

[Act 1998 No 11]



New South Wales

Co-operative Housing and Starr-Bowkett Societies Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the formation and incorporation of co-operative housing societies, Starr-Bowkett societies and associations of those societies,
- (b) to provide for the management, supervision and regulation of those societies and associations,
- (c) to provide for the New South Wales Financial Institutions Commission (*FINCOM*) to be the body that is to administer the new Act and supervise and regulate the activities of those societies and associations,
- (d) to provide for mergers and transfers of engagement involving those societies and associations and other financial institutions,
- (e) to provide for the external administration of those societies and associations,

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

- (f) to provide savings and transitional arrangements for existing societies and associations,
- (g) to repeal the *Co-operation Act 1923* and to make consequential amendments to various Acts.

Outline of provisions

Part 1 Preliminary

Division 1 Introductory

The Division provides for the name of the Act and for its commencement on a day or days to be appointed by proclamation.

Division 2 Interpretation

The Division contains definitions and other interpretative provisions. Important definitions are *co-operative housing body* which means a co-operative housing society, a Starr-Bowkett society and an association, and *society* which means a co-operative housing society or a Starr-Bowkett society.

Division 3 Operation of Act

The Division provides that the Act binds the Crown.

Division 4 Application and adoption of Corporations Law

The Division excludes the operation of the *Corporations Law* in relation to co-operative housing bodies, except for certain specified provisions of that Law. The regulations can also adopt with or without modification other provisions of that Law.

Part 2 Functions and powers of FINCOM

Division 1 General

The Division provides for certain general functions and powers of FINCOM and for the review of decisions of FINCOM.

Division 2 Specific powers

Subdivision 1 Enforcement powers

The Subdivision confers various powers on FINCOM to enable it to obtain information and evidence with respect to compliance with the Act. The appointment and powers of inspectors is provided for, including powers of entry and search to monitor compliance and gather evidence of offences. There is also provision for the issue of search warrants for monitoring compliance with the Act and for finding evidence of an offence against the Act.

Subdivision 2 Special meeting and inquiry

The Subdivision provides for the calling of a special meeting of a society, or the conduct of an inquiry into the affairs of a society, on the application of directors or members of the society or by FINCOM.

Subdivision 3 Special power of intervention

The Subdivision confers a special power on FINCOM to place a co-operative housing body under direction in certain circumstances, such as when the body is trading unprofitably or is being conducted in an improper or financially unsound way. FINCOM then has power to do all things that it considers necessary to remedy the situation.

Subdivision 4 Power to suspend operations of society

The Subdivision confers a special power on FINCOM to suspend certain operations of a co-operative housing body in certain circumstances.

Subdivision 5 Administrators

The Subdivision confers power on FINCOM to appoint an administrator to conduct the affairs of a co-operative housing body in certain circumstances. FINCOM is also given additional powers to appoint and remove directors and specify their terms and conditions of office and to change the rules of a body for which an administrator has been appointed.

Subdivision 6 Levies

The Subdivision provides for the payment of a supervision levy to FINCOM by co-operative housing bodies and for the payment of those levies into the Supervision Fund under the *Financial Institutions (NSW) Code*. FINCOM's expenses under the Act are to be paid from the Fund.

Subdivision 7 Advertising by co-operative housing bodies

The Subdivision gives FINCOM various powers to control advertising by co-operative housing bodies.

Part 3 Societies

Division 1 Formation and registration

The Division provides for the requirements for and method of forming and registering a society. Registration creates the society as a corporation with the legal capacity of a natural person.

Division 2 Powers

The Division provides for the following:

- (a) the general powers of a society, including power to raise money on loan, act as agent, acquire shares in certain corporations and hold a subsidiary,
- (b) restrictions on a society's power to receive money on deposit or to raise money by subscription of its members,
- (c) restrictions on the powers of societies to borrow money and the protection of lenders to societies,
- (d) a Treasurer's indemnity or guarantee for loans to or by co-operative housing societies.

Division 3 Rules

The Division makes provision for the minimum requirements for the rules of a society and provides that the rules bind the members and the society.

The Division also provides for the following:

- (a) the adoption of model rules,
- (b) the entitlement of members to be provided with a copy of the rules,
- (c) the method of altering the rules of a society,
- (d) the power of FINCOM to require the alteration of the rules of a society or to modify rules to facilitate a transfer of engagements between societies.

Division 4 Membership

The Division provides for the membership of a society, including the following:

- (a) how a person becomes a member of a society,
- (b) share capital,
- (c) membership by minors,
- (d) joint membership,
- (e) corporate membership,
- (f) cessation of membership and expulsion from membership,
- (g) the liability of members,
- (h) the fees and charges payable by members,
- (i) the fining of members.

Division 5 Name and office

The Division provides for the registration of the name and the change of name of a society, including the following:

- (a) requirements for and restrictions on names,
- (b) abbreviations of names,
- (c) the effect of a change of name,
- (d) prohibitions on the use of certain names that suggest registration under the Act except by societies,
- (e) the appearance of a society's name on its stationery and at its office.

The Division also requires a society to have a registered office.

Division 6 Registration of charges

The Division applies Part 3.5 of the *Corporations Law* (which provides for the registration of company charges) to co-operative housing bodies.

Part 4 Management

Division 1 Directors and officers

The Division provides for the business and operations of a society to be managed and controlled by a board of directors.

The Division also provides for the following:

- (a) meetings of a society's board,
- (b) the number of directors that a society must have,
- (c) the election or appointment of directors,
- (d) employee directors,
- (e) the appointment of alternate directors,
- (f) the office of chairperson of the board,
- (g) the qualifications to be a director,
- (h) the circumstances in which a director vacates office,
- (i) the removal of directors from office,
- (j) the declaration of a conflict of interest by a director,
- (k) directors' duty of disclosure,
- (l) prohibitions against directors, officers and associates of directors obtaining financial accommodation from a society,
- (m) directors' remuneration,
- (n) management contracts,
- (o) general duties of directors and officers,
- (p) a prohibition against unlawfully acting as a director.

Division 2 Meetings

The Division provides for annual general meetings and special general meetings of societies.

The Division also provides for the following:

- (a) the quorum for the conduct of business at meetings,
- (b) the giving of notice of meetings,
- (c) the voting entitlements of members,
- (d) voting by proxy,
- (e) requirements for the passing of special resolutions,
- (f) the keeping of minutes of meetings.

Division 3 Registers and inspection

The Division requires a society to keep various registers, including a register of directors, principal executive officer and secretaries, a register of members and such other registers as the regulations require.

The Division also provides for the following:

- (a) requiring a society to keep various documents at its registered office for inspection by members,
- (b) keeping of records on computer,
- (c) the form and evidentiary value of records kept by societies.

Division 4 Accounts

The Division provides for the financial year of societies and associations and imposes requirements for the keeping and inspection of financial records.

The Division also provides for the following:

- (a) the preparation of a profit and loss account and balance sheet,
- (b) the auditing of a society's accounts,
- (c) the obligations of directors of a society with regard to the writing off of bad debts, the valuation of assets and compliance by the society's accounts with prescribed requirements and accounting standards,
- (d) directors' reports,
- (e) the laying of accounts and reports before annual general meetings,
- (f) the liabilities of directors.

Division 5 Audit

The Division provides for the qualifications, appointment and removal and resignation of auditors.

The Division also deals with the following:

- (a) the effect of the winding-up of a society on the office of auditor,
- (b) the fees and expenses of auditors,
- (c) reports by auditors to members on the accounts of a society,
- (d) the powers and duties of auditors,
- (e) the final audit on a merger or transfer of engagements involving a society,
- (f) offences concerning the obstruction of auditors,
- (g) protection of auditors against liability for defamation.

Division 6 Returns and relief

The Division imposes obligations on societies to lodge certain returns. The Division also gives FINCOM power to excuse non-compliance with accounts and audit requirements of the Act.

Part 5 Mergers and transfers of engagements

Division 1 Preliminary

The Division contains definitions and provides that the Part applies only to co-operative housing societies and associations (and not to Starr-Bowkett societies).

Division 2 Mergers and transfers of engagements between societies of the same type

The Division provides a mechanism for the merger of societies of the same type and the transfer of engagements between societies of the same type.

The Division deals with the following matters:

- (a) the requirements for an application for a merger or transfer of engagements,
- (b) voluntary transfers of engagements and transfers directed by FINCOM,
- (c) the effect of a merger on the merged societies and their affairs.

Division 3 Transfers of engagements from co-operative housing societies to financial institutions

The Division provides a mechanism for the transfer of engagements from a co-operative housing society to a financial institution (a building society or credit union under the *Financial Institutions (NSW) Code*).

The Division deals with the following matters:

- (a) the requirements for an application for a transfer of engagements,
- (b) voluntary transfers of engagements and transfers directed by FINCOM,
- (c) the effect of a transfer of engagements.

Part 6 External administration

Division 1 Arrangements and reconstructions

The Division provides for the application to societies of provisions of the *Corporations Law* dealing with schemes of arrangement and reconstructions.

Division 2 Receivers and managers

The Division provides for the application to societies of provisions of the *Corporations Law* dealing with receivers and managers.

Division 3 Winding-up

The Division deals with the winding-up of a society, either voluntarily, by the Court or on a certificate of FINCOM, on certain grounds. The Division also provides for the application of provisions of the *Corporations Law* to the winding-up of a society.

Part 7 Associations

The Part provides for the formation of associations of societies and for their objects.

The Part also includes provision for the following:

- (a) the making of an application for registration of an association,
- (b) the incorporation of an association on its registration,
- (c) the membership and share capital of an association,
- (d) meetings of members of an association,
- (e) the means of applying provisions of the Act to associations.

Part 8 Standards and model rules

The Part provides for the formation of a Standards Committee that is to have power to make standards with respect to any aspect of the business and affairs of a co-operative housing body, and model rules for adoption by co-operative housing bodies.

The Part deals with the following matters:

- (a) the procedure for the making of standards and model rules,
- (b) the giving of notice of a proposed standard,
- (c) expedited procedures for urgent standards,
- (d) the matters for which standards can make provision,
- (e) the publication of standards.

Part 9 Evidence, offences and proceedings

Division 1 Evidence

The Division deals with the evidentiary aspects of certain matters arising under the Act, including the following matters:

- (a) certificates of registration, certificates of incorporation and other certificates issued by FINCOM,
- (b) the rules of a co-operative housing body,
- (c) the contents of registers kept under the Act,
- (d) entries in the minutes of meetings.

Division 2 Offences

The Division creates various offences dealing with the following matters:

- (a) failure by a co-operative housing body to comply with a lawful requirement under the Act to give information,
- (b) contravention by a co-operative housing body of any restriction on its powers under the Act,
- (c) the duties of officers in relation to the property of a co-operative housing body,
- (d) incurring of debts not likely to be paid, including the powers of the Court to order that an officer be personally liable,
- (e) the offering of inducements to be appointed as liquidator or official manager,
- (f) falsification of records,
- (g) frauds by officers,
- (h) the providing of false or misleading information,
- (i) powers to examine defaulting officers,
- (j) powers of the Court to assess damages against certain persons,
- (k) providing false copies of the rules of a co-operative housing body,
- (l) fraud and misappropriation,
- (m) compliance with standards.

Division 3 Proceedings

The Division deals with the following aspects of legal proceedings under the Act:

- (a) who can take proceedings for an offence under the Act and the time within which proceedings can be taken,
- (b) the creation of a separate and further offence for continuing offences,
- (c) the granting of injunctions to prevent contraventions of the Act.

Part 10 General

The Part provides for the following general matters:

- (a) a general regulation making power,
- (b) the repeal of the *Co-operation Act 1923* and various other Acts and instruments that will now be redundant,
- (c) provisions to give effect to the Schedule of savings and transitional provisions and the Schedule of consequential amendments to Acts,
- (d) a review of the Act in 5 years.

Schedules

Schedule 1 contains general interpretative provisions.

Schedule 2 provides for the matters to be provided for in the rules of co-operative housing societies.

Schedule 3 provides for the matters to be provided for in the rules of Starr-Bowkett societies.

Schedule 4 contains provisions relating to the constitution and procedure of the Standards Committee.

Schedule 5 contains savings and transitional provisions.

Schedule 6 contains consequential amendments to various Acts.