

TASMANIA

CO-OPERATIVES NATIONAL LAW (TASMANIA) BILL 2013

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CO-OPERATIVES NATIONAL LAW (TASMANIA) BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
14 November 2013

*(Brought in by the Minister for Corrections and Consumer
Protection, the Honourable Nicholas James McKim)*

A BILL FOR

An Act to make provision for a national legislative scheme relating to the formation, registration and management of co-operatives, to repeal the *Cooperatives Act 1999* and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Co-operatives National Law (Tasmania) Act 2013*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Interpretation

(1) For the purposes of this Act, ***the local application provisions of this Act*** are the provisions of this Act other than the Co-operatives National Law.

(2) In the local application provisions of this Act –

Co-operatives National Law (Tasmania) means the provisions applying in relation to this jurisdiction because of section 4(1);

Co-operatives National Regulations or National Regulations means the Co-operatives National Regulations made under the Co-operatives National Law;

Co-operatives National Regulations (Tasmania) means the provisions applying in relation to this jurisdiction because of section 4(2);

Director-General means the Director of Consumer Affairs and Fair Trading appointed under the *Consumer Affairs Act 1988*;

instrument includes a document;

local regulations means regulations made under section 16, but does not include the Co-operatives National Regulations and the *Co-operatives National Regulations (Tasmania)*;

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this jurisdiction means the State of Tasmania.

- (3) Terms used in the local application provisions of this Act and also in the Co-operatives National Law have the same meanings in those provisions as they have in that Law.
- (4) Notes included in this Act do not form part of this Act.

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National Regulations

**PART 2 – APPLICATION OF CO-OPERATIVES
NATIONAL LAW AND CO-OPERATIVES NATIONAL
REGULATIONS**

4. Adoption of Co-operatives National Law and Co-operatives National Regulations

- (1) 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* of New South Wales –
 - (a) applies as a law of this jurisdiction; and
 - (b) as so applying may be referred to as the *Co-operatives National Law (Tasmania)*; and
 - (c) so applies as if it were an Act.
- (2) The Co-operatives National Regulations, as in force from time to time –
 - (a) apply as National Regulations in force for the purposes of the *Co-operatives National Law (Tasmania)*, subject to modifications prescribed by the local regulations; and
 - (b) as so applying may be referred to as the *Co-operatives National Regulations (Tasmania)*.

Note The Co-operatives National Regulations as in force from time to time apply by virtue of this provision as National Regulations for the purposes of the *Co-operatives National*

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Law (Tasmania). The regulations as so applying and referred to as the *Co-operatives National Regulations (Tasmania)* are interpreted in accordance with that Law (and see in particular clauses 15 and 37 of Schedule 4 to that Law).

5. Meaning of certain terms of Co-operatives National Law for purposes of this jurisdiction

In the *Co-operatives National Law (Tasmania)* –

police officer means a police officer as defined in the *Police Service Act 2003*;

public sector official means a person employed under the *State Service Act 2000*;

Registrar means the Director of Consumer Affairs and Fair Trading, appointed under the *Consumer Affairs Act 1988*, who is designated by section 21 as the Registrar of Co-operatives;

this jurisdiction means the State of Tasmania.

6. Exclusion of legislation of this jurisdiction

The following Acts of this jurisdiction do not apply to the *Co-operatives National Law (Tasmania)*, the *Co-operatives National Regulations (Tasmania)*, the Co-operatives National Regulations or other instruments (excluding local regulations) made under that Law:

- (a) *Acts Interpretation Act 1931*;

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(b) *Subordinate Legislation Act 1992.*

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**PART 3 – SOME MATTERS REFERRED TO IN CO-
OPERATIVES NATIONAL LAW (TASMANIA)**

**7. Designated authority, designated instrument and
designated tribunal (Co-operatives National Law
s 4)**

- (1) With respect to the definition of *designated authority* in the *Co-operatives National Law (Tasmania)* –
 - (a) the Registrar is specified for the purposes of sections 15, 492, 494, 520, 601 and 622 of that Law; and
 - (b) a magistrate, within the meaning of the *Magistrates Court Act 1987*, is specified for the purposes of sections 504 and 505 of that Law.
- (2) With respect to the definition of *designated instrument* in the *Co-operatives National Law (Tasmania)* –
 - (a) an order in writing in the approved form is specified for the purposes of the provisions of that Law referred to in Column 2 of the table to this subsection and for the person or class (if any) or in the circumstances (if any) specified in that Column; and
 - (b) a *Gazette* notice in the approved form is specified for the purposes of the provisions of that Law referred to in Column 3 of the table to this subsection

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and for the person or class (if any) or in
the circumstances (if any) specified in
that Column; and

(c) a written notice in the approved form is
specified for the purposes of section
443(5) of that Law.

Table

Column 1	Column 2	Column 3
Item	Designated instrument is an order in writing	Designated instrument is a <i>Gazette</i> notice
1.	...	Section 33(1) (certificate of registration)
2.	Section 35(5)(a) (exemption from special postal ballot for amendment of rules for conversion) – for individual co-operative	Section 35(5)(b) (exemption from special postal ballot for amendment of rules for conversion) – for class of co-operatives
3.	...	Section 60(2) (specifying rule amendments requiring prior approval by Registrar)
4.	Section 71(1) (exemption from requirements of Division 2 of Part 2.4) – for individual co-operative	Section 71(1) (exemption from requirements of Division 2 of Part 2.4) – for class of co-operatives
5.	Section 92(6) (exemption from complying with disclosure direction)	...
6.	Section 171(1) (exemption from requirements of Division 5 of Part 2.6) – for individual co-operative	Section 171(1) (exemption from requirements of Division 5 of Part 2.6) – for class of co-operatives

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Column 1	Column 2	Column 3
Item	Designated instrument is an order in writing	Designated instrument is a <i>Gazette</i> notice
7.	...	Section 221(1) (approval of omission of “Limited” or “Ltd” from name)
8.	Section 226(6) (exemption from requirement to display location notice) – for individual small co-operative	Section 226(6) (exemption from requirement to display location notice) – for class of, or all, small co-operatives
9.	Section 316(1) (exemption for individual co-operative from accounting and auditing provisions)	...
10.	...	Section 317(1) (exemption for class of co-operatives from accounting and auditing provisions)
11.	...	Section 319(1) (exemption for non-auditor members and former members of audit firms, and former employees of audit companies from accounting and auditing provisions)
12.	...	Section 320(1) (exemption for classes of non-auditor members etc. from accounting and auditing provisions)
13.	...	Section 322(1) (exemption from National Regulations made under Part 3.3)

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Column 1	Column 2	Column 3
Item	Designated instrument is an order in writing	Designated instrument is a <i>Gazette</i> notice
14.	Section 338(6) (exemption from compliance with section 338) – for individual co-operative	Section 338(6) (exemption from compliance with section 338) – for class of co-operatives
15.	Section 343(10) (exemption from compliance with section 343) – for individual co-operative	Section 343(10) (exemption from compliance with section 343) – for class of co-operatives
16.	Section 359(3) (exemption from compliance with section 359 or 248)	...
17.	Section 363(2) (stating maximum greater than 20% of nominal value of issued share capital) – for individual co-operative	Section 363(2) (stating maximum greater than 20% of nominal value of issued share capital) – for class of co-operatives
18.	...	Section 372(1) (exemption of person or class of persons from the operation of Division 1 of Part 3.5)
19.	Section 380(1) (exemption from compliance with Division 2 of Part 3.5 or section 248)	...
20.	Section 397(4) (exemption from compliance with section 397)	...
21.	...	Section 401(7) (notification by Registrar of date of effect of transfer of engagements between co-operatives)

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Column 1	Column 2	Column 3
Item	Designated instrument is an order in writing	Designated instrument is a <i>Gazette</i> notice
22.	Section 404(4) (exemption from compliance with section 404 or 248)	...
23.	Section 445(3) (exemption from compliance with section 445 or 248) – for individual co-operative	Section 445(3) (exemption from compliance with section 445 or 248) – for class of co-operatives
24.	Section 607(3) (Registrar's approval) – for individual co-operative or person	Section 607(3) (Registrar's approval) – for class of co-operatives or persons

(3) The following provisions have effect with respect to the definition of ***designated tribunal*** in the *Co-operatives National Law (Tasmania)*:

- (a) the Supreme Court is specified for the purposes of the provisions of that Law in which the term is used, except Part 7.3 of that Law;
- (b) the Magistrates Court (Administrative Appeals Division) is specified for the purposes of Part 7.3 of that Law.

8. Disposal of consideration for shares compulsorily acquired (Co-operatives National Law s 436)

- (1) For the purposes of section 436(3)(b)(i) of the *Co-operatives National Law (Tasmania)*, references in section 1339 of the Corporations Act to crediting an amount to the Companies and Unclaimed Moneys Special Account are to be

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read as references to dealing with the amount as unclaimed money in accordance with the *Unclaimed Moneys Act 1918*.

- (2) For the purposes of section 436(3)(b)(ii) of the *Co-operatives National Law (Tasmania)*, section 1341(1) and (2) of the Corporations Act are taken to be replaced by subsection (3) of this section.
- (3) The amount is to be dealt with in accordance with the *Unclaimed Moneys Act 1918*, and accordingly applications for the payment of the amount may be made under that Act to the Secretary of the responsible Department in relation to the *Unclaimed Moneys Act 1918*.

9. Deregistration (Co-operatives National Law s 453 – sections 601AD, 601AE and 601AF of Corporations Act as applied)

- (1) For the purposes of section 453(d) of the *Co-operatives National Law (Tasmania)*, references in section 601AD, 601AE and section 601AF of the Corporations Act to the Commonwealth are to be read as references to the State of Tasmania.
- (2) For the purposes of section 453(e) of the *Co-operatives National Law (Tasmania)*, references in section 601AE of the Corporations Act to crediting an amount to a Special Account (within the meaning of the *Financial Management and Accountability Act 1997* of the Commonwealth) are to be read as references to crediting the amount to the Special Deposits and Trust Fund.

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10. Costs of inquiry (Co-operatives National Law s 530)

For the purposes of section 530(3)(b) of the *Co-operatives National Law (Tasmania)*, the prescribed entity is the State of Tasmania.

11. Secrecy (Co-operatives National Law s 537)

(1) For the purposes of section 537(4)(c) of the *Co-operatives National Law (Tasmania)*, information may be divulged to –

- (a) the Treasurer; or
- (b) the Commissioner of State Revenue; or
- (c) the Auditor-General; or
- (d) the Integrity Commission; or
- (e) any commission (within the meaning of the *Commissions of Inquiry Act 1995*) if –
 - (i) the Registrar has received a written request for information from the commission; and
 - (ii) the Minister has given to the Registrar written approval of the communication of that information; and
 - (iii) the Registrar has given to the commission written approval of the communication of that information.

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- (2) For the purposes of the definition of *former Act* in section 537(6) of the *Co-operatives National Law (Tasmania)*, the *Cooperatives Act 1999* is specified.

12. Pecuniary penalty orders (Co-operatives National Law s 556)

- (1) For the purposes of section 556(2) of the *Co-operatives National Law (Tasmania)*, a pecuniary penalty ordered to be paid in this jurisdiction is to be paid and treated in accordance with this section.
- (2) The penalty is a civil debt payable to the Registrar on behalf of the State.
- (3) The Registrar or the State may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person.
- (4) The debt arising from the order is taken to be a judgment debt.

13. Stamp duty (Co-operatives National Law s 620)

- (1) No duty is payable in respect of any of the following instruments:
- (a) in the case of a co-operative that –
- (i) has as its primary activity the providing of any community service or benefit; and

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- (ii) was, before it was incorporated under the *Co-operatives National Law (Tasmania)*, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary benefit of its members –

an instrument transferring to the co-operative any property that was, immediately before the co-operative was so incorporated, held by or on behalf of the unincorporated club, association or body;

- (b) an instrument executed or registered for or with respect to a transfer of any property to give effect to section 413 or 481 of the *Co-operatives National Law (Tasmania)* in respect of –
 - (i) a merger of co-operatives; or
 - (ii) a transfer of engagements;
- (c) a share certificate or any other instrument issued or executed in connection with the capital of a co-operative.

(2) If –

- (a) a co-operative that transfers its incorporation under Division 2 of Part 4.3 of the *Co-operatives National Law (Tasmania)* was before its registration as

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a co-operative under that Law a company under the Corporations Act or any corresponding previous law of this jurisdiction; and

- (b) stamp duty has been paid on its incorporation as such a company in respect of the amount of the nominal capital of the company (or if subsequently increased on the amount of its nominal capital as so increased) –

any stamp duty so paid is to be taken into account and included in assessing the stamp duty payable on its incorporation or registration pursuant to the transfer.

- (3) An instrument issued or executed in connection with a CCU of a co-operative is not exempt under subsection (1).

14. Registration fees (Co-operatives National Law s 620)

No fee is chargeable under any Act for registration of an instrument executed or registered for or with respect to a transfer of any property to give effect to section 413 or 481 of the *Co-operatives National Law (Tasmania)* in respect of –

- (a) a merger of co-operatives; or
- (b) a transfer of engagements; or

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(c) a transfer of incorporation.

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Part 4 – Regulations

PART 4 – REGULATIONS

15. National Regulations

- (1) The Governor is authorised to exercise the power to make Co-operatives National Regulations conferred by the Co-operatives National Law as applied by an Act of any jurisdiction.
- (2) The Executive Council of the State is authorised to advise the Governor in the exercise of the power referred to in subsection (1).
- (3) This section does not limit the power of the Governor to make local regulations conferred under the *Co-operatives National Law (Tasmania)*.

16. Local regulations

- (1) The Governor may make regulations (the ***local regulations***), not inconsistent with the local application provisions of this Act or the *Co-operatives National Law (Tasmania)*, for or with respect to any matter –
 - (a) that by the local application provisions of this Act is required or permitted to be prescribed by the local regulations or that is necessary or convenient to be prescribed by the local regulations for carrying out or giving effect to the local application provisions of this Act; or

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Part 4 – Regulations

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- (b) that by the *Co-operatives National Law (Tasmania)* is required or permitted to be prescribed by the local regulations.
- (2) Without limitation, the local regulations may make provision for or with respect to –
- (a) the administration of the *Co-operatives National Law (Tasmania)*; and
 - (b) procedural matters relating to any aspects of the *Co-operatives National Law (Tasmania)*; and
 - (c) without limiting paragraphs (a) and (b), administrative matters relating to the supervision and inspection of co-operatives.
- (3) The local regulations may create offences and impose penalties for an offence of not more than the amount specified in section 612(5) of the *Co-operatives National Law (Tasmania)*.

PART 5 – MISCELLANEOUS

17. Orders and other instruments published in *Gazette*

A copy of an order, notice, exemption or other instrument published in the *Gazette* purporting to have been given or issued under this Act, the *Co-operatives National Law (Tasmania)*, the *Co-operatives National Regulations (Tasmania)* or the local regulations is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

18. Proceedings for offences

- (1) In this section –

offence means an offence under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (Tasmania)* or the *Co-operatives National Regulations (Tasmania)*.

- (2) Proceedings for an offence are to be disposed of summarily before –
- (a) a magistrate; or
 - (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum penalty that may be imposed by a magistrate for an offence is 50 penalty units or imprisonment for 12 months, or both.

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- (4) Proceedings for an offence under the local application provisions of this Act or the local regulations may be –
- (a) commenced no later than 5 years after the alleged commission of the offence; and
 - (b) commenced only by the Registrar or a person authorised in writing by the Registrar to start the proceedings.

Note See sections 551 and 552 of the Co-operatives National Law about starting proceedings for an offence under that Law or the National Regulations.

19. Proceedings for recovery of fines or penalties under co-operative's rules

- (1) Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative are to be disposed of summarily before a magistrate.
- (2) Proceedings for the recovery of a fine or penalty imposed by the rules of a co-operative may be instituted only by the co-operative.

20. Particular officials protected from liability

- (1) In this section –

official means –

- (a) the Minister; or
- (b) the Registrar; or

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- (c) a public sector official (within the meaning of section 5) engaged in the administration of the local application provisions of this Act or the *Co-operatives National Law (Tasmania)*.
- (2) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (Tasmania)* or the *Co-operatives National Regulations (Tasmania)*.
- (3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

21. Registrar of Co-operatives

- (1) The Director of Consumer Affairs and Fair Trading is designated as the Registrar of Co-operatives and may exercise the functions of the Registrar of Co-operatives expressed to be conferred or imposed on the Registrar by or under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (Tasmania)* or the *Co-operatives National Regulations (Tasmania)*.
- (2) For that purpose, a reference in the local application provisions of this Act, the local regulations, the *Co-operatives National Law (Tasmania)* or the *Co-operatives National Regulations (Tasmania)* to the Registrar is to be read as a reference to the Director of Consumer

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Affairs and Fair Trading, but those functions are to be exercised under the title of the Registrar of Co-operatives.

22. Amendments to National Law and National Regulations

(1) The Minister is to cause any amendment to –

- (a) the *Co-operatives National Law (Tasmania)*; and
- (b) the *Co-operatives National Regulations (Tasmania)* –

to be tabled in each House of Parliament within 10 sitting-days from the date on which the amendment commences.

(2) Nothing in this section affects the operation of the amendment.

23. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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Part 5 – Miscellaneous

24. Savings and transitional

The provisions of Schedule 1 have effect.

25. Legislation repealed

The legislation specified in Schedule 2 is repealed.

26. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

27. Legislation revoked

The legislation specified in Schedule 4 is revoked.

**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 24

PART 1 – PRELIMINARY

1. Local regulations for savings or transitional matters

- (1) The local regulations may contain provisions of a savings or transitional nature consequent on the commencement of any provision of this Act or of any Act that amends this Act.
- (2) Any such provision may, if the local regulations so provide, take effect from the date of Royal Assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date on which its making is notified in the *Gazette*, the provision does not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date on which its making is notified in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date on which its making is notified in the *Gazette*.

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**PART 2 – PROVISIONS CONSEQUENTIAL ON ENACTMENT OF
THIS ACT**

1. Definition

In this Part –

repealed Act means the *Cooperatives Act 1999*.

2. General savings

Subject to the local application provisions of this Act and the *Co-operatives National Law (Tasmania)*, each person, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of relevant provisions of the *Co-operatives National Law (Tasmania)* continues to have the same status, operation and effect as it would have had if those provisions had not commenced.

3. Registration of co-operatives

- (1) A co-operative whose registration under the repealed Act is in force immediately before the commencement of this clause is taken to be registered under the *Co-operatives National Law (Tasmania)*.
- (2) A co-operative referred to in subclause (1) that was a trading co-operative immediately before

the commencement of this clause is taken to be a distributing co-operative.

- (3) A co-operative referred to in subclause (1) that was a non-trading co-operative immediately before the commencement of this clause is taken to be a non-distributing co-operative.

4. Rules of certain co-operatives formed to carry on club may restrict voting rights

- (1) The rules of a co-operative that has as a primary activity the operation, maintenance or carrying on of a club may provide for different classes of membership and restrict the voting rights attaching to membership of those different classes, but only if –
- (a) the Registrar approves of the provisions concerned; and
 - (b) the membership of the class or classes entitled to full voting rights constitutes at least 40% of the total membership of the co-operative.
- (2) Any such provision in the rules of a co-operative must not be amended except with the prior approval of the Registrar.

5. Entitlements of former members of trading co-operatives (Co-operatives National Law Sch 3, clause 1)

A reference in Division 5 of Part 2.6 of the *Co-operatives National Law (Tasmania)* to the

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period of 2 years is taken to be a reference to a period of 5 years in a case where the cancellation of membership occurred before the commencement of that Division.

6. Entitlement to distribution from business or reserves of co-operative

Any entitlement that a member or former member of a co-operative had immediately before the commencement of this clause, in relation to a surplus arising from the business of the co-operative or a part of the reserves of the co-operative, continues in force until satisfied.

7. Minimum paid-up amount of shares (Co-operatives National Law s 78(4))

Section 78 of the *Co-operatives National Law (Tasmania)* does not affect shares issued before the commencement of that section.

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sch. 2

SCHEDULE 2 – LEGISLATION REPEALED

Section 25

Cooperatives Act 1999 (No. 85 of 1999)

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SCHEDULE 3 – LEGISLATION RESCINDED

Section 26

Cooperatives Regulations 2010 (No. 29 of 2010)

Co-operatives National Law (Tasmania) Act 2013
Act No. of

sch. 4

SCHEDULE 4 – LEGISLATION REVOKED

Section 27

Cooperatives Order 2010 (No. 43 of 2010)