

Co-operatives National Law Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Co-operatives National Law Bill 2020 (the Bill).

Policy objectives and the reasons for them

Co-operatives are democratically-controlled, jointly owned enterprises created for common economic, social and cultural needs and goals. In Queensland, co-operatives have been established in a range of diverse industry and community sectors, including agriculture, community housing and Aboriginal and Torres Strait Islander arts. Co-operatives contribute to productivity, growth and employment within the Queensland economy.

The policy objective of the Bill is to modernise and improve the regulatory framework for the formation, registration and management of co-operatives in Queensland, principally through nationally-harmonised co-operatives legislation.

The Bill is expected to benefit Queensland co-operatives by providing an improved regulatory environment that supports the ongoing viability of co-operatives as a business and enterprise structure. Specific benefits include a reduction in regulatory burdens, increased operational flexibility, and consistency in co-operatives legislation across the Australian states and territories.

Achievement of policy objectives

The Bill principally achieves the policy objective by repealing the Queensland *Cooperatives Act 1997*, and in its place, applying the Co-operatives National Law (CNL) as a law of Queensland. The CNL is template legislation, contained in the appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW).

The CNL is the result of collaboration between the states and territories, originally under the auspices of the Ministerial Council on Consumer Affairs (now known as the Legislative and Governance Forum on Consumer Affairs or 'CAF'). The agreed operation of the CNL scheme is outlined in the Australian Uniform Co-operative Laws Agreement (the Agreement).

Under the CNL, states and territories continue to be responsible for administering co-operatives laws in their respective jurisdictions (including, for example, by providing registration services). However, by administering the CNL or a corresponding law, the states and territories will apply a consistent legislative framework.

Replacing Queensland's current *Cooperatives Act 1997* with the CNL will mean that Queensland co-operatives benefit from a consistent system of law for co-operatives. Other key reforms of the CNL include:

- (a) updating of provisions to ensure consistency of laws across all jurisdictions;
- (b) automatic mutual recognition of co-operatives by other states and territories resulting in lower costs and paperwork for co-operatives trading interstate;
- (c) simplification of financial reporting and auditing requirements for small co-operatives;
- (d) updating of directors' and officers' duties to modern standards of corporate governance, integrated with co-operative principles;
- (e) new fundraising provisions for co-operative capital units; and
- (f) referencing of the *Corporations Act 2001* (Cth) has been updated.

The Bill provides for specific jurisdictional arrangements to enable the operation of the CNL in Queensland. For example, the Bill makes provision for particular Queensland registry processes, and prescribes the Queensland court and tribunal with jurisdiction to determine specified matters arising under the CNL. The Bill also makes minor, consequential amendments to a number of Queensland Acts to reflect the CNL.

In terms of subordinate legislation, the Bill contains provisions to apply the Co-operatives National Regulations (CNR) made under the CNL, as a law of Queensland. The CNR are template regulations that support the CNL by providing for a range of administrative matters that are common to each jurisdiction.

In addition, the Bill contains a regulation-making power to allow local regulations to be made in Queensland. Local regulations will support the operation of the CNL, by making provision for matters that are specific to Queensland (including, for example, by prescribing fees for various registry services).

Alternative ways of achieving policy objectives

Legislation is the only way to achieve the policy objective of modernising and improving the regulatory framework for co-operatives, principally through nationally-harmonised co-operatives laws. The Bill seeks to achieve the policy objective by applying the CNL as a law of Queensland, by reference to the CNL as set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW).

An alternative legislative approach would be to enact stand-alone Queensland legislation that corresponds, and is consistent, with the CNL. However, it is considered that applying the CNL by way of reference to the template legislation held by New South Wales is an effective and efficient way of achieving the policy objective. It ensures any future changes to the template CNL (and CNR) apply in Queensland preserving the national scheme.

Estimated cost for government implementation

Implementation of the CNL will have resource impacts on the Queensland Office of Fair Trading, including increased capital costs (for system development) and operating costs (for communications, stakeholder education and consultation, website adjustments and implementation of registry forms). The implementation and ongoing administration costs are expected to be met from within existing resources.

Consistency with fundamental legislative principles

The Bill

Legislation has sufficient regard to the institution of Parliament

In accordance with section 4(4) of the *Legislative Standards Act 1992*, fundamental legislative principles include that legislation has sufficient regard to the institution of Parliament. Assessing whether a Bill has sufficient regard to the institution of Parliament depends on a number of considerations, including for example, whether the Bill authorises the amendment of an Act only by another Act (*Legislative Standards Act 1992*, section 4(4)(c)).

Clause 4 of the Bill applies the 'Co-operatives National Law' as a law of Queensland, subject to certain modifications, and provides that the CNL 'applies as if it were an Act' (Bill, clause 4(1)(c)). The 'Co-operatives National Law' is defined in clause 3(1) of the Bill to mean 'the Co-operatives National Law, as in force from time to time, set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012 (NSW)*'.

Future amendments to the template legislation for the CNL, which are made through the Parliament of New South Wales as the host jurisdiction, will automatically apply in Queensland. Similarly, national regulations made under the CNL, as in force from time to time, are also applied as a law of Queensland.

Arguably, this arrangement infringes on the fundamental legislative principle that legislation has sufficient regard to the institution of the Queensland Parliament. However, it is considered that this possible breach is justified and appropriate, having regard to the policy objectives of the Bill.

Automatically adopting amendments to the CNL is an efficient, effective and timely way of ensuring the legislative framework in Queensland maintains consistency with the template legislation held by New South Wales, and therefore, co-operatives laws operating in other states and territories. In this respect, the arrangement will contribute to the benefits of nationally-harmonised co-operatives laws being realised in Queensland.

In terms of mitigating the potential breach of fundamental legislative principles, the Queensland Parliament would retain the ability to amend Queensland specific matters in the Bill. In terms of subordinate legislation, clause 6 of the Bill provides for scrutiny of national regulations by the Queensland Parliament.

It is also relevant to note that the Agreement entered into by participating states and territories deals with proposed amendments to the CNL. Under the agreement, amendments to the CNL may be made by a majority resolution of relevant state and territory fair trading and consumer affairs Ministers, as members of the Ministerial Council on Consumer Affairs (now the Legislative and Governance Forum on Consumer Affairs). In that respect, the Queensland Minister will be consulted and vote on proposed future amendments to the CNL.

Delegation of legislative power

In accordance with section 4(4) of the *Legislative Standards Act 1992*, assessing whether a Bill has sufficient regard to the institution of Parliament may also depend on whether the Bill:

- (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
- (b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The CNL allows the Registrar to approve various exemptions from requirements under the CNL. However, each jurisdiction is able to specify the manner in which the exemption is granted by prescribing a “designated instrument”. Other jurisdictions allow exemptions to be made administratively by their respective Registrars either by writing, an order in writing and/or by Gazette. Clause 10 of the Bill specifies the “designated instrument” in Queensland, as a notice published on a Queensland Government website for specified exemptions, avoiding the requirement to publish notices/exemptions in the Queensland Government Gazette or as part of subordinate legislation as required under the *Queensland Cooperatives Act 1997*.

Publishing of a notice on a Queensland Government website raises the fundamental legislative principle of whether the legislation has sufficient regard to the institution of Parliament and allows the delegation of administrative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992*, section 4(4)(a)). However, the publication of a notice on a Queensland Government website will reduce the administrative burden and costs on government, and provide timelier customer service to co-operatives. This approach aligns with the aim of the CNL to reduce red tape and make co-operatives trading easier.

It is noted, however, that clause 10(2) of the Bill continues the requirement under the *Cooperatives Act 1997* for specified exemptions to be made by regulation under the CNL, namely:

- compliance with requirements regarding entitlements of former members of trading co-operatives (section 141 under the *Cooperatives Act 1997*, section 171(1) under the CNL);
- compliance with particular requirements for co-operatives seeking to be registered as a corporation under the *Corporations Act 2001* (Cth) or as a corporation under other legislation prescribed by the CNL or local regulations (section 301 under the *Cooperatives Act 1997*, section 404(4) under the CNL);
- compliance with particular requirements associated with a co-operative seeking to be voluntarily wound up (section 309 under the *Cooperatives Act 1997*, section 445(3) under the CNL).

Clauses 13 and 14 allow the Registrar to grant exemptions from a restriction on corporations registering a name including the word “co-operative” or similar words (section 220(4) of the CNL) and exemption from restriction on use of the word “co-operative” or similar words (section 225 of the CNL). Unlike the approach taken by other jurisdictions, which have included the equivalent provisions in subordinate legislation, the Bill provides

for these powers in primary legislation. While either approach achieves the same policy outcome, it is considered that these particular powers are more appropriately placed in primary legislation, in order to provide sufficient regard to the institution of Parliament and allow the delegation of administrative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992*, section 4(4)(a)) and sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (*Legislative Standards Act 1992*, section 4(4)(b)).

The Co-operatives National Law (CNL template legislation)

As part of the normal examination process required under the New South Wales *Legislation Review Act 1987*, the New South Wales Legislation Review Committee reviewed the template CNL following its introduction as part of the Co-operatives (Adoption of National Law) Bill 2012. Based on scrutiny principles set out in the *Legislation Review Act 1987* (NSW), the New South Wales Legislation Review Committee considered 28 issues contained in the New South Wales Bill, adversely commenting on four provisions. The New South Wales Bill was passed by the New South Wales Parliament without amendment.

The four provisions attracting an adverse comment and the reasons justifying their inclusion in the CNL were, in summary:

- **Right of entry to seize documents and right to silence**

Clauses 500 and 502 (now sections 500 and 502 of the CNL) provide certain inspectors' powers. The New South Wales Legislation Review Committee stated it will always comment on clauses which provide access to premises without a warrant. The provisions were justified as necessary to protect the interests of the co-operatives' members and creditors.

Under the CNL, a person is not excused from making a statement if required by an inspector on the grounds that making the statement may tend to incriminate the person (section 503(1) of the CNL). While there are protections in that the statement will not be admissible in evidence against the speaker in circumstances where the speaker notes that the statement might incriminate them (section 503(2) of the CNL), the New South Wales Legislation Review Committee stated it will be concerned to comment in circumstances where a person's right to silence is removed by legislation. However, the provisions were justified on the basis that the powers are similar to those available to the Australian Securities and Investments Commission in relation to companies.

- **Procedural fairness**

Clauses 570 to 576 (now sections 570 and 576 of the CNL) provide that if the Registrar fails to approve applications, then it is taken that the Registrar has refused to approve or register the application. The New South Wales Legislation Committee noted the New South Wales Bill provides that a co-operative is required to treat any lack of notice from the Registrar with respect to an application or an approval as a refusal of that application or approval.

This part of the CNL is procedural only, circumscribed by clauses 24 to 26 (now sections 24 and 26 of the CNL), which impose strict time limits on the Registrar to approve rules and disclosure statements and provide that the Registrar must indicate a refusal in writing with reasons.

- **Matters in the regulations that ought to be in the legislation**

Clause 18(2) (now section 18(3) of the *Co-operatives (Adoption of National Law) Act 2012* (NSW)) provides that the Regulations may create offences and impose penalties for an offence. The New South Wales Legislation Review Committee referred to Parliament whether it was reasonable for the New South Wales Bill to provide that the Regulations may create offences and impose penalties for an offence. This was justified as clause 612(5) (now section 612(5) of the CNL) limits this power to minor offences carrying a penalty of up to \$2,000 and the Co-operatives National Regulations were given unanimous approval by CAF Ministers in accordance with the Agreement.

- **Matters in the regulations that ought to be in the legislation**

Clause 455 (now section 455 of the CNL) allows a regulation to be made prescribing the grounds on which a co-operative may appoint an administrator, transfer its engagements (for example, a partial or total transfer of a co-operative's business to another co-operative), and/or be wound up. The New South Wales Legislation Review Committee was concerned a provision for the winding up of a co-operative could be determined in the Regulations.

The Committee was of the view that the circumstances for which an un-elected or non-judicial officer can wind up a co-operative is a matter for the governing legislation, and not the Regulations. However, the justification provided for the regulation making power was that the grounds for winding up a co-operative were limited, identical to existing co-operatives legislation and the approach provided a means to deal with unforeseen circumstances. Also, any decision by the Registrar to wind up a co-operative is subject to review by the Supreme Court on appeal.

Consultation

In December 2009, a Consultation Regulatory Impact Statement, including a draft version of the CNL, was released for public consultation. Consultation closed in February 2010 with 22 submissions received. Submissions were published on the New South Wales Fair Trading website. Stakeholder feedback was taken into consideration in finalising the CNL.

A draft Decision-Making Regulatory Impact Statement was prepared by New South Wales Fair Trading, on behalf of the states and territories. The Commonwealth Office of Best Practice Regulation (OBPR) advised that the Decision-Making Regulatory Impact Statement complied with the COAG Regulatory Impact Statement Guidelines.

Additionally, in December 2012, New South Wales Fair Trading, as the host jurisdiction for the CNL, released a discussion paper on financial reporting by small co-operatives, which focused on defining a 'small co-operative' and the scope of the financial obligations in reporting to members. The discussion paper invited submissions from stakeholders.

The Queensland OBPR has been consulted about the proposal to apply the CNL as a law of Queensland. The Queensland OBPR has advised that as the proposal was previously the subject of extensive national consultation, the proposal is excluded from further regulatory assessment under the *Queensland Government Guide to Better Regulation*.

However, the Queensland OBPR recommended that further consultation with Queensland co-operatives be undertaken. Accordingly, in September 2019, registered Queensland co-operatives and peak stakeholders were consulted on an exposure draft of the Bill.

Stakeholders who responded were broadly supportive of the Bill, and of adopting the CNL in Queensland, with stakeholders anticipating the benefits the CNL would provide to small co-operatives in Queensland through reduced reporting requirements. Co-operatives supported the seamless transition across to the CNL with their existing registration and rules.

In addition to the benefits in cost savings for co-operatives, stakeholders noted that adopting the CNL will enhance choice of business structure for Queensland businesses and enterprises, promote the formation of new co-operatives, and achieve the objective of uniform laws in Australia. Stakeholders noted that uniform laws reduce costs and create opportunities to deliver benefits to Queensland's economy and society and promote further efficiencies for businesses operating across state and territory borders.

Consistency with legislation of other jurisdictions

As this Bill applies the CNL template legislation as a law of Queensland, the legislation is consistent with other jurisdictions. All states and territories, other than Queensland, have previously adopted and commenced the CNL, or a corresponding law.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that when enacted, the Bill may be cited as the *Co-operatives National Law Act 2020*.

Clause 2 states that the Bill is intended to commence on a day fixed by proclamation.

Clause 3 defines certain terms for the purposes of the Bill. Subclause (1) sets out definitions for the terms; “Co-operatives National Law”, “Co-operatives National Law (Queensland)”, “Co-operatives National Regulation (Queensland)”, “local regulation”, “national regulation”, “public trustee”, “Registrar” and “this jurisdiction”. Subclause (2) provides that other terms used throughout the Bill and the Co-operatives National Law are to have the same meaning as those provided in the Co-operatives National Law.

Part 2 Application of Co-operatives National Law

Division 1 General

Clause 4 subclause (1) applies the Co-operatives National Law as a law of Queensland. Subclause (2) provides that the Co-operatives National Regulations, as modified by the local regulation and subject to clause 6 of this Bill (Parliamentary scrutiny of national regulations), apply for the purposes of the Co-operatives National Law (Queensland).

Clause 5 excludes the operation of the *Acts Interpretation Act 1954*, the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992* from applying to the applied provisions of the Co-operatives National Law (Queensland) or another instrument made under that Law, other than to the extent provided for in subclause (2) and clause 6. Subclause (2) provides for the creation of offences and changes in penalties by applying section 20C of the *Acts Interpretation Act 1954* to the Co-operatives National Law (Queensland) and an instrument made under that Law. This provision has been included to maintain uniformity with the template Co-operatives National Law. Subclause (2) also applies part 12 of the *Acts Interpretation Act 1954* to give effect to section 38 of the Co-operatives National Law by ensuring the meaning of ‘coastal waters of this jurisdiction’ is appropriately applied. The local regulation is unique to Queensland and will be subject to the requirements of the *Acts Interpretation Act 1954*, the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*.

Clause 6 allows for Parliamentary scrutiny of a national regulation. The *Statutory Instruments Act 1992* section 49 requires subordinate legislation to be tabled in the Legislative Assembly and section 50 provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation tabled in the Assembly if notice of a disallowance motion is given by a member within fourteen sitting days after the tabling. If a national regulation ceases to have effect because of the operation of subclause (1), the national regulation ceases to have effect for the purposes of the Co-operatives National Law (Queensland), but the cessation does not affect the application of the regulation in another jurisdiction.

Division 2 Meaning of particular terms for Co-operatives National Law (Queensland)

Clause 7 defines certain terms that are used in the Co-operatives National Law (Queensland). This is necessary to support the application of the CNL as a law of Queensland.

Clause 8 provides the chief executive is designated as the Registrar of Co-operatives in Queensland.

Clause 9 specifies that the chief executive, a magistrate or the Minister is the "designated authority" for particular sections of the Co-operatives National Law (Queensland). The chief executive is the designated authority for section 492 which relates to the appointment of inspectors, section 494 which relates to the provision of identity cards to inspectors, section 601 which relates to arrangements for the payment of fees to inspect the register of co-operatives and section 622 which relates to the approval of forms for use under the Co-operatives National Law (Queensland). A magistrate is the designated authority for sections 504 and 505 which set out requirements for obtaining a warrant under the Co-operatives National Law (Queensland). The Minister is the designated authority for section 520 which relates to the appointment of investigators to hold an inquiry into the affairs of a co-operative. This continues current arrangements under the *Cooperatives Act 1997*.

Clause 10 specifies that a notice published on a Queensland Government website is the "designated instrument" that is required for the purpose of certain sections of the Co-operatives National Law (Queensland). Subclause (2) continues current exemption requirements, under the *Cooperatives Act 1997*, to be made by a local regulation under the CNL:

- (a) compliance with requirements regarding entitlements of former members of trading co-operatives (section 141 under the *Cooperatives Act 1997*, section 171(1) under the CNL);
- (b) compliance with particular requirements for co-operatives seeking to be registered as a corporation under the *Corporations Act 2001* (Cth) or as a corporation under other legislation prescribed by the CNL or local regulations (section 301 under the *Cooperatives Act 1997*, section 404(4) under the CNL);
- (c) compliance with particular requirements associated with a co-operative seeking to be voluntarily wound up (section 309 under the *Cooperatives Act 1997*, section 445(3) under the CNL).

Subclause (3) specifies a notice in the approved form is the designated instrument for a liquidator giving notice of his or her appointment under section 443(5) of the Co-operatives National Law (Queensland). The notice is given to the Registrar and published on a Queensland Government website.

Clause 11 specifies the "designated tribunal" for the purposes of the Co-operatives National Law (Queensland). Subclause (1) specifies the Supreme Court, as the designated tribunal for the Co-operatives National Law (Queensland) with the exception of Part 7.3. Subclause (2) specifies the Queensland Civil and Administrative Tribunal (QCAT) as the designated tribunal for the purpose of Part 7.3 of the Co-operatives National Law (Queensland). Part 7.3 sets out the requirements for appeals against decisions of the Registrar of Co-operatives. This continues current arrangements under

the *Cooperatives Act 1997*.

Division 3 Modifications of Co-operatives National Law for this jurisdiction

Clause 12 explains that this division modifies the Co-operatives National Law for the purposes of applying the modified Co-operatives National Law as a law of Queensland.

Clause 13 provides additional Queensland provisions (6A) to (6D) inclusive, specifying the process the Registrar may use to grant exemptions from a restriction on corporations registering a name including the word “co-operative” or similar words under section 220(4) of the Co-operatives National Law. Other jurisdictions have the same exemption power in their respective local regulations. Queensland has maintained consistency with the policy in other jurisdictions, but as provided for in the Bill considers that this power is more appropriately placed in primary legislation.

Clause 14 provides additional Queensland provisions (1A) to (1D) inclusive, specifying the process the Registrar may use to grant exemptions from restriction on use of the word “co-operative” or similar words under section 225 of the Co-operatives National Law. Other jurisdictions have the same exemption power, however the process is contained in their respective local regulations. Queensland has maintained consistency with the policy in other jurisdictions, but as provided for in the Bill considers that this power is more appropriately placed in primary legislation.

Clause 15 adds provisions (6) to (8) inclusive, which aid the interpretation of the additional Queensland provisions inserted by clauses 13 and 14. Subclause (2) omits schedule 4 part 8 (section 38) “Application to coastal sea”, as clause 5(2) of this Bill applies part 12 of the *Acts Interpretation Act 1954* to define “coastal water”.

Division 4 Provisions specific to this jurisdiction

Clause 16 specifies that the reference in section 592(1)(a) of the *Corporations Act 2001* (Cth) to 23 June 1993, referred to in sections 201(b), 444(3)(k) and 451(1)(f) of the CNL is, under the Co-operatives National Law (Queensland), to be read as 1 July 2001. Section 592 imposes liability on directors of companies that incurred debts and traded while insolvent before 23 June 1993. 1 July 2001 is the date specified in the *Cooperatives Act 1997* which applied section 588G of the *Corporations Act 2001* (Cth) governing the duty of directors of co-operatives to prevent insolvent trading. The specified different date relates to changes to the liability of directors under insolvent trading provisions in the *Corporations Act 2001* (Cth) that were not adopted by the *Cooperatives Act 1997* until a later time.

Clause 17 modifies provisions in the *Corporations Act 2001* (Cth) for unclaimed consideration for shares compulsorily acquired by a co-operative under section 436(3)(b)(i) of the Co-operatives National Law (Queensland). References in section 1339 of the *Corporations Act 2001* (Cth) to crediting the money to the Companies and Unclaimed Moneys Special Account are modified by the clause to provide that in Queensland unclaimed consideration be paid to the public trustee as unclaimed money.

Clause 18 specifies that the references in sections 601AD to 601AF inclusive, of the *Corporations Act 2001* (Cth) to the “Commonwealth”, referred to in section 453(d) of the CNL is, under the Co-operatives National Law (Queensland), to be read as a reference to “the State of Queensland”. Section 601AD to 601AF specify the Registrar’s power to fulfil the outstanding obligations of a deregistered co-operative. Subsection (2) states that

references in section 601AE of the *Corporations Act 2001* (Cth) to the Commonwealth controlled 'Special Account', referred to in section 453(e) of the CNL, are to be read as references to 'an account in accordance with the *Financial Accountability Act 2009*'.

Clause 19 prescribes the State of Queensland as the entity to whom the Registrar can direct a co-operative to pay the costs of an inquiry under section 530(3)(b) of the Co-operatives National Law (Queensland).

Clause 20 expands and specifies that the secrecy provisions contained in section 537 of the Co-operatives National Law (Queensland) include the same persons listed under section 456 of the *Cooperatives Act 1997*. Section 537 ensures a person who is engaged in the administration of the Co-operatives National Law (Queensland) or a former Act, must not, other than provided by section 537, record, make use of or divulge information obtained in the course of the administration. Certain persons are specified under certain circumstances in the administration of justice, as persons information may be divulged to. Persons specified in former section 456 of the *Cooperatives Act 1997* specific to Queensland are listed in subclause (1); the Queensland Treasurer, the Queensland Commissioner of State Revenue and the Queensland Auditor General, as they are not already provided for in section 537 of the CNL. Subclause (2) in effect continues section 456(4)(h) of the *Cooperatives Act 1997* allowing information to be divulged to the Crime and Corruption Commission if the Registrar received a written request for the information from the Commission and the Minister and the Registrar approve in writing, the giving of the information to the Commission. Subclause (3) provides that the definition of 'former Act' in section 537(6) of the CNL, for the purposes of the Co-operatives National Law (Queensland), is a reference to the *Cooperatives Act 1997*, which is repealed by this Bill.

Clause 21 states a pecuniary penalty ordered to be paid in Queensland under section 556(1) of the Co-operatives National Law (Queensland) is a debt payable by the person to the State of Queensland and may be recovered from the person by the State as a debt payable to the State of Queensland.

Clause 22 specifies the *Public Records Act 2002*, for section 603 (Disposal of records by Registrar) of the Co-operatives National Law (Queensland).

Clause 23 provides that a fee must not be charged under an Act for the registration of an instrument in relation to a transfer of property under section 413 or 481 of the Co-operatives National Law (Queensland) in respect of a merger of co-operatives, a transfer of engagements of a co-operative or a transfer of incorporation. This provision reflects current section 327 and section 378 of the *Cooperatives Act 1997*.

Clause 24 provides the Co-operatives National Law (Queensland) does not apply to a society registered as a co-operative housing society under the *Financial Intermediaries Act 1996*. The *Financial Intermediaries Act 1996* provides a separate regulatory system for such entities.

Clause 25 provides that proceedings for an offence under the Bill, the Co-operatives National Law (Queensland) or the Co-operatives National Regulation (Queensland) is a summary proceeding under the *Justices Act 1886* and must be commenced within five years after the commission of the offence and may be brought by the Registrar or a person authorised in writing by the Registrar to bring the proceedings.

Clause 26 specifies that a proceeding for the recovery of a fine or penalty imposed on a person under the rules of a co-operative for an infringement of the rules, may be brought

only by the co-operative.

Part 3 Regulation-making power

Clause 27 provides for the making of regulations by the Governor in Council. Subclause (2) lists some matters regulations may be made for, without limiting subclause (1). This includes providing for the refund of all or part of a fee paid under the Co-operative National Law (Queensland) or imposing penalties of no more than 20 penalty units for contravention of a regulation.

Part 4 Repeal

Clause 28 repeals the *Cooperatives Act 1997*.

Part 5 Transitional and saving provisions for repealed Cooperatives Act 1997

Division 1 Preliminary

Clause 29 defines certain terms for this part.

Division 2 General transitional and saving provisions

Clause 30 provides that an existing body (whether a co-operative, association or federation) whose registration is in force under the *Cooperatives Act 1997* immediately before the commencement of this clause is taken to be registered under the Co-operatives National Law (Queensland). Subclause (3) specifies a body that was a trading cooperative under the *Cooperatives Act 1997* immediately before the commencement of this clause is taken to be a distributing co-operative under the Co-operatives National Law (Queensland). A body that was a non-trading cooperative under the *Cooperatives Act 1997* immediately before the commencement of this clause is taken to be a non-distributing co-operative under the Co-operatives National Law (Queensland). A body that was an association or federation under the *Cooperatives Act 1997* immediately before the commencement of this clause is taken to be a co-operative group under the Co-operatives National Law (Queensland). The note directs the reader to specific transitional and savings provisions for foreign cooperatives registered under the *Cooperatives Act 1997* to schedule 3, section 2 of the Co-operatives National Law (Queensland). A registered co-operative's certificate of registration and disclosure statement continues in effect under the Co-operatives National Law (Queensland). A person or body that was a member of the cooperative under the *Cooperatives Act 1997* continues to be a member under the Co-operatives National Law (Queensland). A resolution made by the cooperative under the *Cooperatives Act 1997* that is in effect immediately before the commencement continues in effect as if it were made under the Co-operatives National Law (Queensland).

Clause 31 provides for a general transitional and savings provision so that anything done under the *Cooperatives Act 1997*, that corresponds to a provision of the Co-operatives National Law (Queensland), is taken to have been done under the Co-operatives National Law (Queensland). Appointment of a person under the *Cooperatives Act 1997*, continues under the Co-operatives National Law (Queensland). A thing or circumstance created under the *Cooperatives Act 1997*, continues to have the same status, operation and effect under the Co-operatives National Law (Queensland).

Division 3 Formation

Clause 32 provides that if a formation meeting was held under section 16 of the *Cooperatives Act 1997* and immediately before the commencement, an application for registration of the proposed co-operative had not been made under section 19 of the *Cooperatives Act 1997*, the formation meeting is taken to have been held under chapter 2, part 2.1, division 2 of the Co-operatives National Law (Queensland).

Clause 33 provides that if a formation meeting was held under section 23 of the *Cooperatives Act 1997* for an existing corporation and immediately before the commencement, an application for registration of the proposed co-operative had not been made under section 22 of the *Cooperatives Act 1997*, the formation meeting is taken to have been held under section 30 of the Co-operatives National Law (Queensland).

Clause 34 provides that if a disclosure statement was approved under section 17 of the *Cooperatives Act 1997* and immediately before the commencement, an application for registration of the proposed co-operative had not been made under section 19 or 22 of the *Cooperatives Act 1997*, the approval of the disclosure statement continues in effect and is taken to be an approval under section 25 of the Co-operatives National Law (Queensland).

Clause 35 provides that if a draft disclosure statement was submitted to the registrar under section 17 of the *Cooperatives Act 1997* and immediately before the commencement, the registrar had not approved, refused or been taken to have approved a disclosure statement, section 17 of the *Cooperatives Act 1997* continues to apply. If the registrar approves or has approved the disclosure statement, the approval continues in effect and is taken to be an approval under section 25 of the Co-operatives National Law (Queensland).

Clause 36 provides that if the registrar approved rules for a proposed cooperative under section 18 of the *Cooperatives Act 1997* and immediately before the commencement, an application for registration of the proposed co-operative had not been made under section 19 or 22 of the *Cooperatives Act 1997*, the approval of the rules continues in effect and is taken to be an approval under section 24 of the Co-operatives National Law (Queensland).

Clause 37 provides that if draft rules for a proposed cooperative were submitted to the registrar under section 18 of the *Cooperatives Act 1997* and immediately before the commencement, the registrar had not approved, or refused to approve the rules under section 18 of the *Cooperatives Act 1997*, section 18 continues to apply. If the registrar has approved the rules, the approval continues in effect and is taken to be an approval under section 24 of the Co-operatives National Law (Queensland).

Clause 38 provides that if an application for registration of a proposed cooperative was made under section 19 or 22 of the *Cooperatives Act 1997* and immediately before the commencement, the registrar had not decided the application, then part 2 of the *Cooperatives Act 1997* continues to apply. If the registrar is satisfied the requirements for registration for the application have been met, the registrar must register the proposed co-operative under the Co-operatives National Law (Queensland), which applies as if the decision were made under section 27 or 32 of the Co-operatives National Law (Queensland).

Clause 39 provides that if before commencement, an application was made to the Queensland Civil and Administrative Tribunal (QCAT) under section 29, 30 or 31 of the *Cooperatives Act 1997* and immediately before the commencement, QCAT had not finished dealing with the application, QCAT must continue to hear the application under the *Cooperatives Act 1997*. A decision made by QCAT is taken to be a decision under the Co-operatives National Law (Queensland).

Clause 40 provides for a continuation of a right to apply to QCAT if immediately before the commencement a person had a right to apply to QCAT under part 2, division 7 of the *Cooperatives Act 1997*, and the person had not yet made the application and the period for making the application to QCAT had not expired. The person may apply to QCAT as if the *Cooperatives Act 1997* had not been repealed and a decision made by QCAT in relation to the application is taken to be a decision made under the Co-operatives National Law (Queensland).

Division 4 Dealings with cooperatives

Clause 41 continues part 3, division 3 of the *Cooperatives Act 1997*, in relation to a person's dealings with a cooperative, or dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a cooperative, if the dealings happened before the commencement.

Division 5 Membership

Clause 42 provides that if a fine has been imposed on a member under section 74 of the *Cooperatives Act 1997*, and it has not been paid before the commencement, it continues in effect after the commencement as if the fine were imposed under section 126.

Clause 43 provides that a co-operative may impose a fine on a member under section 126 for an infringement of the rules of the co-operative that happened before the commencement if a fine was not imposed on the member for the same infringement under section 74 of the *Cooperatives Act 1997*.

Clause 44 continues section 81 of the *Cooperatives Act 1997* in relation to a transfer of property made under part 4, division 3 of the *Cooperatives Act 1997* before the commencement.

Clause 45 provides that if before commencement, an application was made to the Supreme Court under part 4 "Membership" of the *Cooperatives Act 1997* and immediately before the commencement, the Supreme Court had not finished dealing with the application, the Supreme Court must continue to hear the application under the *Cooperatives Act 1997*. An order made by the Supreme Court is taken to be an order made under the chapter 2, part 2.5.

Clause 46 continues orders made by the Supreme Court under part 4 "Membership" of the *Cooperatives Act 1997* in effect immediately before the commencement and continues in effect as if the order were made under chapter 2, part 2.5.

Clause 47 provides a person or co-operative may make an application to the Supreme Court under chapter 2, part 2.5 in relation to a matter arising before the commencement.

Division 6 Rules

Clause 48 provides that rules which were registered for a co-operative under the *Cooperatives Act 1997*, and which are in force immediately before the commencement of the Bill, will continue in effect and be the co-operative's rules under the Co-operatives National Law (Queensland). However, if a provision of the co-operative's existing rules are inconsistent with the Co-operatives National Law (Queensland), the Co-operatives National Law (Queensland) prevails to the extent of the inconsistency. Moreover, for applying the existing rules, a reference in the existing rules to a requirement under the *Cooperatives Act 1997* is taken to be a reference to a requirement under the Co-operatives National Law (Queensland) that is equivalent to, or substantially the same as, the requirement under the *Cooperatives Act 1997*.

Clause 49 provides that if before commencement, a draft of a proposed alteration of a cooperative's rules was submitted to the registrar under section 106 of the *Cooperatives Act 1997* and immediately before the commencement, the registrar had not approved the proposed alteration or a different alteration, or refused to approve the proposed alteration, section 106 of the *Cooperatives Act 1997* continues to apply. If the registrar approves the proposed alteration, or a different alteration, the approval is taken to be an approval under section 60 of the Co-operatives National Law (Queensland).

Clause 50 provides that if before commencement, an application for registration of an alteration of a cooperative's rules was made under section 109 of the *Cooperatives Act 1997* and immediately before the commencement, the Registrar had not registered the alteration or refused to register the alteration, section 109 of the *Cooperatives Act 1997* continues to apply. If the Registrar decides to register the alteration, the Co-operatives National Law (Queensland) applies as if the decision were made under section 63 of the Co-operatives National Law (Queensland).

Clause 51 provides that if before commencement, an application was made to QCAT under section 110 of the *Cooperatives Act 1997* and immediately before the commencement, QCAT had not finished dealing with the application. QCAT must continue to hear the application under the *Cooperatives Act 1997*. A decision made by QCAT is taken to be a decision made under the Co-operatives National Law (Queensland).

Clause 52 provides if a cooperative had a right to apply to QCAT under section 110 of the *Cooperatives Act 1997* for a review of a matter, but had not made the application, and the period for making the application under the QCAT Act has not expired, the cooperative may apply to QCAT for a review. A decision made by QCAT in relation to the application is taken to be a decision made under the Co-operatives National Law (Queensland).

Division 7 Active membership

Clause 53 provides that if before commencement, a person had made an application to the Supreme Court under section 125(5) relating to the cancellation of membership of an inactive member under the *Cooperatives Act 1997* and immediately before the commencement, the Supreme Court had not finished dealing with the application, the Supreme Court must continue to hear the application under the *Cooperatives Act 1997*. An order made by the Supreme Court is taken to be an order made under section 162 of the Co-operatives National Law (Queensland).

Clause 54 continues orders or directions made by the Supreme Court under section 131 of the *Cooperatives Act 1997* in effect immediately before the commencement and

continues in effect as if the order were made under section 162 of the Co-operatives National Law (Queensland).

Clause 55 provides a person may make an application to the Supreme Court for an order under section 162 in relation to the cancellation of a person's membership under section 125 of the *Cooperatives Act 1997* before the commencement.

Clause 56 continues the register of cancelled memberships under section 135 of the *Cooperatives Act 1997* by requiring inclusion of the information in a register kept under section 166 of the Co-operatives National Law (Queensland).

Clause 57 preserves 5 year entitlements for members of co-operatives that is provided under the *Cooperatives Act 1997*.

Division 8 Shares

Clause 58 ensures share capital of a cooperative under the *Cooperatives Act 1997* continues to be the share capital of the co-operative under the Co-operatives National Law (Queensland). A share held by a person under the *Cooperatives Act 1997* continues to be held by the person under the Co-operatives National Law (Queensland). An amount paid for shares under the *Cooperatives Act 1997* immediately before the commencement is taken to be an amount unpaid for the shares under the Co-operatives National Law (Queensland).

Clause 59 provides that section 78 of the Co-operatives National Law (Queensland) does not apply to shares issued before the commencement of that section.

Division 9 Other provisions

Clause 60 provides the appointment of a person as a deputy registrar or assistant registrar under the *Public Services Act 2008* under section 435 of the *Cooperatives Act 1997* is not affected by the repeal of the *Cooperatives Act 1997*.

Clause 61 provides for a reference in an Act or document to the repealed *Cooperatives Act 1997* be taken to be a reference to the Co-operatives National Law (Queensland).

Part 6 Amendment of Acts

Division 1 Amendment of Associations Incorporation Act 1981

Clause 62 provides that this division amends the *Associations Incorporation Act 1981*.

Clause 63 omits the definition of "former society", which has been moved to section 106 of the *Associations Incorporation Act 1981*, as it is only referred to in section 106. Subclause (2) omits and inserts a definition of "registrar" as the Registrar under the Co-operatives National Law (Queensland). Subclause (3) replaces the term "cooperative" with "co-operative", being the nationally consistent spelling.

Clause 64 inserts new Part 16, Division 3 providing for transitional provisions for the *Co-operatives National Law Act 2020*.

Division 2 Other Amendments

Clause 65 provides for the consequential amendments to the Acts set out in Schedule 1 to the Bill.

Schedule 1

Schedule 1 makes provision for the consequential amendment of:

- *Co-operatives National Law Act 2020*
- *Associations Incorporation Act 1981*
- *Corporations (Queensland) Act 1990*
- *Duties Act 2001*
- *Housing Act 2003*
- *Public Service Act 2008*
- *Water Act 2000*