

CO-OPERATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to prohibit the making of certain offers to purchase shares in a society unless they do not discriminate between active and inactive members, are approved by a three-quarter majority of members in a postal ballot and are approved by the Minister (these requirements will apply to offers that are part of a proposal to purchase the society as a going concern, to register it as a company or to wind it up and to offers that would result in the offeror holding more than the maximum allowable shareholding); and
- (b) to prohibit the making of an offer to purchase shares if the purchase would result in the offeror becoming a substantial shareholder and the offer discriminates between active and inactive members; and
- (c) to provide that members of co-operative societies who have their shares forfeited because they are inactive members are, for a period of 5 years after forfeiture, to be regarded as shareholders for the purpose of enabling them to participate as shareholders in the sale of the society as a going concern, in its registration as a company or in any surplus in a winding-up; and
- (d) to enable the Advisory Council to insert active membership provisions in the rules of a society that has failed to do so within the time required by that Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Co-operation Act 1923.

Co-operation (Amendment) 1988

SCHEDULE 1—AMENDMENTS**Prohibition against certain share purchase offers**

The Bill inserts provisions that prohibit the making of certain significant offers to purchase shares in a society:

- An offer to purchase shares for the purpose of effecting the purchase of the society's undertaking, registration of the society as a company or the winding-up of the society, or that would result in the maximum shareholding level (generally 20 per cent) being exceeded, is prohibited if the offer discriminates against inactive members or is made without the required approvals. The approvals required are the approval of a three-quarter majority in a postal ballot of members and the approval of the Minister (after consideration of the matter by the Advisory Council).
- An offer to purchase shares that would lead to the offeror becoming a substantial shareholder (a shareholding of at least 10 per cent) is prohibited if it discriminates against inactive members.

If a person makes such a prohibited offer, the person is not entitled to be registered as the holder of the shares concerned and, if registered, is not entitled to vote at meetings.

The proposed provisions apply to offers made before the provisions commence unless the share transfer has been registered. They do not apply to building societies. (Schedule 1 (2)—proposed sections 47BB–47BD)

Entitlements of former inactive members after share forfeiture

The Bill inserts provisions that confer certain entitlements on persons whose shares in a society have been forfeited because they were inactive members.

Those persons are to be regarded as still being shareholders for the following purposes:

- the purchase of shares in the society in situations that (under the prohibited share offer provisions above) require the Minister's consent before they can proceed, occurring within 5 years after the person's shares were forfeited;
- the entitlement of a person as a shareholder in the society when the society becomes registered as a company within 5 years after the person's shares were forfeited;
- the entitlement of a shareholder to a distribution of surplus in a winding-up of the society within 5 years after the person's shares were forfeited.

In a situation where the society concerned becomes the subsidiary of another society, has its engagements transferred to another society or amalgamates to form another society, a forfeited shareholder is to be regarded as a forfeited shareholder of the other society for the purposes of the above entitlements.

Any amount that a person has been, or is entitled to be, repaid by the society in respect of forfeited shares is required to be set-off against any entitlement arising under the proposed provisions.

The Minister can exempt a society from some or all of the proposed provisions. (Schedule 1 (6)—proposed Division 5 of Part 3A)

Power of Advisory Council to insert active membership provisions into rules of society

The Bill inserts a provision that authorises the Advisory Council to alter the rules of a society so that the rules make provision for active membership if the society has not done so within the period currently required under section 80F of the Principal Act.

Co-operation (Amendment) 1988

The society concerned must be given an opportunity to make representations concerning the matter. (Schedule 1 (5)—proposed section 80FA)

Other amendments

The Bill also makes other amendments of a minor or consequential nature, including an amendment that makes it clear that the only members of a society who are entitled to vote in a postal ballot of members are those members who are entitled to vote at meetings (Schedule 1 (3) (b) and (c)).
