

National Mutual Permanent Building Society Bill

No.

TABLE OF PROVISIONS

Clause

1. Purpose.
2. Commencement.
3. Definitions.
4. Application for registration as a public company.
5. Registration as a public company.
6. Application of the Code during interim period.
7. Sunset provision.

LEGISLATIVE COUNCIL

Read 1° 29 October 1985

(Brought in by the Honourable J. H. Kennan)

A BILL

to enable the National Mutual Permanent Building Society to become a public company deemed to be incorporated in Victoria and for other purposes.

National Mutual Permanent Building Society Act 1985

The Parliament of Victoria enacts as follows:

Purpose.

- 5 1. The purpose of this Act is to facilitate the National Mutual Permanent Building Society becoming a banking corporation by enabling it to become a public company deemed to be incorporated in Victoria.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

- 10 3. In this Act—

“**Code**” means the *Companies (Victoria) Code*.

“**Commission**” means the Commission established under the *National Companies and Securities Commission Act 1979* of the Commonwealth.

“**Corporation**” means the National Mutual Permanent Building Society which is a society within the meaning of the *Building Societies Act 1976*.

“**Public company**” means a public company under the Code.

Application for registration as a public company.

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4. (1) The corporation may by a special resolution determine to apply to be registered as a public company.

(2) The corporation must by special resolution have—

(a) determined under what name the corporation is to apply to be registered as a public company; and

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(b) adopted a memorandum of association and articles of association for the proposed public company.

(3) The corporation may determine that the name of the proposed public company is to be different from the name of the corporation.

(4) Until the corporation becomes a banking corporation within the meaning of the Code it is entitled to continue to use the name “National Mutual Permanent Building Society”.

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(5) The memorandum of association must contain the particulars required by the Code and be signed by at least five persons who are members of the corporation.

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(6) The articles of association are to be prepared as required by the Code.

(7) The memorandum of association and articles of association must not—

(a) impose on any member of the public company who was a member of the corporation at the date of its registration as a public company any liability to contribute to the assets of the public company which is different to the liability to which he or she was subject as a member of the corporation; or

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(b) deprive any member of the public company who was a member of the corporation at the date of its registration as a public company of any rights with respect to dividend or capital to which he or she was entitled as a member of the corporation.

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(8) The corporation may apply to be registered as a public company under the Code by lodging with the Commission—

(a) an application for registration under the common seal of the corporation; and

(b) a copy of the special resolution passed by the corporation; and

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- (c) the memorandum of association and the articles of association adopted by special resolution; and
- (d) a list specifying the name, address and occupation of each member of the corporation and the number, nominal value and amount credited as paid up of any shares held by each member of the corporation as at a date specified in the list being not less than six clear days before the application is lodged.

Registration as a public company.

- 10 5. (1) When the documents required under section 4 (8) have been lodged with the Commission the Commission must—
- (a) certify that the corporation is deemed to be a public company incorporated under the Code with liability limited by shares; and
- 15 (b) issue a certificate of incorporation under the Code.
- (2) As from the day on which the certificate of incorporation is issued—
- (a) the corporation is deemed for all purposes to be a public company incorporated under the Code; and
- 20 (b) except as provided in sections 4 (4) and 6, the Code applies to the corporation and its members, contributories and creditors as if the corporation had been registered under the Code; and
- 25 (c) the *Building Societies Act* 1976 ceases to apply to the corporation and its members, contributories and creditors; and
- (d) the Registrar of Building Societies must cancel the registration of the corporation as a building society under the *Building Societies Act* 1976.
- 30 (3) The identity of the corporation is not affected by its incorporation as a public company and the corporation is the same entity as the public company.
- (4) Without limiting sub-section (3) the following provisions apply on and from the issue of the certificate of incorporation:
- 35 (a) Any person who was a member of the corporation immediately before the issue of the certificate of incorporation remains a shareholder of the public company with the same shareholding, rights and obligations;
- 40 (b) Any person who was a depositor, lender or other creditor of the corporation immediately before the issue of the certificate of incorporation remains a creditor of the public company on the same terms and conditions;
- (c) Any person who was a borrower from or other debtor of the corporation immediately before the issue of the certificate

- of incorporation remains a debtor of the public company on the same terms and conditions;
- (d) The duties, responsibilities and obligations imposed immediately before the issue of the certificate of incorporation upon the corporation and the immunities, rights and privileges of or vested in, exercisable by or available to the corporation immediately before the issue of the certificate of incorporation remain the duties, responsibilities, obligations, immunities, rights and privileges of the public company;
- (e) The property, rights and other assets that immediately before the issue of the certificate of incorporation were those of the corporation remain the property, rights and assets of the public company;
- (f) The debts, obligations and liabilities of the corporation immediately before the issue of the certificate of incorporation remain the debts, obligations and liabilities of the public company;
- (g) The public company by force of this section remains as a party to any proceedings pending in any court to which the corporation was a party immediately before the issue of the certificate of incorporation;
- (h) The public company by force of this section remains as a party to any arrangement or contract entered into by or on behalf of the corporation as a party and in force immediately before the issue of the certificate of incorporation;
- (i) Any reference to the corporation in any agreement, instrument, deed or other document whatsoever is to be construed as a reference to the public company unless inconsistent with the context or subject-matter so far as it relates to any period after the issue of the certificate of incorporation;
- (j) Without limiting paragraph (i) any reference to the corporation in any certificate of title or other document or record maintained by the Registrar of Titles, the Registrar-General or any other public office is deemed to be a reference to the public company.
- (5) If there are no persons named as directors of the corporation in the articles of association then upon registration as a public company the persons who were directors of the corporation immediately before the registration are the first directors of the public company.
- (6) The certificate of incorporation issued by the Commission is conclusive evidence that all the requirements of this Act and the Code in respect of registration under the Code have been complied with and that the corporation is incorporated as a public company under the Code.

Application of the Code during interim period.

6. (1) In sub-section (2) "**prescribed provision**" means a provision of Division 1 or 5 of Part IV. or of section 552 of the Code.

5 (2) Except as provided in sub-section (3), the following provisions apply from the time the corporation is incorporated as a public company under the Code until it becomes a banking corporation within the meaning of the Code:

10 (a) A prescribed provision does not apply to or in relation to anything done or to be done by the corporation in the ordinary course of its business;

(b) The corporation is not required to comply with a prescribed provision in respect of anything done or to be done by the corporation in the ordinary course of its business;

15 (c) The corporation is not to be taken, by reason of anything done or to be done by the corporation in the ordinary course of its business, to be a borrowing corporation for the purposes of a prescribed provision;

20 (d) The definition of "debenture" in section 5 (1) of the Code has effect in its application to the corporation as if the reference in paragraph (aa) to "banking corporation" included a reference to the corporation and the reference to "banking business" included a reference to the corporation's business.

25 (3) If a borrowing corporation is required by section 152 (1) of the Code to make provision in a trust deed for the appointment of a corporation as a trustee for the holders of debentures and the corporation is appointed as a trustee for the holders of those debentures, Division 5 of Part IV. of the Code applies to or in relation to the corporation in its capacity as trustee for the holders of the debentures.

30 **Sunset provision.**

7. Sections 4 (4) and 6 cease to have effect on the day which is six months after the day on which each of those sections comes into operation.



