

Regulatory Impact Statement

Co-operative Housing and Starr-
Bowkett Societies Regulation 2015

June 2015





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The Consultation Process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this Regulatory Impact Statement. Matters covered by the Principal Act are not the subject of this consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is all about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>

The closing date for submissions is 24 July 2015.

Email submissions to: policy@finance.nsw.gov.au

Postal submissions to:

Co-operative Housing and Starr-Bowkett Societies Regulation 2015
Policy and Strategy
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Additional copies of this Regulatory Impact Statement and the proposed Regulation can be downloaded from: www.fairtrading.nsw.gov.au

Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.



Confidentiality of Submissions

The consultation process is public. All submissions received will be published on the NSW Fair Trading website. Requests for submissions to be treated as confidential must be accompanied by supporting reasons, and will be considered in the light of Government principles and requirements relevant to the public release of, and access to, information, including those established by the *Government Information (Public Access) Act 2009*. Automatically generated confidentiality statements in emails are not sufficient.

If the proposed Regulation is made, a copy of all written comments and submissions received will be provided to the Legislation Review Committee of Parliament.

Identified Stakeholders

The Regulatory Impact Statement has been provided directly to organisations and individual co-operative housing and Starr-Bowkett societies. A list of these stakeholders is provided at Appendix 3.

Evaluation of Submissions

NSW Fair Trading will review all submissions received and based on this review, the proposed Regulation may be amended as appropriate. If required, further targeted consultation may be undertaken.

Commencement of the Regulation

After the Regulation has been finalised, it will be submitted to the Governor for approval. Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au

It is proposed that the Regulation will commence on 1 September 2015, when the existing Regulation is due to be repealed.



Objective and Rationale of the Regulation

Objective

The primary objective of the Co-operative Housing and Starr-Bowkett Societies Regulation 2015 (the proposed Regulation) is to provide the legislative support and administrative detail needed for the operation of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (the Act).

Co-operative housing societies and Starr-Bowkett societies provide funds for home ownership and other purposes, on flexible terms, to low and middle income earners who may not otherwise have access to such funds.

The Act:

- provides for the establishment, registration and operation of co-operative housing societies and Starr-Bowkett societies;
- ensures financial accountability and transparency of societies so stakeholders' funds are safeguarded;
- obliges societies to have a set of rules which give vital direction to members about how the society will operate;
- requires societies maintain a number of registers and provides strict requirements for their availability and inspection; and
- applies relevant provisions of the *Corporations Act 2001* of the Commonwealth (the Corporations Act) to co-operative housing bodies, with any necessary modification.

The Regulation enables the Act to operative effectively and provides the administrative detail required to support the operation of the Act. The Regulation deals with:

- documents the Registrar keeps that members of the public may inspect;
- registers of loans made and raised, and securities taken and given;
- the functions, formation and registration of associations by two or more societies;
- requirements relating to the lodgement of audits and annual returns;
- fees payable in connection with the administration of the Act;



- modifications to the application of the *Corporations Act 2001* of the Commonwealth;
- prescribed forms; and
- procedures for conducting postal ballots.

Rationale

It is necessary to remake the Regulation at this time because:

- the existing Regulation will be automatically repealed on 1 September 2015 if it is not re-made, because of sunset provisions contained in the *Subordinate Legislation Act 1989*; and
- if the existing Regulation is allowed to be automatically repealed, the administrative detail required to support the operation of the Act cannot be achieved.



Options for achieving objectives

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the *Co-operative Housing and Starr-Bowkett Societies Act 1998*.

The options for achieving the objectives of the Regulation are:

Option 1

Maintain the status quo. Do not make the proposed Regulation, and instead remake the Regulation to be identical to the existing Regulation.

Option 2

No action. Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989*, and do not make a replacement Regulation.

Option 3

Make the proposed Regulation. The provisions of the Regulation would provide the legislative support and administrative detail for the *Co-operative Housing and Starr-Bowkett Societies Act 1998*.



Impact Assessment of Options

Assessment of Option 1

Option 1 is to remake the existing Regulation with no changes, and maintain the status quo.

Option 1 - Costs

There are no additional costs for industry, consumers or Government associated with this option as the status quo would be maintained. The associated costs would be the same as they are in the existing Regulation, which generally include the regulatory requirements relating to preparing and submitting a range of reports and returns.

Option 1 - Benefits

This option continues the regulatory framework that has been in place since 2005. Maintaining the existing Regulation in its current form would produce no additional associated benefits. This is primarily because the opportunity to ensure that the existing Regulation remains relevant and continues to meet its policy objective is lost.

Option 1 - Conclusion

Maintaining the existing Regulation in its current form enables the Act to operate as intended and meet its objectives, but not in the most effective way. While there are no additional costs imposed for this option, there are also no additional benefits.

The overall assessment of this option is estimated as low or negative.

Assessment of Option 2

Option 2 is to do nothing and allow the existing Regulation to lapse on 1 September 2015. This would mean the Act would operate without any accompanying Regulation.

Option 2 - Costs

This option would produce a high level of costs to Government, industry and consumers. Without any Regulation, consumers would be exposed to further potential risks arising from lack of financial accountability of societies, which could result in possible disputes and recovery costs to consumers. Additionally, the transparency of the performance of



societies would be reduced, particularly the ability of society members and other stakeholders to obtain vital information about the management of societies.

NSW Fair Trading as the regulatory body will not have the ability to monitor and scrutinise the financial position and performance of the sector or detect any potential conflicts of interests a director of a society may have due to the lack of Regulation for the lodgement of audits and annual returns. While there are costs to Government in the prudential supervision of societies, including the cost of reviewing annual reports lodged, these costs would not outweigh the benefits in protecting stakeholders' funds by having the Regulation.

Several provisions in the Act would also be unworkable, including collection of fees. If fees were not payable, administrative costs of providing access to or certified copies of documents would increase the costs to Government. Additional costs and delays may be experienced if the documents were instead obtained under the *Government Information (Public Access) Act 2009*.

Option 2 - Benefits

The removal of the regulatory burdens imposed under the Regulation may possibly benefit societies, such as not having to prepare and lodge prescribed annual returns. However, having no Regulation in place means consumers will not be given the protection afforded under a regulatory framework. It would also limit the effective implementation of the Act and essentially prevent its objects from being achieved. Overall, the benefits of this option are considered low.

Option 2 - Conclusion

Allowing the existing Regulation to lapse is not considered viable. While the Act would still exist, many of the provisions of the Act would become unworkable and the objectives of the Act could not be achieved, such as, the provisions that contribute to safeguarding stakeholders' funds. With potentially high costs for industry and consumers and little benefit, the overall benefit of this option is estimated as low or negative.

Assessment of Option 3

Option 3 is to make the proposed Regulation. This option would enable the Act to operate with the Regulation providing the required administrative detail necessary to support its operation.



Option 3 - Costs

There are no significant additional costs associated with this option. The costs imposed would be the same as they are in the existing Regulation. These generally include the costs societies and associations incur in preparing and submitting a range of reports and annual returns and administrative costs on societies in making and maintaining currency of prescribed registers. Also, fees payable under the Act by industry and consumers and administrative costs Fair Trading incurs for processing returns and administering the legislation would continue to be recoverable.

While changes and updates to the prescribed forms may impose minor initial start-up costs for industry in revising the forms they use, this is unlikely to cause significant extra administrative burden to industry, consumers or Government in comparison to the existing Regulation. This minimal start-up cost is outweighed by benefits provided to improve administrative efficiency. The introduction of a provision setting out how surplus funds are to be distributed on the wind-up of a society does not impose any additional costs to industry, consumers or Government.

Option 3 - Benefits

This option continues the existing regulatory framework with minor updates to improve its operation and efficiency. The proposed Regulation will provide significant benefits for societies by removing unnecessary red tape and administrative requirements placed on societies to complete a range of forms. The proposed Regulation reduces the number of forms societies are required to lodge by half and provides significant benefits to consumers by preventing officers of societies, directors and remaining members receiving windfall distributions of surplus funds upon wind-up.

Option 3 - Conclusion

This option provides the benefits of the existing Regulation while making some minor changes and updates to significantly improve operation and efficiency. This option does not impose unnecessary financial or administrative burdens on the industry, consumers or the Government. Remaking the Regulation provides the best option to achieve the objectives of the Act. The overall assessment of this option is high or positive.

**Summary of Costs and Benefits for each option**

Option	Likely Costs	Likely Benefits	Overall Benefit
Option 1	Low	Low	Negative
Option 2	High	Low	Negative
Option 3	Low	High	Positive

Preferred Option

Option 3, making the proposed Regulation, is the preferred option. This is the option which provides the greatest benefit and the least cost to industry and the community.



Regulation- Making Powers

Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
Part 1 Preliminary			
4(2)(g)	To prescribe a kind of relationship in which persons are considered 'associates' for the purposes of the Act	17	Prescribes a relationship where: <ul style="list-style-type: none"> ▪ an entity is a body corporate and the other is a director or secretary of a related body corporate ▪ a person acts, or intends to act in concert with another person other than in certain cases ▪ a person enters, or intends to enter into a transaction with another person other than in certain cases
5A	To prescribe the meaning of 'economic entity' or 'entity' where these terms are not defined in an accounting standard	–	None prescribed
12(2)	To make provision for determining whether an entity controls another entity in relation to prescribed financial years	–	None prescribed
17	To: <ul style="list-style-type: none"> ▪ declare any matter relating to a co-operative housing body to be an applied Corporations legislation matter in relation to excluded Corporations legislation provisions ▪ specify modifications to the definitions and other interpretative provisions of the Corporations legislation and provide for ASIC to exercise functions under any excluded Corporations legislation provisions 	–	None prescribed
Part 2 Functions and powers of Registrar			
23(1)(a)	To prescribe documents or class of documents kept by the Registrar which may be inspected and to prescribe the fee payable	18	Provides all documents kept by the Registrar under the Act may be inspected. Sets an inspection fee of \$20
23(1)(b)	To prescribe a fee for a certified copy of a prescribed document	Sch. 2	Sets a fee of \$22 + \$2 for each page after the first page



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
27(2)(c)	To prescribe a decision of the Registrar not subject for review by the Civil and Administrative Tribunal	–	None prescribed
29(5)	To prescribe scales of allowances and expenses payable to a person required to give evidence to the Registrar	19	Provides a person is entitled to the same allowances and expenses as payable to a witness in District Court criminal proceedings
32(2)(c)	To prescribe documents relating to a co-operative housing body in relation to which an inspector is entitled to enter and search non-residential premises during business hours	20	Specifies documents concerned with the management or administration of a co-operative housing body
43(4)(c)(ii)	To prescribe an event - the happening of which would require a body to be wound-up	–	None prescribed
Part 3 Societies			
48(4)	To prescribe additional objects which would apply to societies	–	None prescribed
50(1)	To prescribe application procedures to be registered as a society and authorised to operate either as a co-operative housing society or a Starr-Bowkett society	–	None prescribed
55(1)(d)	To prescribe lenders from which a loan made to a co-operative housing society prevents the society from raising money by means of any other kind of loan	–	None prescribed
79(3)	To prescribe an alternative fine a society can charge a member where written notice and opportunity to show cause why the fine should not be imposed has been given	–	None prescribed
Part 4 Management			
97(f)(iii)	To prescribe an offence for which conviction prevents a person from being eligible to be a director of a society	–	None prescribed
109(2)	To prescribe an alternative period from the end of the financial year within which an annual general meeting must be held	–	None prescribed



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
115(1)(b)	To prescribe procedures for postal ballots for voting on a special resolution relating to a merger or transfer of engagements under Part 5	21 Sch. 3	Prescribes procedures in relation to fixing dates, returning officers, voting rolls, ballot papers and forms, duplicates, ballot boxes, counting of votes, returning officers' statements and retention of ballot papers
117(1)	To prescribe registers a society must keep	4	Prescribes a register of loans made to members and securities taken (containing a range of prescribed particulars); a register of loans raised and securities given; a register of loans guaranteed and, in the case of Starr-Bowkett societies - a register of deposits received and a register of appropriations
117(2)	To prescribe particulars that registers must contain		
118(10)	To prescribe the form of return to be lodged with the Registrar advising a person has become or ceases to be a director, principal executive officer or secretary of a society and the particulars	12(1) Sch. 1	Prescribes the form set out in Form 1
119(1)(c)	To prescribe information which must be kept in a society's register of members	5	Prescribes shares held by each member and the date the shares were allotted, the amount paid on shares of each member, the date and circumstances of a member's termination
122(3)	To prescribe precautions societies must take to guard against damage, destruction or falsification of registers	–	None prescribed
122(5)	To provide for how up to date information contained in the written form of a register kept in electronic form must be when made available for inspection	6	Provides the information must be current as at a maximum of 7 days before being made available
132(1)(a)	To prescribe requirements applying to accounts and group accounts	–	None prescribed
137(5)(e)	To prescribe the form of return to be lodged with the Registrar showing the name and address of each member of a firm appointed as auditor of a society, if the firm's business name is not registered under the business names law	12(2) Sch. 1	Prescribes the form set out in Form 2 (Part 3)



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
138(3)	To prescribe the form in which a society must give notice to the Registrar of the appointment of an auditor	12(3) Sch. 1	Prescribes the form set out in Form 2 (Part 2)
140(12)	To prescribe the form in which a society must give notice to the Registrar of the resignation, retirement or withdrawal of an auditor	12(4) Sch. 1	Prescribes the form set out in Form 2 (Part 1)
143(7)(b)	To prescribe matters of a kind in a standard the auditor also reports on when giving the auditor's report to a society's directors	–	None prescribed
145(1)	To prescribe statements and information relating to accounts and accounting records which must be included in a report the auditor prepares if a society is dissolved as part of a merger or transfer of engagements under Part 5 of the Act and the Registrar directs	–	None prescribed. Clause 24 from the existing Regulation is being rolled into the Act as part of the Statute Law (Miscellaneous Provisions) Bill 2015
148(1)	To prescribe returns that must be lodged with the Registrar	14 Sch. 1	Prescribes within 3 months of the end of each financial year, a society must provide for the last financial year: <ul style="list-style-type: none"> ▪ the accounts in Form 3 (for a Starr-Bowkett society) or Form 4 (for a co-operative housing society) ▪ group accounts made out for a holding society in Form 3 (for a Starr-Bowkett society) or Form 4 (for a co-operative housing society) ▪ directors' statement and report ▪ auditor's report
Part 5 Mergers and transfers of engagements			
153(4)(b)	To prescribe procedures for postal ballots for voting on a special resolution relating to a merger or transfer of engagements	21 Sch. 3	Prescribes procedures for ballots, returning officers, voting rolls, ballot papers and forms, duplicates, ballot boxes, counting of votes, returning officers' statements and retention of ballot papers



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
Part 6 External administration			
173(d)	To prescribe modifications to the application of Part 5.1 of the Corporations Act to co-operative housing bodies	13(1)	Provides a form prescribed for the purposes of a provision of the Corporations Act that applies to co-operative housing bodies because of section 173, is the relevant form prescribed by the Corporations Regulations, with any necessary modifications
		22 Sch.4	Modifies the application of section 412(1)(a)(ii) of the Corporations Act to provide matters that must be included in an explanatory statement for a proposed arrangement between a co-operative housing body and its creditors or members
174(b)	To prescribe modifications to the provisions of Part 5.2 of the Corporations Act to co-operative housing bodies	13(2)	Provides a form prescribed for the purposes of a provision of the Corporations Act that applies to co-operative housing bodies because of section 174, is the relevant form prescribed in the Corporations Regulations, with any necessary modifications
176(1)(c)	To prescribe an event upon the happening of which a society is to be wound-up	–	None prescribed
177(1)(d)	To prescribe modifications to the application of the Commonwealth winding-up and deregistration provisions to co-operative housing societies	7	Modifies the application of sections 461, 462 and 464 of the Corporations Act to recognise the regulatory functions of the Registrar. Modifies Part 5.6 of the Corporations Act by inserting a provision that deals with the distribution of surplus funds
		13(3)	Provides a form prescribed for the purposes of a provision of the Corporations Act that applies to co-operative housing bodies because of section 177, is the relevant form prescribed in the Corporations Regulations, with any necessary modifications



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
Part 7 Associations			
183(b)	To prescribe additional functions an association is able to perform	8	Prescribes the following: <ul style="list-style-type: none"> ▪ provide payment guarantees on behalf of member societies ▪ make secured loans to members of the member societies ▪ make secured loans to a corporation or body corporate in which a member society can purchase shares
184(1)	To prescribe application procedures for two or more societies to be registered as an association	9	Prescribes that: <ul style="list-style-type: none"> ▪ a formation meeting must be held by at least two societies, which must consider: <ul style="list-style-type: none"> - a written statement outlining the association's objectives and means of achieving them; and - proposed rules of the association ▪ if the rules are approved, an application may be signed and directors elected ▪ an application for shares in a proposed association may not be withdrawn
		10	Prescribes an application for registration must be in the form approved by the Registrar, signed by at least two directors and lodged within two months of the formation meeting or an extended period allowed by the Registrar
184(2)(b)	To prescribe documents which must accompany an application by two or more societies to form an association	10	Prescribes an application must be accompanied by: <ul style="list-style-type: none"> ▪ a copy of the written statement presented at the formation meeting, signed and certified by the secretary and chair of the meeting ▪ a statement of the particulars of each director ▪ other particulars the Registrar may require



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
190	To prescribe provisions of the Act which apply to associations with all necessary and any prescribed modifications	11	Prescribes the whole of the Act, except Divisions 1 and 2 of Part 3, applies to an association as if it were a society
		14(4)	Prescribes an association listed at the end of clause 5 of Schedule 5 to the Act must provide the Registrar with an annual report containing the relevant returns that are required of a society
Part 8 Standards and model rules			
192(2)	To prescribe matters which may not be the subject of a standard made by the Standards Committee under Part 8 of the Act	–	None prescribed
Part 9 Evidence, offences and proceedings			
209(1)	To prescribe persons who, in addition to the Registrar, may apply to the Court for a declaration as to the personal liability of a person convicted under s 208 in relation to incurring debts not likely to be paid or defrauding creditors	23	Prescribes a liquidator or administrator appointed under the Act or the Corporations Act
Part 10 General			
225	Provides a general regulation making power which enables the Governor to make regulations, not inconsistent with the Act, for or with respect to any matter required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the Act, including: <ul style="list-style-type: none"> ▪ fees payable in connection with the administration of the Act, including lodgement and late lodgement fees ▪ prescribe different fees for different classes of cases 	14(2)	Provides the return specifying declarations of interest under section 100(11) of the Act is to be in Form 3 for Starr-Bowkett societies
		14(3)	Provides the return specifying declarations of interest under section 100(11) of the Act is to be in Form 4 for co-operative housing societies
		15 Sch. 2	Prescribes the fees payable in connection with the administration of the Act, including lodgement and late lodgement fees, are as set out in Schedule 2



Section in the Act	Regulation making power under the Act	Clause in proposed Regulation	Scope of the proposed Regulation
	<ul style="list-style-type: none"> ▪ the waiver, reduction or refund of fees 	16	Provides the Registrar may waive, reduce or refund any fee payable if the Registrar is of the opinion that there are special circumstances that justify the action
		25	Provides for savings of matters that were in effect under the repealed Regulation immediately before its repeal
Schedule 2 Matters to be provided for in rules of co-operative housing societies			
Schedule 2, cl 27	To prescribe additional matters to be provided for in the rules of co-operative housing societies	24(1)	States the rules must provide for whether the society intends to raise money by securitisation arrangement
Schedule 3 Matters to be provided for in rules of Starr-Bowkett societies			
Schedule 3, cl 29	To prescribe additional matters to be provided for in rules of Starr-Bowkett societies	24(2)	States the rules must provide for whether the society intends to raise money by securitisation arrangement



Discussion of the Proposed Regulation

Submissions are welcome on any aspect of the proposed Regulation, whether or not raised in this Regulatory Impact Statement.

The proposed Regulation involves a redraft of the existing Regulation with minor amendments such as:

- updating language to plain English;
- modernising forms to prepare for future developments to facilitate the Government's shift to a digital platform;
- streamlining the layout (previously 35 clauses, now 25 clauses);
- removing obsolete references and repetitive provisions;
- simplifying clauses making it easier to read and greater legislative consistency;
- grouping together relevant clauses for ease of reference;
- setting out how societies are to distribute surplus funds on wind-up; and
- removing unnecessary red tape and administrative requirements for societies (previously 8 forms, now 4 forms).

However, the following discussion points provide greater context for some provisions in the proposed Regulation and explore some options for further amendments.

Forms and returns (Part 5 and Schedule 1)

The existing Regulation provides a variety of older style forms which have not been reviewed since 2005. The proposed Regulation now groups together clauses prescribing various forms and annual returns under Part 5 for ease of reference. The number of forms has also been reduced from eight to four (see Schedule 1).

Most forms have been streamlined in the proposed Regulation, and unnecessary or repetitive matters have been removed. Forms 2, 3 and 4 have been combined into one form (Form 2) as they all deal with the appointment and cessation of auditors, which is now consistent with Form 1 dealing with the appointment and cessation of directors. However, this streamlining could potentially be taken one step further with forms 1 and 2 combined. Under the regular Co-operatives law there is just one 'Change of details' form which co-operatives use to notify Fair Trading of any change in directors, auditors or a change of address.



The requirement to provide a list of directors and principal officers (currently Form 7) has been deleted to reduce red tape. It is unnecessary for societies to send in a list of the same office holders each year. Societies only need to inform the Registrar once, which they all would have done. After this, it only becomes relevant to inform the Registrar if there is a change in a director or officer and Form 1 adequately covers this.

Similarly, the declaration currently contained in Form 8 has been combined into the annual return forms to reduce the compliance burden on societies.

As part of the reporting requirements, the accounts of the society need to be lodged (Form 3 for Starr-Bowkett societies and Form 4 for co-operative housing societies). Stakeholder comments were that the format was outdated and created unnecessary red tape, imposing costs on business.

One stakeholder suggested the annual return Starr-Bowkett societies are required to submit should be removed altogether. Societies are already required to provide an annual auditor's report, financial accounts, director's report and director's statement. It was argued that these documents adequately provide a picture of the financial position of each society and requiring annual returns on top of these was heavy handed.

Therefore one option may be to remove the requirement for annual returns. Another option may be to keep annual returns but reduce them in size significantly to draw out the key data (no more than a one-page summary).

If the annual returns for societies are to be retained in their current format, as set out in the proposed Regulation, there may be scope for further refinements and improvements. For example, a distinction is currently made in the co-operative housing societies return between the management account and the interest account. It is understood that the rules in this area changed some time ago and that the surplus or deficit in the interest account is transferred to the management account. One option would be to combine the management and interest accounts on the form.

In the Starr-Bowkett society annual return societies are required to state whether loans for less than \$6,000 are used to purchase newly-constructed homes or previously-occupied homes. This is an extremely unlikely scenario given the cost of homes in NSW. The form could be amended to simply require the purpose of the loan to be stated.

With the shift towards a digital platform, there may be scope to consider developing fillable forms for electronic lodgement in the future to reduce the administrative burden and costs to both Government and industry.

**Questions**

1. Are annual returns for societies still required? If so, what form should they take?
2. Are there any changes with the forms, as set out in the proposed Regulation, you would like to see to make them easier to fill out and understand?

Winding-up (Part 3)

The operation of a society can end when it reaches its useful life and is no longer required to function, and it is not feasible to merge with another society. Under the Act, a society may be wound-up voluntarily, by the court or on a certificate of the Registrar. In these cases, the Act applies the winding-up and deregistration provisions of the *Corporations Act 2001* of the Commonwealth, subject to any modifications provided in the Regulation.

The proposed Regulation amends the existing winding-up provisions by inserting a new subclause to modify Part 5.6 of the Corporations Act. The proposed clause 7(5) sets out how surplus funds are to be distributed on the winding up of a society.

Currently, there is no provision that deals with the distribution of funds to members when a society is wound up as the Act seeks to rely on the rules of each society. This means surplus funds can be distributed to remaining members, directors, contract secretaries or managers. Windfall profits would defeat the mutuality aspect of the legislation.

To address this, the proposed subclause provides for surplus funds to be distributed to another society or a similar organisation unconnected to the wound-up society. The distribution must be decided at a general meeting of the society, with subsequent oversight and approval of the Registrar. If there is no other society or similar organisation unconnected to the wound-up society, the funds are to be returned to the Government and treated in accordance with the legislation relating to unclaimed monies.

Questions

3. Do you agree with the new provision that has been added dealing with the treatment of surplus funds upon the winding up of a society?
4. Are there any other modifications required to the winding up provisions?



Associations (Part 4)

The proposed Regulation retains the existing provision which sets out additional functions of associations (proposed clause 8), sets the procedures for forming and registering an association (proposed clauses 9 and 10) and applies the whole Act (with some minor exceptions) to associations as if they were a society (proposed clause 11).

Under the Act, two or more societies may form an association with the object of providing administrative, secretarial or other services to member societies and their members, and other functions as may be prescribed.

Member societies of an association pay administrative fees to the umbrella association who then carries out administrative work. This may include, paying wages, co-ordinating legal advice, obtaining and disbursing documents to their members and aiding member societies with their electronic systems.

The proposed Regulation (clause 8) permits associations to provide payment guarantees on behalf of member societies, to make secured loans to members of the member society and to make secured loans to a corporation or body corporate in which shares can be purchased by a member society. With additional financial functions comes financial reporting obligations.

One stakeholder commented that associations no longer provide payment guarantees or make loans as they did in the past. While new associations can still be formed, an option to consider is whether to remove the additional functions set out in clause 8. This would restore associations to their original purposes as set out in the Act, namely as a representative body providing administrative and other related services.

Removing financial functions from associations may also enable the application of the Act to associations to be lessened. For example, the regulatory requirement to lodge annual returns and other financial documents could be removed.

Questions

5. Should the additional functions relating to loans and guarantees given to associations be removed?
6. Should the red tape and regulatory burden on associations be reduced? If so, how?



Fees (Part 6 and Schedule 2)

Each year, Fair Trading's fees and charges in all areas are increased in line with movements in the Consumer Price Index. The proposed Regulation includes the adjusted fees in anticipation of the increases to commence on 1 July 2015.

The prescribed fees support the effective regulatory supervision of societies. A lengthy list of various types of fees currently exists for administrative services Fair Trading's Registry Services performs. However, the vast majority of the prescribed fees are for matters that may be rarely used or applied. For example, there is a fee to register a Starr-Bowkett society. The last Starr-Bowkett society was registered more than 20 years ago. An option to consider would be to only prescribe common fees actually being charged and remove all other unnecessary fees. This would reduce the administrative burden and cost to Government in its annual review of fees.

There may also be some types of fees that may still not reflect actual costs Fair Trading recoups for providing or performing services. For example, Fair Trading sustains costs each year in reviewing lodged annual returns to ensure societies and associations are compliant with the legislative requirements. Fair Trading currently undertakes this function without recouping costs. This differs to other industry sectors (i.e. Associations, Funeral Funds and Co-operatives) where fees are payable for lodging a return or summary of financial affairs.

An option would be to introduce a fee for lodging annual returns to help recover costs Fair Trading sustains each year, which would be consistent with other similar sectors. Any amount recouped should fairly cover the cost of providing services/functions for which the fee applies.

There are more than four pages of fees in the proposed Regulation. About half of these fees are for matters under the Corporations Act. Rather than set out all of these fees again, another option would be to adopt the approach taken in the Co-operatives (New South Wales) Regulation 2014. The Co-operatives Regulation simply has a clause which states that fees for anything done by or in relation to the Registrar under provisions of the Corporations Act as applied under the Law are to be the same as the fees for chargeable matters under the *Corporations (Fees) Act 2001* of the Commonwealth and the regulations under that Act.

Questions

7. Is it appropriate to introduce a fee for lodging an annual return? If not, why?



8. Do you support streamlining the current long list of fees? If so, how should this be done?

Postal ballots (clause 21 and Schedule 3)

The proposed Regulation retains the existing requirements, which set out procedures for voting on matters under the Act where a special resolution must be decided by a postal ballot. These are decisions involving a proposed merger of societies or a transfer of engagements. Given that the conduct of postal ballots relates to significant financial decisions which may impact on stakeholders and members of societies, the procedures set out in Schedule 3 ensure the voting is fair and all members have the opportunity to have their say.

The current procedures require the use of three envelopes. An **outer envelope** addressed to the returning officer, a smaller **middle envelope** to which a member completes and signs their details on the reverse, and a small **inner envelope** in which the ballot paper is enclosed. Requiring the use of three envelopes may make it more cumbersome for a returning officer to prepare, more confusing for members to correctly fill out and more costly for societies.

An option to consider would be to remove the 'middle envelope' requirement. This would remove one step in the process and is also consistent with postal ballot procedures in other legislation Fair Trading administers. For example, the Associations Incorporation Regulation 2010 sets similar procedures for conducting postal ballots but without requiring a 'middle envelope'. Under the Associations Regulation, the member's name and address is recorded on the back of the outer envelope with the inner envelope containing the member's ballot paper. This ensures an accurate record of who has voted can be maintained while respecting the confidentiality of who voted for and against the proposal.

Questions

9. Should the option to remove the 'middle envelope' be implemented? If not, why?
10. Are there other ways to improve the postal ballot procedures?



Appendix 1 - Background Information

Introduction

Co-operative housing societies and Starr-Bowkett societies are lending institutions that help people achieve home ownership through the provision of affordable home loans. These societies both came to fruition at a time when home ownership was a difficult proposition for low to middle income earners.

The prime objective of these societies is the provision of funds for home ownership, on flexible terms, to low and middle income earners who would not normally have access to such funds. It was not possible, as it is today, to access a variety of lending institutions in order to obtain funds to purchase a home.

Both types of societies, along with other types of entities, were previously regulated under the Co-operation Act 1923 until it was ultimately replaced by the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (the Act). The Act has been amended several times since 1998 to give effect to restructuring within the Public Sector and to update the Act to maintain consistency with changes made to the Co-operatives legislation and the Corporations Law. These societies are also subject to the Australian Consumer Law, including unfair contract provisions.

The main issue affecting the continued operation of this sector is the rapid decline of active societies. There is also a declining amount of funds being lent due to an ongoing rationalisation of the industry and the increase in the variety and number of other borrowing options now available.

What are co-operative housing societies?

Co-operative housing societies are financial intermediaries that do not take deposits. Traditionally, Government used co-operative housing societies for the operation of housing loan schemes for people who would not be able to access finance through other financial institutions.

Co-operative housing societies directly lend funds to their members. Borrowings by members are recorded as an asset of the society and the funds which the society obtained from Government lending schemes or borrowed from other lending institutions (which may be Government guaranteed) are recorded as a liability on the society's



balance sheets. These societies may also act in an agency or brokerage role for other financial organisations to provide home loans (known as off-balance sheet lending). They also have the ongoing management of the earlier NSW Government home ownership programs.

Co-operative housing societies have made a valuable contribution to the financing of housing construction in NSW and have helped to give Australia one of the highest home ownership rates in the world. The trend in the sector in the past decade has been toward rationalisation, with societies engaging in a process of transferring engagements to another society as the size of the existing loan portfolios diminish. Currently, there are five co-operative housing societies registered.

What are Starr-Bowkett societies?

Starr-Bowkett societies are a form of a terminating building society - a mutual organisation where each depositor is a member of the organisation. Their objects are to raise funds from members' pooled savings for making loans to its members. Starr-Bowkett societies may also engage in additional financial activities, such as selling low interest loans to members.

These societies operate by issuing shares, with each share having a certain value. Each society has its own rules about matters such as minimum or maximum shareholding requirements. Shares are payable by members in monthly instalments and, over a set period of time, members deposit sufficient funds to pay for the number of shares they have invested in. A ballot system then determines the order in which members receive a loan and loans are required to be secured by mortgage over freehold or leasehold land.

Once all members obtain their loans, the society terminates and is voluntarily 'wound-up'. However, the society remains registered until the last member makes their final loan repayment. Currently, there are 11 Starr-Bowkett societies registered. However, only six are active (Director controlled) with five in various stages of liquidation. There are only three societies still issuing loans.



Appendix 2 - Summary of the Regulation

Clauses 1, 2 and 3 include the name of the Regulation, the date of commencement and the definitions used in the Regulation.

Clause 4 requires each society to keep registers of loans made to members and securities taken, loans raised and securities given, loans guaranteed, and in the case of Starr-Bowkett societies - deposits received and appropriations.

Clause 5 requires each society to keep a register of members, the shares held for each member and when shares were allotted, the amount paid on shares and the circumstances of a member's termination.

Clause 6 sets a maximum of seven days for how up-to-date information in registers must be before being made available.

Clause 7 modifies the application of the winding up provisions of the Corporations Act to recognise the regulatory functions of the Registrar and sets up how surplus funds are to be distributed.

Clause 8 allows an association to guarantee payment of any amount a member society is or will be liable for, and also to make secured loans.

Clause 9 sets out the process if at least two societies wish to form an association.

Clause 10 requires an application to register an association be lodged within two months together with certain statements.

Clause 11 generally provides that the whole Act applies to an association as if it was a society.

Clause 12 prescribes the forms advising of the appointment or cessation of a director/officer or an auditor.

Clause 13 carries across certain forms prescribed in the Corporations Regulation, with necessary modifications.

Clause 14 requires a society to lodge annual returns within three months of the end of the financial year, together with the director's statement and report and the auditor's report.

Clause 15 states the fees payable in connection with the administration of the Act.



Clause 16 allows the Registrar to waive, reduce or refund any fee charged if there are special circumstances that justify such action.

Clause 17 expands the definition of who is an 'associate'.

Clause 18 states all documents held by the Registrar about an individual society can be inspected by members of the public.

Clause 19 entitles a person who gives evidence to the Registrar to the same allowances and expenses payable to a witness in District Court criminal proceedings.

Clause 20 clarifies the right of an inspector to enter non-residential premises during business hours.

Clause 21 provides for postal ballots to be carried out in the case of a merger or transfer of engagements.

Clause 22 modifies the application of the Corporations Act to require an explanatory statement for a proposed arrangement between a co-operative housing body and its creditors or its members.

Clause 23 allows a liquidator or administrator appointed under the Act or the Corporations Act to also apply to the Court for a declaration.

Clause 24 states a society's rules must disclose whether a society intends to raise money by a securitisation arrangement.

Clause 25 provides for savings of matters in effect under the repealed Regulation immediately before its repeal.

Schedule 1 sets out the prescribed Forms.

Schedule 2 lists the fees payable in connection with the administration of the Act.

Schedule 3 sets out the procedures for conducting postal ballots.

Schedule 4 contains the information to be included in an explanatory statement relating to a proposed compromise or arrangement with creditors or members.



Appendix 3 - List of Stakeholders

Key Stakeholders

The following organisations have been provided with a copy of the proposed Regulation and this Regulatory Impact Statement:

Mitchell Co-operative Housing Society

NSW Co-operative Housing Society

Northern Co-operative Housing Society

Parramatta Co-operative Housing Society

Penrith Valley Co-operative Housing Society

Co-operative Housing Societies Association of New South Wales Ltd

The Earlwood-Canterbury Association of Co-operative Housing Societies Ltd

The Starr-Bowkett Co-operative Bicentenary Home Loans Society Ltd

The Starr-Bowkett Co-operative Home Loans Society No.6 Ltd

The Starr-Bowkett Co-operative Home Loans Society No.8 Ltd

The Starr-Bowkett Co-operative Home Loans Society No.25 Ltd

Starr-Bowkett Statewide Co-operative Society No.26 Ltd

Starr-Bowkett Statewide Co-operative Society No.27 Ltd

The Starr-Bowkett Co-operative Home Loans Society No.2 Ltd (in Liquidation)

The Starr-Bowkett Co-operative Home Loans Society No.5 Ltd (in Liquidation)

The Commonwealth Starr-Bowkett Co-operative Building Society No 9 Ltd (in Liquidation)

The North Sydney Starr-Bowkett Building Co-operative Society No.10 Ltd (in Liquidation)

Starr-Bowkett Statewide Co-operative Society No.25 Limited (in Liquidation)

Newtown United Co-operative Building Association Ltd

The Association of Starr-Bowkett Co-operative Home Loans Societies Ltd

Australian Prudential Regulation Authority

Housing NSW

Financial Rights Legal Centre

Council of Social Service of NSW