

**CREDIT UNION (AMENDMENT) ACT, 1981, No. 4**

**New South Wales**



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**ELIZABETHÆ II REGINÆ**

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**Act No. 4, 1981.**

An Act to amend the Credit Union Act, 1969, to enable associations of credit unions to raise funds in the form of subordinated deposits and to alter the requirements in relation to the maintenance of reserves by credit unions and associations of credit unions; and for certain other purposes.  
[Assented to, 6th April, 1981.]

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*Credit Union (Amendment).*

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**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 "Credit Union (Amendment) Act, 1981".

**Commencement.**

**2. (1)** Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

**(2)** Section 4 (1), in its application to Schedule 1 (1), and Schedule 1 (1) shall be deemed to have commenced on 1st July, 1969.

**(3)** Sections 4 (2) and 6 and Schedule 2 shall commence on 1st July, 1981.

**Schedules.**

**3.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE CREDIT UNION ACT, 1969.

SCHEDULE 2.—FURTHER AMENDMENTS TO THE CREDIT UNION ACT, 1969.

**Amendment of Act No. 8, 1969.**

**4. (1)** The Credit Union Act, 1969, is amended in the manner set forth in Schedule 1.

**(2)** The Credit Union Act, 1969, is further amended in the manner set forth in Schedule 2.

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**Savings and transitional provisions.**

**5. (1)** Nothing in this Act affects the winding up of an association in respect of which a liquidator was appointed before the date of assent to this Act.

**(2)** In subsections (3) and (4)—

“the former Act” means the Credit Union Act, 1969, as in force immediately before the date of assent to this Act;

“the present Act” means the Credit Union Act, 1969, as amended by section 4 (1) and Schedule 1.

**(3)** In relation to amounts appropriated, before the date of assent to this Act, to reserve by an association, section 50A (5) of the present Act shall be construed as if the reference in that subsection to amounts transferred to reserve pursuant to section 50A of the present Act included a reference to moneys appropriated to reserve pursuant to section 50 of the former Act.

**(4)** In relation to a financial year of an association that ended before the date of assent to this Act, section 50A of the present Act, as modified in accordance with subsection (3), shall be construed as if—

- (a) a reference in section 50A (6) (a) or (b) of the present Act to section 50A (3) of the present Act included a reference to section 50 (2) of the former Act;
- (b) the reference in section 50A (6) (c) of the present Act to section 50A (3) (b) (ii) of the present Act included a reference to section 50 (2) (b) (ii) of the former Act;
- (c) the reference in section 50A (6) (c) of the present Act, as modified in accordance with paragraph (b), to the prescribed amount included a reference to the prescribed amount as defined in section 50 (1) of the former Act;
- (d) the reference in section 50A (6) of the present Act, as modified in accordance with paragraphs (a), (b) and (c), to equity funds included a reference to reserve; and

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- (e) the reference in section 50A (6) of the present Act, as modified in accordance with paragraphs (a), (b), (c) and (d), to the prescribed equity amount included a reference to the prescribed reserve amount as defined in section 50 (1) of the former Act.

**Further savings and transitional provisions.****6. (1)** In this section—

“the former Act” means the Credit Union Act, 1969, as in force immediately before 1st July, 1981;

“the present Act” means the Credit Union Act, 1969, as amended by section 4 (2) and Schedule 2.

**(2)** In relation to amounts appropriated, before 1st July, 1981, to reserve by a credit union, section 50 (5) of the present Act shall be construed as if the reference in that subsection to amounts transferred to reserve pursuant to section 50 of the present Act included a reference to moneys appropriated to reserve pursuant to section 50 of the former Act.

**(3)** In relation to a financial year of a credit union that ended before 1st July, 1981, section 50 of the present Act, as modified in accordance with subsection (2), shall be construed as if—

- (a) a reference in section 50 (6) (a) or (b) of the present Act to section 50 (3) of the present Act included a reference to section 50 (2) of the former Act;
- (b) the reference in section 50 (6) (c) of the present Act to section 50 (3) (b) (ii) of the present Act included a reference to section 50 (2) (b) (ii) of the former Act;
- (c) the reference in section 50 (6) (c) of the present Act, as modified in accordance with paragraph (b), to the prescribed amount included a reference to the prescribed amount as defined in section 50 (1) of the former Act; and

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- (d) the reference in section 50 (6) of the present Act, as modified in accordance with paragraphs (a), (b) and (c), to the prescribed reserve amount included a reference to the prescribed reserve amount as defined in section 50 (1) of the former Act.

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SCHEDULE 1.

(Sec. 4 (1).)

AMENDMENTS TO THE CREDIT UNION ACT, 1969.

(1) Section 19 (2A)—

After section 19 (2), insert :—

(2A) Funds invested by way of deposit pursuant to subsection (1) (c) may, notwithstanding any rule of law or equity to the contrary, be so invested under an agreement whereby, in the event of the winding up of the association with which the deposit is made, any claim of the depositor against the association in respect of the deposit shall rank in priority—

- (a) equally with the claim of any other depositor in respect of a deposit the subject of a like agreement; and
- (b) except as provided in paragraph (a), after the claims of any other unsecured creditors of the association.

(2) (a) Section 49 (1)—

Omit “and section 50”.

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*Credit Union (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

## (b) Section 49 (4)—

Omit the subsection, insert instead :—

(4) The maximum rate of dividend shall not exceed—

- (a) in respect of a share in a credit union—9 per cent per annum or, where the Minister on the recommendation of the Advisory Committee fixes another rate by order published in the Gazette, that other rate; and
- (b) in respect of a share in an association—12 per cent per annum or, where the Minister fixes another rate by order published in the Gazette, that other rate.

## (c) Section 49 (5)—

Omit “five years”, insert instead “5 years”.

## (d) Section 49 (6)—

Omit “ten per centum”, insert instead “10 per cent”.

## (e) Section 49 (7)–(10)—

Omit section 49 (7), insert instead :—

(7) In calculating the surplus for the purposes of this section—

- (a) no regard shall be had to amounts appropriated to any reserve;
- (b) proper allowance shall be made for depreciation in the value of property;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

- (c) an allowance determined under subsection (8) shall be made for contingent liability for loss in respect of a loan made by the credit union or association concerned; and
- (d) a proper allowance shall be made for contingent liability for loss otherwise than in respect of loans to which paragraph (c) applies.

(8) The amount of the allowance to be made under subsection (7) (c) for contingent liability for loss in respect of a loan is—

- (a) except as provided by paragraph (b), where a payment on the loan is due and unpaid—
  - (i) for a period of at least 3 months but less than 6 months—at least 40 per cent of the balance of the loan;
  - (ii) for a period of at least 6 months but less than 9 months—at least 60 per cent of the balance of the loan;
  - (iii) for a period of at least 9 months but less than 12 months—at least 80 per cent of the balance of the loan; or
  - (iv) for a period of at least 12 months—100 per cent of the balance of the loan;or
- (b) where, under subsection (10), the Minister varies a period or a percentage, or both, specified in paragraph (a)—the percentage of the loan determined under paragraph (a) as so varied.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

(9) In subsection (8) (a), “balance of the loan” means the sum of—

(a) the balance of the principal; and

(b) any interest due and unpaid on the principal or the balance of the principal,

in respect of the loan as at the time the allowance referred to in subsection (7) (c) is to be made.

(10) The Minister may, by order published in the Gazette, vary a period or a percentage, or both, specified in subsection (8) (a), in any manner specified in the order.

(3) (a) Section 50 (1)—

Omit “, or of an association”.

(b) Section 50 (1), definition of “prescribed amount”—

Omit “or association” wherever occurring.

(c) Section 50 (1), paragraph (a) of the definition of “prescribed reserve amount”—

Omit “or association”.

(d) Section 50 (2)—

Omit “, or an association, has no reserve, or”, insert instead “has no reserve or has”.

(e) Section 50 (2), (4)–(6)—

Omit “or association” wherever occurring.



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*Credit Union (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

(4) Section 50A—

After section 50, insert :—

**Reserves of associations.**

50A. (1) In this section—

“equity funds”, in relation to an association, means—

- (a) the paid up share capital of the association;
- (b) amounts transferred to reserve by the association; and
- (c) funds invested with the association by way of deposit pursuant to section 19 (1) (c), being funds so invested under an agreement of the kind referred to in section 19 (2A);

“mean balance of assets”, in relation to a financial year of an association, means one-half of the sum of—

- (a) the amount shown as the value of the assets of the association at the end of that year in the balance sheet of the association for that year lodged with the registrar in accordance with this Act; and
- (b) the amount shown as the value of the assets of the association at the end of the last preceding financial year in the balance sheet of the association for that year lodged with the registrar in accordance with this Act;

“prescribed amount”, in relation to a financial year of an association, means an amount equal to  $\frac{1}{4}$  per cent or, where some other percentage is

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

determined under subsection (4), that other percentage, of the mean balance of assets of the association at the end of that year;

“prescribed equity amount”, in relation to a financial year of an association, means an amount equal to 3 per cent or, where some other percentage is determined under subsection (4), that other percentage, of the mean balance of assets of the association at the end of that year.

(2) For the purposes—

(a) of subsections (3) and (6), in calculating the amount of equity funds which an association has at any time, no regard shall be had to so much of any reserve as consists of—

(i) amounts that represent the revaluation of assets of the association; or

(ii) amounts in respect of which provision has been made by the association for distribution to shareholders or for any other application; and

(b) of subsection (3), a requirement of subsection (3) (b) to transfer an amount to reserve is a requirement to transfer an amount which does not include amounts of the kind referred to in paragraph (a) (i) or (ii).

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*Credit Union (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

(3) Where, at the end of a financial year, the amount of the equity funds of an association is less than the prescribed equity amount for that year, the association shall—

- (a) during the next succeeding financial year, increase its equity funds so that at the end of that succeeding financial year, the amount of its equity funds is not less than the prescribed equity amount for that succeeding financial year; or
- (b) forthwith after the end of the next succeeding financial year, transfer to reserve an amount not less than—
  - (i) the prescribed amount for that succeeding financial year; or
  - (ii) the amount by which the prescribed equity amount for that succeeding financial year exceeds the amount of its equity funds at the end of that succeeding financial year,

whichever is the lesser.

(4) The Minister may, by order published in the Gazette, determine, in relation to a specified financial year of an association, percentages for the purposes of the definitions of “prescribed amount” and “prescribed equity amount” in subsection (1).

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*Credit Union (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

(5) Amounts transferred to reserve by an association pursuant to this section shall not be distributed among members of the association except—

- (a) upon terms and conditions approved by the Advisory Committee; or
- (b) in the event of a winding up.

(6) Where, in respect of a financial year, an association—

- (a) makes no transfer to reserve pursuant to subsection (3);
- (b) fails to comply with subsection (3); or
- (c) pursuant to subsection (3) (b) (ii), transfers to reserve an amount less than the prescribed amount for that year,

the association shall not, during the next succeeding financial year, distribute among its members any part of its reserve if, after the distribution, the amount of its equity funds would be less than the prescribed equity amount for the firstmentioned year, except—

- (d) upon terms and conditions approved by the Advisory Committee; or
- (e) in the event of a winding up.

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*Credit Union (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CREDIT UNION ACT, 1969—*continued.*

(5) Section 72B—

After section 72A, insert :—

**Priority of sub-ordinated deposits.**

72B. In the winding up of an association, the claim of a depositor in relation to funds invested with the association by way of deposit under an agreement of the kind referred to in section 19 (2A) shall rank among the claims of any creditors of the association in such priority as is specified in the agreement.

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SCHEDULE 2.

(Sec. 4 (2).)

FURTHER AMENDMENTS TO THE CREDIT UNION ACT, 1969.

(1) Section 50—

Omit the section, insert instead :—

**Reserves of credit unions.**

50. (1) In this section—

“mean balance of assets”, in relation to a financial year of a credit union, means one-half of the sum of—

- (a) the amount shown as the value of the assets of the credit union at the end of that year in the balance sheet of the credit union for that year lodged with the registrar in accordance with this Act; and
- (b) the amount shown as the value of the assets of the credit union at the end of the last preceding financial year in the

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*Credit Union (Amendment).*

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SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE CREDIT UNION ACT, 1969—  
*continued.*

balance sheet of the credit union for that year lodged with the registrar in accordance with this Act;

“prescribed amount”, in relation to a financial year of a credit union, means an amount equal to  $\frac{1}{2}$  per cent or, where some other percentage is determined under subsection (4), that other percentage, of the mean balance of assets of the credit union at the end of that year;

“prescribed reserve amount”, in relation to a financial year of a credit union, means an amount equal to 5 per cent or, where some other percentage is determined under subsection (4), that other percentage, of the mean balance of assets of the credit union at the end of that year.

(2) For the purposes—

- (a) of subsections (3) and (6), in calculating the amount of a reserve which a credit union has at any time, no regard shall be had to so much of any reserve as consists of—
  - (i) amounts that represent the revaluation of assets of the credit union; or
  - (ii) amounts in respect of which provision has been made by the credit union for distribution to shareholders or for any other application; and
- (b) of subsection (3), a requirement of that subsection to transfer an amount to reserve is a requirement to transfer an amount which does not include amounts of the kind referred to in paragraph (a) (i) or (ii).

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*Credit Union (Amendment).*

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SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE CREDIT UNION ACT, 1969—  
*continued.*

(3) Where, at the end of a financial year, a credit union has no reserve or has a reserve the amount of which is less than the prescribed reserve amount for that year, the credit union shall thereupon transfer to reserve—

- (a) where it has no reserve, an amount not less than the prescribed amount for that year; or
- (b) where it has a reserve the amount of which is less than the prescribed reserve amount for that year, an amount not less than—
  - (i) the prescribed amount for that year; or
  - (ii) the amount required to increase the reserve to the prescribed reserve amount for that year,

whichever is the lesser.

(4) The Minister may, by order published in the Gazette, determine, in relation to a specified financial year (not being a financial year that has ended) of a credit union, percentages for the purposes of the definitions of “prescribed amount” and “prescribed reserve amount” in subsection (1).

(5) Amounts transferred to reserve by a credit union pursuant to this section shall not be distributed among members of the credit union except—

- (a) upon terms and conditions approved by the Advisory Committee; or
- (b) in the event of a winding up.

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*Credit Union (Amendment).*

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SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE CREDIT UNION ACT, 1969—  
*continued.*

(6) Where, in respect of a financial year, a credit union—

- (a) makes no transfer to reserve pursuant to subsection (3);
- (b) fails to comply with subsection (3); or
- (c) pursuant to subsection (3) (b) (ii), transfers to reserve an amount less than the prescribed amount for that year,

the credit union shall not, during the next succeeding financial year, distribute among its members any part of its reserve if, after the distribution, the amount of its reserve would be less than the prescribed reserve amount for the firstmentioned year, except—

- (d) upon terms and conditions approved by the Advisory Committee; or
- (e) in the event of a winding up.

(2) Section 69AA (1) (a)—

Omit “section 50 (2)”, insert instead “section 50 (3)”.

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