

CO-OPERATION (AMENDMENT) ACT 1987 No. 19

NEW SOUTH WALES



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CO-OPERATION (AMENDMENT) ACT 1987 No. 19

NEW SOUTH WALES



Act No. 19, 1987

An Act to amend the Co-operation Act 1923 to make further provision with respect to the regulation of co-operative societies; and for other purposes.
[Assented to 24 April 1987]

Co-operation (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

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

Commencement

2. (1) Subject to this section, this Act shall commence on the date of assent to this Act.

- (2) Section 4, in its application to a provision of Schedule 1 or 2, shall commence on the day on which that provision commences.

- (3) The several provisions of Schedules 1 and 2 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Co-operation Act 1923 is referred to in this Act as the Principal Act.

Amendment of Act No. 1, 1924

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.
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Co-operation (Amendment) 1987

SCHEDULE 1

(Sec. 4)

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

(1) Section 18C (**Non-terminating building societies directors' shares**)—

Section 18C (2) (c) (ii), (3) (a) (ii)—

After "advertisement" wherever occurring, insert "with respect to the business or activities of the society".

(2) Section 18D (**Commencement of advertising by a new building society**)—

(a) Section 18D (1), (2)—

Omit "commence to issue or to cause to be issued after its registration under this Act any advertisement" wherever occurring, insert instead "after its registration under this Act commence to advertise its business or activities".

(b) Section 18D (1)—

After "to the society", insert "or association".

(3) Section 18F (**Interpretation**)—

Omit the section.

(4) Section 43 (**Amalgamation**)—

Section 43 (1C)—

After section 43 (1B), insert:

(1C) An application referred to in subsection (1A) may not be made unless, where Division 6 of Part III of the Permanent Building Societies Act 1967 applies to the amalgamation, the provisions of that Division have been complied with.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
APPLICATION TO THE ACT OF TAKEOVER REVIEW COMMITTEE
PROVISIONS—*continued*(5) Section 43A (**Amalgamation with permanent building society**)—

Section 43A (2A)—

After section 43A (2), insert:

(2A) An application under this section may not be made unless, where Division 6 of Part III of the Permanent Building Societies Act 1967 applies to the amalgamation, the provisions of that Division have been complied with.

(6) Section 69 (**Transfer of engagements**)—

Section 69 (1D)—

After section 69 (1C), insert:

(1D) Engagements shall not be transferred under this section unless, where Division 6 of Part III of the Permanent Building Societies Act 1967 applies to the transfer, the provisions of that Division have been complied with.

(7) Section 70 (**Registration of society as company**)—

(a) Section 70 (1)—

After “rural society”, insert “, a non-terminating building society or a society mentioned in the Second Schedule”.

(b) Section 70 (1B), (1C)—

After section 70 (1A), insert:

(1B) A non-terminating building society or a society mentioned in the Second Schedule, other than a society prohibited from doing so by its rules, may apply to be registered as a company under the Companies (New South Wales) Code.

(1C) An application referred to in subsection (1B) shall not be made unless—

- (a) details of the proposed application have first been submitted to the registrar; and

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

- (b) the provisions of Division 6 of Part III of the Permanent Building Societies Act 1967 have been complied with in respect of the proposal.
- (c) Section 70 (4) (b)—
Omit “state” where firstly occurring, insert instead “include”.
- (d) Section 70 (6) (a1)—
After section 70 (6) (a), insert:
(a1) Paragraph (a) does not prevent the articles of association of a proposed company from containing such provisions as the Takeover Review Committee may approve or require under Division 6 of Part III of the Permanent Building Societies Act 1967 with respect to a proposal by a society to apply to be registered as a company under the Companies (New South Wales) Code.

SCHEDULE 2

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- (1) Section 5C (**Subsidiary corporations and societies**)—
- (a) Section 5C (1)—
After “corporation” wherever occurring, insert “or society”.
- (b) Section 5C (2)—
After “corporation’s” wherever occurring, insert “or society’s”.
- (c) Section 5C (3)—
After “corporation” where firstly occurring, insert “or society”.

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SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 5c (3)—

After “society” where firstly, secondly, thirdly and seventhly occurring, insert “of which the corporation or society may be a subsidiary”.

(2) Section 47B (**Limitation on shareholding**)—

(a) Section 47B (1)—

Omit the subsection, insert instead:

(1) In this section—

“equity fixed share” has the same meaning as in the Permanent Building Societies Act 1967;

“society” (except in subsection (4)) means a non-terminating building society or a society mentioned in the Second Schedule.

(b) Section 47B (2) (b), (c)—

Omit “he” wherever occurring, insert instead “the person or an associate of the person”.

(c) Section 47B (2) (d1)–(d3)—

After section 47B (2) (d), insert:

(d1) subject to paragraph (d2), a reference to an associate of a person is a reference to an associate of a person within the meaning of section 136 of the Companies (New South Wales) Code, construed as if a reference in that section to a company included a reference to a society;

(d2) if the registrar has, by order, declared a person whose principal business is the business of holding marketable securities as a trustee or nominee to be an approved trustee or nominee, that person shall not be regarded as an associate of another person;

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (d3) if the registrar has, by order, declared that specified shares in respect of which an associate of a person has a power referred to in paragraph (b) or (c) are to be disregarded for the purpose of ascertaining the shares in respect of which that person has a relevant interest, those shares shall be so disregarded;
- (d) Section 47B (2) (f)—
Omit the paragraph, insert instead:
- (f) the prescribed proportion for a society is—
- (i) in the case of equity fixed shares—one-tenth;
 - (ii) in the case of shares of a class other than equity fixed shares—one-fifth; or
 - (iii) in the case of shares (whether of not including equity fixed shares or shares of any other class)—one-fifth,
- or, where a lesser proportion is specified in the rules of the society or any other proportion (whether lesser or greater) is specified in the regulations, the proportion so specified.
- (e) Section 47B (3), (3AA)—
Omit section 47B (3), insert instead:
- (3) Where a person (other than a holding society created in accordance with section 68A of this Act or section 39A of the Permanent Building Societies Act 1967) has relevant interests—
- (a) in the equity fixed shares of a society exceeding the prescribed proportion of the nominal value of all equity fixed shares issued by the society;
 - (b) in the shares of a society (being shares of a class other than equity fixed shares or any other prescribed class) exceeding the prescribed proportion of the nominal value of all shares of that class issued by the society; or

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) in the shares of a society (whether or not including equity fixed shares or shares of any other class) exceeding the prescribed proportion of the nominal value of all shares issued by the society,

the society shall—

- (d) cancel the excess shares; and
- (e) pay to the person the amount paid up on the cancelled shares, together with any other money to which the person may be entitled in respect of those shares.

(3AA) Subsection (3) (b) does not operate so as to require the cancellation of shares in which a person has relevant interests if—

- (a) the acquisition of the relevant interests in those shares was in accordance with an approval given under Division 6 of Part III of the Permanent Building Societies Act 1967;
- (b) the person had the relevant interests in those shares before the commencement of this subsection; or
- (c) the person has the relevant interests as the result of a share issue and those relevant interests represent a proportion of the issued shares no greater than the proportion which the person had before the share issue.
- (f) Section 47B (4) (a) (ii)—
- Omit “the prescribed proportion to”, insert instead “one-fifth of”.
- (g) Section 47B (4) (b)—
- Omit “the prescribed proportion”, insert instead “one-fifth”.

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(3) Section 68A—

After section 68, insert:

Subsidiary societies

68A. (1) A non-terminating building society or a society mentioned in the Second Schedule may by special resolution take action to become a subsidiary society (within the meaning of section 5C) of a non-terminating building society or a society mentioned in the Second Schedule, or a permanent building society registered under the Permanent Building Societies Act 1967.

(2) A non-terminating building society or a society mentioned in the Second Schedule, or a permanent building society may—

(a) by special resolution; or

(b) with the consent of the registrar, by resolution of a general meeting or of the board,

take action to become a holding society of a society referred to in subsection (1).

(3) An arrangement under this section between societies to enter into the relationship of subsidiary society and holding society shall not have effect unless, where Division 6 of Part III of the Permanent Building Societies Act 1967 applies to the arrangement, the provisions of that Division have been complied with or, where that Division does not apply to the arrangement—

(a) the holders of not less than two-thirds of the whole number of shares of each of the societies consented in writing to the arrangement, or the arrangement has been confirmed under section 69B (3); and

(b) the special resolution of the proposed subsidiary society has been registered.

SCHEDULE 2—*continued*
MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) The registrar, before registering the special resolution referred to in subsection (2) (a), may require such evidence as the registrar deems necessary to ensure—

- (a) that the proposed holding society has taken action to become a holding society in accordance with this section;
- (b) that the statements referred to in section 69B have (unless an exemption has been granted by the registrar pursuant to section 69B (1)) been issued; and
- (c) that consent has been given under subsection (3) (a), or the arrangement has been confirmed under section 69B (3).

(5) A society shall, within one month of the passing of a resolution under subsection (2) (a), notify the registrar that the resolution has been passed and if the society fails to notify the registrar, the society and every officer of the society who is in default shall be guilty of an offence and liable to a penalty not exceeding \$500.

(4) Section 69AA—

After section 69A, insert:

Transfer of engagements of certain building societies

69AA. (1) Where a society registered under the Permanent Building Societies Act 1967 by special resolution resolves to transfer its engagements to a non-terminating building society or a society mentioned in the Second Schedule, the non-terminating building society or society mentioned in the Second Schedule may—

- (a) by special resolution; or
- (b) with the consent of the registrar—by resolution of a general meeting or of the board,

undertake to fulfil the engagements of the transferor society.

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SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 69 (1D) and section 69A (3), (4) and (5) apply to and in respect of a transfer of engagements between societies under this section in the same way as they apply to and in respect of a transfer of engagements between societies to which those subsections apply.

(3) Section 41A (2) and (2A) apply to and in respect of a transfer of engagements between societies under this section in the same way as those subsections apply to and in respect of a society making an application under section 41A, and those subsections so apply as if—

- (a) a reference in those subsections to the day on which the certificate of incorporation is issued were a reference to the day on which the special resolution of the transferor society is registered;
- (b) a reference in those subsections to the society that made the application were a reference to the transferor society;
- (c) a reference in those subsections to the society incorporated under this Act were a reference to the transferee society and, where that society is a society mentioned in the Second Schedule, included a reference to any persons who, immediately before the day on which the special resolution of the transferor society is registered, were trustees appointed by the transferee society;
- (d) a reference in section 41A (2) (e) to the incorporation of a society under this Act were a reference to the transfer by a society of its engagements; and
- (e) a reference in section 41A (2) (h) to the issue of the certificate of incorporation were a reference to the registration of the special resolution of the transferor society.

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Notwithstanding subsection (3), the registrar may, if satisfied that the proposed transfer of engagements is not prejudicial to the interests of the members of the transferee society, grant in writing an exemption to a society from compliance with the provisions referred to in subsection (2) or any of them.

(5) Section 69B—(Further supplementary provisions as to amalgamation, subsidiary societies or transfer of engagements)—

(a) Section 69B (1)—

After “amalgamation” where firstly occurring, insert “, arrangement to enter into the relationship of subsidiary society and holding society”.

(b) Section 69B (1)—

After “amalgamation” where secondly, thirdly, fourthly and fifthly occurring, insert “, arrangement”.

(c) Section 69B (1)—

After “is proposed”, insert “, or an undertaking by a society to fulfil engagements is proposed,”.

(d) Section 69B (1)—

After “or transfer” where secondly occurring, insert “concerned”.

(e) Section 69B (1)—

Omit “will be non-terminating building societies or societies mentioned in the Second Schedule, or non-terminating building societies and societies mentioned in the Second Schedule”, insert instead “will not include a society other than a non-terminating building society, a society mentioned in the Second Schedule or a society registered under the Permanent Building Societies Act 1967”.

(f) Section 69B (2)—

After “section 43 (1B) (b)”, insert “, 68A (2) (a)”.

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continued

- (g) Section 69B (2)—
After “amalgamation”, insert “, arrangement”.
- (h) Section 69B (3) (a)—
After “amalgamation”, insert “, arrangement”.
- (i) Section 69B (3)—
After “amalgamation” where lastly occurring, insert “, arrangement”.
- (6) Section 69C (**Transfer of engagements by direction of registrar**)—
Section 69C (7A)—
After section 69C (7), insert:
(7A) A non-terminating building society or a society mentioned in the Second Schedule may, with the consent of the registrar and by resolution of the board, accept a transfer of engagements directed under a provision of the Permanent Building Societies Act 1967 corresponding to this section.
- (7) Section 80 (**Special resolution**)—
(a) Section 80 (1)—
Omit the subsection, insert instead:
(1) For the purposes of this Act, a special resolution means a resolution which is passed by—
(a) if paragraph (b) does not apply—a majority of not less than two-thirds of the members of the society; or
(b) if a non-terminating building society or a society mentioned in the Second Schedule has fixed shares and the rules of the society so provide—
(i) a majority of not less than two-thirds of the members who are the holders of shares of the society (including fixed shares); and

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (ii) a majority of not less than two-thirds of the members who are the holders of fixed shares of the society, being, in each case, members who, being entitled to do so—
- (c) vote in person; or
- (d) where proxies are allowed, vote by proxy,
- at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and the rules of the society.
- (b) Section 80 (3)—
- Omit “and registered by him, and until the copy is so registered the special resolution shall not take effect”.
- (c) Section 80 (3A), (3B)—
- After section 80 (3), insert:
- (3A) If the registrar is satisfied that the society has complied with the provisions of this Act and of the regulations, and that the resolution is not contrary to this Act or the regulations, the registrar shall register the copy of the resolution.
- (3B) A special resolution shall not take effect until the copy is so registered.
- (8) Section 88 (**Directors, officers—remuneration, borrowings, etc.**)—
- Section 88 (2C), (2D)—
- After section 88 (2B), insert:
- (2C) A director or other officer of any non-terminating building society or society mentioned in the Second Schedule or a person who, for the purposes of section 88AA, is associated with a director or other officer of any such society shall not be paid any amount or be given any other benefit having a value in excess of such amount as may be determined by order of the Minister in connection with—

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continued

- (a) the loss of office by the director or other officer or the retirement from office by the director or other person; or
- (b) the transfer of engagements of a society, the amalgamation of societies or the registration of a society under another Act.

(2D) An order made by the Minister may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

(9) Section 109A (**Certain acts prohibited in relation to loans from building societies**)—

Section 109A (1A)—

After section 109A (1), insert:

- (1A) Subsection (1) does not apply to a loan or finance unless—
- (a) the loan or finance is in respect of land (including freehold or leasehold land and land that is of any tenure under any Crown lands legislation) that is occupied or intended to be occupied personally for residential purposes by the mortgagors or persons obtaining finance; or
 - (b) being any other kind of loan or finance, the arrangements for obtaining that loan or finance do not comply with such requirements as may be prescribed.

(10) Section 122 (**Review of decisions of registrar**)—

Section 122 (1)—

After “rules”, insert “or special resolutions”.

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (11) Third Schedule (**Provisions of this Act applicable to societies mentioned in Second Schedule**)—
- (a) Omit “18F,”.
 - (b) Omit “69, 69A”, insert instead “68A, 69, 69A, 69AA”.
 - (c) After “69D,”, insert “70,”.
 - (d) After “84B,”, insert “88 (2C),”.