

Act No. 19 of 1987

CO-OPERATION (FURTHER AMENDMENT) BILL 1986*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Permanent Building Societies (Further Amendment) Bill 1986.

The object of this Bill is to amend the Co-operation Act 1923 so as—

- (a) to reflect amendments made by the proposed Permanent Building Societies (Further Amendment) Act 1986 with respect to the role of the proposed Takeover Review Committee, advertisements, recognition of the relationship of holding society and subsidiary society and other matters; and
- (b) to make other amendments to the Principal Act of a miscellaneous, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the provisions of the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

* Amended in committee—see table at end of volume.

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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE APPLICATION TO THE ACT OF TAKEOVER REVIEW COMMITTEE PROVISIONS

Schedule 1 (1) amends section 18C (2) of the Principal Act so as to limit the operation of that provision to advertisements concerning the business or activities of a society: the amendment is consequential on the amendment to be made by Schedule 1 (3).

Schedule 1 (2) amends section 18D (Commencement of advertising by a new building society) of the Principal Act so as to limit the operation of that provision to advertisements concerning the business or activities of a society: the amendment is consequential on the amendment to be made by Schedule 1 (3).

Schedule 1 (3) repeals section 18F (Interpretation) of the Principal Act in recognition of the fact that the word ‘advertisement’ (which is defined by that section) is occasionally used in the Principal Act in a wider sense than that of the definition.

Schedule 1 (4) amends section 43 (Amalgamation) of the Principal Act so as to provide that, where proposed Division 6 of Part III of the Permanent Building Societies Act 1967 applies to a proposed transfer of engagements, the provisions of that Division must be complied with before the amalgamation proceeds.

Schedule 1 (5) amends section 43A (Amalgamation with permanent building society) of the Principal Act so as to provide that, where proposed Division 6 of Part III of the Permanent Building Societies Act 1967 applies to a proposed amalgamation with a permanent building society, the provisions of that Division must be complied with before the amalgamation proceeds.

Schedule 1 (6) amends section 69 (Transfer of engagements) of the Principal Act so as to provide that, where proposed Division 6 of Part III of the Permanent Building Societies Act 1967 applies to a proposed transfer of engagements, the provisions of that Division must be complied with before the transfer proceeds.

Schedule 1 (7) (a) amends section 70 (Registration of society as company) of the Principal Act so as to require—

- (a) submission to the registrar of any proposal to register a society as a company; and
- (b) compliance with proposed Division 6 of Part III of the Permanent Building Societies Act 1967 before any application for registration as a company is made.

Schedule 1 (7) (b) amends section 70 (4) of the Principal Act so as to ensure that the contents of the proposed articles of association prepared by a society that has applied to be registered as a company under the Companies (New South Wales) Code are not limited by the objects of the society.

Schedule 1 (7) (c) inserts a new paragraph into section 70 (6) of the Principal Act so as to enable the proposed articles of association prepared by a society that has applied to be registered as a company under the Companies (New South Wales) Code to contain provisions approved or required by the Takeover Review Committee (being provisions that would otherwise be inconsistent with subsection (6) (c) of that section).

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SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

Schedule 2 (1) amends section 5C (Subsidiary corporations and societies) of the Principal Act in consequence of the recognition of the relationship of holding society and subsidiary society by the proposed Act.

Schedule 2 (2) amends section 47B (Limitation on shareholding) of the Principal Act so as to fix the maximum prescribed proportion of equity fixed shares, or total shares, in a society which a person (other than a holding society) may hold. Excess shares are to be cancelled and the amount paid up on them is to be paid to the person entitled in respect of those shares.

Schedule 2 (3) inserts proposed section 68A into the Principal Act. The proposed section enables societies to become subsidiaries of other societies (including permanent building societies registered under the Permanent Building Societies Act 1967) in a manner similar to that by which a society transfers its engagements to another society under the Principal Act. The members of an intended subsidiary society must pass a special resolution (requiring a two-thirds majority) to take action to become a subsidiary society. The members of the intended holding society must either pass a similar resolution or, with the consent of the registrar, may take the necessary action to become a holding society by means of a resolution of a general meeting or of the board. A subsidiary society is one in which another society controls the majority of the shares or the composition of the board of directors or can cast or control the majority of votes cast at a general meeting.

Schedule 2 (4) inserts proposed section 69AA (Transfer of engagements of certain building societies) into the Principal Act. The proposed section enables a non-terminating building society or a society mentioned in the Second Schedule to the Principal Act to undertake to fulfil the engagements of a permanent building society registered under the Permanent Building Societies Act 1967 which has resolved to transfer its engagements to the society.

Schedule 2 (5) amends section 69B (Further supplementary provisions as to amalgamation, subsidiary societies or transfer of engagements) of the Principal Act so as to require a statement relating to a proposed arrangement creating the relationship of holding and subsidiary society or a proposed undertaking by a society to fulfil engagements, as approved by the registrar, to be sent to the members of the societies concerned before any meetings to pass the necessary resolutions are held.

Schedule 2 (6) amends section 69C (Transfer of engagements by direction of registrar) of the Principal Act so as to enable a non-terminating building society or a society mentioned in the Second Schedule to accept a transfer of engagements directed under the Permanent Building Societies Act 1967.

Schedule 2 (7) amends section 80 (Special resolutions) of the Principal Act so as to provide for the registration by the registrar of special resolutions where the registrar is satisfied that the special resolutions are not contrary to the Principal Act or the regulations. A right of appeal to the Supreme Court against a decision of the registrar not to register a special resolution is provided.

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Schedule 2 (8) amends section 88 (Directors, officers—remuneration, borrowing, etc.) of the Principal Act so as to prohibit the payment of benefits to directors or other officers of a society or associated persons, on loss of office, retirement or on amalgamation or transfer of engagements, in excess of such amount as may be determined by order of the Minister.

Schedule 2 (9) amends section 109A (Certain acts prohibited in relation to loans from building societies) to make it clear that the prohibition against payment of commission, fee or reward to an officer of a building society relates only to home mortgages or other loans or finance that do not comply with prescribed requirements.

Schedule 2 (10) makes an amendment consequential on the amendment made by Schedule 2 (7).

Schedule 2 (11) (a), (b) and (d) are consequential amendments.

Schedule 2 (11) (c) has the effect of providing that the procedure for bringing a society mentioned in the Second Schedule of the Principal Act under the Companies (New South Wales) Code is to be governed by section 70 (Registration of society as company) of the Principal Act instead of under the Building and Co-operative Societies Act 1901.
