draft to bring it into line with the Corporations Act on which it was initially based. The draft should reflect the provisions of s181 of the Corporations Act so as to afford the same protection to directors of co-operatives as is given to directors of companies and to increase the low threshold from ‘honesty’ alone. Section 3119 needs to be updated to include the business judgement defence in s180(2) of the Corporations Act.</p> <p><b>Co-operative Federation of Victoria:</b> It would make sense that the general duties and officers should be made more consistent with the Corporations Act 2001 provided this was consistent with board accountability to members. Honesty (3118) and due diligence (3119) are</p>	<p>Section 3119 has been replaced with a modern statement of the standard of care and diligence modelled on s180 of the Corporations Act 2001. The business judgement defence in s180(2) of the Corporations Act has been included with the requirement that a business judgment is taken in the context of co-operative principles. This provision is a civil penalty provision only. Provisions for civil penalties have been included in Chapter Seven of the CNL.</p> <p>Section 3118 has been replaced with a <i>civil penalty provision</i> directly modelled on s181 of the</p>

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		<p>essential to the integrity of co-operatives.</p> <p><b>Co-operative Federation of WA:</b> Co-operatives WA has no firm view on this issue, but is unclear why the provisions of the Corporations Act with respect to insolvent trading are not appropriate or are in need of modification.</p> <p><b>Law Council of Australia:</b> Align provisions in the CNL relating to directors' duties and offences with those in sections 180 to 184 of the <i>Corporations Act 2001</i>. In particular, include a 'business judgment rule' for co-operative directors and decriminalise clause 3119. Delete the defence entitling a director to be absolved for negligence e.g. the passing of a 'forgiveness' resolution by the co-operatives' members. The business judgment rule, as a defence to negligence, creates a standard of governance that should apply to co-operatives rather than a 'forgiveness' resolution. The use of the forgiveness resolution in 3119(2) should be replaced (with appropriate adaptations) with the 'business judgment rule' the <i>Corporations Act 2001</i> s180(2).</p>	<p>Corporations Act 2001. This provision also captures other persons involved in the contravention. The terminology of honesty is replaced with a more modern formulation of the duty using the terms good faith and in the best interests of the co-operative and exercising powers for a proper purpose.</p> <p>The criminal offence arises if the breach of duty is committed either with recklessness or intentional dishonesty: new section 3.1.25(1).</p> <p>Section 3120 has been replaced civil penalty provisions modelled on s182 and 183 of the Corporations Act 2001. A director or other officer must improperly use their position or information to gain an advantage for themselves or someone else, or to cause detriment to the co-operative.</p> <p>A director, other officer or employee commits an offence if they dishonestly use their position to gain advantage or to cause detriment to the co-operative or dishonestly use information obtained through their position.</p> <p>Criminal penalties are made consistent with the Corporations Act 2001.</p>
3.1.32	Directors' remuneration	<p><b>Co-operative Development Services:</b> section 202A(2) of the Corporations Act be incorporated into clause 3128.</p>	<p>Section 3.1.32 (formerly s3128) has been amended to enable a director to be paid for travel and other expenses incurred in attending meetings – consistent with entitlements payable to directors under subsection 202A(2) of the Corporations Act 2001.</p>
3.1.41	Registers to be kept by co-operatives	<p><b>Co-operative Federation of NSW:</b> 3137 (b) &amp; (c) The reason for requiring two registers that appear to have the same content is unclear. Perhaps one is a list of names and the other of loans, for privacy reasons, but in a time of computerised records, this is unnecessary. Ambiguity of subsections needs to be clarified.</p>	<p>Requirements for registers specified at in 3.1.41 (formerly s3137) have been combined and clarified.</p>
3.1.49	Name to include certain	<p><b>Co-operative Federation of Victoria:</b> The documentation for the proposed Co-operatives National Law uses the word co-operative</p>	<p>Spelling of cooperative changed globally to include hyphen. Name requirements will continue</p>



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	matter	without the hyphen. This is contrary to practice in Australia and the practice of the International Co-operative Alliance. Legislative reform should not impose the word co-operative without a hyphen.	to refer to both spelling conventions.
3.1.55	Registered office of co-operative	<b>Co-operative Federation of NSW:</b> The requirement that a notice of the registered office must be public and conspicuous is not appropriate for all small co-operatives. Recognition should be given to the changing business environment such that a physical registered office address is required for official communications purposes but that it not be required to be public and conspicuous.	Section 3.1.55 (formerly s3151) has been amended to enable the Registrar to give an exemption to a small co-operative, or a class of small co-operatives. Other amendments are also made to require the registered office to be in a particular jurisdiction and to identify the administrative act that determines which office is the registered office (for those entities that have more than one place of business).
3.2.3	Voting by proxy	<p><b>Namoi Cotton:</b> 3203 restricts the number of undirected proxies that may be held to 10. Recommends this be re-drafted as general practice for a large co-operative, the Chairperson may act as a proxy for greater than 10 members. Namoi Cotton being a listed entity has no restrictions under the ASX Listing Rules. There should be no restriction on the number of proxy's any member, director or the Chairperson may hold.</p> <p><b>Co-operative Federation of Queensland:</b> As a general philosophy we believe that limited holding of proxies by any individual is essential. To do otherwise is fraught with danger as it provides for one dominant voting person. The ballot form allows for individuals to express their wish by voting by direction on each motion. Proxies have the capacity to be abused. All members of a co-operative must be "active members" and therefore only active members should be voting or providing proxies. In the context of a poll at meetings, perhaps in that context a person holding two or more proxies can only exercise one for the show of hands. Matters already submitted by voting paper cannot be altered or voted upon in this manner.</p>	Limit on number of undirected proxies that can be held removed. Any limits will be provided for in co-operative's rules. Note inserted to explain.
former3204	Restriction on voting entitlement under power of attorney	<b>Namoi Cotton:</b> 3204 and S3205 appear to be not necessary, certain members may have cross holdings and one individual may show to a meeting with a power of attorney to vote for both members, therefore the restriction practically does not work, I am not sure what it is really trying to achieve. If a person has a valid power of attorney for a set number of members then they should be accepted. Recommendation is that this provision be deleted.	Section 3204 is redundant and has been deleted. Relevant interest restrictions deal with problems of inappropriate vote control.

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former3205	Restriction on voting by representatives of corporations	<b>See comment at 3204.</b>	Section 3205 is redundant and has been deleted.
3.2.7	Effect of relevant share and voting interests on voting rights	<b>Co-operative Federation of NSW:</b> The problem of a member not being able to vote if another person has an interest in his share or right to vote has not been resolved. Section 3209(4) should be added to say “provided that 3209 does not apply in respect of joint members or joint shareholders or to a situation where a corporate member has a director or shareholder who is also a member”. The co-operative should also have the right to appeal on behalf of a specified member or members.	This provision has been adjusted to confirm that a person is not prevented from voting where there is a joint membership or shares are jointly held as provided for in s3.2.2(5) and (6).
3.2.15	Special resolutions	<p><b>Co-operative Development Services:</b> the majority required to pass a special resolution at a general meeting be reduced to 66% consistent with current co-operatives legislation.</p> <p><b>Co-operative Federation of NSW:</b> retain the different 66⅔%, 66⅔% and 75% majority requirements.</p> <p><b>Co-operative Federation of WA:</b> Co-operatives WA considers that only a two-thirds majority should be required for special resolutions other than the critical issues reserved for a special postal ballot.</p> <p><b>Mattila Lawyers:</b> Strongly object to the majority for a special resolution being increased from 66 2/3% to 75%. Special Resolutions are almost entirely alteration of Rules. Rule alterations should not be made more difficult than is currently the case. Co-operatives unlike companies are governed primarily through their Rules. We believe a distinction between the percentages required for a special postal ballot (currently 75%) and a special resolution continues to be important to stress to members the difference between the two types of resolutions.</p> <p><b>Online survey responses:</b> Four of the six respondents took the view it was appropriate to require a 75 percent majority for all special resolutions. Two of the respondents believed it was not appropriate to require a 75 percent majority for all special resolutions.</p>	<p>The provision has been amended so that the majority for passing a special resolution should be “two thirds” rather than 75 percent. A majority of 75 % will be required in the case of a special resolution by special postal ballot.</p> <p>Associated changes are:</p> <ul style="list-style-type: none"> <li>• s3.1.8 now requires an ordinary resolution to remove a director – subject to special notice consistent with requirements in s203D of the <i>Corporations Act 2001</i>.</li> <li>• s2.4.16 being a special resolution requiring members to take up additional shares requires a special postal ballot</li> <li>• s3.4.13 being a special resolution requiring members to make loans to the co-operative also requires a special postal ballot</li> <li>• there are consequential changes made to s3.2.23.</li> </ul>
3.2.26	Annual general meetings	<p><b>Co-operative Development Services:</b> reference to “calendar year” in subclause (2) should be deleted.</p> <p><b>Co-operatives Federation of NSW:</b> The timing of the first AGM is to be determined by the date of incorporation but must always occur within the calendar year of incorporation – it is never possible to use the 18 month</p>	Section 3.2.26 (formerly s3228) is amended to make it clear that a new co-operative has 18 months after incorporation to hold its first annual general and must the hold an annual general meeting in every subsequent calendar year and no later than 5 months after the end of its financial

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		period, as is intended. Subsection (2) should be subject to subsection (1).	year.
3.2.28	Notice of meetings	<b>Co-operative Development Services:</b> the words " <i>or at least 21 days notice if a special resolution is to be considered at a general meeting</i> " be added.	A note has been inserted at s3.2.28 referring to the requirement under s3.2.13 to give 21 days notice of any special resolution to be considered at the meeting.
3.2.30	Decision at meetings	<b>Co-operatives Federation of NSW:</b> this is unnecessarily complex. The existing provisions in s201 should be maintained, with the addition of the capacity for the Chair to call for a poll and those present, if less than five. There is a tendency to complicate the exercise of proxies, even when allowed in the Rules. Subsections 3232(3) (iii) and (iv) be removed together with subsection (2).	Section 3.2.30 (formerly s3232) has been modified so that :  (1) A question for decision at a general meeting is to be determined by a show of hands, unless a poll is required.  (2) A poll can be required by the chairperson, or by any 5 members present at the meeting or represented at the meeting by a proxy.  (3) A person can exercise only one vote on a question determined by a show of hands.  (4) A person who holds one or more proxies may exercise more than one vote on a question determined by a poll.  (5) In the case of an equality of votes, the chairperson should have a casting vote if the rules so provide.
3.2.32	Minutes	<b>Co-operative Development Services:</b> clause 3234 be amended to provide for minutes of meetings to be entered into the appropriate books within 28 days <i>after</i> confirmation of the minutes.  <b>Co-operative Federation of NSW:</b> Suggest that the Corporations Act is more flexible, with s251A(2) allowing the chair of the meeting or the next meeting to sign the minutes. The draft does not specify where to retain the minute books.  <ul style="list-style-type: none"> <li>○ Amend subsection (1) to allow the chair to sign the minutes.</li> <li>○ Insert a subsection specifying where the minute books should be maintained – or amend the list of registers in Division 6.</li> </ul>	Section 3.2.32 (formerly s3234) is amended to allow flexibility for the chairperson to sign (either the chair of the meeting relating to the minutes or the chair of the next meeting). Provisions are consistent with WA Co-operatives Act and Corporations Act. Note that provisions refers only to signing the minutes as a record, confirmation of the minutes would still be a matter for persons at the next meeting.  Location of minute books is required to be kept with other registers for inspection under s3.1.43
3.3.8	Who has to prepare annual	<b>Co-operative Development Services:</b> sub-clause 3309(4)(b) be	<b>Section 3.3.8 (formerly s3309)</b> has been

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	financial reports and directors' reports	<p>deleted.</p> <p><b>Auditing and Assurance Standards Board:</b> Provisions for small co-operatives should take account of proposed changes to requirements for small companies limited by guarantee.</p>	<p>adjusted to provide a minimum standard of reporting by a small co-operative to its members. The minimum standard will be set by the National Regulations. There is no lodgement of financial reports required by small co-operatives. A small co-operative can be required to provide additional reporting and or audit if the members direct under s3.3.9 or if the Registrar so directs under s3.3.10. A small co-operative's rules may require a different level of reporting to members but a rule governing financial reporting would not be able to reduce the minimum standards of reporting required under the National Regulations. These reporting requirements will be developed in consultation with the sector and may require different levels of reporting for different classes of small co-operative. Recent changes to reporting requirements for small companies limited by guarantee will be taken into account in this process.</p>
3.3.9	Small co-operative—direction by members	<p><b>Auditing and Assurance Standards Board:</b> Subclause 3310(4) should enable members to give a directive that a financial report is to be audited <b>or reviewed</b> in accordance with Division 3 of Part 2M.3 of the <i>Corporations Act 2001</i>. Provision for members to require auditing “in some specified manner” should be removed.</p>	<p>Subsection 3.3.9(3) (formerly 3310(3) has been amended to enable a direction to be “that the financial report is audited <b>or reviewed</b>”. Subsection 3.3.10(4) has been amended to confirm that the financial report may be audited <b>or reviewed</b> in accordance with requirements prescribed by National Regulations.</p>
3.3.15	Audit of annual financial report	<p><b>Co-operative Federation of NSW:</b> the draft should be adjusted to require an audit for those small co-operatives where neither the Rules, members or the Registrar specify the need for an audit. A definition is needed of the qualifications required to perform the review – it is not appropriate that the person needs to be a company auditor. The minimum review steps required should also be specified and set out in the regulations, with exemptions to be approved by the Registrar. 3315(2) That the phrase “unless required in the Rules of the co-operative” be added.</p>	<p>A small co-operative will be required to prepare an annual financial report and directors' report if directed by members under s3.3.9 or if directed by the Registrar under s3.3.10. Where there is no direction in force, a small co-operative must prepare any financial report or directors' report that is prescribed in the National Regulations. The National Regulations will be able to prescribe minimum reporting requirements for different classes of small co-operative including basic requirements for audit or review. Details of any</p>

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			prescribed requirements will be determined during development of the National Regulations.
3.3.25	Consideration of reports at annual general meeting	<b>Co-operative Federation of NSW:</b> Directors should be required to lay before members at the AGM the financial accounting statements prepared for members. Small co-operatives are public entities where generally an arms' length relationship between members and management means that members are not aware of the results of operations, unlike small companies which generally have close holdings. The requirement that reports that have been prepared for members must be laid before the AGM should be added to the section or another section be inserted.	<b>Section 3.3.25 (formerly s3326) is amended to</b> require a small co-operative to lay any financial reports as required by the National Regulations before the annual general meeting.
3.3.66	Contravention by directors of provisions of this Part	<b>Online survey responses:</b> Four respondents took the view it was appropriate to replace the civil penalty with a criminal offence provision. One disagreed with the proposal, and one respondent did not provide a response.	Section 3.3.66 (formerly s3367) replicated s344 of the Corporations Act. It placed a blanket liability on directors in respect of failures by the co-operative to comply with financial reporting obligations. As a result of COAG requirements to review director liability provisions and other changes importing a civil penalty regime, s3.3.66 has been modified to reflect civil and criminal penalties in respect of contraventions over which the director has control.
3.4.7	Application of Corporations Act—issues of debentures	<b>General comments on s3118 to 3121.</b> See comments above in relation to director and officer duties and liabilities.	Consequential amendments are made to s3.4.7 as a result of the introduction of a civil penalty regime in the CNL. Section 3407 has been amended to make it clear that the civil penalty provisions ss674(2), 674(2A), 675(2) and 675(2A) s1041A, 1041B(1), 1041C(1), 1041D, 1043A(1) and (2). of the Corporations Act apply as civil penalty provisions under the CNL. Subsection 3407(1)(a) has been amended so as not to omit s283DA of the Corporations Act.
3.4.13	Compulsory loan by member to co-operative	<b>Law Council of Australia:</b> Reconsider the need for a co-operative to have a power to compulsorily require members to make loans (with or without security) to the co-operative. At least a ceiling on the amount of the loan should be prescribed if no change is made (refer clause 3413). Additionally, at call loans should be prescribed as the default standard rather than for term loans of up to seven years, thereby allowing	Section 3.4.3 is amended so that a proposed compulsory loan must be approved by a special resolution passed by special postal ballot thereby requiring a 75% majority. The National Regulations may prescribe a term for the loan along with a maximum amount that may be raised

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		members to call up a loan made in an emergency situation. These prescriptive measures are suggested because the only resource of a member who does not want to be a part of the compulsory loan commitment is to resign their membership.	by compulsory loan in any 12 month period.
3.5.4	Maximum permissible level of share interest	<b>Namoi Cotton:</b> Section 3504(4)(b) provides "the person concerned is another co-operative". The relevance of this provision is questioned, firstly there is a restriction in share capital holding of 20%, however this can be lifted by a special resolution, which then has to be approved by the Registrar. Then an exemption for approval by the Registrar is given to "another co-operative". Practically there is no reason why any co-operative wishing to hold more than 20% share capital in another co-operative should be exempt for approval by the Registrar. Our recommendation is Section 3504(4)(b) be deleted.	Subsection 3.5.4(4)(b) has been deleted. The requirement for Registrar approval will apply to all special resolutions authorising a person to hold more than 20% of share capital in a co-operative.
3.5.9	Co-operative to keep register	<b>Namoi Cotton:</b> Section 309(3)(b) provides "by another person, on payment of a fee (if any)". The Member Share Register including the "register of notifiable interests" is a highly important information to the business i.e. it maybe the co-operative's biggest client, by allowing any third party access to such registers puts the financial viability of the co-operative at risk, it also questions whether the Board and Management are acting in the best interest of the co-operative. Our recommendation is that Section 3509(3)(b) be deleted. Information regarding members should only be accessible by members, but the Board should have the right to refuse such registers if the release of the information is likely to cause detriment to the co-operative.	Subsection 3.5.9(3)(b) has been deleted. Access is permitted only to members to provide appropriate protection of commercially confidential information. Note that section 3.1.40 also provides protection in relation to members by restricting the use of information obtained from registers.
3.5.10	Unlisted companies to provide list of shareholders etc	<b>Co-operative Federation of WA:</b> Co-operatives WA supports the proposed change from automatic annual reporting to reporting on demand of certain information about shareholders in unlisted companies that are members of a co-operative. However the CNL proposal goes beyond simply changing to reporting "on demand" and unless amended will remove the current right of a co-operative to direct access to this information as the CNL only allows the Registrar to request this information.  <b>Online survey responses:</b> Three respondents agreed that section 3510 provides an appropriate mechanism, with one disagreeing. The other two respondents did not provide an opinion.	Section 3.5.10 has been amended to permit both the co-operative and the Registrar to obtain the listed information. Section 2.4.25 gives a co-operative the power to direct an unlisted company to disclose relevant interests, cross-reference appears in a note.
4.1.3	Appointment of administrator by Registrar	<b>Commonwealth Treasury on behalf of MINCO:</b> As a general policy, those persons who ultimately bear the costs of administration and upon	Section 4103 (2) has been amended to require the Registrar to appoint a registered liquidator

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	in case of insolvency	whom the consequences of poor administration will predominantly fall should, shortly after commencement, be empowered to replace an insolvency practitioner. e.g. creditors in a creditor's voluntary liquidation or voluntary administration; members in a member's voluntary liquidation. The Court's powers to remove and appoint practitioners should be in addition to this power. The winding up or reorganisation of a body has the potential to adversely affect a broad range of persons (members, creditors, employees etc). It is therefore inadvisable to enable unregulated persons to conduct insolvency administrations.	unless the likely costs of administration by a registered liquidator are excessive taking into consideration the assets of the co-operative and the expected extent of debt.
4.5.2	Winding up on registrar's certificate	<p><b>Insolvency Practitioners Association:</b> The Registrar can appoint an administrator for the purposes of Part 5.3A of the Corporations Act 2001 – if the Registrar is of the view that the coop is insolvent or is likely to become insolvent. The Registrar can approve a liquidator under 4503(3)(n). The IPA assumes that this person does not have to be registered by ASIC as a liquidator.</p> <p>Liquidators should be appropriately regulated by ASIC. If liquidators are regulated differently for co-operatives, there should be a national regulatory process that is not reliant on State and Territory communications. Misconduct in one jurisdiction should ensure a response in all jurisdictions and a report o ASIC. The IPA provides as an example the case of Mr Stuart Ariff.</p>	A liquidator appointed by the Registrar for winding up on Registrar's certificate does not need to be registered by ASIC, but can only be appointed in circumstances specified in s 4.8.1 which focus on issues relevant to the existence and structure of the co-operative and not necessarily involving insolvency. The power of the Registrar to appoint a liquidator who is not registered with ASIC is qualified in the same manner as s4.1.3. A liquidator appointed for a voluntary winding up or a court ordered winding up is appointed under the Corporations Act provisions and must be registered with ASIC see 4.5.3.
4.6.1	Application of Corporations Act—insolvent co-operatives	<p><b>General comments on s3118 to 3121.</b> See comments above in relation to director and officer duties and liabilities</p> <p><b>Online survey responses:</b> Three respondents to the survey noted the director's duty was stated appropriately in section 4601. The remaining three respondents did not provide an opinion.</p> <p><b>Online survey responses:</b> Volunteer directors reliant on Government funding to operate and continue to supply a community service would be at risk.</p>	Section 4.6.1(c) is no longer required as a result of the adoption of a civil penalty regime in the CNL. Section 4.6.1(2) clarifies that the applied s588G(2) of the Corporations Act is a civil penalty provision under the CNL
5	Foreign co-operatives	<p><b>Co-operative Development Services:</b> Chapter 5 (Foreign co-operatives) be deleted and replaced with a requirement that a co-operative will be required to register as a Registrable Australian Body under Part 5B.2 of the Corporations Act 2001 prior to carrying on business including recruiting members in another jurisdiction.</p> <p><b>Co-operative Federation of NSW:</b> Adopt the possible alternative option</p>	Entities from foreign jurisdictions that wish to carry on business in Australia will continue to have a choice of registering as a foreign company under the Corporations Act 2001 or they may wish to incorporate a new co-operative within any State or Territory and then have automatic authority to carry on business in all participating

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		<p>where co-operatives in participating jurisdictions simply operate wherever they wish, without the need to register beforehand.</p> <p>Establish a central or common register of co-operatives across all jurisdictions to prevent duplication of names and to facilitate ease of identification – preferably by inclusion in an existing national numbering system, such as ARBN.</p> <p><b>Mattila Lawyers:</b> The Co-operatives National Law should provide a single registration and compliance system so as to remove the duplication of cross-border compliance that exists under the current legislation and allow co-operatives to freely conduct their business in any State or Territory to which the Law applies. It should also not require additional statutory instruments for the provision to take effect.</p>	<p>jurisdictions.</p>
8.2.1	Service of documents on co-operative	<p><b>Insolvency Practitioners Association:</b> Service of document provisions should be consistent with the Corporations Act 2001. For example, see s666G allowing electronic communications with creditors and others. Also see s109X.</p>	<p>A liquidator or administrator appointed by a court or by the co-operative will be registered with ASIC and not the Registrar. Section 8.2.1 is amended to ensure that in these cases documents can be served at the most recent address notified to ASIC.</p>
8.2.2	Service on member of co-operative	<p><b>Co-operative Federation of NSW:</b> Members of non-distributing co-operatives have as much right to information on their membership as distributing co-operative members. There is no reason why it should be considered appropriate that they not be personally informed of any matters requiring notice. Remove 8202(2)(c)(i).</p> <p><b>Mattila Lawyers:</b> Provision should be included to allow service by email by the <i>Electronic Transaction Act 2000</i> (NSW) or the legislation at the relevant State. Model Rules should contain provisions allowing notices requisitioning meetings of the co-operative to be given via email. (See above.)</p>	<p>All three conditions in subclause 8.2.2(2)(c) need to be met, That is the whereabouts of a member of non-distributing co-operative must be unknown and the Registrar must have approved giving notice by means of a published notice.</p>