

CO-OPERATION (AMENDMENT) ACT 1986 No. 106

NEW SOUTH WALES



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CO-OPERATION (AMENDMENT) ACT 1986 No. 106

NEW SOUTH WALES



Act No. 106, 1986

An Act to amend the Co-operation Act 1923 to make further provision with respect to the membership of co-operative societies and the keeping and auditing of accounts and in certain other respects. [Assented to 26 November 1986]

See also Public Accountants Registration (Co-operation) Amendment Act 1986; Permanent Building Societies (Co-operation) Amendment Act 1986.

Co-operation (Amendment) 1986

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

Short title

1. This Act may be cited as the "Co-operation (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Co-operation Act 1923 is referred to in this Act as the Principal Act.

Amendment of Act No. 1, 1924

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions

5. Schedule 3 has effect.

Validation—Premier Low Start Home Loans

6. (1) This section applies to a co-operative housing society where the rules of the society are altered after, but not more than 6 months after, the commencement of section 17 (5) of the Principal Act to authorise the society to exercise the additional powers referred to in that subsection.

(2) Where this section applies to a society, anything done or purportedly done by the society before that alteration of its rules takes effect (including before the commencement of section 17 (5) of the Principal Act) which would, if done after that alteration takes effect, have been validly done under section 17 (5) of the Principal Act is validated.

Co-operation (Amendment) 1986

SCHEDULE 1

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 5 (**Interpretation**)—

(a) Section 5, definition of “Director of Housing”—

After the definition of “Co-operative Farms Purchase Promotion Committee”, insert:

“Director of Housing” means the Director of Housing holding office as such under the Public Service Act 1979.

(b) Section 5, definition of “Officer”—

After “director,”, insert “principal executive officer,”.

(c) Section 5, definitions of “Primary object”, “Principal executive officer”—

After the definition of “Prescribed”, insert:

“Primary object”, in relation to a society, means an object of the society which is specified in the rules of the society as a primary object of the society.

“Principal executive officer”, in relation to a society or to a subsidiary corporation of a society, means the principal executive officer of the society or corporation for the time being, by whatever name called, and whether or not that officer is a director or the secretary.

(d) Section 5, definition of “Subsidiary corporation”—

After the definition of “Society”, insert:

“Subsidiary corporation” has the meaning ascribed to that expression by section 5c.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Sections 5A–5D—

After section 5, insert:

Co-operative principles:

5A. (1) In this Act, a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

Voluntary association and open membership:

Membership of a co-operative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.

Democratic control:

Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.

Limited interest on capital:

Share capital shall only receive a strictly limited rate of interest, if any.

Equitable division of surplus:

The economic results arising out of the operations of the society belong to the members of that society and shall be distributed in such a manner as would avoid one member gaining at the expense of others.

*Co-operation (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

This may be done by decision of the members as follows:

- (i) by provision for development of the business of the co-operative;
- (ii) by provision of common services; or
- (iii) by distribution among the members in proportion to their transactions with the society.

Co-operative education:

All co-operative societies shall make provision for the education of their members, officers, and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic.

Co-operation among co-operatives:

All co-operative organisations, in order to best serve the interests of their members and communities shall actively co-operate in every practical way with other co-operatives at local, national and international levels.

(2) Any requirement in this Act that a society function in accordance with co-operative principles shall not be construed

- (a) as requiring the society to function in accordance with all of the principles set out in subsection (1); or
- (b) as authorising the society to contravene any other provision of this Act or of its rules.

(3) The Governor may, by order published in the Gazette, amend the principles set out in subsection (1) so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
*continued***Rules to specify primary objects**

5B. (1) The board of a society (not being a building society or an association the majority of the component societies of which are building societies) shall ensure that the rules of the society specify which of the objects of the society are the primary objects of the society from time to time.

(2) A society may have 1 or more than 1 primary object.

(3) The Minister may, by order published in the Gazette, specify factors and considerations to be taken into account in determining which of the objects of a society are the primary objects of the society and the rules of a society shall specify as primary objects of the society those objects which are determined in accordance with any such order as being the primary objects of the society.

(4) Where the rules of a society are altered in connection with the specification of its primary objects, the registrar—

- (a) may, before registering the alteration, require the society to provide the registrar with such additional information as the registrar may require for the purpose of deciding whether or not to register the alteration; and
- (b) in the exercise of the registrar's power to refuse to register the alteration, may refuse to register all or part only of the alteration.

(5) Where the registrar refuses to register such an alteration, or part of such an alteration, of the rules of a society on the basis that the matter refused registration would cause the rules to specify as a primary object of the society an object which is not a primary object of the society or would cause the rules to fail to specify as a primary object of the society an object which is a primary object of the society—

- (a) the registrar shall inform the society in writing of the reasons for the refusal; and

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) the Advisory Council shall, at the request of the society, review the registrar's decision to refuse registration on that basis.

(6) If, following its review of the registrar's decision to refuse registration, the Advisory Council is of the opinion that registration should not have been refused on that basis and recommends to the registrar that the alteration, or part of the alteration, be registered, the registrar shall comply with the recommendation.

(7) An alteration of the rules of a society effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 83 (3).

Subsidiary corporations

5C. (1) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of the corporation;
- (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) holds more than one-half of the issued share capital of the corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by a society, the composition of a corporation's board of directors shall be taken to be controlled by a society if the society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the society, can appoint or remove all or a majority of the directors, and, for the purposes of this section, the society shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in that person's favour by the society of such a power; or
- (b) a person's appointment as a director follows necessarily from that person's being a director or other officer of the society.

(3) In determining whether a corporation is a subsidiary of a society—

- (a) any shares held or power exercisable by the society in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for the society (except where the society is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the society, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by the society;

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation, or of a trust deed for securing any issue of any such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the society (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.

(4) In this section—

“corporation” has the meaning ascribed to that expression by the Companies (New South Wales) Code, and includes a society.

Active membership

5D. (1) For the purposes of this Act, a member of a society (not being a building society or an association the majority of the component societies of which are building societies) is an active member of the society if the member—

- (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in the manner and to the extent which the rules of the society provide is sufficient to establish active membership; or
- (b) maintains such other relationship or arrangement with the society in connection with the carrying on of a primary object of the society as the regulations provide is sufficient to establish active membership.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) The board of such a society shall ensure that the rules of the society specify the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active membership of the society.

(3) Without affecting the generality of subsection (1), a rule or regulation may be made under that subsection which provides that the payment of a regular subscription by a member of a society to be applied in connection with a primary object of the society is sufficient to establish active membership of the society.

(4) Where the primary objects of a society include the supply to or purchase from the society by its members of goods or produce, a rule shall not be made by the society for the purposes of subsection (1) which provides that the support of an activity of, or the maintaining of a relationship or an arrangement with, the society, is sufficient to establish active membership of the society (including a rule which makes provision as referred to in subsection (3)), except with the approval of the Minister given after consultation with the Advisory Council.

(5) For the purposes of this section and of any rule made for the purposes of this section, a member of a society supplies to or purchases from the society goods or produce—

- (a) if the member supplies to or purchases from a corporation constituted by an Act for the purpose of the marketing of goods or produce and that corporation in turn supplies to or purchases from the society; or
- (b) if there exists between the member and the society such other relationship or arrangement as may be prescribed by the regulations as being sufficient to establish the relationship of supplier or purchaser.

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(6) The registrar may refuse to register a rule of a society, or an alteration of the rules of a society, made or effected for the purpose—

- (a) of specifying an activity which a member of the society is required to utilise or support or any other relationship or arrangement which a member of the society is required to maintain; or
- (b) of providing for the manner in which or the extent to which a member of the society is required to utilise or support an activity of the society or maintain any other relationship or arrangement with the society,

in order to establish active membership of the society if the registrar is of the opinion that in all the circumstances of the case the requirements of the rule or alteration are not reasonable.

(7) An alteration of the rules of a society effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 83 (3).

(3) Section 16 (**Objects**)—

Section 16 (3)—

After section 16 (2), insert:

(3) A co-operative housing society shall have, as an additional object, the object of assisting its members and other persons to obtain loans on the security of a mortgage over land in Australia of any tenure to be used wholly or partly for residential purposes.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Section 16AA—

After section 16, insert:

Additional objects of co-operative housing societies

16AA. (1) A co-operative housing society shall have such additional objects as may be prescribed in relation to the provision of housing for its members and other persons.

(2) An additional object may be prescribed so as—

- (a) to apply generally to all co-operative housing societies;
- (b) to apply to a particular co-operative housing society or the members of a class of co-operative housing societies; or
- (c) to be limited in its application to those societies by reference to specified exceptions or factors.

(5) Section 17 (**Powers**)—

Section 17 (5), (6)—

After section 17 (4), insert:

(5) In addition to its other powers, a co-operative housing society may, as incidental to the object referred to in section 16 (3) (assisting members and others to obtain loans), enter into and give effect to any agreement, scheme or other arrangement for or incidental to the provision, management or administration of loans.

(6) The power under subsection (5)—

- (a) shall only be exercised by a society if authorised by its rules; and
- (b) shall be exercised subject to any conditions or restrictions imposed by the regulations.

*Co-operation (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(6) Section 17AA—

After section 17, insert:

Additional powers of co-operative housing societies

17AA. (1) A co-operative housing society may if authorised by its rules, as incidental to its objects, engage in such additional activities as may be prescribed.

(2) The regulations may impose conditions and restrictions—

(a) on the exercise of any such additional power of a co-operative housing society; or

(b) on the exercise of any power of a co-operative housing society (whether or not an additional power under this section) as incidental to an object prescribed as an additional object of the society under section 16AA,

and the powers of the society shall be exercised accordingly.

(7) Section 17AB (**Treasurer may undertake to make good certain losses**)—

Section 17AB (5)—

Omit “one million dollars”, insert instead “\$2,000,000 (or such other amount as may, with the concurrence of the Treasurer, be prescribed).”.

(8) Section 34 (**Association**)—

(a) Section 34 (1), (1A)—

Omit section 34 (1), insert instead:

(1) An association may be formed of any number of societies, whether of the same kind or of different kinds, to be known as component societies of the association.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(1A) Where the membership of an association comprises at least 50 component societies which are societies registered under this Act, there may be admitted to membership of the association as a component society of the association a body corporate or other body—

- (a) which is incorporated or registered under any other law, whether or not a law of the State; and
- (b) which in the opinion of the board of the association is designed and intended to function in accordance with co-operative principles.

(b) Section 34 (2)—

Omit “(not being a rural society which has become a component society of an association of trading societies)”.

(c) Section 34 (2) (a)—

After “supervise”, insert “and assist in the administration of ”.

(d) Section 34 (2) (a1)—

After section 34 (2) (a), insert:

- (a1) to make arrangements for the provision by qualified persons of audit, insolvency and other professional services to its component societies;

(e) Section 34 (2) (d)—

After section 34 (2) (c), insert:

- (d) such other objects as may be prescribed.

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continued

(f) Section 34 (3)—

Omit “(not being a rural society which has become a component society of an association of trading societies) might do, and in the case of an association of any of the following kinds of societies, that is to say, rural societies, trading societies, rural credit societies, and building societies, the association may, unless otherwise provided by its rules—”, insert instead “might do, and all or any of the following things unless otherwise provided by its rules:”.

(g) Section 34 (3) (d), (e)—

After section 34 (3) (c), insert:

- (d) acquire by purchase or otherwise shares in any other society;
- (e) such other things as may be prescribed.

(h) Section 34 (4)—

After section 34 (3), insert:

(4) The registrar may refuse to register a rule or an alteration of the rules of an association where the rule or alteration would have the effect of specifying as an object or a power of the association an object or a power which—

- (a) is not an object or a power of an association specified in subsection (2) (a)–(d) or (3) (a)–(e); and
- (b) is not an object or a power of a component society of the association which is a society registered under this Act.

(9) Section 38 (**Liability and membership**)—

(a) Section 38 (2)—

Omit “section”, insert instead “Act”.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 38 (7)—

After section 38 (6), insert:

(7) A person is not qualified to be admitted to membership of a society (except a building society or an association the majority of the component societies of which are building societies) unless there are reasonable grounds for believing that the person will be an active member of the society.

(10) Section 39 (Formation)—

(a) Section 39 (7) (a1)—

After section 39 (7) (a), insert:

(a1) that the society (not being a building society or an association the majority of the component societies of which are building societies) is designed and intended to function in accordance with co-operative principles;

(b) Section 39 (7A) (b)—

Omit “or”.

(c) Section 39 (7A) (b1)—

After section 39 (7A) (b), insert:

(b1) that the applicant society (other than a building society or an association the majority of the component societies of which are building societies) is not designed or intended to function in accordance with co-operative principles; or

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(11) Section 44A (**Any company may apply to be registered**)—

Section 44A (3) (a1)—

After section 44A (3) (a), insert:

- (a1) that the company (not being a company designed and intended to function, after registration under this Act, as a building society or as an association the majority of the component societies of which will be building societies) is designed and intended to function in accordance with co-operative principles;

(12) Section 46 (**Members**)—

(a) Section 46 (5)—

Omit “the societies”, insert instead “the component societies”.

(b) Section 46 (5)—

Omit “other societies which are”, insert instead “other society, body corporate or other body which is”.

(c) Section 46 (7)—

After “section”, insert “and to any restriction imposed by the rules of a society as to the entitlement of a person to represent a body corporate”.

(d) Section 46 (7B)—

Omit “society which is a member of an association”, insert instead “component society of an association or a union of associations”.

(e) Section 46 (7B)—

After “the association” wherever occurring, insert “or union”.

(f) Section 46 (7B)—

After “members”, insert “(or, where the rules of the association or union so permit, persons who are not members)”.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(g) Section 46 (7c)—

Omit “he is a member of a society that is a member”, insert instead “the person is entitled to be appointed under subsection (7B) to represent a component society”.

(h) Section 46 (9) (b)—

After “with”, insert “this Act or”.

(i) Section 46 (9) (k)—

Before “society” where secondly occurring, insert “component”.

(13) Section 47 (Shares)—

(a) Section 47 (10) (a)—

Omit “No member shall, in his own right or through nominees, hold more than one-fifth of the shares or, where any lesser proportion is specified in the rules, more than such lesser proportion.”, insert instead “Unless the Minister on the recommendation of the Advisory Council otherwise approves in a particular case, no person shall hold shares in a society which represent more than one-fifth (or such lesser proportion as may be specified by the rules of the society) of the nominal value of the issued share capital of the society as disclosed in the accounts of the society last submitted to the registrar.”.

(b) Section 47 (10) (b)—

After section 47 (10) (a), insert:

(b) For the purposes of this section, a person holds a share in a society if the person would, for the purposes of section 47B, be regarded as having a relevant interest in the share if that section applied to the society.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 47 (11), (11A)—

After section 47 (10), insert:

(11) Where a person holds shares in a society in contravention of subsection (10), the board of the society shall declare to be forfeited sufficient of those shares to remedy the contravention, being—

- (a) those shares nominated by the person for the purpose; or
- (b) in the absence of such a nomination—those shares which have been held by the person for the shortest time,

and any such declaration shall have effect according to its tenor.

(11A) Section 54D (repayment of amounts due in respect of forfeited shares) applies to and in respect of shares forfeited under subsection (11) in the same manner as it applies to and in respect of shares forfeited under section 54C.

(d) Section 47 (18)–(20)—

Omit section 47 (18), insert instead:

(18) Except with the approval of the Minister given either generally or in a particular case and on the recommendation of the Advisory Council, the board shall not consent to the sale or transfer of a share in a society (not being a non-terminating building society or a society mentioned in the Second Schedule) if the sale or transfer would cause the nominal value of all shares sold or transferred since the commencement of the then current financial year of the society to exceed the prescribed proportion (or such lesser proportion as may be specified in the rules of the society) of the nominal value of the issued share capital of the society as at that commencement.

(19) For the purposes of subsection (18), the prescribed proportion is one-fifth or such other proportion as may be prescribed by the regulations.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(20) Subsection (18) does not prevent the board from consenting to the sale or transfer of a share—

(a) on the death of a member; or

(b) in such other circumstances as the regulations may provide.

(14) Section 47A (**Issue of additional shares and making of deductions**)—

(a) Section 47A (5)—

Omit “, and approved by it by resolution”, insert instead “for its approval”.

(b) Section 47A (5A)—

After section 47A (5), insert:

(5A) The Advisory Council shall consider an application for its approval of any such proposal and may approve of the proposal (subject to such conditions or modifications, if any, as it may impose or require) or may refuse to approve of the proposal.

(c) Section 47A (6)—

Omit “society, and”, insert instead “society in accordance with the approval and”.

(d) Section 47A (7)—

Omit “subsection (5) it shall, as soon as practicable, notify the board of its reasons for withholding”, insert instead “subsection (5A) it shall, as soon as practicable, notify the board of its reasons for refusing”.

(15) Section 47AA (**Issue of bonus shares**)—

(a) Section 47AA (4)—

Omit “conditions, if any, as it may impose”, insert instead “conditions or modifications, if any, as it may impose or require”.

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 47AA (6) (b)—

Omit the paragraph, insert instead:

- (b) shall be issued only in respect of shares that are fully paid up as at the date of issue of the bonus shares.

(16) Section 47BA—

After section 47B, insert:

Notice of substantial shareholding

47BA. (1) For the purposes of this section—

- (a) a person holds shares in a society if the person would, for the purposes of section 47B, be regarded as having a relevant interest in the shares if that section applied to the society; and
- (b) a person is a substantial shareholder in a society if the person holds shares in the society which represent at least 10 per cent of the nominal value of the issued share capital of the society as disclosed in the accounts of the society last submitted to the registrar.

(2) Where a person—

- (a) becomes a substantial shareholder in a society;
- (b) being a substantial shareholder in a society, increases or decreases the number of shares in the society which the person holds; or
- (c) ceases to be a substantial shareholder in a society,

the person shall, within 7 days after becoming aware of the fact, give notice in writing of the fact to the society in the prescribed form and specifying the prescribed particulars.

Penalty: \$1,000.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(3) A society shall keep a register of substantial shareholders in which shall be entered in alphabetical order the names of persons from whom the society has received a notice under subsection (2) together with the information given by the notice.

(4) The register of substantial shareholders shall be open for inspection by any member of the society free of charge.

(5) The provisions of this section—

(a) do not apply to or in respect of a shareholding in a building society or in an association the majority of the component societies of which are building societies;

(b) do not apply in a case or class of cases exempted from the operation of this section by the regulations;

(c) apply to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in the State or in Australia or not; and

(d) extend to acts done or omitted to be done outside the State, whether in Australia or not.

(17) Section 52—

Omit the section, insert instead:

Purchase and repayment of shares

52. (1) A society may, if authorised by its rules—

(a) purchase any share of a member in the society; or

(b) except in the case of a building society whose rules provide for the withdrawal of shares, repay to a member with the member's consent the whole or any part of the amount paid up on any share held by the member when the sum repaid is not required for the purposes of the society.

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Except with the written consent of the registrar and subject to such conditions (if any) as the registrar may impose, the amount paid by a society under this section in purchasing shares or repaying any amount paid up on shares, or both, in any financial year of the society shall not exceed the sum of—

- (a) 5 per cent of the nominal value of the issued share capital of the society immediately before the commencement of that financial year; and
- (b) the amount of any additional share capital of the society subscribed for during that year.

(3) Subsection (2) does not prevent a society from purchasing the shares of a deceased member of the society.

(4) A society, being a non-terminating building society or a society mentioned in the Second Schedule, shall not—

- (a) purchase any shares of a member in the society; or
- (b) repay to a member any amount paid up on any share held by the member,

to the extent that the purchase or repayment would result in the society failing to maintain its capital adequacy as required by the Permanent Building Societies Act 1967.

(5) Nothing in subsection (2) applies to a building society.

(18) Section 53 (**Cancellation of shares**)—

Omit “may cancel or sell and re-issue”, insert instead “shall cancel”.

(19) Section 54 (**Repayment of shares on expulsion**)—

Section 54 (1)–(2)—

Omit the subsections.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(20) Sections 54C, 54D—

After section 54B, insert:

Forfeiture of shares—inactive members

54C. (1) The board of a society with limited liability (other than a building society or an association the majority of the component societies of which are building societies) shall declare to be forfeited the shares of a member where—

- (a) the whereabouts of the member are not presently known to the society and have not been known to the society for a continuous period of at least 2 years before that time; or
- (b) the member is not presently an active member of the society and has not been an active member of the society at any time during the period of 2 years immediately before that time,

and any such declaration shall have effect according to its tenor.

(2) Where after consultation with the Advisory Council the Minister—

- (a) is satisfied in a particular case or class of cases that the forfeiture of shares in accordance with subsection (1) was or would be unreasonable; and
- (b) directs by order in writing that the shares should not have been forfeited or should not be forfeited,

subsection (1) does not require the shares to be forfeited while the order is in force and, where the shares have been forfeited, the person who was the holder of the forfeited shares is entitled to be reinstated as a member of the society (with all the rights and entitlements attaching to or arising from the former membership) in accordance with the directions of the Minister.

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(3) Where the registrar is satisfied that it is not reasonably practicable for a society to determine for how long before the commencement of this section a member's whereabouts have not been known to the society or for how long before that commencement a member has not been an active member of the society, the registrar may by order in writing approve of subsection (1) (a) or (b) not applying to the society for such period (not longer than 2 years) after the commencement of this section as the registrar specifies in the approval and, where such an approval is in force in respect of a society, shares of the society are not required to be forfeited on a ground specified in subsection (1) (a) or (b), as the case requires, before the expiration of that period.

(4) Unless the regulations otherwise provide, the board of a society shall not declare shares of a member to be forfeited under this section—

- (a) if the society is under official management;
- (b) if a compromise or an arrangement is being administered in respect of the society;
- (c) if the society is in the course of being wound up;
- (d) if an appointment of a receiver of any property of the society is in force;
- (e) if the society has, for the purposes of being registered as a company under the Companies (New South Wales) Code, lodged with the registrar the documents required to be registered or filed with the registrar pursuant to section 70 (7) (a); or
- (f) in such other circumstances as may be prescribed.

(5) The board of a society shall ensure that not less than one month's notice of its intention to declare the shares of a member to be forfeited is given to the member—

- (a) by notice in writing sent to the member by post; or

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) where the member's whereabouts are unknown to the society, by notice published in a newspaper circulating in the district in which the registered office of the society is situated.

(6) No notice is required to be given under subsection (5) where the member's whereabouts are unknown to the society and the amount subscribed in respect of the shares to be forfeited does not exceed \$50.

(7) Where the board of a society fails to declare the shares of a member to be forfeited as required by this section, each director of the society is guilty of an offence and liable to a penalty not exceeding \$1,000 unless the director satisfies the court that—

- (a) the failure occurred without the knowledge of the director;
- (b) the director was not in a position to influence the conduct of the board in relation to the failure; or
- (c) the director, being in such a position, used all due diligence to prevent the failure by the board.

Repayment of amounts due in respect of forfeited shares

54D. (1) Where the shares of a member of a society are forfeited under section 54C, the society shall, within 12 months after the date of forfeiture—

- (a) repay to the former member the amount paid up in respect of the forfeited shares; or
- (b) if, in the opinion of the board, repayment of that amount to the former member would adversely affect the financial position of the society—apply that amount as a deposit by the former member with the society or allot debentures of the society to the former member in satisfaction of that amount.

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) A deposit or debenture to which an amount due to a former member in respect of forfeited shares is transferred—

- (a) bears interest in respect of any period at the rate (or, where there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the society or, where the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined; and
- (b) shall be repaid to the former member as soon as the repayment would not, in the opinion of the board, adversely affect the financial position of the society and in any case before the expiration of the period of 10 years (or such shorter period as may be required by the rules of the society) after forfeiture of the member's shares or before the expiration of such longer period after that forfeiture as the Advisory Council may approve under subsection (3), subject to the conditions (if any) to which that approval is made subject.

(3) Where the Advisory Council is satisfied that the repayment of an amount to a former member before the expiration of 10 years (or any shorter period required by the rules of the society) after forfeiture of the former member's shares would cause the society financial hardship, the Advisory Council may approve, whether or not subject to conditions, of the repayment of that amount not later than such longer period after that forfeiture as the Advisory Council considers reasonable.

(4) Where a former member whose shares are declared to be forfeited under section 54c is subsequently readmitted to membership of the society, any amount held by the society under subsection (1) (b) shall, at the request of the member, be applied towards the cost of subscription for share capital in the society.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(5) A society shall keep a register in the prescribed form and specifying the prescribed particulars of shareholders whose shares have been forfeited under this section.

(6) Nothing in the Unclaimed Money Act 1982 requires money to be paid to the Treasurer under section 6 of that Act before the money is required to be repaid to a former member of a society under this section.

(21) Section 58 (**Death of member**)—

Section 58 (2)—

Omit “The proviso to section 52 (1) shall not extend to such a purchase.”.

(22) Section 61 (**Use of word “co-operative”**)—

Section 61 (5), (6)—

Omit “not exceeding ten dollars for every day during which the offence continues” wherever occurring, insert instead “not exceeding \$500”.

(23) Section 64 (**Property**)—

Section 64 (2A)—

After section 64 (2), insert:

(2A) Without limiting the Minister’s power to refuse to approve of the sale or lease, the Minister may refuse approval if of the opinion that the sale or lease—

- (a) would adversely affect a significant number of the members of the society;
- (b) would adversely affect the efficiency, viability or profitability of the society; or
- (c) would not be in the public interest.

*Co-operation (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(24) Section 65 (**Borrowing powers**)—

Section 65 (1) (a1)—

After section 65 (1) (a), insert:

(a1) A society may, if authorised by its rules, raise money by issuing, discounting or otherwise dealing with bills of exchange.

(25) Section 66AA (**Compulsory loan by member to society**)—

(a) Section 66AA (7A)—

After section 66AA (7), insert:

(7A) The Advisory Council shall consider an application for its approval of any such proposal and may approve of the proposal (subject to such conditions or modifications, if any, as it may impose or require) or may refuse to approve of the proposal.

(b) Section 66AA (8)—

After “society” where firstly occurring, insert “in accordance with the approval”.

(c) Section 66AA (9)—

Omit “withholding”, insert instead “refusing”.

(26) Section 70 (**Registration of society as company**)—

Section 70 (1A) (a1)—

After section 70 (1A) (a), insert:

(a1) Without limiting the Minister’s power to refuse to approve of the application being made, the Minister may refuse approval if of the opinion that registration of the society as a company—

(a) would adversely affect a significant number of the members of the society;

(b) would adversely affect the efficiency, viability or profitability of any other society engaged in an activity in which the society is engaged; or

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) would not be in the public interest.

(27) Section 72 (**Name and address**)—

Section 72 (3A)—

After section 72 (3), insert:

(3A) The name and address of a society shall appear in legible characters on its business letters.

(28) Section 75B (**Directors to furnish certain information**)—

Section 75B (3)—

Omit “and a further penalty not exceeding \$20 for every day from the time the offence is committed until the time the notice is given”.

(29) Section 76 (**Returns**)—

(a) Section 76 (1), (1A)—

Omit the subsections, insert instead:

(1) A society shall, within 14 days after the appointment of a person—

(a) as a director of the society or of any subsidiary corporation of the society; or

(b) as the principal executive officer or secretary of the society or of any subsidiary corporation of the society,

and within 14 days after any such appointment ceases, submit to the registrar a notice in writing specifying the prescribed particulars of the appointment or cessation of appointment.

(1A) Whenever a society is required to submit to the registrar a notice under subsection (1) specifying particulars of the appointment of a person as a director of the society or of any subsidiary corporation of the society, it shall also specify in the notice the prescribed particulars of any other corporation of which the person is, according to any notice or notices given under section 75B, a director.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 76 (2) (a)–(f)—

Omit section 76 (2) (a)–(e), insert instead:

- (a) a list specifying the directors and the principal executive officers of the society and of each subsidiary corporation of the society, as at the date of the return;
- (b) the accounts of the society in respect of its financial year then last past;
- (c) the accounts of each subsidiary corporation of the society in respect of the financial year of the subsidiary corporation then last past;
- (d) a copy of any report by the auditors or directors of the society or subsidiary corporation on the accounts referred to in paragraphs (b) and (c);
- (e) in the case of a co-operative housing society—a copy of a report by the auditors on the audit of security documents carried out under section 89A (2) (a) most recently before the transmission of returns to the registrar; and
- (f) a return containing such other particulars as may be prescribed.

(c) Section 76 (2A)—

After “of the society”, insert “and of each subsidiary corporation of the society”.

(d) Section 76 (2C)—

Omit the subsection, insert instead:

(2C) Within 1 month after the end of the period in which an audit of the security documents held by a co-operative housing society is required to be carried out under section 89A (2) (b), the society shall transmit to the registrar a copy of the report on that audit by the auditors under section 89A (3).

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(30) Section 78 (**Charges**)—

Section 78 (4)—

Omit “approval of the registrar.”, insert instead:

approval—

- (a) in relation to a co-operative housing society—of the Director of Housing; or
- (b) in any other case—of the registrar.

(31) Section 82 (**Rules**)—

(a) Section 82 (1) (d1)—

After section 82 (1) (d), insert:

- (d1) which of the objects of the society (not being a building society or an association the majority of the component societies of which are building societies) are its primary objects;

(b) Section 82 (2) (c)—

Omit the paragraph.

(c) Section 82 (2) (j)—

Omit “or in the circumstances mentioned in section 47 (18) (a)”.

(32) Section 83 (**Alteration of rules**)—

(a) Section 83 (1)—

Omit the subsection, insert instead:

- (1) The rules of a society shall not be altered except by a special resolution passed by the members or as provided by this section.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 83 (3)—

Omit the subsection, insert instead:

(3) The rules of a society may be altered by a resolution passed by the board but only where—

- (a) the alteration does no more than give effect to a requirement, restriction or prohibition imposed by or under the authority of this Act or the regulations or, in the case of a non-terminating building society or a society mentioned in the Second Schedule, by or under a provision of the Permanent Building Societies Act 1967 applying to the society by reason of the operation of Division 4 of Part XI of that Act; or
- (b) in the case of a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule—the alteration does no more than deal with a matter specified in an order under subsection (3c) in such manner, if any, as may be specified in that order.

(c) Section 83 (3c) (a)—

Omit the paragraph, insert instead:

- (a) matters that may be dealt with under subsection (3) (b) by the board of a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule; and

(33) Section 84 (**Board of directors**)—

(a) Section 84 (7) (b) (i)—

After “that society”, insert “(being a member whose shares are not required to be forfeited under section 54c)”.

(b) Section 84 (7) (b) (ii)—

After “that association”, insert “or is otherwise qualified under the rules of that association to be a director”.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 84 (7) (b1)—

After section 84 (7) (b), insert:

(b1) Notwithstanding paragraph (b), a person is qualified to be elected as a director of a society (not being a building society) if the person holds a qualification, including a qualification based on the holding of an office, specified in the rules of the society as qualifying the person to be a director and the Minister is satisfied and certifies by order in writing that it would be in the public interest for a person so qualified to be a director of the society or that any interest which the Crown has in the society would be benefited by a person so qualified being a director of the society.

(d) Section 84 (11) (e)—

After section 84 (11) (d), insert:

(e) if the shares of the director are required to be forfeited under section 54C;

(e) Section 84 (11) (j), (j1)—

After section 84 (11) (i), insert:

(j) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;

(j1) if the director becomes an employee of the society;

(f) Section 84 (14A)—

After section 84 (14), insert:

(14A) A vacancy in the office of director occurring as a result of the shares of the director being required to be forfeited under section 54C shall be filled by election by the members held as soon as practicable after the vacancy occurs.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(34) Section 84AAA (**Election of employees as directors**)—

Section 84AAA (3) (a)—

Omit “, in the opinion of the registrar (of which notice in writing has been served on the society), has as a principal object”, insert instead “has as a primary object”.

(35) Section 84AAC (**Revocation of approval, etc.**)—

Section 84AAC (1)—

Omit “in respect of which an opinion referred to in section 84AAA (3) (a) was formed has ceased to have as a principal object”, insert instead “has ceased to have as a primary object”.

(36) Section 84AB (**Director to disclose interest in certain contracts**)—

Section 84AB (10)—

Omit “and to a further penalty not exceeding \$20 for every day during which the offence continues”.

(37) Section 85 (**Meetings of the society**)—

Section 85 (4)—

After section 85 (3), insert:

(4) At any meeting of the society a member whose shares are required to be forfeited under section 54C is not entitled to be present.

(38) Section 86 (**Votes of members**)—

(a) Section 86 (2)—

Omit the subsection, insert instead:

(2) Except as provided by subsection (2A), every member of a society shall have one vote only.

(b) Section 86 (3)–(7)—

Omit the subsections.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 86 (8A)—

After section 86 (8), insert:

(8A) Where the shares of a member are required to be forfeited under section 54C, the member is not entitled to vote (including by proxy) and any vote cast by the member when not entitled to vote shall be disregarded.

(d) Section 86 (9) (a)—

Omit “of a component society or association”, insert instead “, in the case of an association or a union, is entitled to represent a component society or association of the association or union on the association or union”.

(39) Section 88 (**Officers**)—

Section 88 (2B) (a)—

Omit “registrar”, insert instead “Director of Housing”.

(40) Section 89A (**Audit of certain security documents**)—

Section 89A (2)—

Omit the subsection, insert instead:

(2) A co-operative housing society shall ensure that security documents held by the society are audited by the auditors of the society—

- (a) at least once during the period commencing 1 month before and ending 1 month after the end of each financial year of the society; and
- (b) at least once during the period commencing 5 months after and ending 7 months after the commencement of each financial year of the society.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(41) Section 92 (**Winding up**)—

(a) Section 92 (3) (g1)—

After section 92 (3) (g), insert:

(g1) that the board of the society has, after notice from the registrar, failed to ensure that the rules of the society specify—

(i) which of the objects of the society are the primary objects of the society; and

(ii) the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active membership of the society;

(b) Section 92 (4)—

After “(g),” insert “(g1),”.

(c) Section 92 (7) (a1)—

(a1) Without limiting the Minister’s power to refuse to approve of the voluntary winding-up, the Minister may refuse approval if of the opinion that the voluntary winding-up of the society—

(a) would adversely affect a significant number of the members of the society;

(b) would adversely affect the efficiency, viability or profitability of any other society engaged in an activity in which the society is engaged; or

(c) would not be in the public interest.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(42) Section 93A—

After section 92C, insert:

Liability of member to contribute in a winding up where shares forfeited, etc.

93A. (1) Where a person ceases to be a member of a society within 2 years before the commencement of the winding up of the society, by reason of the shares of the person being forfeited under section 54C, the person is liable on the winding up to contribute to the property of the society the nominal value of the cancelled shares immediately before their cancellation.

(2) Where under section 52 a society (other than a building society)—

- (a) purchases any share of a member in the society; or
- (b) repays to a member the whole or any part of the amount paid up on any share held by a member,

within 2 years before the commencement of the winding up of the society, the member or former member is liable on the winding up to contribute to the property of the society the amount which was paid by the society to the member or former member in respect of the purchase or repayment together with any amount unpaid on those shares immediately before the purchase or repayment.

(3) Where, pursuant to a liability under subsection (1) or (2), a person contributes to the property of a society on a winding up of the society, the amount contributed shall, for the purposes of the winding up, be treated as having been paid up by the person on shares of the society.

(4) The liability of a member or former member of a society under this section is in addition to any other liability of the member or former member to contribute to the property of the society on a winding up of the society.

*Co-operation (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(43) Section 101 (**Defaults by society**)—

(a) Section 101 (1) (d)—

Omit “or return”, insert instead “, return or other document”.

(b) Section 101 (1)—

Omit “\$10 or, in the case of a continuing default, not exceeding \$10 in respect of each day on which the default continues,”, insert instead “\$500”.

(44) Section 102 (**Restrictions on powers**)—

Section 102 (1)—

After “imposed by this Act”, insert “or its rules”.

(45) Section 103 (**Too few members**)—

Section 103 (1)—

Omit “ten dollars for every day during which the offence continues”, insert instead “\$500”.

(46) Section 104 (**Name**)—

(a) Section 104 (1)—

Omit “ten dollars for every day during which the offence continues”, insert instead “\$500”.

(b) Section 104 (2)—

Before “bill of exchange”, insert “business letter,”.

(47) Section 111AAA—

After section 111, insert:

Continuing offences

111AAA. Where—

(a) by or under a provision of this Act or the regulations an act or thing is required or directed to be done;

(b) failure to do that act or thing constitutes an offence; and

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) a person (including a society) is convicted of an offence in respect of a failure to do that act or thing,

that person is guilty of a separate and further offence in respect of the continuing failure to do that act or thing and the penalty applicable to each such separate and further offence is a penalty not exceeding the maximum penalty applicable to the original offence.

(48) Section 117 (**Inspection by registrar**)—

(a) Section 117 (1)—

Omit the subsection, insert instead:

(1) The registrar and any inspector appointed under section 118A and authorised in writing by the registrar either generally or specially to do so—

- (a) may inspect any records, or examine the affairs, of a society (not being a non-terminating building society) or of any subsidiary corporation of a society (not being a subsidiary corporation of a non-terminating building society), whether or not the society or corporation is in the course of being wound up; and
- (b) where a society (not being a non-terminating building society) or a subsidiary corporation of a society (not being a subsidiary corporation of a non-terminating building society) is in the course of being wound up, may inspect any records kept by the liquidator in respect of the society or corporation.

(b) Section 117 (3)—

After “(other than a non-terminating building society)”, insert “or of a subsidiary corporation of a society (not being a subsidiary corporation of a non-terminating building society)”.

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(49) Section 118 (**Special meeting and inquiry**)—

(a) Section 118 (1) (b)—

After “society”, insert “or of a subsidiary corporation of the society”.

(b) Section 118 (8)—

Omit the subsection, insert instead:

(8) All expenses of and incidental to a meeting called or an inquiry held under subsection (1) or an inquiry held under subsection (9) shall be defrayed in such proportions as the registrar directs—

(a) by the applicants (if any);

(b) out of the funds of the society to which the meeting or inquiry related or, as the case may be, the society whose subsidiary corporation was the subject of the inquiry; or

(c) by any officer, member, former officer or former member of the society.

(c) Section 118 (9)—

After “(other than a non-terminating building society)”, insert “or a subsidiary corporation of a society (not being a subsidiary corporation of a non-terminating building society)”.

(d) Section 118 (9)—

After “the society”, insert “or corporation”.

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(50) Section 120 (**Inspection of documents**)—

(a) Section 120 (a)—

Omit the paragraph, insert instead:

- (a) inspect any document (not being a document of a class or description prescribed for the purposes of this paragraph) registered by, or filed or lodged with, the registrar pursuant to this Act and obtain from the registrar a certified copy of any such document; or

(b) Section 120 (b1), (c)—

Omit the paragraphs.

(c) Section 120 (2)—

At the end of section 120, insert:

- (2) None of the following is a document to which subsection (1) applies:

- (a) a return submitted pursuant to section 84A (1) of the Permanent Building Societies Act 1967 by a non-terminating building society or a society mentioned in the Second Schedule;
- (b) a list of the members of a society submitted by a society pursuant to section 76 (2A);
- (c) a return or special return submitted by a society pursuant to section 76 (2B) or (6).

Co-operation (Amendment) 1986

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(51) Section 121—

Omit the section, insert instead:

Powers of registrar and inspectors

121. (1) The registrar or any inspector appointed under section 118A may, for the purpose of any inquiry or inspection under this Act in relation to a society (other than a non-terminating building society) or a subsidiary corporation of a society (other than a subsidiary corporation of a non-terminating building society), do any one or more of the following things:

- (a) administer an oath;
- (b) by notice in writing require the attendance of any person at a time and place specified in the notice and at that time and place require the person—
 - (i) to answer any question put by the registrar or inspector in relation to the subject-matter of the inquiry or inspection;
 - (ii) to produce to the registrar or inspector for inspection all or any of the records of the society, or of a subsidiary corporation of the society; or
 - (iii) to do both of those things;
- (c) require any officer of the society—
 - (i) to furnish to the registrar or inspector any information relating to the affairs of the society, or of any subsidiary corporation of the society, or the subject-matter of any inquiry into the working and financial condition of the society, or of a subsidiary corporation of the society;
 - (ii) to produce to the registrar or inspector for inspection all or any of the records of the society, or of a subsidiary corporation of the society; or
 - (iii) to do both of those things;

SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) require any officer of a subsidiary corporation of the society—

- (i) to furnish to the registrar or inspector any information relating to the affairs of that corporation, or of the society of which it is a subsidiary corporation, or the subject-matter of any inquiry into the working and financial condition of that corporation or of the society of which it is a subsidiary corporation;
- (ii) to produce to the registrar or inspector all or any of the records of that corporation, or of the society of which it is a subsidiary corporation; or
- (iii) to do both of those things;

(e) enter, at any reasonable time—

- (i) the registered office of a society or of a subsidiary corporation of a society; or
- (ii) any other premises or place in which the registrar or inspector believes on reasonable grounds the affairs of a society or of a subsidiary corporation of a society are being carried on or in which any records relating to the affairs of a society or of a subsidiary corporation of a society are kept.

(2) Subsection (1) (e) does not authorise the registrar or an inspector to enter that part of any premises that is used for residential purposes, without the consent of the occupier of that part.

(3) Any person who, without lawful excuse—

- (a) refuses or fails to comply with any requirement lawfully made by the registrar or by an inspector for the purposes of this Act; or

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) assaults or wilfully obstructs, hinders or otherwise interferes with the registrar or an inspector in the exercise or performance of any of the duties, powers, authorities or functions of the registrar or of an inspector under this Act,

is guilty of an offence and liable on conviction to a penalty not exceeding \$600 or to imprisonment for a period not exceeding 6 months, or to both.

- (4) In subsection (3), a reference to the registrar includes a reference to a person to whom any of the duties, powers and authorities of the registrar have been delegated under this Act.

- (5) The registrar may disclose to a person performing under a law of another State or of a Territory functions similar to those performed by the registrar under this Act any information concerning a society or a subsidiary corporation of a society where the information was obtained by the registrar or an inspector in the course of the exercise or performance of any of the duties, powers, authorities or functions of the registrar or inspector under this Act.

- (6) The registrar is not liable to any civil or criminal proceedings in respect of a disclosure made or proposed to be made in good faith under subsection (5).

- (7) A notice referred to in subsection (1) (b) may be served—

- (a) where it is addressed to an officer of a society, in the appropriate manner specified in section 72A; or
- (b) where it is addressed to any other person, personally or by being sent by post to the address of that other person last known to the registrar or to the inspector concerned.

- (52) Third Schedule (**Provisions of this Act applicable to societies mentioned in Second Schedule**)—

- (a) After “76 (1),”, insert “76 (1A),”.

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SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) After “111,”, insert “111AAA,”.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT

- (1) Section 5 (**Interpretation**)—

- (a) Section 5, definitions of “Accounting records”, “Accounts”—

Before the definition of “Advisory Council”, insert:

“Accounting records” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

“Accounts” means profit and loss accounts and balance-sheets and includes—

- (a) statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance-sheets; and

- (b) in a case where the directors of a society—

- (i) are required by the regulations to cause a cash statement relating to a financial year of the society to be made out; or

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

- (ii) not being required by the regulations to cause a cash statement relating to a financial year of the society to be made out, cause such a cash statement to be made out for the purpose of laying it before the next annual general meeting of the society,

that cash statement, being a statement of cash movements.

- (b) Section 5, definition of “Records”—

After “accounts,” insert “accounting records,”.

- (2) Section 74 (**Registers and accounts**)—

Section 74 (1)—

Omit “and accounts”.

- (3) Section 75 (**Inspection**)—

Section 75 (1) (c)—

Omit the paragraph, insert instead:

- (c) a copy of the accounts of the society, and of each subsidiary corporation of the society, in respect of the financial year of the society or corporation then last past, together with any report of the auditors or directors of the society or corporation concerning those accounts;

- (4) Section 89—

Omit the section, insert instead:

Accounts and audit

89. (1) This section applies to a society other than a non-terminating building society or a society mentioned in the Second Schedule.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

(2) A society to which this section applies shall—

- (a) keep its accounts and accounting records, and ensure that the accounts and accounting records of any corporation of which it is the holding society are kept, in the manner required by the regulations; and
- (b) ensure that its accounts and the accounts of any corporation of which it is the holding society are audited in accordance with the regulations.

Penalty: \$1,000.

(3) The directors of a society shall make such disclosures in relation to the affairs of the society and of any corporation of which the society is the holding society as may be required by the regulations.

Penalty: \$1,000.

(4) Without limiting the generality of subsection (2), regulations may be made for or with respect to—

- (a) prescribing the qualifications and the powers, authorities, duties and functions of auditors of the accounts of a society and providing for the appointment, the holding of office by, the remuneration of and the removal of auditors;
- (b) requiring the preparation and submission of group accounts by societies;
- (c) requiring the accounts of a society to be kept in accordance with any accounting standard (with or without modifications specified by the regulations) adopted and in force for the purposes of Part VI of the Companies (New South Wales) Code;
- (d) requiring submission of the accounts of a society to the Accounting Standards Review Board established by the Ministerial Council for Companies and Securities;

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

- (e) requiring the adoption by a society of the same financial year for all corporations of which the society is the holding society;
 - (f) generally the adoption (with or without modifications specified by the regulations) of any provision made by or under the Companies (New South Wales) Code concerning accounts and audit;
 - (g) the duties of directors of a society in relation to the preparation, the auditing and the laying before meetings of members of accounts of the society and of the corporations of which the society is the holding society, including the reports to be prepared by directors in relation to those accounts; and
 - (h) the sending of copies of accounts and reports in relation to accounts to members.
- (5) The registrar may by order in writing exempt a society or any class of societies from compliance with the provisions, or a specified provision, of the regulations made for the purposes of this section and, subject to compliance with any conditions to which the exemption is made subject, nothing in any such provision applies to or in respect of the society or to or in respect of a society which is a member of that class while the exemption is in force.
- (6) In this section and in the regulations made for the purposes of this section, a reference to a holding society of a corporation is a reference to a society of which the corporation would be regarded as a subsidiary for the purposes of the Companies (New South Wales) Code were a society a corporation within the meaning of that Code.
- (7) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in this section and in the regulations made for the purposes of this section has the meaning it has in Part VI of the Companies (New South Wales) Code, being the meaning it would have if a society were a company or a corporation within the meaning of that Code.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

(5) Section 89B—

After section 89A, insert:

Protection of auditors, etc.

89B. (1) An auditor of a society (not being a non-terminating building society or a society mentioned in the Second Schedule) has qualified privilege in proceedings for defamation in respect of—

- (a) any statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or
- (b) the giving of any notice, or the sending of any copy of accounts, group accounts or a report, to the registrar under this Act.

(2) A person has qualified privilege in proceedings for defamation—

- (a) in respect of the publishing of any document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the registrar, whether or not the document has been so lodged; or
- (b) in respect of the publishing of any statement made by an auditor as mentioned in subsection (1).

(3) This section does not limit or affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

(6) Section 101 (**Defaults by society**)—

- (a) Section 101 (1) (b)—

Omit “or account”.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

(b) Section 101 (1) (c)—

Omit “balance-sheet or profit and loss account, together with the report of the auditor”, insert instead “accounts of the society and of each subsidiary corporation of the society (together with any report of the auditors or directors of the society or subsidiary corporation on those accounts)”.

(7) Section 108—

Omit the section, insert instead:

Falsification of records

108. If any person makes, orders or allows to be made any entry or erasure in, or any omission from

- (a) any accounts or accounting records of a society or of a subsidiary corporation of a society; or
- (b) any return, document or other record required to be sent, produced or delivered for the purposes of this Act,

with intent to falsify them or it, or to evade any of the provisions of this Act, that person is guilty of a misdemeanour.

(8) Section 113A—

After section 113, insert:

Indemnification of officers and auditors

113A. (1) Any provision, whether contained in the rules or in a contract with a society or otherwise, for exempting any officer or auditor of the society from, or indemnifying the officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the society is void.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

(2) Notwithstanding anything in this section, a society may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in the officer's or auditor's favour or in which the officer or auditor is acquitted or in connection with any application in relation to any such proceedings in which relief is under this section granted to the officer or auditor by the court.

(3) Subsection (1) does not apply in relation to a contract of insurance except a contract of insurance the premiums in respect of which are paid by the society.

(4) If in any proceedings for negligence, default or breach of duty against an officer or auditor of a society it appears to the court hearing the case that the person is or may be liable in respect of the negligence, default or breach of duty, but that the person has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach of duty, that court may relieve the person, either wholly or partly, from the person's liability on such terms as the court thinks fit.

(5) Where an officer or auditor of a society has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default or breach of duty in relation to the society, the person may apply to the Supreme Court for relief, and the Court on any such application shall have the same power to relieve the person as it would have under this section if it had been a court before which proceedings against that officer or auditor for negligence, default or breach of duty had been brought.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*

(6) Where any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if satisfied that the defendant should in pursuance of that subsection be relieved either wholly or partly from the liability sought to be enforced against him or her, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(7) For the purposes of this section, “officer”, in relation to a society, means—

- (a) a director, secretary, treasurer, executive officer or employee of the society or any other person empowered under the rules of the society to give directions in regard to the business of a society;
- (b) an administrator appointed to conduct the affairs of the society under section 95A;
- (c) a receiver, or receiver and manager, of property of the society;
- (d) an official manager or deputy official manager of the society;
- (e) a liquidator of the society; and
- (f) a trustee or other person administering a compromise or arrangement made between the society and another person or other persons.

(9) Section 124 (**Regulations**)—

Section 124 (1B)—

Omit the subsection, insert instead:

(1B) A regulation may create an offence punishable—

- (a) in the case of a regulation made for the purposes of section 89—by a penalty not exceeding \$1,000; or
- (b) in any other case—by a penalty not exceeding \$500.

*Co-operation (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ACCOUNTS AND AUDIT—*continued*(10) Third Schedule (**Provisions of this Act applicable to societies mentioned in Second Schedule**)—

Omit “89,”.

SCHEDULE 3

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. A reference in this Schedule to the rules of a society making the necessary provision for the forfeiture of the shares of an inactive member of the society is a reference to the rules specifying—

- (a) which of the objects of the society are the primary objects of the society; and
- (b) the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active membership of the society.

Amendment of rules—primary objects, etc.

2. The board of a society complies with the provisions of the Principal Act which require the board of a society to ensure that the rules of the society make the necessary provision for the forfeiture of the shares of an inactive member if the board ensures that the rules so specify before or as soon as is practicable after the commencement of those provisions and in any case within 12 months, or such other period as the Minister may specify by order published in the Gazette, after that commencement.

Notice of forfeiture provisions

3. (1) Where notice is given to a member of a society of a meeting at which a resolution is to be proposed to alter the rules of the society so that the rules will make the necessary provision for the forfeiture of the shares of an inactive member, the society is guilty of a contravention of the Principal Act unless the notice includes details of the circumstances in which the shares of the member will be required to be forfeited under section 54C of the Principal Act if the resolution is passed.

(2) This clause applies only to a notice given in respect of an alteration of the rules of a society for the purpose of complying with the Principal Act pursuant to clause 2.

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SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Qualifications for membership—likelihood of active membership**

4. Section 38 (7) of the Principal Act does not apply to or in respect of a society until the rules of the society make the necessary provision for the forfeiture of the shares of an inactive member of the society.

Substantial shareholder provisions—society to inform members

5. (1) A society shall, within 12 months after the commencement of section 47BA of the Principal Act, send a notice in writing by post to each person who is a member of the society as at that commencement at the person's address last known to the society informing the person of the requirements of that section and a society which fails to do so is guilty of a contravention of the Principal Act.

(2) A person who is a member of a society as at the commencement of section 47BA of the Principal Act is not guilty of an offence under that section in respect of the person's failure to give notice of a fact to the society unless—

- (a) the society has sent the notice required by subclause (1) to the member; and
- (b) the person failed to give notice of the fact within 7 days after the time the notice sent by the society would have been delivered in the ordinary course of post or within 7 days after the person became aware of the fact, whichever is the later.

(3) For the purposes of section 47BA of the Principal Act, a person who is a substantial shareholder in a society (within the meaning of that section) as at the commencement of that section shall be deemed to have become a substantial shareholder in the society at the time of that commencement and to have become aware of that fact at that time.

Returns

6. (1) Section 76 (1) of the Principal Act applies in relation to a change in the membership of a board that occurred before the commencement of Schedule 1 (23) (a) as if this Act had not been enacted.

(2) Section 76 (2) of the Principal Act applies in relation to a society's financial year that ends before the commencement of Schedule 1 (23) (b) as if this Act had not been enacted.

Approval of charges

7. On and after the commencement of Schedule 1 (24), any charge or alteration of a charge approved by the registrar in relation to a co-operative housing society for the purposes of section 78 (4) of the Principal Act before that commencement shall be deemed to have been approved by the Director of Housing.

Election of employees as directors

8. Until the rules of a society specify which of the objects of the society are the primary objects of the society, sections 84AAA (3) (a) and 84AAC (1) of the Principal Act apply to and in respect of the society as if this Act had not been enacted.

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SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Maximum amount of directors' fees**

9. On and after the commencement of Schedule 1 (33), an amount fixed by the registrar under section 88 (2B) (a) of the Principal Act as the maximum amount payable by way of fees in any year to directors of a society and in force immediately before that commencement shall be deemed to have been fixed by the Director of Housing, subject to the power of the Director of Housing to fix some other amount.

Audit of security documents

10. (1) Where as a consequence of the amendment effected by Schedule 1 (34) an audit of the security documents held by a co-operative housing society is required to be carried out under section 89A of the Principal Act within 1 month after the commencement of that amendment, the time within which that audit is required to be carried out shall be extended by such period as is necessary to cause the period after that commencement within which the audit is required to be carried out to be 1 month.

(2) Section 89A of the Principal Act, as amended by Schedule 1 (34), does not operate in relation to a co-operative housing society to the extent that that section would require an audit of security documents held by the society to be carried out within 3 months after an audit of those documents was carried out under that section as in force immediately before the commencement of Schedule 1 (34).

Protection of auditors, etc.

11. Section 89B of the Principal Act applies—

- (a) only in respect of proceedings for defamation commenced after the commencement of that section; and
- (b) in respect of an act of an auditor whether done before or after the commencement of that section.

Liability on winding up

12. Section 93A (2) of the Principal Act does not apply to or in respect of a member where the purchase of the share of the member or the repayment of an amount paid up on the share of the member occurred before the commencement of that subsection.

Regulations

13. (1) The regulations under the Principal Act may make provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may, if the regulations under this clause so provide, take effect as from the date of assent to this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

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SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (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 of its publication therein; 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 of its publication therein.
- (4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any other clause of this Schedule.
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