

Act No. 118

## CO-OPERATION (FURTHER AMENDMENT) BILL 1987\*

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 so as—

- (a) to introduce the concept of active membership of a society (meaning, generally, the utilisation or support of the activities of the society concerned with its primary objects) and to provide—
  - (i) that a person is not qualified to be admitted to membership of a society unless the person is likely to be an active member;
  - (ii) that the shares of a member who has been inactive for 2 years are to be forfeited;
  - (iii) for the repayment of amounts paid up on shares forfeited and for the liability of such a member in a winding-up which commences within 2 years after forfeiture of the shares;
  - (iv) that a director of a society is required to be an active member; and
  - (v) for the loss of entitlement to vote by an inactive member;
- (b) to require the board of a society to forfeit shares in the society held by a person above the maximum permissible level of shareholding;
- (c) to provide that shares in a society may only be sold or transferred to a person qualified to be admitted to membership of the society;
- (d) to impose a limit on the number of shares in a society which may be sold or transferred in a financial year;

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

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- (e) to require persons to give notice to a society if they sell, transfer or dispose of the beneficial interest in shares of the society, or agree to do so, or who commence to hold shares in the society on behalf of a person;
- (f) to impose additional requirements on certain societies to ascertain the views of active members and to obtain the approval of the Minister before selling or leasing any part of the undertaking of the society as a going concern, applying for registration as a company or voluntarily winding-up;
- (g) to provide for the method by which a casual vacancy on the board of certain societies is to be filled;
- (h) to provide for the loss of a member's entitlement to vote if another member has a relevant interest in the shares concerned;
- (i) to enable a society to be wound-up if its rules do not contain active membership provisions;
- (j) to make special provision for the liability on a winding-up of a society of a former member whose shares were forfeited, purchased or repaid in certain circumstances;
- (k) to prevent a person from representing more than 1 body corporate member of a society and more than 1 member under a power of attorney; and
- (l) to make other amendments of a minor, consequential or ancillary nature.

The Bill—

- (a) inserts various provisions inserted by uncommenced provisions of the Acts referred to in clauses 4 and 5 which will now not be commenced; and
- (b) also makes savings and transitional provisions.

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Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 repeals certain uncommenced provisions of the Co-operation (Amendment) Act 1986 which will now be dealt with by the proposed Act.

Clause 5 repeals certain uncommenced provisions of the Co-operation (Amendment) Act 1987 which will now be dealt with by the proposed Act.

#### SCHEDULE 1—AMENDMENTS TO THE CO-OPERATION ACT 1923

Schedule 1 (1) is a consequential amendment.

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Schedule 1 (2) inserts proposed sections 5A and 5B into the Principal Act:

- (a) Proposed section 5A specifies certain principles as co-operative principles, being the principles adopted by the International Co-operative Alliance.
- (b) Proposed section 5B defines what constitutes a subsidiary corporation or subsidiary society of a society. Generally, a corporation or society is a subsidiary of a society if the society controls the composition of the board of directors, controls more than half of the votes that might be cast at a general meeting or holds more than half of its issued share capital.

Schedule 1 (3) provides that a person is not qualified to be admitted to membership of a society (other than a building society or an association of building societies) unless there are reasonable grounds for believing that the person will be an active member under proposed Part IIIA of the Principal Act.

Schedule 1 (4) (a) prevents a person from representing a body corporate as a member of a society if the person also represents another body corporate.

Schedule 1 (4) (b) prevents a person from representing a member of a society under a power of attorney if the person also represents another member under a power of attorney.

Schedule 1 (5) (a) requires the board of a society to forfeit any shares held by a person above the maximum permissible shareholding in a society. Provision is also made for the repayment of amounts due in respect of forfeited shares.

Schedule 1 (5) (b) inserts provisions which—

- (a) make it clear that a share in a society may be transferred on death or incapacity without the consent of the board of the society;
- (b) provide that, except as provided in paragraph (a), shares in a society may only be sold or transferred with the consent of the board to a person qualified to be admitted to membership of the society;
- (c) impose a limit on the volume of sales and transfers of shares to which the board of a society (other than a non-terminating building society or a society mentioned in the Second Schedule to the Principal Act) may consent during a financial year;
- (d) provide that the limit for the purposes of paragraph (c) is one-fifth (or other prescribed proportion), or a lesser proportion prescribed by the society's rules, of the issued share capital of the society at the start of the financial year concerned;
- (e) empower the Minister (on the advice of the Advisory Council) to approve, or the regulations to provide for, exemption from the limit in paragraph (c) for a particular sale or transfer;
- (f) require a person who sells, transfers or disposes of his or her beneficial interest in shares in a society, or who agrees to do so, to give notice to the society; and
- (g) require a person who commences to hold shares in a society on behalf of a person to give notice to the society.

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Schedule 1 (6) imposes restrictions on the power of a society (other than a co-operative housing society, a non-terminating building society or a Second Schedule society) to sell or lease any part of the society's undertaking as a going concern. The society will now have to conduct a postal ballot of members and 75 per cent of the formal votes will have to be in favour of the sale or lease. The Minister's approval is also required before the sale or lease can proceed and the Advisory Council considers the matter and reports to the Minister. Generally, the society's rules will also have to contain active membership provisions under proposed Part IIIA of the Principal Act.

Schedule 1 (7) imposes restrictions on the power of certain societies to apply for registration as a company under the Companies (New South Wales) Code. In the case of a non-terminating building society or a Second Schedule society, details of the proposed application have to be submitted to the registrar and the provisions of the Permanent Building Societies Act 1967 relating to the review of such proposed applications must be complied with. An application by any other society (except a co-operative housing society) is subject to the restrictions referred to in Schedule 1 (6).

Schedule 1 (8) inserts proposed sections 79A and 79B:

- (a) Proposed section 79A makes provision for the postal ballots required under Schedule 1 (6), (7) and (14). A society is required to send with the ballot papers a statement concerning certain matters, including the interests of directors in the proposal concerned.
- (b) Proposed section 79B makes provision for the approval of the Minister under Schedule 1 (6), (7) and (14). The proposal concerned is considered by the Advisory Council which makes a recommendation to the Minister who may approve or refuse to approve of the proposal.

Schedule 1 (9) inserts proposed Part IIIA into the Principal Act (proposed sections 80A-80AB):

- (a) Proposed section 80A provides that the proposed new Part does not apply to a building society or to an association the majority of the component societies of which are building societies.
- (b) Proposed section 80B defines—
  - (i) "chief primary object" of a society to mean an object which the rules of the society specify as a chief primary object; and
  - (ii) "primary object" of a society to mean an object which the rules of a society specify as a chief primary object or primary object of the society.
- (c) Proposed section 80C defines what constitutes active membership of a society. Generally, a member is an active member if the member—
  - (i) utilises or supports an activity of the society or maintains a relationship or an arrangement with the society, in connection with a primary object of the society, in the manner required by the rules of the society; or
  - (ii) maintains any other prescribed relationship or arrangement with the society in connection with a primary object of the society.

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- (d) Proposed section 80D defines—
- (i) “active membership provisions” to mean provisions in a society’s rules which specify the matters necessary to determine who are the active members of the society; and
  - (ii) “active membership resolution” to mean a resolution which inserts active membership provisions into the rules of a society.
- (e) Proposed section 80E requires a society to have at least 1 primary object. A society registered before the commencement of the proposed section is required to have at least 1 chief primary object until its rules contain active membership provisions relating to a primary object other than a chief primary object.
- (f) Proposed section 80F requires the board of a society to ensure that the rules of a society contain appropriate active membership provisions. The board must comply, generally, within 12 months after the commencement of the proposed section. An extension may be granted in certain circumstances.
- (g) Proposed section 80G empowers the Minister to specify factors and considerations to be taken into account in determining appropriate active membership provisions.
- (h) Proposed section 80H enables active membership provisions to provide that the payment of a regular subscription by a member in connection with a primary object is sufficient to establish active membership.
- (i) Proposed section 80I places restrictions on the type of active membership provisions which may be adopted by “goods and produce” societies.
- (j) Proposed section 80J provides that an active membership resolution cannot be proposed at a meeting of the society unless the registrar has approved of the resolution.
- (k) Proposed section 80K provides for a review by the Advisory Council of a decision of the registrar to refuse to approve of a proposed active membership resolution.
- (l) Proposed section 80L requires at least 21 days’ notice to be given to members of a society of a meeting at which an active membership resolution is to be proposed. The notice must state whether the member is eligible to vote on the resolution.
- (m) Proposed section 80M sets out the requirements for a member to be eligible to vote on an active membership resolution. Generally, to be eligible, a member must currently be an active member. In the absence of active membership provisions, eligibility is determined on the basis of active membership under resolutions already passed and proposed to be passed at the meeting concerned.
- (n) Proposed section 80N prevents a director voting at a meeting of the board of a society on a proposal to submit an active membership resolution to members unless the director would be eligible to vote on the resolution at the meeting of members.

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- (o) Proposed section 80O provides for the order in which proposed active membership resolutions are to be considered at a meeting of a society and for the automatic failure of proposed resolutions which conflict with resolutions already passed.
- (p) Proposed section 80P makes it clear that loss of entitlement to vote on a resolution does not affect any other entitlement or right of a member.
- (q) Proposed section 80Q requires the board of a society to forfeit the shares of a member if—
  - (i) the whereabouts of the member have been unknown for 2 years; or
  - (ii) the member has not been an active member for the last 2 years.
- (r) Proposed section 80R empowers the Minister to order in appropriate cases that the shares of a member not be forfeited under proposed section 80Q.
- (s) Proposed section 80S empowers the board of a society to defer forfeitures of shares if it thinks that an active membership resolution may be proposed which would affect the forfeiture.
- (t) Proposed section 80T empowers the registrar to exempt a society from forfeiture provisions on the basis that its records do not allow it to discover who is not an active member.
- (u) Proposed section 80U prohibits forfeiture of shares in certain unusual circumstances, such as where the society is in the course of being wound-up.
- (v) Proposed section 80V requires notice to be sent to a shareholder whose shares are about to be forfeited.
- (w) Proposed section 80W enables directors of a society to be prosecuted if they fail to use all due diligence to prevent the board failing to carry out its duty to forfeit shares.
- (x) Proposed section 80X makes provision for the repayment to a member whose shares are forfeited of the amount paid up on those shares. An amount due to a member may, in some circumstances, be transferred to a debenture of or a deposit with the society, instead of being repaid.
- (y) Proposed section 80Y makes provision for the interest payable on, and the repayment of, a debenture or deposit to which a member's funds are transferred under proposed section 80X.
- (z) Proposed section 80Z prevents a member voting at a meeting of the society unless the member is an active member.
- (aa) Proposed section 80AA requires a society to keep a register of shareholders whose shares have been forfeited because they were inactive members.
- (ab) Proposed section 80AB provides that money required to be repaid to a shareholder is not subject to the Unclaimed Money Act 1982 until it is required to be repaid to the member.

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Schedule 1 (10) adds active membership provisions to the list of matters for which a society's rules are required to provide.

Schedule 1 (11) (a) and (b) require a director of a society to be an active member and provide for a director who is not to vacate office.

Schedule 1 (11) (c) requires a casual vacancy on the board of a society (other than a building society) to be filled by election held at a general meeting, by postal ballot or by the same method as for ordinary elections of directors. Provision is also made for the board to appoint directors if the number of directors falls below a quorum plus 1.

Schedule 1 (12) provides that a member whose shares are required to be forfeited under proposed Part IIIA of the Principal Act is not entitled to be present at a meeting of the society.

Schedule 1 (13) (a) provides that if a member has a relevant interest in shares held by another member or other members, only one of those members is eligible to vote. The Advisory Council may restore entitlement to vote if satisfied that loss of the entitlement would be unjust or unreasonable.

Schedule 1 (13) (b) provides that a member is not entitled to vote at a meeting if—

- (a) the member's shares are required to be forfeited under proposed Part IIIA of the Principal Act; or
- (b) the member has sold, transferred or disposed of the beneficial interest in his or her shares or has agreed to do so.

Schedule 1 (14) (a) enables a society to be wound-up on a certificate of the registrar if the board has, after notice from the registrar, failed to ensure that the rules of the society contain active membership provisions.

Schedule 1 (14) (b) imposes restrictions on the voluntary winding-up of a society (other than a co-operative housing society, a non-terminating building society or a Second Schedule society). The restrictions are as specified in Schedule 1 (6).

Schedule 1 (15) makes special provision for the liability in a winding-up of past members of a society who cease to be members as a result of having their shares forfeited, purchased or repaid.

Schedule 1 (16) and (17) make various savings and transitional provisions consequent on the enactment of the proposed Act.

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