



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1981

No. 41 of 1981**An Act to amend the Building Societies Act, 1975-1976.***[Assented to 19 March 1981]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Building Societies Act Amendment Act, 1981".

(2) The Building Societies Act, 1975-1976, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Building Societies Act, 1975-1981".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended by inserting after the definition of "the repealed Act" the following definition:

"restricted loan" means a loan that is, in terms of section 33, a restricted loan:.

Amendment of
s. 6—
Registrar
and Deputy
Registrars.

4. Section 6 of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) a Registrar of Building Societies:.

Amendment of
s. 12—
Registration
and
incorporation.

5. Section 12 of the principal Act is amended by striking out from subsection (3) the passage "five hundred thousand dollars of which not less than one hundred thousand dollars" and substituting the passage "two million dollars of which not less than one million dollars".

Repeal of
ss. 21, 22 and
23 and
substitution
of new sections.

6. Sections 21, 22 and 23 of the principal Act are repealed and the following sections are substituted:

Amalgamation.

21. Two or more societies may be amalgamated either upon application, or by direction of the Minister, under this Division.

22. (1) An application for amalgamation may be made to the Registrar upon the authority of a special resolution of each of the societies concerned in the proposed amalgamation.

Application for
amalgamation.

(2) An application under subsection (1)—

(a) must be made jointly by the societies concerned in the proposed amalgamation;

(b) must contain such information as may be prescribed;
and

(c) must be accompanied by a copy of the proposed rules of the society to be formed by the amalgamation.

(3) A society that proposes to join in an application for amalgamation with one or more other societies shall send to each of its members a statement the contents of which have been approved by the Registrar concerning—

(a) the financial position of the society and any other society or societies with which it proposes to amalgamate;

(b) any interest that the officers of the society or of any other society concerned in the amalgamation may have in the amalgamation;

(c) any compensation or other consideration proposed to be paid to the officers of the society and of the other society or societies concerned;

(d) the payments (if any) to be made to members of the society and of the other society or societies concerned in consideration of the amalgamation;

and

(e) such other matters as the Registrar may direct.

(4) A statement under subsection (3) shall be sent so that it will in the ordinary course of post reach each member not later than the time at which he would receive notice of the meeting called to pass the special resolution authorizing the application for amalgamation.

(5) If three days before the day on which the meeting called to pass the special resolution is to be held, a society has received written notices of objection from ten per centum or more of its members to the proposed amalgamation, the motion for the special resolution shall not be placed before the meeting.

(6) The Registrar may, on the application of a society, authorize the society to join in an application under this section—

(a) notwithstanding that the application is not authorized by a special resolution of the society;

or

(b) notwithstanding that any other requirement of this section has not been complied with.

(7) The Registrar may give such notice (if any) of an application under subsection (6) as he thinks appropriate and may, before granting or refusing the application, hear any person who has, in the opinion of the Registrar, a proper interest in the matter.

Amalgamation
by direction
of the
Minister.

23. (1) Where—

- (a) a society is insolvent or the financial position of a society is such that it is, in the opinion of the Minister, in danger of becoming insolvent;

and

- (b) another society agrees, by special resolution, to amalgamate with the society referred to in paragraph (a),

the Minister may direct the society referred to in paragraph (a) to amalgamate with the society referred to in paragraph (b).

(2) Before calling a meeting to pass a special resolution referred to in subsection (1) (b), a society shall send to each of its members a statement the contents of which have been approved by the Registrar concerning—

- (a) the financial position of the society and the society with which it is proposed that it amalgamate;
- (b) any interest that the officers of the society may have in the amalgamation;
- (c) any compensation or other consideration proposed to be paid to the officers of the society;
- (d) the payments (if any) to be made to members of the society in consideration of the amalgamation;

and

- (e) such other matters as the Registrar may direct.

(3) A statement under subsection (2) shall be sent so that it will in the ordinary course of post reach each member not later than the time at which he would receive notice of the meeting called to pass the special resolution agreeing to the amalgamation.

(4) If three days before the day on which the meeting called to pass the special resolution is to be held, the society has received written notices of objection from ten per centum or more of its members to the proposed amalgamation, the motion for the special resolution shall not be placed before the meeting.

(5) The Registrar may, on the application of a society, authorize the society to agree, by special resolution, to an amalgamation under this section notwithstanding that a requirement of this section has not been complied with.

(6) The Registrar may give such notice (if any) of an application under subsection (5) as he thinks appropriate and may, before granting or refusing the application, hear any person who has, in the opinion of the Registrar, a proper interest in the matter.

(7) The first rules of the society to be formed by the amalgamation of societies in pursuance of a direction of the Minister under this section shall be as determined by the Minister.

23a. (1) Where—

Amalgamation.

(a) due application for the amalgamation of two or more societies is made under this Division;

or

(b) the Minister directs the amalgamation of societies in pursuance of this Division,

the Registrar shall, subject to subsection (2)—

(c) register the society formed by the amalgamation and shall register the rules of the society and shall issue a certificate of incorporation in the prescribed form in respect of the society;

and

(d) shall cancel the registration of the societies that were parties to the amalgamation.

(2) A society shall not be registered under subsection (1) unless the requirements of section 12 (3) and (4) (other than paragraph (a) of section 12 (4)) are complied with.

(3) Section 12 (5) applies to a society in respect of which a certificate of incorporation has been issued under subsection (1).

(4) The amalgamation shall not prejudice any right of a creditor of any society that is a party to the amalgamation.

(5) Upon the issue of the certificate of incorporation the property of each society that was a party to the amalgamation shall on and from the date of the certificate and by virtue of this Act without any conveyance, transfer or assignment, vest in the society formed by the amalgamation.

(6) For the purposes of this section the property of the societies that are parties to the amalgamation shall include all estates and interests in property, whether real or personal, vested or contingent.

(7) Upon production of the certificate of the Registrar, and of the appropriate certificates of title (if any) the Registrar-General shall make such entries or notations upon existing certificates of title, or shall issue such new certificates of title as are necessary to evidence the vesting of any estate or interest in land in a society formed by amalgamation under this section.

(8) Any property vested in, or transferred to, a society by virtue of or in pursuance of this section shall be subject to any debt, liability or obligation affecting that property.

(9) All debts and liabilities, whether certain or contingent, and whether then existing or capable of arising at a future time, to or with which any society that is a party to the amalgamation is, immediately before the issue of the certificate of incorporation, liable or charged, shall by virtue of this Act become and be the debts and liabilities of the society formed by the amalgamation.

Repeal of
s. 27 and
substitution
of new section.

7. Section 27 of the principal Act is repealed and the following section is substituted:

Rates of
interest.

27. (1) The Minister may, by notice published in the *Gazette*—

(a) fix a maximum rate of interest generally applicable to loans made by societies;

(b) fix a maximum rate of interest in relation to any class of loans made by societies;

and

(c) vary or revoke a rate of interest fixed under this subsection.

(2) Subject to this Act, a society shall not charge interest upon a loan at a rate exceeding a maximum fixed under subsection (1) that is applicable to the loan.

(3) This section does not apply in respect of—

(a) a restricted loan;

or

(b) a loan that was lawfully made before the commencement of this Act.

Amendment of
s. 41—
Power to
raise funds.

8. Section 41 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A society may, subject to this Act, and the rules of the society, raise funds—

(a) by accepting deposits;

(b) by borrowing money;

or

(c) in any other manner authorized by regulation.

Amendment of
s. 47—
Share capital.

9. Section 47 of the principal Act is amended by striking out from subsection (6) the passage “five hundred thousand dollars” and substituting the passage “two million dollars”.

Repeal of
s. 50 and
substitution
of new section.

10. Section 50 of the principal Act is repealed and the following section is substituted:

Charitable
contributions.

50. (1) A society may, subject to this section and the rules of the society, make contributions out of its funds—

(a) for charitable purposes;

or

(b) for the purpose of establishing or maintaining a charitable foundation.

(2) Unless the Registrar otherwise determines a contribution shall not be made under subsection (1) unless—

(a) the society achieved a surplus in each of the three financial years last preceding the making of the contribution;

and

(b) the aggregate of that contribution and any previous contributions made in the same financial year does not exceed—

(i) five per centum of the average annual surplus achieved in the three financial years last preceding the making of that contribution;

or

(ii) such other proportion of that average annual surplus as may be prescribed.

(3) A contribution shall not be made under subsection (1) for the purpose of establishing a charitable foundation unless the Minister has first given his approval in writing.

(4) For the purposes of this section, the extent (if at all) to which a society has achieved a surplus shall be determined in accordance with the provisions of section 37.

(5) In this section—

“charitable foundation” means a foundation or trust that exists, or is to be established, only for charitable purposes.

11. The following Division is inserted after section 64 of the principal Act: Insertion of new Division V.

DIVISION V—MANAGEMENT CONTRACTS

64a. (1) A society shall not enter into a management contract without first obtaining the written approval of the Registrar. Management contracts.

(2) In this section “management contract” means an agreement or arrangement under which—

(a) a society agrees to perform the whole or any part of its functions—

(i) in a particular manner;

(ii) in accordance with the directions of any person;

or

(iii) subject to specified restrictions or conditions;

or

(b) a person who is not an officer or an employee of the society agrees to perform the whole, or a substantial part, of the functions of the society.

12. Section 74 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the passage “five hundred thousand dollars” and substituting the passage “two million dollars”. Amendment of s. 74—
Too few members, etc.

13. The following section is inserted after section 89 of the principal Act: Insertion of new s. 90.

90. (1) There shall be a Committee entitled the “Building Societies Advisory Committee”. The Advisory Committee.

(2) The Committee shall consist of six persons appointed by the Minister of whom—

- (a) one shall be the Registrar;
- (b) one shall be a nominee of the Treasurer;
- (c) one shall be a nominee of the Minister of Housing;
- and
- (d) three shall be persons who are, in the opinion of the Minister, suitably qualified to represent the interests of societies.

(3) Subject to subsection (4) the Minister may appoint a suitable person to be a deputy of a member of the Committee, and such a person may, in the absence of the member of whom he has been appointed a deputy, act as a member of the Committee.

(4) The Minister shall not appoint a person as the deputy of a member who was appointed under subsection (2) (b) or (2) (c) unless that person has first been nominated by the Treasurer or the Minister of Housing respectively.

(5) A member of the Committee shall hold office at the pleasure of the Minister.

(6) The functions of the Committee are as follows:

- (a) to make recommendations to the Minister on the more effective operation of societies;
- (b) to make recommendations to the Minister in relation to regulations and model rules under this Act;
- (c) to make recommendations to the Minister in relation to maximum rates of interest applicable to loans made by societies;
- (d) to keep legislation relevant to the operation of societies under review and, where appropriate, to recommend amendments;
- (e) to advise the Minister or the Registrar upon matters referred to the Committee for advice;
- and
- (f) to advise the Minister generally on the operation of societies and matters relevant to the administration of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor