



Regulatory Impact Statement

Proposed Co-operative Housing and
Starr-Bowkett Societies Regulation 2020



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1. Background Information

1.1 What are Co-operative housing and Starr-Bowkett societies?

Co-operative housing societies and Starr-Bowkett societies are lending institutions that provide affordable loans for home ownership and other purposes. These societies came to fruition in the early to mid part of the last century across Australia as a popular alternative to banks.

Co-operative housing societies are financial intermediaries that provide housing loans to low and moderate-income households.

Co-operative housing societies do not take deposits. They lend funds directly to their members. Borrowings by members are recorded as an asset of the society and the funds 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 institutions to provide home loans (known as off balance sheet lending).

Co-operative housing societies have made a valuable contribution to the financing of housing construction in Australia, funding over 30 per cent of housing construction in both New South Wales and Victoria through the 1950s.¹ Australia had a thriving cooperative housing society sector until the mid-1990s, when all jurisdictions withdrew guarantees and funding. The trend 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 in NSW.

Starr-Bowkett societies are a form of a terminating building society – a mutual organisation where each depositor is a member of the organisation. They provide interest-free or low-interest loans to members on a lottery basis from members' pooled savings. Depending on the size of the loan the funds can be used by the member to purchase a home, or a car or whitegoods etc.

These societies operate by issuing shares, with each share having a certain value. Shares are payable by members in instalments and, over a set period, 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, which is 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 only 3 Starr-Bowkett societies registered in NSW.

¹ Abbott, M. J. & Doucouliagos, C. (2001). The rise and decline of the New South Wales cooperative societies. *Urban Policy and Research*, 19(2), 227–242

1.2 History of Regulation of societies in NSW

Both types of societies were previously regulated under the *Co-operation Act 1923* until it was replaced by the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (the Act). Since 1998, the Act has been amended several times to reflect changes to the Co-operatives legislation and the *Corporations (New South Wales) Act 1990*.

These societies came to fruition at a time when home ownership was a difficult proposition for low to middle income earners. Recent surge in the variety and number of other borrowing options has led to a rapid decline of active societies. Accordingly, many jurisdictions no longer regulate these societies and NSW is the last jurisdiction to legislate for Starr-Bowkett societies.

As of 1 July 2019, NSW has grandfathered the Act so that no new societies can be formed or registered. While existing societies can continue to operate, societies can no longer admit new members. The proposed Co-operative Housing and Starr-Bowkett Societies Regulation 2020 (proposed Regulation) makes minor amendments to the existing regulatory regime to reflect the changes to the industry.

1.3 Why the proposed Regulation is being made

Under the *Subordinate Legislation Act 1989* most regulations are scheduled for automatic repeal after 5 years. This is to ensure that each regulation remains relevant and fit for purpose. Regulations that are due for repeal can be remade (either with or without amendments), postponed or allowed to lapse.

The Co-operative Housing and Starr-Bowkett Societies Regulation 2015 (existing Regulation) is due for staged repeal on 1 September 2020. If the proposed Regulation is not made, there will be no supporting Regulation for the Act. The proposed Regulation provides necessary regulatory support and administrative detail to effectively administer and enforce the objectives of the Act.

Remaking this Regulation requires the preparation of a regulatory impact statement (RIS) and a period of public consultation. This RIS sets out the rationale and objectives of the proposed Regulation and options for achieving the objectives, including an assessment of associated costs and benefits. The RIS should be read in conjunction with the proposed Regulation.

2. Consultation Program

2.1 Public consultation on the proposed Regulation & RIS

The proposed Regulation and this RIS will be publicly exhibited for a period of 28 days until Friday, 31 July 2020. It is available on the 'Have Your Say' page of the Fair Trading website at www.fairtrading.nsw.gov.au

A notice advising of the availability of the proposed Regulation and RIS has been published in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald.

Details of the consultation have been placed on the general NSW Government Have Your Say webpage at www.nsw.gov.au/improving-nsw/have-your-say/

Copies of the proposed Regulation and this RIS have also been provided directly to existing societies and other key stakeholders.

2.2 How to make 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 RIS.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is 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/>.

Please forward submissions by:

Email: policy@customerservice.nsw.gov.au

or by mail to:

Co-operative Housing and Starr-Bowkett Societies Regulation 2020
Better Regulation Division, Policy and Strategy
Department of Customer Service
4PSQ, Lv 28, Mail Room
12 Darcy Street
PARRAMATTA NSW 2150

Alternatively, submissions made be made online by responding to the survey questions on the 'Have Your Say' page of the Fair Trading website.

The closing date for submissions is Friday 31 July 2020.

2.3 Confidential submissions

We will make all submissions publicly available on the Fair Trading website. If you do not want your personal details or part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough.

Even if you state that you do not want us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*. The Department will also provide all submissions to the Legislation Review Committee of NSW Parliament. This is a statutory requirement.

2.4 Evaluation of submissions

The Department will carefully consider each submission. If necessary, we will amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may consult with key stakeholders before finalising the new Regulation.

2.5 Matters outside the scope of the consultation

Matters covered by the Act are not the subject of the consultation process. This RIS only deals with matters within the scope of the regulation not provisions contained in the Act itself.

2.6 Commencement of the proposed Regulation

Once the Regulation has been finalised it will be submitted to the Governor for approval.

The final Regulation will then be published on the NSW Government website for online publication of legislation at www.legislation.nsw.gov.au prior to commencing.

At this stage, the proposed Regulation will commence on 1 September 2020 when the existing Regulation is due to be repealed.

3. Objective and rationale of the Regulation

3.1 Objectives of the proposed Regulation

The aim of the proposed Regulation is to provide legislative support and administrative detail for the effective operation of the Act. The proposed Regulation contains provisions that are not found in the Act or elsewhere. Without these regulatory provisions, the Act would therefore not be as effectively administered or enforced.

The specific objectives of the proposed Regulation are to provide for:

- requirements relating to annual returns and registers to be kept;
- the formation, registration and functions of associations;
- relationships that result in a person being an associate of a body corporate or other person for the purposes of the Act;
- the application of the *Corporations Act* of the Commonwealth to the winding up of societies;
- procedures for postal ballots; and
- fees payable under the Act.

3.2 Options for achieving objectives

Three options have been identified in this RIS as a means of achieving the objectives of the proposed Regulation. These options are:

Option 1: Take 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 2: Maintain the status quo

Do not make the proposed Regulation and remake the Regulation 'as is', identical to the existing Regulation.

Option 3: Make the proposed Regulation

Remake the existing Regulation with amendments to modernise and improve the regulatory regime.

3.3 Criteria used to assess the regulatory options

The following criteria have been used to evaluate the above options:

- the extent to which the option:
 - modernises the existing regulatory framework
 - reduces red tape and regulatory burden
 - improves financial integrity and accountability
 - supports the objectives of the Act
- the cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.

4. Impact assessment of options

4.1 Summary and preferred option

Option 3 is the preferred option. Remaking the regulation with amendments will maintain the benefits of the existing Regulation with added benefits provided by minor changes. This option best meets the objectives of the Act, reduces red tape and improves legislative clarity. The proposed amendments will provide an updated regulatory framework that is relevant and aligned with current industry practices. Streamlining and redrafting provisions into plain English, including the fees schedule, will simplify the Regulation to make it easier to read.

Option 2 is not supported. Remaking the Regulation without amendment will not impose any new costs on industry or consumers but it will not result in any benefits. While the Act's objectives would still be able to be achieved, there would be a missed opportunity to modernise the existing regulatory regime. The Regulation will continue to contain provisions that are no longer relevant in light of the recent grandfathering of the Act.

Option 1 is not supported. Allowing the current Regulation to lapse, under the base option of doing nothing, would reduce the effectiveness of the Act and make parts inoperable. This includes provisions of the Act that involve administrative fees and forms, and the formation and functions of associations, which are prescribed by the existing Regulation. There will also be uncertainty to the application of the *Corporations Act 2001* to the Act, causing new ambiguity for industry as they navigate their statutory obligations under the laws of the Commonwealth and New South Wales. While the absence of regulatory requirements may provide immediate savings to administrative and compliance costs for industry and Government, not having supporting Regulation would create unprecedented challenges to the way the Act is interpreted and enforced. This would likely result in long-term costs to industry and Government as greater resources become involved in law enforcement, complaints handling and dispute resolution. Additionally, this option will significantly reduce consumer protection as there is reduced financial transparency and accountability.

Table 1: Summary of costs and benefits of each option

	Option	Costs	Benefits	Overall benefit
1	Take no action	Low	Low	Negative
2	Maintain status quo	High	Low	Negative
3	Make proposed Regulation	Low	Medium	Positive

Table 2: Summary of benefits of each option

Evaluation criteria	Option 1: Take no action	Option 2: Maintain status quo	Option 3: Make new Regulation
Modernises existing regulatory framework	No	No	Yes
Reduces red tape and regulatory burden	No	No	Yes
Improves financial integrity and accountability	No	No	Yes
Supports objectives of the Act	No	Yes	Yes

4.2 Assessment of option 1 – Take no action

This option would result the existing Regulation lapsing under the sunset provisions of the *Subordinate Legislation Act 1989* with no replacement of the Regulation.

Option 1 – Costs

This option would likely result in high level of costs to industry, consumers and Government.

Without a Regulation, the Act would be unsupported and specific provisions in the Act would become inoperable, such as the collection of fees. If fees were not payable, administrative costs of providing access to or certified copies of documents would significantly increase costs to Government. Additional costs and delays may be experienced if the documents are required to be produced under the *Government Information (Public Access) Act 2009*. The number of requests for information and complaints received by NSW Fair Trading would also increase significantly with limited guidance and detail that the Regulation would otherwise provide. At the same time, industry practice may lose consistency as many provisions of the Act become open to interpretation in the absence of regulatory guidance.

In addition, allowing the Regulation to lapse would reduce transparency and protection for consumers. NSW Fair Trading will no longer be able to monitor the financial position and performance of societies as they will no longer be required to comply with existing reporting and record keeping requirements. Reduced accountability would result in an increased risk of harm to consumers and impact the overall integrity of the industry.

Option 1 – Benefits

Allowing the Regulation to lapse would result in the removal of many regulatory requirements. This may provide short-term benefit to industry and Government as administrative burden and costs would be reduced.

However, as indicated above, having no supporting Regulation will significantly limit the effective operation of the Act and prevent many of its objectives from being realised. Consumers will also not be provided the protection afforded under a regulatory framework. While there are costs to Government in the prudential supervision of societies, these costs do not outweigh the benefits of protecting the interests of consumers, other stakeholders and the broader community. Overall, the benefits of this option are considered low.

For these reasons, Option 1 is not supported.

4.3 Assessment of option 2 – Maintain the status quo

This option would result in the current Regulation being remade without any amendment when it lapses on 1 September 2020.

Option 2 – Costs

Industry and Government would continue to incur administrative and financial costs under this option when the Regulation is remade. This would generally involve costs arising from the administration of the Act and the Regulation.

While there are no additional costs for industry, consumers or Government if the status quo is maintained, there will be a loss of opportunity to modernise the regulatory regime. The existing Regulation contains provisions that are no longer relevant following the grandfathering of the Act in July 2019. If the existing Regulation is remade without any amendment, outdated provisions such as arrangements for securitisation and the registration application fee for new societies would remain. In addition to a missed opportunity to update the regime, there will be a reputational risk to Government in not updating the Regulation to reflect current industry practice.

Under this option, there will also be a loss of savings as red tape reduction measures provided by the proposed Regulation would not be achievable. When the existing Regulation is remade, industry and Government would be obliged to comply with existing statutory requirements. These include obligations involving significant amount of resources, such as the reporting and record keeping provisions that require societies to produce extensive documents and conduct administrative checks that are disproportionate to the risks involved. The rolling over of these prescriptive provisions will incur unnecessary costs for industry and prevent improvements to the overall efficiency of the regulatory regime.

Option 2 – Benefits

The primary benefit of maintaining the status quo is the savings achieved as no changes are required to existing practices and procedures. The regulatory provisions will be familiar to industry, consumers and Government, and there will be no operational disturbances, saving time and money.

Under this option, the regulatory framework will continue to support the objectives of the Act to regulate societies and provide legal protection to members. However, this option would see a continuation of an

outdated regulatory framework that does not accommodate industry changes, including those arising from the recent grandfathering of the Act.

Maintaining the existing Regulation 'as is' does not provide any additional benefits. Instead, there will be missed opportunities to improve regulatory efficiency and relevance. The overall benefit under this option is therefore assessed as low.

For these reasons, Option 2 is not supported.

4.4 Assessment of option 3 – Remake the regulation

This option would result in the proposed Regulation with amendments being made to replace the current regulation when it lapses on 1 September 2020.

Option 3 – Costs

Minimal costs are associated with this option as the amendments are largely minor administrative improvements and do not create any new requirements. Government and industry would continue to incur costs in the ongoing administration of the legislation. The proposed Regulation would not otherwise impose any new costs to societies, members or Government.

The minimal costs incurred under the proposed Regulation will be outweighed by the long-term benefits arising from a reformed regulatory regime. Notably, there will be significant reduction in administrative and financial costs for both industry and Government as existing requirements will be simplified or removed altogether under the proposed Regulation.

Option 3 – Benefits

Remaking the Regulation would result in an updated regulatory regime that best meets the intended objectives of the Act.

The proposed Regulation will reduce red tape by removing unnecessary provisions. Changes include the removal of overly prescriptive reporting requirements and certain timeframes for lodging forms with NSW Fair Trading, including when registering a new association. In addition, existing provisions will be redrafted into plain English and provisions restructured to improve legislative readability. A clear, consistent regulatory framework will reduce the likelihood of misunderstanding the law and in turn reduce compliance burdens for industry.

The proposed Regulation will also streamline provisions with comparable legislation in other States and Territories. This includes amending the fees schedule to ensure the amount payable under NSW law is fair and reasonable, compared to similar fees in other jurisdictions. It is in the best interest of the Government to support legislative consistency and to ensure laws are appropriate and remain fit for purpose.

For these reasons, Option 3 provides the **greatest net benefit** to industry, consumers and Government in comparison to the other options and is the preferred option.

5. Discussion of the proposed regulation

Submissions are welcome on any aspect of the proposed Regulation regardless of whether the issue has been specifically raised in this RIS. The following discussion highlights some of the key changes contained in the proposed Regulation.

5.1 Removing outdated and unnecessary provisions

The proposed Regulation improves the existing regulatory regime by removing outdated provisions.

The proposed amendments give effect to the recent grandfathering of the Act by removing provisions that relate to the registration of new co-operative housing or Starr-Bowkett societies. Under Schedule 1 of the existing Regulation, a fee is imposed to register a society with NSW Fair Trading. As no new societies can be formed as of 1 July 2019, this fee item is now redundant and has not been included in the proposed Regulation.

Clause 24 of the existing Regulation has also not been retained in the proposed Regulation. This clause requires societies to indicate in their rules whether they intend to raise money by a securitisation arrangement. This provision is no longer relevant as new societies cannot be formed and existing societies would have already addressed this issue in their rules. Removing this provision will not affect the operation of existing societies as they will have the option to modify their arrangements at any future point in time. The proposed amendment will ensure that the regulatory regime remains up-to-date.

The proposed Regulation also removes obsolete references in the existing Regulation. For example, clause 20 of the existing Regulation prescribes additional documents that are subject to inspection under entry and search powers. There are sufficient enforcement powers in Part 2 of the Act, including provisions that authorise officers to gather evidence as required. This clause does not add to the existing inspection powers under the Act nor provide any additional regulatory measures. To maintain high efficacy in the regulatory regime, shell provisions such as clause 20 have been removed in the proposed Regulation.

- 1. Are there any other provisions in the existing Regulation that are outdated or unnecessary?**

5.2 Reducing red tape and administrative burden

The proposed Regulation removes provisions that create unnecessary red tape and administrative burden for societies. In particular, statutory requirements relating to reporting and record keeping have been simplified.

Simplifying annual returns requirements

Clause 14(1) of the existing Regulation requires societies to lodge with the Registrar the following information as part of an annual return:

- Accounts of the society for the last financial year;
- Group accounts of the holding society for the last financial year (if applicable);
- A copy of the director's statement prepared under section 133 of the Act;
- A copy of the director's report prepared under section 134 of the Act; and
- A copy of the auditor's report prepared under section 143 of the Act.

While the proposed Regulation still requires societies to lodge accounts with the Registrar within 3 months of the end of each financial year, it no longer prescribes documents that must be provided as part of the return. Instead, clause 10 in the proposed Regulation simply provides that a return must be lodged in the approved form. The amendment therefore clarifies that societies only need to provide information as contained in the approved form or required to be attached.

By removing the separate list of documents in sub-clauses, future amendments to the reporting requirements can be made more easily to the approved form without needing regulatory amendment. This provides greater flexibility to adjust the reporting requirements as needed, in response to stakeholder feedback and the evolving industry. Any reporting obligations that impose unnecessary administrative burdens or are no longer fit-for-purpose can readily be removed from the approved form. In particular, requirements relating to documents that can be supplied under other legislation administered by NSW Fair Trading can be subject to periodic assessment to ensure the regulatory requirements remain appropriate and relevant.

Simplifying record keeping requirements

The proposed Regulation further reduces unnecessary red tape by simplifying the record keeping requirements in the existing Regulation.

Under clause 4(1)(a), the existing Regulation prescribes certain types of information that must be kept in a register of loans made to members and securities taken. This includes the amount of each loan, the date on which the loan was approved, and the name of each member receiving the loan. The clause also requires societies to keep records of highly detailed information such as the folio reference to the minute documenting the board's decision to provide the loan. In addition, societies must record "particulars of any movement of the location of documents relating to the security taken in respect of loans." While the proposed Regulation retains most of the record keeping requirements in the current regime, highly prescriptive provisions such as these have not been carried across. The proposed Regulation also removes existing clause 6 which requires societies to ensure electronic registers are kept up-to-date and

reviewed at least 7 days before they are produced for inspection. By removing highly prescriptive provisions such as these, the proposed Regulation reduces red tape and administrative burden for both industry and Government. The amendments also promote best practice for existing societies who will have greater responsibility to ensure their record keeping is up-to-date and compliant with legislation.

2. Are the proposed changes to the annual returns requirements appropriate? If not, how should they be changed?

3. Are there any documents for annual returns that should be included or excluded in the approved form? If so, what are they?

4. Are the proposed changes to the record keeping requirements appropriate? If now, how should they be changed?

5.3 Simplifying and streamlining provisions

Streamlining the fees schedule

Schedule 2 of the current Regulation lists 19 fees that are currently administered under the Act. The proposed Regulation streamlines this list by grouping fees relating to similar matters. For example, existing fee items 13 to 17 have been consolidated under a single fee dealing with the merger or transfer of engagements. Similarly, fee items 6 and 7 have been combined under the proposed fee item 4 – “change of name of co-operative housing body”. By streamlining the schedule, the proposed Regulation reduces the total number of fees from 19 to 12. This will result in reduced administrative costs to industry and to Government in its annual review of fees.

The language used in the fees schedule has also been simplified to improve readability. Fee amounts have been reviewed to ensure consistent fees are charged for items involving similar amount of resources. Each year, fees are increased according to movements in the Consumer Price Index. The proposed Regulation includes the adjusted fees in anticipation of the automatically indexed increases to commence on 1 July 2020.

5. Are the proposed fees fair and reasonable? If not, how should they be changed?

Restructuring provisions in the Regulation

The proposed Regulation makes minor structural amendments to the existing Regulation to improve legislative clarity and consistency.

In the existing Regulation, winding up provisions are currently contained in Part 3. In the proposed Regulation, these provisions have been moved to Part 6 to proceed the provisions dealing with registration and reporting requirements. This amendment aligns the proposed Regulation with the Act which places the winding-up provisions towards the end of the legislation. Consistent formatting between the Act and the proposed Regulation will assist consumers in navigating the legislative framework.

Further, the proposed Regulation rearranges certain provisions to improve legislative flow. In the existing Regulation, clause 8 prescribes additional functions of associations. This provision is currently placed prior to provisions for the formation and registration of associations. Logically, provisions dealing with the formation and registration of bodies should precede information about their additional functions or obligations. The proposed Regulation gives effect to this logical sequence by rearranging clause 8 to follow provisions on the formation and registration of associations. This amendment improves readability and overall legislative cohesion in the proposed Regulation.

6. Are there any other modifications required to the winding up provisions?

7. Are there any other changes required to the structure of the proposed Regulation?

5.4 Other issues not raised in this RIS

The regulation making powers of the Act are summarised at Appendix 1. Some of these powers are used in the current Regulation while other powers are not.

8. Do any of the regulation making powers that are not included in the proposed Regulation need to be used, and if so, why?

9. Are there any other issues that are not raised in this RIS that relate to the Regulation? If so, what is the issue and how could it be addressed in the Regulation?

Appendix 1 – Regulation making powers

The following table sets out the existing regulation making powers in the Act and the powers intended to be used in the proposed Regulation.

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
4(2)(g)	Define relationships that are considered as 'associates' for the purposes of the Act	<p>Clause 15 prescribes the following relationships:</p> <ul style="list-style-type: none"> • Where a person is a body corporate and the other person is a director or secretary of a related body corporate • Where a person acts, or intends to act in concert with another person • Where a person enters, or intends to enter into a transaction with another person in order to become associated with another person
5A	Define 'economic entity' or 'entity' where those terms are not defined by an accounting standard	None prescribed
12(2)	Determine whether an entity controls another entity	None prescribed
17	Declare any matter relating to societies to be an applied Corporations legislation matter	None prescribed
23(1)(a)	Prescribe documents that may be inspected	Clause 16 provides that all documents kept by the Registrar may be inspected.
23(1)(b)	Set a fee to obtain a certified copy of an inspected document	Schedule 1 prescribes the relevant fees.
27(2)(c)	Specify Registrar decisions that are not subject to administrative review by NCAT	None prescribed.
29(5)	Set scales of allowances and expenses for a person giving evidence to the Registrar	Clause 17 sets the same allowances and expenses as payable to a witness in District Court criminal proceedings.
32(2)(c)	Prescribe documents that are subject to entry and search powers	None prescribed.
43(4)(c)(ii)	Specify circumstances for the winding-up of societies	None prescribed.
48(4)	List additional objects for societies	None prescribed.
50(1)	Outline application procedures for registering societies	None prescribed.

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
55(1)(d)	Prescribe loans that prevent co-operative housing societies from raising money by means of any other kind of loan	None prescribed.
79(3)	Set an alternative fine for infringement of rules	None prescribed.
97(f)(iii)	Specify offences that prevent a person from being a director of a society	None prescribed.
109(2)	Set an alternative timeframe within which an annual general meeting must be held	None prescribed.
115(1)(b)	Prescribe the voting process relating to a merger or transfer of engagements	Schedule 2 prescribes the procedures for voting including voting rolls, ballot papers and forms, ballot boxes and counting of votes.
117(1), (2)	Specify registers and the particulars that societies must keep	Clause 4 requires the following registers to be kept: <ul style="list-style-type: none"> • loans made to members and securities taken • loans raised and securities given for co-operative housing societies • subscriptions received for Starr-Bowkett societies
118(10)	Create a form for reporting an incoming or outgoing director, principal executive officer or secretary	None prescribed.
119(1)(c)	Prescribe information that must be kept in a register of members	Clause 5 prescribes the following information: <ul style="list-style-type: none"> • shares held by each member and the date those shares were allotted • amount paid on shares • date and circumstances for terminating a membership
122(3)	Specify precautions societies must take to guard against damage, destruction or falsification of registers	None prescribed.
122(5)	Require information in registers to be up to date at the time of inspection	None prescribed.
132(1)(a)	Prescribe requirements for accounts	None prescribed.
137(5)(e)	Create a form to be lodged with the Registrar showing the name and address of each member of an auditor firm, if the firm is not registered in NSW	None prescribed.
138(3)	Create a form to notify the appointment of an auditor	None prescribed.

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
140(12)	Create a form to notify the resignation, retirement or withdrawal of an auditor	None prescribed.
143(7)(b)	Prescribe additional matters that must be reported in the auditor's report to directors	None prescribed.
148(1)	Specify requirements for lodging returns with the Registrar	Clause 10(1) requires societies to provide the Registrar with an annual return in the approved form within 3 months of the end of each financial year.
173(d)	Modify the application of Part 5.1 of the Corporations Act to a society	Schedule 3 modifies the application of s412(1)(a)(ii) of the Corporations Act to provide matters to be included in an explanatory statement for a proposed arrangement between a co-operative housing body and its creditors or members
174(b)	Modify the application of Part 5.2 of the Corporations Act to a society	None prescribed.
176(1)(c)	Specify events that would cause the winding up of a society	None prescribed.
177(1)(d)	Modify the application of the winding-up and deregistration provisions in the Corporations Act to a society	Clause 13 modifies the application of ss. 461, 462 and 464 of the Corporations Act to recognise the regulatory functions of the Registrar. The clause also modifies Part 5.6 by inserting a provision to deal with the distribution of surplus funds.
183(b)	Add functions of an association	<p>Clause 8 adds the following functions:</p> <ul style="list-style-type: none"> • providing payment guarantees on behalf of member societies • making secured loans to members of societies that form the association • making secured loans to a corporation or body corporate in which a member society can purchase shares
184(1)	Prescribe the application process for the registration of an association	<p>Clause 6 prescribes that:</p> <ul style="list-style-type: none"> • a formation meeting must be held by at least two societies • 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 <p>Clause 7 prescribes that an application for registration must be lodged with the Registrar in the approved form and signed by at least two directors.</p>

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
184(2)(b)	Specify documents that must accompany an application to register an association	Clause 7 prescribes the following documents: <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 in a particular case
190	Modify the application of the Act to associations	Clause 10(2) increases the timeframe within which associations must lodge annual returns (5 months after the end of each financial year).
209(1)	Authorise persons to apply for a Court declaration that a person convicted under s 208 of the Act is personally liable	Clause 19 authorises a liquidator or administrator appointed under the Act or the Corporations Act.
225	Provide a general regulation making power which enables the Governor to make regulations, not inconsistent with the Act.	This power has been used throughout the proposed Regulation, including: <ul style="list-style-type: none"> • cl 11 & Sch 1: Prescribe the fees payable in connection with the administration of the Act • cl 12: Authorise the Registrar to waive, reduce or refund any fees payable • cl 20: Provide for savings of matters that were in effect under the repealed Regulation immediately before repeal
Schedule 2, cl 27	Add matters to be provided for in the rules of co-operative housing societies	None prescribed.
Schedule 3, cl 29	Add matters to be provided for in rules of Starr-Bowkett societies	None prescribed.

Appendix 2 – Comparison against existing Regulation

The following table sets out the key changes in the proposed Regulation, compared to the existing Regulation.

Existing Regulation	Proposed Regulation
<p>Clause 4(1)(a) prescribes a list of information that must be contained in a register of loans made to members and securities taken. This includes information relating to:</p> <ul style="list-style-type: none"> • Cl 4(1)(a)(iv) - the folio reference to the minute documenting the board's decision to provide the loan; and • Cl 4(1)(a)(x) - the particulars of any movement of the location of documents relating to the security taken in respect of loans. 	<p>Clause 4(a) retains most of the prescribed information from the existing Regulation, however omits prescriptive provisions that impose unnecessary administrative burden, such as sub-clauses 4(1)(a)(iv) and 4(1)(a)(x).</p>
<p>Clause 14(1) requires societies to lodge the following documents as part of annual returns:</p> <ul style="list-style-type: none"> • Accounts of the society for the last financial year; • Group accounts of the holding society for the last financial year (if applicable); • A copy of the director's statement prepared under section 133 of the Act; • A copy of the director's report prepared under section 134 of the Act; and • A copy of the auditor's report prepared under section 143 of the Act. 	<p>Clause 10 simplifies the annual returns requirements by removing the prescribed documents and instead requiring returns to be lodged in the approved form.</p>
<p>Clause 20 prescribes additional documents that are subject to inspection under the entry and search powers of the Act.</p>	<p>This provision has been omitted in the proposed Regulation as there are sufficient enforcement powers under Part 2 of the Act.</p>
<p>Clause 24 requires societies to indicate in their rules whether they intend to raise money by a securitisation arrangement.</p>	<p>This provision has been omitted in the proposed Regulation as this requirement is only applicable to new societies. As no new societies can be</p>

	formed or registered as of 1 July 2019, this provision is no longer relevant.
Clause 10(2) requires an application to register a new association to be lodged with the Registrar within 2 months after the formation meeting.	This timeframe has been removed in the proposed Regulation to reduce unnecessary red tape. Proper registration is required for any association to come into effect and it is in the association's best interest to lodge an application for registration as soon as practicable.
Clause 8 prescribes additional functions of associations. This provision is currently placed prior to provisions for the formation and registration of associations.	The proposed Regulation improves readability by moving the existing clause 8 to precede the provisions relating to formation and registration of associations.
The existing Regulation provides for the winding up of societies in Part 3.	The proposed Regulation moves down the winding up provision to Part 6, consistently with the structure of the Act.
Clause 11 specifies that the whole of the Act (except Divisions 1 and 2 of Part 3) apply to an association as if the association were a society.	The proposed Regulation omits this provision as section 190 of the Act sufficiently provides that 'all necessary modifications' apply to the provisions in the Act regarding societies when it comes to Associations. The legislative intent of this provision is adequately met by the Act, making this provision in the Regulation unnecessary.
There are 19 fees prescribed in Schedule 1 of the existing Regulation.	There are 12 fees prescribed in Schedule 1 of the proposed Regulation. The number of fees has been shortened by removing outdated fees and streamlining fees into categories, where applicable.
The fees schedule in Schedule 1 prescribes a fee for registering a new society with NSW Fair Trading.	This fee item has been omitted in the proposed Regulation as no new societies can be formed or registered since 1 July 2019, when the Act was grandfathered.