

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
AMENDMENT ACT 1987 No. 247**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
AMENDMENT ACT 1987 No. 247**

NEW SOUTH WALES



Act No. 247, 1987

An Act to amend the Co-operation Act 1923 so as to expedite the granting of certain housing loans; and for other purposes. [Assented to 16 December 1987]

*Co-operation (Indemnities and Guarantees) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Co-operation (Indemnities and Guarantees) Amendment Act 1987.

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on a day to be appointed by proclamation.

(2) Schedule 1 (4) and (5), and section 3 in its application to those provisions, shall commence on the date of assent to this Act.

Amendment of Act No. 1, 1924

3. The Co-operation Act 1923 is amended as set out in Schedule 1.

Amendment of Act No. 57, 1934

4. The Government Guarantees Act 1934 is amended—

- (a) by inserting in section 3 (2) (b) after the word “society” the words “(other than a co-operative housing society)”;
- (b) by omitting the first proviso to section 3 (2) and the proviso to section 3 (2A);
- (c) by inserting in section 3 (2A) after the words “building society” the words “(other than a co-operative housing society)”;
- (d) by omitting section 4A.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 16A (**Approval of additional security required in certain cases**)—
 - (a) Section 16A (2) (b)—
Omit “takes”, insert instead “obtains”.
 - (b) Section 16A (3)—
Omit “take”, insert instead “obtain”.
 - (c) Section 16A (3) (b)—
Omit the paragraph, insert instead:
 - (b) an indemnity granted under section 17AB;
- (2) Section 17AB (**Indemnity where loan made by building society**)—
 - (a) Section 17AB (1)–(2D)—
Omit section 17AB (1) and (2), insert instead:

*Co-operation (Indemnities and Guarantees) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(1) The Treasurer may grant a written indemnity for a building society which indemnifies the society against loss suffered by the society in respect of a loan made or to be made by the society.

(2) The maximum loss against which a society is indemnified in respect of a loan is the balance of the prescribed amount after deducting from that amount—

- (a) the value of the share capital of the member; and
- (b) any amount that would, but for neglect or misconduct of the society or its servants or agents, have been received by the society with respect to the loan.

(2A) In subsection (2)—

“prescribed amount”, in relation to a loan, means the amount by which the loan exceeds 80 per cent of the value of the security for the loan when the loan was made.

(2B) An indemnity granted in respect of a loan made by a society is enforceable by the society only if—

- (a) in relation to the loan, the society complies with the guidelines approved by the Co-operative Housing Societies Advisory Committee and in force when the loan is made; or
- (b) the indemnity was granted on the recommendation of that Committee,

and the society has not, in relation to the loan, contravened any of the terms or prescribed or other conditions to which the indemnity is subject.

(2C) An indemnity in respect of a loan made by a society is subject to—

- (a) the terms and conditions set out in the indemnity when it is granted;
- (b) the prescribed conditions in force when the loan is made; and
- (c) any other terms and conditions imposed by the Treasurer, notice of which has been served on the society before the loan is made.

(2D) An indemnity may apply—

- (a) with respect to a particular loan; or
- (b) with respect to loans of any class, whether or not made or to be made by the same society.

(b) Section 17AB (3)—

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Omit “conditions subject to which the Treasurer agrees to indemnify a society under subsection (1)”, insert instead “prescribed conditions referred to in this section”.

(c) Section 17AB (3) (i)—

Omit the paragraph, insert instead:

- (i) such other conditions as may be declared by the regulations to be prescribed conditions for the purposes of indemnities under this section.

(d) Section 17AB (4), (5)—

Omit the subsections.

(e) Section 17AB (6)—

Omit “by way of”, insert instead “in connection with an”.

(f) Section 17AB (7)—

Omit the subsection, insert instead:

(7) If a term, a prescribed condition or any other condition to which an indemnity relating to a society is subject is contravened, the Treasurer may, by notice served on the society, cancel the indemnity—

- (a) where it was granted in respect of a particular loan—wholly; or
- (b) where it was granted in respect of loans of a class made or to be made by that society—wholly or to the extent to which it applied in respect of any one or more of those loans.

(g) Section 17AB (8)—

Omit “to which he has agreed under this section”.

(3) Sections 17AC, 17AD—

Omit section 17AC, insert instead:

Guarantee where loan made to co-operative housing society

17AC. (1) The Treasurer may, on the recommendation of the Co-operative Housing Societies Advisory Committee, execute a guarantee in favour of—

- (a) any bank;
- (b) any society registered under the Friendly Societies Act 1912;
- (c) the Government Insurance Office of New South Wales; or
- (d) any other person approved by the Treasurer.

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for the repayment of any advance to a co-operative housing society made or to be made by the bank, society, office or other person.

(2) Except as provided by subsections (3) and (4), sections 4 and 5 of the Government Guarantees Act 1934 apply to a guarantee authorised by this section in the same way as they apply to a guarantee authorised by that Act.

(3) The guarantee shall be part of a three-party loan and guarantee agreement between the lender (being the bank, friendly society, Government Insurance Office or approved person concerned), the Treasurer and the co-operative housing society under which, in consideration for the advance to be made by the lender to the co-operative housing society and the guarantee to be given by the Treasurer—

- (a) the co-operative housing society and the lender undertake to observe the terms and conditions specified in the agreement; and
- (b) the co-operative housing society creates a charge in favour of the Treasurer over the securities given to the society by its members in respect of loans to be made from the advance.

(4) The guarantee is enforceable against the Treasurer and the Consolidated Fund even though the lender is not authorised—

- (a) to hold any security in respect of the debt guaranteed (other than the guarantee); or
- (b) to appoint a receiver or manager of the property of the co-operative housing society.

Delegation by Treasurer

17AD. The Treasurer may delegate to the Minister, the registrar or the deputy registrar any or all of the Treasurer's powers, authorities, duties or functions under section 17AB or 17AC or both of those sections.

(4) Section 18A (Valuers)—

Section 18A (4)—

After section 18A (3), insert:

(4) The regulations may prescribe circumstances in which and conditions subject to which a valuation as referred to in subsection (1) is not necessary.

(5) Section 95A (Appointment of administrator of society)—

(a) Section 95A (5A)—

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SCHEDULE 1—AMENDMENTS—*continued*

After section 95A (5), insert:

(5A) When a liquidator of a society is appointed, the appointment of any administrator of the society is revoked.

(b) Section 95A (6)—

Before “section 95B (2)”, insert “subsection (5A) or”.

(6) Fifth Schedule—

At the end of the Fifth Schedule, insert:

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Savings relating to indemnities and guarantees

8. (1) Any indemnity granted under section 17AB and in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987 shall be deemed to have been granted under that section, as amended by that Act.

(2) Any guarantee—

(a) which was executed under section 3 (2) or (2A) of the Government Guarantees Act 1934 for the repayment of any advance made or to be made to a co-operative housing society; and

(b) which was in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987,

shall be deemed to have been executed under section 17AC, as re-enacted by the latter Act.
