

# Co-operative Societies Bill.

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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1921.

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## A BILL

To make provision for the formation and registration of co-operative societies; to amend certain Acts; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Co-operative Societies Act, 1921," and shall come into operation upon a date to be specified by the Governor in a proclamation in the Gazette.

Short title  
and com-  
mencement.

Definition.

**2.** In this Act, unless the context otherwise requires,—

“Board of supervision” means board of members appointed to supervise the management of a registered society.

“By-law” means registered by-law for the time being in force.

“Committee” means governing body of a society.

“Member” includes a person joining in the application for registration of a society, and a person duly admitted to membership after registration.

“Minister” means Colonial Treasurer.

“Officer” includes chairman, secretary, treasurer, member of committee, or of board of supervision, or other person empowered under the rules or by-laws to give directions in regard to the business of a society.

“Prescribed” means prescribed by this Act or by regulation made thereunder.

“Registered society” means society registered or deemed to be registered under this Act.

“Registrar” means person appointed as registrar of societies under this Act.

“Union” means a group or federation of registered societies.

The registrar and deputy-registrar.

**3.** (1) The Governor may appoint a registrar and such other persons as he thinks necessary.

(2) The Governor may also appoint a deputy-registrar.

(3) The registrar and deputy-registrar shall have such powers and perform such duties as may be prescribed.

Societies which may be registered.

**4.** Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability:

Provided

Provided that unless the registrar by general or special order otherwise directs, the liability of a society of which a member is a registered society shall be limited.

**5.** Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

Restriction upon interest of member of society.

- (a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed; or
- (b) have or claim any interest in the shares of the society exceeding two hundred pounds.

**6.** (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least seven persons above the age of eighteen years.

Conditions of registration.

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

**7.** (1) For purposes of registration an application to register shall be made to the registrar.

Application for registration.

(2) The application shall be signed—

- (a) in the case of a society of which no member is a registered society, by at least seven persons; and
- (b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by seven other members or, when there are less than seven other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the registrar may require.

**8.** If the registrar is satisfied that a society has complied with the provisions of this Act and the regulations, and that its proposed by-laws are not contrary to the Act or to the regulations, he may, if he thinks fit, register the society and its by-laws.

Registration.

Evidence of registration.

**9.** A certificate of registration signed by the registrar shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration of the society has been cancelled.

Amendment of by-laws.

**10.** (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the registrar.

(2) If the registrar is satisfied that any amendment of the by-laws is not contrary to this Act, or to the regulations, he may, if he thinks fit, register the amendment.

(3) When the registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Member not to exercise rights until payment made.

**11.** No member of a registered society shall exercise the rights of a member, unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed by the regulations or by-laws.

Votes of members.

**12.** (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only, as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members.

Restriction on transfer of share or interest.

**13.** (1) The transfer or charge of the share or interest of a member in the capital of a registered society, shall be subject to such conditions as to maximum holding as may be prescribed.

(2)

(2) In case of a society registered with unlimited liability, a member shall not transfer any share held by him, or his interest in the capital of the society, or any part thereof, unless—

- (a) he has held such share or interest for not less than one year; and
- (b) the transfer or charge is made to the society, or to a member of the society.

**14.** Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the registrar notice of every change thereof. Address of society.

**15.** Every registered society shall keep a copy of this Act and of the regulations governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society. Copy of Act, regulations, and by-laws open to inspection.

**16.** (1) The registrar shall audit, or cause to be audited by some person or union authorised by him, by general or special order in writing in that behalf, the accounts of every registered society once at least in every year. Audit.

(2) The audit under subsection one shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

(3) The registrar, or any person or union authorised by him by general or special order in writing in that behalf, shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

**17.** The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose of its constitution. Societies to be bodies corporate.

**18.**

Prior claim  
of society.

**18.** Subject to any prior claim of the Crown, a registered society shall be entitled in priority to all other creditors to enforce any outstanding demand due to the society from a member or past member—

- (a) in respect of the supply of plants, seed, or manure, or of the loan of money for the purchase of plants, seed, or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan;
- (b) in respect of the supply of animals, fodder for animals, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of animals or any of the foregoing things—upon any such animals or things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

Charge and  
set-off in  
respect of  
share or  
interest of  
member.

**19.** A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus, or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

Share or  
interest not  
liable to  
attachment.

**20.** Subject to the provisions of this Act, no creditor shall have any remedy against the share or interest of a member in the capital of a registered society, and such share or interest shall not be liable to attachment or sale under a decree or order of any court in respect of any debt or liability incurred by such member, and shall not be property divisible amongst the creditors of any such member upon his bankruptcy.

Transfer of  
interest on  
death of  
member.

**21.** (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the regulations made in that behalf, or, if there is no person so nominated, to the legal representative of the deceased member



member, or pay to such nominee or legal representative a sum representing the value of such member's share or interest, as ascertained in accordance with the regulations or by-laws :

Provided that—

- (i) in the case of a society with unlimited liability, such nominee or legal representative may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid ;
- (ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or legal representative, being qualified in accordance with the regulations and by-laws for membership of the society, or on his application within three months of the death of a deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such legal representative or nominee.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

**22.** The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member. Liability of past member.

**23.** The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease. Liability of estate of deceased member.

**24.** Any register or list of members or shares kept by any registered society shall be prima facie evidence of any of the following particulars entered therein :— Register of members to be evidence.

- (a) The date at which the name of any person was entered in such register or list as a member.
- (b) The date at which any such person ceased to be a member.

**25.**

Proof of entry  
in book of  
society.

**25.** A copy of any entry in a book of a registered society, regularly kept in the course of business, shall, if certified in such manner as may be prescribed, be received, in any action or legal proceeding, as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Exemption  
from income  
tax and  
stamp duty.

**26.** (1) Income tax shall not be payable by any registered society or in respect of the income or profits of any such society.

(2) Instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, shall not be chargeable with stamp duty.

Restrictions  
on loans.

**27.** (1) A registered society shall not make a loan to any person other than a member :

Provided that, with the general or special sanction of the registrar, a registered society may make loans to another registered society.

(2) The registrar may, by general or special order, prohibit or restrict the lending of money on mortgage by any registered society or class of registered societies.

Restrictions  
on borrowing.

**28.** A registered society may receive deposits and loans from persons who are not members but only to such extent and under such conditions as may be prescribed by the regulations or by-laws.

Restrictions  
on transac-  
tions with  
non-members.

**29.** Save as provided in sections twenty-seven and twenty-eight, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as are prescribed.

Investment  
of funds.

**30.** A registered society may invest or deposit its funds—

- (a) in the Government Savings Bank ; or
- (b) in any securities in which trust funds are authorised to be invested by any Act ; or
- (c) in the shares or on the security of any other registered society ; or

(d)

(d) with any bank or person carrying on the business of banking, approved for this purpose by the registrar ; or

(e) in any other mode permitted by the regulations.

**31.** No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members : Funds not to be divided by way of profit.

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the regulations or by-laws :

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the registrar.

**32.** Any registered society may, with the sanction of the registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per centum of the remaining net profits to any charitable purpose. Contribution to charitable purpose.

**33.** (1) The registrar may of his own motion, and shall on the application of a majority of the committee, or board of supervision, or of not less than one-third of the members, hold an inquiry, or direct some person authorised by him by order in writing in that behalf to hold an inquiry, into the constitution, working, and financial condition of a registered society. Inquiry by registrar.

(2) All officers and members of the society shall furnish such information in regard to the affairs of the society as the registrar or the person authorised by the registrar may require.

**34.** (1) The registrar shall, on the application of a creditor of a registered society, inspect, or direct some person authorised by him by order in writing in that behalf to inspect, the books of the society : Inspection of books.

Provided that—

- (a) the applicant satisfies the registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time ;  
and (b)

(b) the applicant deposits with the registrar such sum as security for the costs of the proposed inspection as the registrar may require.

(2) The registrar shall communicate the results of any such inspection to the creditor.

Cost of inquiry.

**35.** Where an inquiry is held under section thirty-three or an inspection is made under section thirty-four, the registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

Recovery of costs.

**36.** Any sum awarded by way of costs under section thirty-five may be recovered in any court of competent jurisdiction as a debt due by the person from whom the money is claimable.

Dissolution.

**37.** (1) If the registrar, after an inquiry has been held under section thirty-three, or after an inspection has been made under section thirty-four, or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

(2) Any member of a society may, within two months from the date of an order made under subsection one, appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(5) The authority to which appeals under this section shall lie shall be the Minister :

Provided that the Minister may, by notification in the Gazette, direct that an appeal shall lie to such court as may be specified in the notification, and in such case such court shall be the appellate authority under this section in respect of the appeal or appeals specified in such notification.

**38.**

**38.** Where it is a condition of the registration of a society that it should consist of at least seven members, the registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than seven.

Cancellation  
of regis-  
tration.

**39.** Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

Effect of  
cancellation.

- (a) in the case of a cancellation in accordance with the provisions of section thirty-seven, from the date the order of cancellation takes effect ;
- (b) in the case of cancellation in accordance with the provisions of section thirty-eight, from the date of the order.

**40.** (1) Where the registration of a society is cancelled under section thirty-seven or section thirty-eight, the registrar may appoint a competent person to be liquidator of the society.

Appointment  
of liquidator.

(2) A liquidator appointed under subsection one shall have power—

- (a) to institute and defend suits and other legal proceedings in the name and on behalf of the society ;
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;
- (c) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ;
- (e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society ; and
- (f) such other powers as may be prescribed.

(3) Subject to any regulations, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have

have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a commissioner under the Royal Commissioners Evidence Act, 1901.

(4) Where an appeal from any order made by a liquidator under this section is provided for by the regulations, it shall lie to the judge of the district court for the district in which the registered office of the society is situated.

(5) Orders made under this section shall, on application, be enforced as follows:—

(a) When made by a liquidator, by any court of competent jurisdiction in the same manner as an order of such court.

(b) When made by the judge of a district court on appeal, in the same manner as an order of such court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

Regulations.

**41.** (1) The Governor may make regulations to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) subject to the provisions of section five, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;

(b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;

(c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering, and repealing by-laws, and the conditions to be satisfied prior to such making, alteration, or repeal ;

(d)

- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership;
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (g) provide for the appointment, suspension, and removal of the members of the committee, board of supervision, and other officers, and for the payment or non-payment of salaries or allowances to members of the committee, board of supervision, and other officers, and for the procedure at meetings of the committee and board of supervision, and for the powers to be exercised and the duties to be performed by the committee, board of supervision, and other officers;
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society;
- (i) prescribe the returns to be submitted by a society to the registrar, and provide for the persons by whom, and the form in which, such returns shall be submitted;
- (j) provide for the persons by whom, and the form in which, copies of entries in books of societies may be certified;
- (k) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares;

(1)

- (l) provide that any dispute touching the business of a society between members or past members of the society, or persons claiming through a member or past member, or between a member or past member or persons so claiming, and the committee or any officer, shall be referred to the registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators, and the procedure to be followed in proceedings before the registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the registrar or the awards of arbitrators ;
- (m) provide for the withdrawal and expulsion of members, and for the payments, if any, to be made to members who withdraw or are expelled, and for the liabilities of past members ;
- (n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;
- (o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, or to whom money has been lent, the persons who may or may not apply for loans, or become sureties for payment of loans, the period for which loans may be made, and the amount which may be lent to an individual member ;
- (p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;
- (q) prescribe the extent to which a society may limit the number of its members ;
- (r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability, and the maximum rate of dividend which may be paid by societies ;
- (s) provide for the formation of unions, and prescribe the powers, duties, and liabilities of unions ;
- (t)



- (t) subject to the provisions of section thirty-seven, determine in what cases an appeal shall lie from the orders of the registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals; and
- (u) prescribe the procedure to be followed by a liquidator appointed under section forty, and the cases in which an appeal shall lie from the order of such liquidator.

(3) Such regulations may provide for the punishment of offences against the Act or regulations by the imposition of a penalty not exceeding *one hundred* pounds, or of a term of imprisonment not exceeding two years, or of both penalty and imprisonment. Any such punishment may be enforced by conviction before a police or stipendiary magistrate, or any two justices in petty sessions.

(4) Such regulations shall be—

- (i) published in the Gazette;
- (ii) take effect from the date of publication or from a later date to be specified in such regulations; and
- (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is then in session, and if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**42.** (1) All sums due from a registered society or from an officer, or member, or past member of a registered society as such to the Crown, including any costs awarded to the Crown under section thirty-five, may be recovered as a debt due to the Crown by such society or person.

Recovery of sums due to Crown.

(2) Sums due from a registered society to the Crown and recoverable under subsection one may be recovered,

recovered, firstly, from the property of the society; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability; and, thirdly, in the case of other societies, from the members.

Power to exempt societies from conditions as to registration.

**43.** Notwithstanding anything contained in this Act, the registrar may, by special order in each case and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Act as to registration.

Power to exempt registered society from provisions of Act.

**44.** The registrar may, by general or special order, exempt any registered society from any of the provisions of this Act, or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

Use of word co-operative prohibited.

**45.** (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "Co-operative" is part without the sanction of the Minister:

Provided that nothing in this section shall apply to any society established under the Building and Co-operative Societies Act, 1902, or the Friendly Societies Act, 1912, or any Act amending the same, or to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be liable to a penalty not exceeding *twenty* pounds; and in the case of a continuing offence, to a penalty not exceeding *five* pounds for each day on which the offence is continued after conviction therefor.