

Co-operation Bill

CLAUSE NOTES

PART I—PRELIMINARY

Clause 1 contains the short title of the Act.

Clause 2 provides for the coming into operation of the Act upon a date to be fixed.

Clause 3 contains details of the Parts and Divisions of the Act.

Clause 4 repeals the *Co-operation Act 1958*.

Clause 5 contains the definition provisions including the definition of significant terms used in the Act.

PART II—CO-OPERATIVE SOCIETIES

Clause 6 provides for the formation of different kinds of co-operative societies. It also prevents the application of the *Companies Act 1961* to societies and foreign societies under the Act, except where expressly provided.

Clause 7 sets out the objects for which a producer's society may be formed. (No change.)

Clause 8 lists the powers which a producer's society may adopt. (No change.)

Clause 9 sets out the objects for which a trading society may be formed. (No change.)

Clause 10 lists the powers which a trading society may adopt. (No change.)

Clause 11 sets out the objects for which a community settlement society may be formed. These societies may operate in rural areas only.

Clause 12 lists the powers which a community settlement society may adopt. (No change.)

Clause 13 sets out the objects for which a community advancement society may be formed. (No change.)

Clause 14 lists the powers which a community advancement society may adopt. (No change.)

Clause 15 enables certain community advancement societies to adopt additional objects and powers. (No change.)

Clause 16 sets out the objects of a credit society. Essentially, these are to raise funds and apply those funds in making loans to or continuing credit arrangements with members.

Clause 17 lists the powers which a credit society may adopt. These have been widened to allow, for example, a credit society to appoint agents and to act as an agent.

Clause 18 prohibits a credit society from making loans to or continuing credit arrangements with a person unless that person is a member of the society. The clause also prohibits the making of loans or continuing credit arrangements unless the society holds at least the prescribed amount of liquid funds. Liquid funds are defined.

Clause 19 requires an application by a member to a credit society for a loan or continuing credit arrangement to be in a particular form, notification of the board's decision to be in writing, and an offer by the board to contain certain details. Contracts for loans and continuing credit arrangements are to be in a particular form and contain certain details to ensure that adequate disclosure of terms and conditions is made to the member. Where the details of a contract are varied as provided, a society must notify the member accordingly at least fourteen days before the variation takes effect. The clause prohibits a credit society from advancing to a member an amount greater than that specified in its rules. It also makes provision for the delegation of the board's power to approve of loans, &c.

Clause 20 limits the obligations of a credit society which has undertaken to supervise the expenditure of a loan made by a third party. (No change.)

Clause 21 establishes the Credit Societies' Guarantee Fund. (No substantial change other than name.)

Clause 22 establishes the Credit Societies Guarantee Fund Advisory Committee as a body corporate and provides for its composition. The clause provides the terms and conditions of appointment for the members of the Advisory Committee and provides for the election of a chairman, appointment of deputy members and quorum. The Advisory Committee is required to report annually to the Minister and credit societies on certain matters and appoint auditors to audit the accounts of the Fund.

Clause 23 requires each credit society to maintain in the Fund a contribution of one per centum of the aggregate of its paid up share capital, moneys deposited with and moneys loaned to it. The contribution is a deferred asset of a society.

Clause 24 enables the advisory committee to levy each credit society if the capital of the Fund has been greatly reduced in order to replenish the Fund. The levy is not to exceed annually one half of one per centum of the aggregate of a society's paid up share capital and moneys deposited with it. The levy is an expense of a society.

Clause 25 enables the Minister on the advice of the Advisory Committee to order a credit society to make a compulsory loan to the Fund at a prescribed rate of interest. (No substantial change.)

Clause 26 makes default in payment under clauses 23, 24 or 25 an offence by a credit society and officers responsible. (No change.)

Clause 27 makes provision for the investment of moneys in the Fund by the Advisory Committee. (No change.)

Clause 28 makes provision for payments out of the Fund. (No substantial change.)

Clause 29 makes provision for claims against the Fund. (No substantial change.)

Clause 30 empowers the Advisory Committee to declare a credit society subject to its direction in certain circumstances, for example, if the society fails to comply with particular clauses or is trading unprofitably.

Clause 31 provides for the period of direction by the Advisory Committee.

Clause 32 provides a right of appeal by a credit society, to the Credit Societies Appeals Tribunal constituted under clause 36, where the Advisory Committee has declared a credit society subject to its direction or refused to declare that the period of direction is to cease.

Clause 33 provides for the powers of the Advisory Committee with respect to a credit society under its direction.

Clause 34 enables the Advisory Committee to appoint an auditor to audit the accounts of a credit society.

Clause 35 is an interpretation provision with respect to the Credit Society Appeals Tribunal.

Clause 36 establishes the Credit Society Appeals Tribunal and provides for its composition.

Clause 37 provides for the manner in which appeals are to be made to the Tribunal.

Clause 38 empowers the Tribunal with respect to an appeal.

Clause 39 requires that an appeal to the Tribunal shall be conducted *in camera*.

Clause 40 provides for the giving of evidence and production of documents to the Tribunal by the parties to an appeal.

Clause 41 provides for the determination of an appeal by the Tribunal.

Clause 42 enables the Tribunal to award costs at its discretion.

Clause 43 provides that an order of the Tribunal under clause 41 is deemed to be the final decision of the Advisory Committee.

Clause 44 requires a minimum of five societies to form an association.

Clause 45 sets out the objects for which an association may be formed and lists the powers which it may adopt, including the giving of guarantees in respect of loans made to its component societies.

Clause 46 enables component societies of an association to indemnify the guarantor of a loan to the association. (No change.)

Clause 47 enables an association to purchase shares in any other association or in any foreign association &c. (No change.)

Clause 48 defines "foreign associations". (No substantial change.)

Clause 49 requires a minimum of ten bodies to form a federation and defines who those bodies may be. The clause sets out the objects for which a federation may be formed and lists the powers which it may adopt.

PART III—INCORPORATION

Clause 50 prevents bodies which are co-operative in nature from registering under any other Act. (No change.)

Clause 51 enables corporate bodies registered under other specified Acts to transfer their registration to this Act. (No change.)

Clause 52 identifies who may be members of a society. Natural persons must be at least 15 years old.

Clause 53 requires that a society be formed by at least seven persons or, in the case of a credit society by at least 50 persons present at a formation meeting. The clause recites the documents and statements to be presented to the meeting, and those to be lodged with the Registrar in making application for registration. The Registrar may refer any application to the Co-operative Societies Advisory Council or, in the case of a credit society, the Credit Societies Guarantee Fund Advisory Committee. If the Registrar is satisfied that all matters are satisfactory he is to register the society.

Clause 54 restricts the use of the words “credit society” and “co-operative”.

Clause 55 prohibits a society being registered with, or changing its name to, a name identical with that of another society or other corporate body, or an undesirable name or a name that the Minister has directed not to be acceptable for registration.

Clause 56 enables two or more societies of the same kind to amalgamate. (No substantial change.)

Clause 57 provides that a certificate of incorporation shall be conclusive evidence, that all requirements of this Act have been complied with. (No change.)

Clause 58 provides for various matters relating to membership of a society, including cessation of membership. The rules of a credit society must limit application for membership to persons having a common bond.

Clause 59 provides for various matters relating to the capital and shares of a society. The shares of an association or federation may be of different classes, but are to rank equally on a winding up.

Clause 60 sets forth the ways in which a society may distribute the surplus arising in any year from its business. (No change.) Credit societies must make proper allowance for doubtful debts.

Clause 61 enables a society to make financial donations to certain bodies. (No change.)

Clause 62 defines the liability of a member to a society. (No change.)

Clause 63 empowers a society to cancel or sell any forfeited shares.

Clause 64 enables a society to repay share capital to a member. (No change.) Except for credit societies, the Registrar’s approval may be required in certain circumstances.

Clause 65 provides for the disposal by a society of the shares of a member whose whereabouts are unknown.

Clause 66 provides for a society to have a charge upon a member's shares etc., in respect of any debt due from the member to the society. (No change.)

Clause 67 makes provision for the payment on the death of a member of any amounts due to him by the society. Sum increased to \$1000.

Clause 68 deems a society to be a body corporate. (No change.)

Clause 69 empowers a society to acquire real or personal property. (No change.)

Clause 70 prohibits a society from entering into any contracts with respect to land or the management of the society without the consent of the Registrar. The clause also limits the amount that a credit society may expend on its business premises.

Clause 71 empowers a society to borrow money in such manner as it thinks fit. (No change.)

Clause 72 imposes restrictions on societies with respect to receiving money on deposit. (No substantial change.)

Clause 73 makes provision for the rules of a society or for the regulations to limit the amount of money which a society may raise on loan or receive on deposit. (No change.) A society is prohibited from borrowing or repaying moneys other than in Australian currency.

Clause 74 applies the provisions of the *Companies Act* 1961 in relation to charges etc., given by societies.

Clause 75 makes provision for the investment of a society's surplus funds. Credit societies are limited with regard to mortgage investments; inter-society lending is subject to the approval of the Registrar. An association of credit societies is empowered to deposit funds with the Australian Federation of Credit Unions Limited.

Clause 76 makes provision for a society to transfer its engagements to another society.

Clause 77 requires a society, prior to an amalgamation under clause 56 or a transfer of engagements under clause 76, to send a statement containing certain particulars to each of its members. The Registrar may direct the society to seek from all its members their approval or disapproval of the proposal, and may confirm the amalgamation or transfer of engagements notwithstanding that the required proportion of members does not approve of it.

Clause 78 empowers the Registrar in certain circumstances to direct a society to transfer its engagements to another society.

Clause 79 enables a society to enter into contracts. (No substantial change.)

Clause 80 provides for matters relating to the name and address of a society. (No substantial change.)

Clause 81 provides that a society and its members shall be bound by the rules of the society. (No change.)

Clause 82 permits a society to have dealings with its members that would otherwise be in restraint of trade. (No change.)

Clause 83 requires a society to furnish to intending members a list of charges incidental to membership. The clause empowers the Registrar to fix the maximum charges which a society may impose in connection with the making of loans.

Clause 84 provides for a society to impose a fine on a member for any infringement of its rules. (No substantial change.)

Clauses 85 to 96 relate to the issue of a prospectus.

These clauses incorporate with appropriate modifications the prospectus provisions of the *Companies Act 1961*, but will apply to a society only if the Registrar issues an appropriate direction. The Registrar may not issue any such direction in respect of a credit society.

PART IV—RULES, MANAGEMENT, ETC.

Clause 97 makes provision for the prescription by regulation of model rules for each kind of society. (No change.)

Clause 98 lists the matters which must be set forth in the rules of a society. (No substantial change.)

Clause 99 prohibits a society from altering its rules other than by special resolution. (No change.)

Clause 100 empowers the Registrar to require a society to alter its rules to conform with this Act. If a society fails to do so, the Registrar may alter the society's rules.

Clause 101 provides for the management and control of a society by its board of directors. (No change.)

Clause 102 requires that a person of or above the age of 72 years may only be elected or re-elected as a director by special resolution, and only until the next general meeting.

Clause 103 restricts the number of directors of a society and contains provisions for the election of directors, including the election of an employee of the society.

Clause 104 requires that directors of a society must be members of that society. (No substantial change.)

Clause 105 sets out the circumstances in which the office of a director is to be vacated. (No substantial change.)

Clause 106 requires that a director must declare to the board the nature of any interest he has in a contract or proposed contract with the society.

Clause 107 prohibits a director having certain dealings with the society without the approval of three-quarters of the board. The clause also provides for the remuneration of a director.

Clause 108 requires that a person in charge of any money of a society give security as prescribed by regulation. (No change.) A credit society is to insure itself against such risks and to the extent stipulated by the Advisory Committee.

Clause 109 enables the Minister to appoint a person to hold an inquiry into the acts of a director of a society that has a loan in respect of which the Treasurer of Victoria has issued a guarantee. (No change.)

Clause 110 requires that a society hold an annual general meeting within a specified time, and makes provision for the holding of special general meetings.

Clause 111 provides for matters relating to voting by members at meetings of a society. Each member has one vote. A component body of an association or federation may have up to five votes.

Clause 112 defines "special resolution".

A special resolution now relates to a proportion of those voting at a meeting, rather than those present.

Clause 113 requires that minutes be kept of all board and society meetings. (No change.)

Clause 114 provides for the settlement of disputes between a member and a society by arbitration.

PART V—SPECIAL INVESTIGATIONS

PART V (*Clauses 115 to 126*) makes provision for the Minister, essentially where it is in the public interest, to appoint an inspector to investigate the affairs of a society. (No change.) This Part does not apply to a credit society.

PART VI—ACCOUNTS, AUDIT, REGISTERS AND RETURNS

Clauses 127 to 135 incorporate with appropriate modifications the accounts provisions of the *Companies Act 1961*.

Clause 136 provides that the financial year of a society shall end on such date as is fixed by the society's rules. (No change.)

Clauses 137 to 143 incorporate with appropriate modifications the audit provisions of the *Companies Act 1961*.

Clause 144 empowers the Treasurer of Victoria to authorize the Auditor-General to audit the accounts of any society. (No change.)

Clause 145 requires that a society keep such registers as are prescribed by regulation. The clause prohibits notice of any trust being entered in any register, etc. kept by a society except as specifically provided in the case of a credit society.

Clause 146 entitles members and creditors to inspect certain documents and registers at the office of the society. A member is also entitled to inspect his own account in the books of the society for a small fee.

Clause 147 lists the returns which a society is to lodge with the Registrar.

PART VII—ARRANGEMENTS AND RECONSTRUCTIONS

PART VII (*Clauses 148 to 151*) incorporates with appropriate modifications the arrangements and reconstructions provisions of the *Companies Act 1961*.

PART VIII—RECEIVERS AND MANAGERS

PART VIII (*Clauses 152 to 162*) incorporates with appropriate modifications the receivers and managers provisions of the *Companies Act 1961*.

PART IX—OFFICIAL MANAGEMENT

Clause 163 empowers the Registrar, in certain circumstances to appoint an administrator to conduct the affairs of a society. Upon the appointment of an administrator the directors of a society cease to hold office.

Clause 164 gives the Registrar additional powers when appointing directors of a society upon the revocation of the appointment of an administrator.

Clause 165 prohibits without the leave of the Court any proceedings against a society under administration.

Clause 166 enables the directors of a society under administration to make representations to the Advisory Council with respect to the appointment of the administrator. The Advisory Council must report thereon to the Minister, who may direct the Registrar to revoke the appointment.

Clauses 167 to 191 incorporate with appropriate modifications the official management provisions of the *Companies Act 1961*. These provisions do not apply to a credit society.

PART X—WINDING UP

Clause 192 provides for the winding up of a society. (No substantial change.)

Clause 193 enables the Registrar to appoint a person to fill a vacancy in the office of a liquidator of a society. (No change.)

Clause 194 requires that the remuneration paid to a liquidator be approved by the Advisory Council. (No change.)

Clause 195 provides for the cancellation of registration of a dissolved society. (No change.)

PART XI—FOREIGN SOCIETIES

PART XI (*Clauses 196 to 206*) incorporates with appropriate modifications the foreign company provisions of the *Companies Act 1961* in relation to a society registered in another State or in a territory of the Commonwealth.

PART XII—ADMINISTRATION

Clause 207 makes provision for a Registrar and Deputy Registrars of co-operative societies, for an office of the Registrar, and for matters connected therewith. (No substantial change.)

Clause 208 provides that all documents required to be lodged with the Registrar shall be kept in the office of the Registrar. (No change.)

Clause 209 empowers the Minister to authorize payments to meet expenses relating to the giving of information on the formation of societies. (No change.)

Clause 210 enables the Registrar to require evidence in relation to various matters. (No change.)

Clause 211 gives the Registrar power to inspect books and records of a society or of a banker to a society. (No substantial change.)

Clause 212 prohibits the Registrar and his staff from divulging any information gained by reason of their appointment for any purpose other than the performance of their official duties.

Clause 213 provides for the inspection by any person of documents at the Registry. Annual returns furnished by societies will be available for inspection.

Clause 214 requires the Registrar to make an annual report to the Minister and both Houses of Parliament. (No change.)

Clause 215 makes provision for the Registrar to call a special general meeting and/or hold an investigation into the affairs of a society on the application of a majority of the board or of a specified proportion or number of the members of the society or of his own motion. (No substantial change.)

Clause 216 empowers the Registrar with the approval of the Minister to direct a society to suspend its operations where he considers it expedient to do so in the interests of members or depositors of the society. The society may make representations to the Advisory Council with respect to the direction. The Advisory Council must report thereon to the Minister, who may direct the Registrar to withdraw or amend the direction.

Clause 217 empowers the Registrar with the approval of the Minister to give a direction prohibiting the publication by a society of advertisements where he considers it expedient to do so in the interests of persons who may become members of or deposit money with the society. The Registrar must give prior notice of his intention to issue such a direction and the society may make representations to the Advisory Council with respect to the notice. The Advisory Council must report thereon to the Minister, who must consider the report before approving of the direction.

Clause 218 constitutes the Co-operative Societies Advisory Council, provides for its membership and sets out its functions. (No substantial change.)

PART XIII—GOVERNMENT GUARANTEES

Clause 219 empowers the Treasurer of Victoria to execute a guarantee in favour of an approved body with respect to the repayment of any loan made to a society by the approved body. (No change.)

Clause 220 limits the aggregate liability of the Treasurer of Victoria in respect of guarantees executed under clause 219 to \$20 million. (Increased from \$15 million.)

PART XIV—MISCELLANEOUS

Clauses 221 to 226 relate to evidence, judicial notice and proof of documents given by the Registrar or kept by a society. (No substantial change.)

Clause 227 deems as offences certain defaults by a society. (No change except for raising of penalty.)

Clause 228 renders a society guilty of an offence if it contravenes any restriction imposed by the Act on its powers. An officer of a society is concurrently liable with the society if he is knowingly a party to the breach. (No substantial change except for raising of penalties.)

Clauses 229 to 233 are provisions dealing with offences committed by officers of certain societies. By virtue of clause 223, which is an interpretation provision, these clauses apply to societies with a "disability", e.g. under official management, under special investigation, in receivership.

Clause 229 lists a number of widespread offences.

Clause 230 concerns liability where proper accounts are not kept.

Clause 231 renders it an offence for an officer of a society to incur on behalf of the society debts not likely to be paid.

Clause 232 empowers the Court to make a person convicted of an offence under clause 231 personally liable to the society. (These clauses have been adapted from the *Companies Act 1961*.)

Clause 234 renders it an offence for a person to offer to a member or creditor of a society an inducement with a view to securing his own appointment as the society's liquidator or official manager. The clause also makes it an offence for an officer of a society to destroy or falsify any books of the society. (Adapted from the *Companies Act 1961*.)

Clause 235 deems as offences certain frauds by an officer of a society. (Adapted from the *Companies Act 1961*.)

Clause 236 renders it an offence for a person to make false and misleading statements in any documents required by the Act. (Adapted from the *Companies Act 1961*.)

Clauses 237 and 238 are provisions giving the Court power to deal with officers of and other persons connected with certain "disabled" societies as defined in clause 239. Clause 237 empowers the Court to examine defaulting officers. Clause 238 empowers the Court to assess damages against delinquent officers. (Adapted from the *Companies Act 1961*.)

Clause 240 renders it an offence for a director to allow a society to carry on business with too few members. (No substantial change except for raising of penalty.)

Clause 241 renders it an offence for a society to use a name other than its registered name or an abbreviation approved by the Registrar. An officer who authorizes the use is also guilty of an offence. (No substantial change except for raising of penalties.)

Clause 242 renders it an offence for a person to use a seal of a society which does not contain the legible name of the society. (No change except for raising of penalty.)

Clause 243 renders it an offence for a person before a society is registered to take any money in consideration of the allotment of a share in the society. (No change except for raising of penalty.)

Clause 244 renders it an offence for a person to give to a member or intending member of a society a false copy of the society's rules. (No change except for raising of penalty.)

Clause 245 renders it an offence for a person to misappropriate any property of a society. (No change except for raising of penalty.)

Clause 246 renders it an offence for an officer or employé of a society to accept a commission in relation to dealings of a person with the society. The guilty officer or employé is liable to pay the society double the amount of the commission. (No substantial change except for raising of penalty.)

Clause 247 renders it an offence for a person other than an officer or employé of a society to accept a commission from any person as consideration for procuring for any person a loan from a society. A person convicted of an offence under this clause or clause 243 must repay the sum received to the person who paid it.

Clause 248 provides for a general offence and general penalty.

Clause 249 provides for a default penalty.

Clause 250 provides for the institution of offences against the Act or the regulations and the payment of any fines into the Consolidated Fund. (No change.)

Clause 251 makes provision for civil remedies in certain cases where a society has contravened the Act or its rules. (No change.)

Clause 252 provides for the making of regulations by the Governor in Council.

Clause 253 empowers the Court to make rules with respect to proceedings under the Act and any matter required to be prescribed by rules.

Schedule 1 lists the Acts which are repealed by clause 4.

Schedule 2 sets out particulars to be stated in a prospectus.

Schedule 3 sets out the requirements with which the accounts of a society are to comply.

Co-operation Bill

COMPARATIVE TABLE

<i>Bill Clause</i>	<i>Act No. 6225</i>	<i>Bill Clause</i>	<i>Act No. 6225</i>	<i>Bill Clause</i>	<i>Act No. 6225</i>
1	1	65	44A	129	..
2	1	66	45	130	..
3	1	67	46	131	75 (5A)
4	2	68	47	132	..
5	3	69	48	133	..
6	4	70	48A	134	..
7	5	71	50	135	75 (5)
8	6	72	51	136	76
9	7	73	52	137	75 (2)
10	8	74	53	138	..
11	9	75	54	139	..
12	10	76	55	140	..
13	11	77	..	141	..
14	12	78	..	142	75 (3), (4)
15	13	79	56	143	..
16	14	80	57	144	75 (7)
17	15	81	58	145	59
18	16	82	62	146	60, 75 (6)
19	17	83	63	147	61
20	18	84	64	148	..
21	18A, 18c	85	..	149	..
22	18B	86	..	150	..
23	18D	87	..	151	..
24	18E	88	..	152	..
25	18E	89	..	153	..
26	18EA	90	..	154	..
27	18F	91	..	155	..
28	18G	92	..	156	..
29	18H	93	..	157	..
30	..	94	..	158	..
31	..	95	..	159	..
32	..	96	..	160	..
33	..	97	66	161	..
34	..	98	67	162	..
35	..	99	68	163	..
36	..	100	..	164	..
37	..	101	69	165	..
38	..	102	..	166	..
39	..	103	69	167	..
40	..	104	69	168	..
41	..	105	69	169	..
42	..	106	..	170	..
43	..	107	73 (1)	171	..
44	22	108	73 (2), (3)	172	..
45	23	109	74	173	..
46	24	110	70	174	..
47	25	111	71	175	..
48	26	112	65	176	..
49	27	113	72	177	..
50	28	114	77	178	..
51	29	115	77A	179	..
52	30	116	77B, 77C	180	..
53	31	117	77D	181	..
54	32	118	77E	182	..
55	33	119	77F	183	..
56	34	120	77G	184	..
57	35	121	77H	185	..
58	36	122	77I	186	..
59	37	123	77J	187	..
60	38	124	77K	188	..
61	39	125	77L	189	..
62	40	126	77L	190	..
63	42	127	..	191	..
64	43	128	..	192	78

<i>Bill Clause</i>	<i>Act No. 6225</i>	<i>Bill Clause</i>	<i>Act No. 6225</i>	<i>Bill Clause</i>	<i>Act No. 6225</i>
193	79	214	92	235	..
194	80	215	88	236	..
195	82	216	..	237	..
196	..	217	..	238	..
197	..	218	93	239	..
198	..	219	95	240	105
199	..	220	96	241	106
200	..	221	97	242	107
201	..	222	98	243	108
202	..	223	99	244	109
203	..	224	100	245	111
204	..	225	101	246	112
205	..	226	102	247	..
206	..	227	103	248	113
207	83	228	104	249	..
208	84	229	..	250	114
209	85	230	..	251	115
210	86	231	..	252	116
211	87	232	..	253	..
212	..	233	..		
213	91	234	..		