

CO-OPERATION (AMENDMENT) ACT, 1985, No. 85

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 85, 1985.

An Act to amend the Co-operation Act, 1923, for the purpose of making further provision with respect to the objects and powers of certain building societies; and for other purposes. [Assented to, 4th June, 1985.]

Co-operation (Amendment) 1985

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, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be 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.

Schedules.

4. This Act contains the following Schedules:—

- SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.
- SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.
- SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.
- SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.
- SCHEDULE 5.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.
- SCHEDULE 6.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.
- SCHEDULE 7.—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.
- SCHEDULE 8.—SUBSTITUTION OF THE THIRD SCHEDULE TO THE PRINCIPAL ACT.
- SCHEDULE 9.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 1, 1924.

5. The Principal Act is amended in the manner set forth in Schedules 1-8.

Savings and transitional provisions.

6. Schedule 9 has effect.
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Co-operation (Amendment) 1985

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

- (1) Section 5, definition of "Mortgage-backed security"—

After the definition of "Mortgage", insert:—

"Mortgage-backed security" has the meaning ascribed to that expression by section 84FA of the Stamp Duties Act, 1920, and includes any security of a class of securities prescribed as mortgage-backed securities for the purposes of this Act.

- (2) Section 5, definition of "Permanent Building Societies Advisory Committee"—

After the definition of "Officer", insert:—

"Permanent Building Societies Advisory Committee" means the Permanent Building Societies Advisory Committee constituted pursuant to the Permanent Building Societies Act, 1967.

- (3) Section 5, definition of "Records"—

After the definition of "Prescribed", insert:—

"Records" includes books, accounts, minutes, registers, deeds, writings, documents and other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

- (1) Section 16 (1), (1A), (1C)—

After "building society" wherever occurring, insert "(other than a non-terminating building society)".

- (2) (a) Section 16A (1)—

After "building society", insert "(other than a non-terminating building society)".

Co-operation (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 16A (2)—

After “society” where firstly occurring, insert “to which subsection (1) applies”.

(3) Sections 16B, 16C, 16D—

Omit the sections.

(4) Section 17 (1)—

Omit “The society”, insert instead “A building society (other than a non-terminating building society)”.

(5) Section 17A—

After section 17, insert:—

Additional powers of certain societies.

17A. Subject to express provision made by this Act, the specification in this Act of a particular power of a society does not limit the powers that a non-terminating building society, or a society mentioned in the Second Schedule, has by reason of the operation of Division 4 of Part XI of the Permanent Building Societies Act, 1967.

(6) Section 17B (1)—

After “building society”, insert “(other than a non-terminating building society)”.

(7) Section 17C—

Omit the section.

(8) (a) Section 18 (1)—

After “building society”, insert “(other than a non-terminating building society)”.

(b) Section 18 (2), (3)—

After “building society” wherever occurring, insert “to which subsection (1) applies”.

Co-operation (Amendment) 1985

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(9) Section 18A (1)—

After “building society”, insert “(other than a non-terminating building society)”.

(10) Sections 18B (1) (a) (i), 18B (4) (a), 18B (4) (c), 18C (2) (a) (i), 18C (3), 18C (4)—

Omit “Co-operative Housing Societies Advisory Committee” wherever occurring, insert instead “Permanent Building Societies Advisory Committee”.

(11) (a) Section 18D—

After “building society”, insert “(other than a non-terminating building society)”.

(b) Section 18D—

Omit “issue or cause to be issued any advertisement until”, insert instead “commence to issue or to cause to be issued after its registration under this Act any advertisement unless and until”.

(c) Section 18D (2), (3)—

At the end of section 18D, insert:—

(2) A non-terminating building society shall not commence to issue or to cause to be issued after its registration under this Act any advertisement unless and until the Permanent Building Societies Advisory Committee has given to the society permission in writing to do so.

(3) Nothing in this section applies to an advertisement in so far as it indicates that a society is a party to an arrangement with or a member of a prescribed guarantor corporation within the meaning of section 23 of the Permanent Building Societies Act, 1967.

*Co-operation (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(12) (a) Section 18E (1)—

After “Committee”, insert “or the Permanent Building Societies Advisory Committee, as the case may be,”.

(b) Section 18E (3)—

Omit “make representations to the Co-operative Housing Societies Advisory Committee with respect to any such proposal and the committee shall report thereon to the Minister.”, insert instead:—

make representations with respect to any such proposal—

(a) in the case of a non-terminating building society or a society mentioned in the Second Schedule—to the Permanent Building Societies Advisory Committee; or

(b) in any other case—to the Co-operative Housing Societies Advisory Committee,

which shall report on the proposal to the Minister.

(13) Section 18G (1)—

After “contravenes”, insert “or fails to comply with”.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) (a) Section 39 (7A)—

After “for registration”, insert “(not being an application for registration of a non-terminating building society)”.

(b) Section 39 (7A)—

Omit “of opinion”, insert instead “, in respect of an application for registration referred to it under this subsection, of the opinion”.

*Co-operation (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2) Section 42AA—

After section 42A, insert:—

Conflict with provision of the repealed enactment, etc.

42AA. Where, in relation to any matter, a provision of this Act which applies to a society mentioned in the Second Schedule—

- (a) conflicts with a provision of or made pursuant to the enactment repealed by section 3 which applies to the society; or
- (b) makes provision with respect to that matter in a manner which differs from a provision made with respect to that matter by a provision of or made pursuant to that repealed enactment which applies to the society,

that provision of this Act shall apply to the society in relation to that matter to the exclusion of any other provision referred to in this section.

(3) Section 44—

After section 43A, insert:—

Application of provisions of Permanent Building Societies Act, 1967.

44. The Permanent Building Societies Act, 1967, applies to a non-terminating building society and to a society mentioned in the Second Schedule to the extent and in the manner provided by Division 4 of Part XI of that Act.

(4) (a) Section 47 (1)—

Omit “capital”, insert instead “share capital”.

(b) Section 47 (3)—

After “(5A)”, insert “, (5B)”.

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (c) Section 47 (5B) (a)—
Omit “but not exceeding the maximum rate of dividend which by subsection (14A) may be paid by a society in respect of its paid-up share capital”.
- (d) Section 47 (5B) (b)—
Omit the paragraph.
- (e) Section 47 (5C)—
Omit “This section does not operate to prevent a non-terminating building society or a society mentioned in the Second Schedule from issuing”, insert instead “A non-terminating building society or a society mentioned in the Second Schedule may issue”.
- (f) Section 47 (5D)—
Omit the subsection.
- (g) Section 47 (13A)—
Omit “a building society or”.
- (h) Section 47 (14A), (14B)—
Omit the subsections.
- (i) Section 47 (18) (b)—
After section 47 (18) (a), insert:—
(b) Shares in a non-terminating building society may not be declared to be forfeited to the extent that the forfeiture would result in the society failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967.
- (5) Section 47A (1)—
After “society”, insert “(other than a non-terminating building society)”.

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(6) Section 47B (3A)–(3E)—

After section 47B (3), insert:—

(3A) Shares of a society may be cancelled under subsection (3) only to the extent that the cancellation would not result in the society concerned failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967.

(3B) Where subsection (3A) prevents the cancellation of excess shares of a society, dividend, interest and other amounts continue to be payable in respect of the shares in all respects as if they were not excess shares.

(3C) Where subsection (3A) prevents the cancellation of excess shares of a society, the society shall so conduct its business as to ensure that, before the end of—

- (a) the period of 12 months, or, if another period is prescribed, that other period, after that subsection commenced to operate to prevent those excess shares from being cancelled; or
- (b) such further period or periods as the Minister may in any particular case allow,

such of those shares as remain excess shares are cancelled in accordance with subsection (3).

(3D) While subsection (3A) prevents the cancellation of excess shares of a society, no proceedings may be commenced for an offence arising out of a failure to comply with subsection (3) in relation to those shares but, subject to the foregoing, neither this subsection nor subsection (3A) affects the operation of any other provision of this Act in relation to such a failure.

(3E) Where, because of the operation of subsection (3A), any question arises as to the order in which excess shares are to be cancelled, the question shall be determined in accordance with the rules of the society concerned or, to the extent that the rules do not make provision for the determination of the question, in such manner as the board thinks appropriate.

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(7) (a) Section 48 (1), (1A)—

Omit the subsections.

(b) Section 48 (4)—

Omit “Subject to subsection (1), where”, insert instead “Where”.

(c) Section 48 (5)—

Omit “but subject to the provisions of subsection (1)”.

(d) Section 48 (8)—

Omit the subsection, insert instead:—

(8) In this section, “surplus”, in relation to a society, means the surplus after making proper allowance for depreciation in value of the property of the society and for contingent liability for loss.

(8) (a) Section 52—

Omit “A society”, insert instead “(1) Subject to subsection (3), a society”.

(b) Section 52—

Omit “Nothing in this section”, insert instead “(2) Nothing in subsection (1)”.

(c) Section 52 (3)—

At the end of section 52, insert:—

(3) A society, being a non-terminating building society or a society mentioned in the Second Schedule, shall not purchase any shares of a member in the society to the extent that the purchase would result in the society failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967.

*Co-operation (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(9) (a) Section 54 (1)—

Omit “A society”, insert instead “Subject to subsection (1A), a society”.

(b) Section 54 (1A)—

After section 54 (1), insert:—

(1A) A society, being a non-terminating building society or a society mentioned in the Second Schedule, shall not repay to a member any amount paid up on any share held by the member to the extent that the repayment would result in the society failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967.

(c) Section 54 (3) (a)—

After “shall”, insert “, subject to subsection (4),”.

(d) Section 54 (3) (c)—

After “shall” where firstly occurring, insert “, subject to subsection (4),”.

(e) Section 54 (4)–(6)—

After section 54 (3), insert:—

(4) A society, being a non-terminating building society or a society mentioned in the Second Schedule, shall not repay any amount paid up on shares held by a member expelled from the society in accordance with its rules to the extent that the repayment would result in the society failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967.

(5) Where subsection (4) prevents the repayment of any amount paid up on shares of a society held by an expelled member, dividend, interest and other amounts continue to be payable in respect of the shares in all respects as if the member had not been expelled.

*Co-operation (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(6) Where subsection (4) prevents the repayment of any amount paid up on shares of a society held by an expelled member, the society concerned shall so conduct its business as to ensure that, before the end of—

- (a) the period of 12 months, or, if another period is prescribed, that other period, after that subsection commenced to operate to prevent the society from repaying the amount; or
- (b) such further period or periods as the Minister may in any particular case allow,

such of the amount as remains unpaid is repaid in accordance with subsection (3).

(10) (a) Section 55—

Omit “member:”, insert instead “member.”.

(b) Section 55—

Omit “Provided that no”, insert instead “(2) No”.

(c) Section 55 (3)—

At the end of section 55, insert:—

(3) Nothing in this section applies to a non-terminating building society.

(11) (a) Section 57—

After “balance”, insert “and deposits”.

(b) Section 57—

After “dividend”, insert “, interest,”.

*Co-operation (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(c) Section 57—

Omit “sum credited or payable to a member or past member”, insert instead “amount paid on account of that share or otherwise, or any amount credited or payable to the member or past member,”.

(d) Section 57 (2), (3)—

At the end of section 57, insert:—

(2) The charge created by subsection (1) may be enforced, at any time after 7 days’ notice to the member or past member, by the appropriation by the society of the capital, interest or deposit subject to the charge.

(3) Any share in respect of which capital has been so appropriated shall be cancelled.

(12) Section 58 (2)—

Omit “section 52”, insert instead “section 52 (1)”.

(13) Section 64 (3)—

After section 64 (2), insert:—

(3) Nothing in this section applies to a non-terminating building society.

(14) Section 65 (1) (c)—

After section 65 (1) (b), insert:—

(c) Nothing in this subsection applies to a non-terminating building society.

(15) (a) Section 66 (1)—

After “society” where firstly occurring, insert “(other than a non-terminating building society)”.

(b) Section 66 (5), (5A)—

Omit section 66 (5)–(5B), insert instead:—

(5) Subject to the regulations, a co-operative housing society may, if authorised by its rules, issue, discount or otherwise deal with mortgage-backed securities.

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(5A) Without limiting the generality of subsection (5), regulations made for the purpose of that subsection may require a co-operative housing society, in exercising the society's powers under subsection (5), to comply with any terms or conditions imposed by the Treasurer.

(c) Section 66 (7)—

Omit "In", insert instead "For the purposes of this section, in".

(d) Section 66 (7A)—

Omit "(5) or (6) the total amount raised on loan by any of the societies", insert instead "(6), the total amount raised on loan by a society".

(e) Section 66 (7B)—

Omit "(5) or (6) the total amount raised on loan, otherwise than by the issue of bonds, by any of the societies", insert instead "(6), the total amount raised on loan, otherwise than by the issue of bonds, by a society".

(f) Section 66 (9)—

After "society", insert "(other than a non-terminating building society)".

(g) Section 66 (9A)—

Omit the subsection.

(h) Section 66 (11)—

After "a society", insert "(other than a non-terminating building society)".

(i) Section 66 (11)—

Before "every deposit", insert ", except in the case of a non-terminating building society,".

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(16) (a) Section 66A (6) (a)—

Omit “or a society”.

(b) Section 66A (6) (b)—

Omit the paragraph, insert instead:—

(b) a society (other than a non-terminating building society) registered under this Act; or

(c) Section 66A (7)—

After section 66A (6), insert:—

(7) Nothing in this section applies to a non-terminating building society.

(17) Section 66B (3)—

After section 66B (2), insert:—

(3) Nothing in this section shall be construed as restricting the power of a non-terminating building society to act as an agent.

(18) Section 66BA—

Omit the section.

(19) Section 66C (2), (3)—

Omit the subsections.

(20) Section 67A (1)—

After “society”, insert “(other than a non-terminating building society)”.

(21) (a) Section 68 (1A), (1B)—

Omit the subsections.

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(b) Section 68 (2)—

After “A society”, insert “(other than a non-terminating building society)”.

(c) Section 68 (3A)—

After “a society”, insert “(other than a non-terminating building society)”.

(d) Section 68 (3B) (b)—

Omit “48 or”.

(22) Section 68A—

Omit the section.

(23) Section 69C (4) (b1), (b2)—

After section 69C (4) (b), insert:—

(b1) that the society has failed to comply with a direction given to the society under section 121AA;

(b2) that the society has failed to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967;

(24) (a) Section 69D (1)—

After “representations” where firstly occurring, insert “(in the case of a non-terminating building society or a society mentioned in the Second Schedule) to the Permanent Building Societies Advisory Committee or (in any other case)”.

(b) Section 69D (1)—

Omit “Co-operative Housing Societies Advisory Committee” where secondly occurring, insert instead “Committee to which they are so made”.

Co-operation (Amendment) 1985

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(25) Section 72 (5)—

After “society”, insert “(other than a non-terminating building society)”.

(26) (a) Section 75 (1), (2)—

After “A society” wherever occurring, insert “(other than a non-terminating building society)”.

(b) Section 75 (3)—

After section 75 (2), insert:—

(3) A society (being a non-terminating building society or a society mentioned in the Second Schedule) shall keep at its registered office and at each branch office and open at all reasonable hours to inspection by any member or creditor of the society a copy of this Act and the regulations.

(27) (a) Section 76 (1A), (2), (2A)—

After “A society” wherever occurring, insert “(other than a non-terminating building society)”.

(b) Section 76 (2) (a)—

Omit “for the year then current”, insert instead “as at the date of the return”.

(c) Section 76 (2B)—

After “building society”, insert “(other than a non-terminating building society)”.

(28) Section 78 (1)—

After “A society”, insert “(other than a non-terminating building society)”.

Co-operation (Amendment) 1985

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) (a) Section 82 (1) (dd), (2) (l), (3) (e)—

Omit “other matters as may be prescribed” wherever occurring, insert instead “matters as may be prescribed, whether in addition to or in substitution for any matter specified in this subsection”.

(b) Section 82 (1) (dd), (ee)—

At the end of section 82 (1) (dd), insert:—

; and

(ee) such other matters as to the society appear necessary or desirable.

(2) (a) Section 83 (3)—(3D)—

After section 83 (2), insert:—

(3) In the case of a non-terminating building society or a society mentioned in the Second Schedule, the rules of the society may be altered by a resolution passed by the board but only where the alteration does no more than—

(a) give effect to a requirement, restriction or prohibition imposed by or under the authority of this Act or the regulations or 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) deal with a matter specified in an order under subsection (3C) in such manner, if any, as may be specified in that order.

(3A) Where the rules of a society are altered pursuant to subsection (3), the society shall cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the date on which notice is given to those members of the next annual general meeting of the society following the taking effect of the alteration.

*Co-operation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(3B) Subsection (3) (b) does not apply to a society to the extent that the rules of the society so provide.

(3C) The Minister may, by order published in the Gazette, specify—

(a) matters that may be dealt with by the board of a society under subsection (3); and

(b) the manner in which any such matter shall be so dealt with.

(3D) The provisions of section 53 of the enactment repealed by section 3 apply with such modifications as may be prescribed to and in respect of an alteration pursuant to subsection (3) of the rules of a society mentioned in the Second Schedule in the same way as those provisions would so apply if the alteration were an alteration by resolution at a meeting of the society.

(b) Section 83 (4A)—

After “Council” where firstly occurring, insert “, other than an application relating to a non-terminating building society”.

(3) (a) Section 84 (7) (b)—

After “Unless”, insert “(in the case of a non-terminating building society) the Permanent Building Societies Advisory Committee or (in any other case)”.

(b) Section 84 (11) (c)—

Omit “the Act”, insert instead “this Act or the Permanent Building Societies Act, 1967”.

(c) Section 84 (11A) (f)—

After “a society”, insert “(other than a non-terminating building society or a society mentioned in the Second Schedule)”.

Co-operation (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(4) Section 84AC (1), (2), (3)—

Omit “Co-operative Housing Societies Advisory Committee” wherever occurring, insert instead “Permanent Building Societies Advisory Committee”.

(5) (a) Section 88 (2B)—

Before “fixed”, insert “(if any)”.

(b) Section 88 (2B) (a)—

Omit “or”.

(c) Section 88 (2B) (a1)—

After section 88 (2B) (a), insert:—

(a1) in the case of a non-terminating building society—by the Permanent Building Societies Advisory Committee; or

(6) (a) Section 88AA (1) (b)—

Omit “\$50,000”, insert instead “\$100,000”.

(b) Section 88AA (5)—

Omit “Co-operative Housing Societies Advisory Committee”, insert instead “Permanent Building Societies Advisory Committee”.

(7) (a) Section 88B (2)—

After “report”, insert “(in the case of a non-terminating building society) to the Permanent Building Societies Advisory Committee or (in any other case)”.

(b) Section 88B (4)—

After “Committee” where firstly occurring, insert “or the Permanent Building Societies Advisory Committee, as the case may be,”.

*Co-operation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(c) Section 88B (4)—

After “Committee” where secondly occurring, insert “or the Permanent Building Societies Advisory Committee, as the case may require.”.

(8) (a) Section 89 (2) (a1)—

After section 89 (2) (a), insert:—

- (a1) in the case of a non-terminating building society or a society mentioned in the Second Schedule, an officer or servant of a subsidiary corporation (within the meaning of the Permanent Building Societies Act, 1967) of the society;

(b) Section 89 (2) (b)—

Omit “and”.

(c) Section 89 (2) (b1)—

After section 89 (2) (b), insert:—

- (b1) in the case of a non-terminating building society or a society mentioned in the Second Schedule, a person who is a partner of or in the employment of or the employer of an officer or servant of a subsidiary corporation (within the meaning of the Permanent Building Societies Act, 1967) of the society;

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) (a) Section 92 (3) (h), (h1)—

After section 92 (3) (g), insert:—

- (h) that the society has failed to comply with a direction given to the society under section 121AA;

Co-operation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(h1) that the society, being a non-terminating building society or a society mentioned in the Second Schedule, has failed to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967;

(b) Section 92 (4)—

After “(g),” insert “(h), (h1),”.

(c) Section 92 (5)—

After “fixed”, insert “(in the case of a non-terminating building society or a society mentioned in the Second Schedule) by the Permanent Building Societies Advisory Committee or (in any other case)”.

(d) Section 92 (6) (b)—

Omit “society—”, insert instead “society, in addition to any modifications prescribed under paragraph (a), those provisions shall apply with the following modifications:—”.

(e) Section 92 (8)—

After section 92 (7B), insert:—

(8) Without affecting the generality of the foregoing provisions of this section, the provisions of Subdivision F of Division 4 of Part XII of the Companies (New South Wales) Code apply, subject to this Part and with such modifications as may be prescribed, to the dissolution of a society.

(2) Section 92B—

After “fixed”, insert “(in the case of a non-terminating building society or a society mentioned in the Second Schedule) by the Permanent Building Societies Advisory Committee or (in any other case)”.

Co-operation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(3) (a) Section 92C (1)—

After “Code apply”, insert “, with such modifications as may be prescribed,”.

(b) Section 92C (2)—

Omit “For the purposes of subsection (1), the provisions referred to therein shall be construed”, insert instead “In addition to any modifications prescribed under subsection (1), the provisions referred to in that subsection shall apply to and in respect of a society”.

(4) Section 95A (3) (b1), (b2)—

After section 95A (3) (b), insert:—

- (b1) that the society has failed to comply with a direction given to the society under section 121AA;
- (b2) that the society has failed to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967;

(5) (a) Section 95B (1) (a), (a1)—

Omit section 95B (1) (a), insert instead:—

- (a) where the society is a non-terminating building society or a society mentioned in the Second Schedule—to the Permanent Building Societies Advisory Committee;
- (a1) where the society is a building society, other than a society specified in paragraph (a)—to the Co-operative Housing Societies Advisory Committee; or

(b) Section 95B (1)—

Before “the Co-operative Housing Societies Advisory Committee or”, insert “the Permanent Building Societies Advisory Committee,”.

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SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

(1) Section 102 (1) (c)—

After “Act”, insert “and (in the case of a non-terminating building society and a society mentioned in the Second Schedule) in such of the provisions of the Permanent Building Societies Act, 1967, as apply to such a society”.

(2) Section 109 (1)—

After “Act”, insert “or the Permanent Building Societies Act, 1967”.

(3) Section 109B—

After “a society”, insert “(other than a non-terminating building society)”.

(4) Section 110 (1)—

After “a society”, insert “(other than a non-terminating building society)”.

(5) Section 111—

After “thereof”, insert “shall be guilty of an offence and”.

(6) Section 111AA—

After section 111, insert:—

Offences by officers.

111AA. (1) Where a society contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the society shall be deemed to have contravened the same provision unless the officer satisfies the court that—

- (a) the society contravened the provision without the knowledge of the officer;
 - (b) the officer was not in a position to influence the conduct of the society in relation to its contravention of the provision;
- or

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SCHEDULE 6—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(c) the officer, being in such a position, used all due diligence to prevent the contravention by the society.

(2) An officer of a society may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the society has been proceeded against or convicted under that provision.

(3) An officer proceeded against and convicted under a provision pursuant to subsection (1) is liable to a penalty not exceeding the maximum penalty to which a society would be liable if convicted under the provision.

(7) Section 112A—

Omit the section, insert instead:—

Notice to be given of conviction for offence.

112A. Where after the commencement of Schedule 6 (7) to the Co-operation (Amendment) Act, 1985, a society or an officer of a society is convicted of an offence against a provision of this Act or the regulations, the society shall, not later than 15 months after the date on which the conviction is recorded, give to each member of the society notice in writing of—

- (a) the conviction;
 - (b) any penalty imposed in respect of the offence to which the conviction relates; and
 - (c) the nature of the offence to which the conviction relates.
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SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.

- (1) (a) Section 115 (2)—
Omit the subsection, insert instead:—
(2) The registrar of co-operative societies shall be the registrar under the enactment hereby repealed.
- (b) Section 115 (3)—
Omit “now in the custody of the Registrar of Friendly Societies”, insert instead “kept”.
- (c) Section 115 (6c)—
Omit “With the approval of the Minister first obtained, the”, insert instead “The”.
- (2) (a) Section 117 (1)—
Omit “minutes or books”, insert instead “records”.
- (b) Section 117 (1)—
Omit “of the society” where firstly occurring, insert instead “of a society (other than a non-terminating building society)”.
- (c) Section 117 (1)—
Omit “minutes, books, records or documents”, insert instead “records”.
- (d) Section 117 (3)—
Omit “of the society”, insert instead “of a society (other than a non-terminating building society)”.
- (3) (a) Section 118 (1)—
After “members”, insert “, of a society (other than a non-terminating building society)”.
- (b) Section 118 (9)—
Omit “the society” where firstly occurring, insert instead “a society (other than a non-terminating building society)”.

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SCHEDULE 7—*continued.*AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

(4) Section 118B (4)—

Omit “Co-operative Housing Societies Advisory Committee”, insert instead “Permanent Building Societies Advisory Committee”.

(5) Section 120 (b1)—

After section 120 (b), insert:—

(b1) 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 in respect of a non-terminating building society or a society mentioned in the Second Schedule and obtain from the registrar a certified copy of any such document; or

(6) (a) Section 121 (1)—

After “Act”, insert “in relation to a society (other than a non-terminating building society)”.

(b) Section 121 (1) (b), (c), (2)—

Omit “books or documents” wherever occurring, insert instead “records”.

(7) Section 121AA—

After section 121, insert:—

Direction to remedy breach.

121AA. (1) Where, following an inquiry into the affairs of a society (being a non-terminating building society or a society mentioned in the Second Schedule) under section 113 of the Permanent Building Societies Act, 1967, the registrar is of the opinion that the society is in breach of a provision of this Act or the

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SCHEDULE 7—*continued.*

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

regulations or of the rules of the society, the registrar may, within 12 months after the completion of the inquiry, by notice in writing served on the society, direct the society to remedy the breach before the expiration of a period specified in the notice.

(2) Where the registrar is of the opinion that a society (being a non-terminating building society or a society mentioned in the Second Schedule) is failing to maintain its capital adequacy as required by the Permanent Building Societies Act, 1967, the registrar may, by notice in writing served on the society, direct the society to remedy the breach before the expiration of a period specified in the notice.

(3) The registrar may withdraw a direction under this section.

(4) A society shall not fail to comply with a direction under this section which is not withdrawn.

SCHEDULE 8.

(Sec. 5.)

SUBSTITUTION OF THE THIRD SCHEDULE TO THE PRINCIPAL ACT.

Third Schedule—

Omit the Schedule, insert instead:—

*Co-operation (Amendment) 1985*SCHEDULE 8—*continued.*SUBSTITUTION OF THE THIRD SCHEDULE TO THE PRINCIPAL ACT—
continued.

THIRD SCHEDULE.

(Sec. 41A.)

*Provisions of this Act applicable to societies mentioned in
Second Schedule.*

Sections 17A, 17AB, 17AC, 18AA, 18E, 18F, 18G, 41A, 42, 42A, 42AA, 43, 43A, 44, 46 (7), 46 (7AA), 46 (7A), 46 (7B), 46 (7C), 47 (5B), 47 (5C), 47 (17), 47B, 48, 52, 54, 57, 59, 65 (3), 66 (10), 66 (12), 66BB, 66C, 68 (1C), 68 (4), 69, 69A, 69B, 69C, 69D, 72 (2A), 72A, 74, 75 (3), 75A, 75B, 75C, 76 (1), 76 (6), 80, 83 (3)—(3D), 84 (11), 84 (11A), 84 (13), 84AAA (1), 84AAA (2), 84AAA (7), 84AAC (5), 84AA, 84AB, 84AC, 84B, 88 (3), 88A, 88AA, 89, 91, 91A, 92, 92A, 92B, 92C, 95, 95A, 95B, 101, 102, 108, 109A, 110A, 111, 111AA, 111A, 112, 112A, 113, 115, 116, 118B, 120, 121AA, 121A, 122 and 124.

SCHEDULE 9.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Mortgages by minors.

1. Where a member of a non-terminating building society, or a society mentioned in the Second Schedule to the Principal Act, who is under the age of 18 years executes a mortgage in favour of the society before the commencement of Schedule 2 (6) to this Act, section 17B (1) of the Principal Act continues to apply to and in respect of the member in relation to the mortgage as if this Act had not been enacted.

Co-operative Housing Societies Advisory Committee.

2. (1) In this clause, "Permanent Building Societies Advisory Committee" means the Permanent Building Societies Advisory Committee constituted pursuant to the Permanent Building Societies Act, 1967.

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SCHEDULE 9—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) On and from the commencement of Schedule 2 (10) to this Act, a reference to the Co-operative Housing Societies Advisory Committee in a provision of the rules of a society to the effect that shares referred to in section 18B (1) of the Principal Act shall not be transferable without the consent in writing of that Committee shall be construed as a reference to the Permanent Building Societies Advisory Committee.

(3) Any permission given by the Co-operative Housing Societies Advisory Committee to a non-terminating building society under section 18D of the Principal Act, in respect of the commencement of advertising by the society, and in force immediately before the commencement of Schedule 2 (11) to this Act shall, on and from that commencement, be deemed to have been given by the Permanent Building Societies Advisory Committee.

(4) Any approval of the Advisory Council under section 84 (7) (b) of the Principal Act, in relation to the qualification of a person to be a director of a non-terminating building society, in force immediately before the commencement of Schedule 4 (3) (a) to this Act, shall, on and from that commencement, be deemed to be an approval of the Permanent Building Societies Advisory Committee.

(5) An amount fixed by the Advisory Council pursuant to section 88 (2B) of the Principal Act as the maximum amount payable in any year to directors of a non-terminating building society, in force immediately before the commencement of Schedule 4 (5) to this Act, shall, on and from that commencement, be deemed to have been fixed by the Permanent Building Societies Advisory Committee.

Directors.

3. Where a person of or over the age of 72 years was elected as a director of a non-terminating building society, or a society mentioned in the Second Schedule to the Principal Act, under section 84 (11A) (f) of the Principal Act and was holding office as such a director immediately before the commencement of Schedule 4 (3) (c) to this Act—

- (a) that person may continue to hold office as such a director until the conclusion of the annual general meeting of the society next following that commencement, whereupon the office of the director shall become vacant; but

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SCHEDULE 9—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (b) that person is not eligible for election as a director of a non-terminating building society, or a society mentioned in the Second Schedule to the Principal Act, after that commencement.

Offences by directors, etc.

4. Section 111AA of the Principal Act, as amended by this Act, does not apply to or in respect of a contravention committed by a society before the commencement of that section.

Notice of imposition of penalty.

5. Section 112A of the Principal Act applies in relation to a penalty imposed before the commencement of Schedule 6 (7) to this Act as if this Act had not been enacted.

Regulations.

6. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may 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—

- (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), 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 a public authority) 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 the foregoing clauses of this Schedule.
