

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 29 February, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. , 1972.

An Act to simplify the manner in which the Treasurer may indemnify certain building societies against certain losses; to extend to non-terminating building societies and societies registered under the Building and Co-operative Societies Act, 1901, the same controls over dividend rates and interest rates on shares and deposits as are applicable to permanent building societies; to make further provisions with respect to building and other co-operative societies; for these and other purposes to amend the Co-operation Act, 1923; and for purposes connected therewith.

BE

Co-operation (Amendment).

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 :—

1. (1) This Act may be cited as the "Co-operation (Amendment) Act, 1972". Short title and commencement.

(2) This section commences upon the day on which this Act receives the Royal assent.

10 (3) Subject to subsection two of this section, a provision of this Act commences on the day that the Governor appoints, by proclamation published in the Gazette, as the day on which the provision is to commence.

2. The Co-operation Act, 1923, is amended— Amendment of Act No. 1, 1924.

15 (a) by inserting in section five after the definition of "Bond" the following new definition :— Sec. 5. (Interpretation.)
"Co-operative Building Advisory Committee" means the committee constituted under section 114A of this Act.

20 (b) by inserting next after section 16C the following new section :— New sec. 16D.

25 16D. (1) A non-terminating building society shall not approve of a loan unless, at the time the approval is given, the society holds liquid funds equal to not less than seven and one-half per Liquidity. Act No. 18, 1967, s. 63.

centum

Co-operation (Amendment).

centum or, where some other proportion is prescribed, that other proportion, of the total of members' paid up share capital and deposits held by the society.

5 (2) In this Act, a reference to liquid funds held by a society at a particular time is a reference to the total amount of funds held by the society at that time—

10 (a) as cash at the bank (after allowing for cheques or other bills of exchange drawn but not presented for payment) or in hand;

15 (b) as investments made in the manner authorised by paragraph (a) of subsection (1A) of section sixty-eight of this Act, as qualified by subsection (1B) of that section; and

(c) as moneys deposited in the manner authorised by paragraph (b) of subsection (1A) of section sixty-eight of this Act.

20 (3) For the purpose of calculating the proportion referred to in subsection one of this section, investments referred to in paragraph (b) of subsection two of this section shall be taken at their cost or market value, whichever is the lesser.

25 (c) by inserting next after subsection six of section 17A the following new subsection :—

30 (7) On or after the day appointed under subsection one of section 17AB of this Act the Co-operative Building Advisory Committee shall not recommend that the approval of the Governor be given to enter into any agreement under this section.

Sec. 17A.
(Treasurer may undertake to indemnify building societies against loss in certain circumstances.)

(d)

Co-operation (Amendment).

(d) by inserting next after section 17AA the following ^{New} new section :— _{sec. 17AB.}

5 17AB. (1) On and after a day appointed by the Governor and notified by proclamation published in the Gazette the Treasurer may, on the recommendation of the Co-operative Building Advisory Committee, agree to indemnify a building society, subject to the prescribed conditions in force at the time of the agreement, in respect of such part of
10 any loss suffered by the society as does not exceed the amount referred to in subsection four of this section.

15 (2) The Treasurer shall be deemed to have agreed to indemnify a society as provided by subsection one of this section when the registrar notifies the society that the Treasurer has so agreed in respect of a specified loan and a specified amount.

20 (3) The conditions subject to which the Treasurer agrees to indemnify a society under subsection one of this section are—

25 (a) that the loss indemnified is loss directly attributable to the fact that the society lent to a member an amount that, reduced by the value of the share capital of the member, exceeded eighty per centum of the value of the security for the loan;

30 (b) that the amount so lent does not exceed an amount equal to ninety-five per centum or, where the regulations prescribe some other proportion for the purposes of this paragraph, that other proportion, of the value of the security for the loan;

(c)

Co-operation (Amendment).

- 5 (c) that the amount so lent, reduced by the amount of the share capital of the member or the prescribed amount, whichever is the lesser amount, does not exceed the prescribed maximum amount where—
- 10 (i) the prescribed amount is five hundred and forty dollars or, where the regulations prescribe some other amount for the purposes of this subparagraph, that other amount; and
- 15 (ii) the prescribed maximum amount is ten thousand eight hundred dollars or, where the regulations prescribe some other amount for the purposes of this subparagraph, that other amount;
- 20 (d) that security for the repayment of the amount so lent is taken by way of a first mortgage over land on which is erected a dwelling house used, or intended to be used, by the borrower as a home for himself, his family and his dependants;
- 25 (e) that, where the borrower owns a dwelling house at the time the loan is made, the Co-operative Building Advisory Committee is satisfied that there are special reasons why the Treasurer should indemnify the society;
- 30 (f) that the society will, at all times, comply with the provisions of this Act, the regulations made thereunder and its rules, in so far as they affect it;
- 35 (g) that the society will not, without the previous consent in writing of the Treasurer, assign or encumber the benefit of the indemnity;

(h)

Co-operation (Amendment).

5 (h) that the society will, upon request made to it by the Co-operative Building Advisory Committee, furnish at the expense of the society a valuation of the security for the loan; and

(i) such other conditions as may be prescribed.

10 (4) The amount of an indemnity referred to in subsection one of this section in relation to a loan by a society is the amount specified under subsection two of this section in relation to that loan, reduced by any amount that would, but for the neglect or misconduct of the society or its servants or agents, have been received by the society.

15 (5) The Treasurer shall not agree to indemnify a society under this section if he would thereby be involved in a liability which, when added to the total liability of the Treasurer in respect of other indemnities entered into by the Treasurer during the preceding three months would exceed an amount of one million dollars but a contravention of this section does not invalidate the indemnity in respect of which the contravention occurs.

25 (6) An amount payable by way of indemnity under this section shall be paid out of moneys provided by Parliament.

30 (7) The Treasurer may cancel an indemnity to which he has agreed under this section if the conditions subject to which he agreed to the indemnity are not complied with.

(8) The Treasurer ceases to be liable in respect of an indemnity to which he has agreed under this section when the amount of the loan to

which

Co-operation (Amendment).

which the indemnity relates is reduced to an amount that does not exceed the equivalent of eighty per centum of the value of the security for the loan when the loan was made.

5 (9) A valuation of security and calculation of share capital for the purposes of this section shall be made in such manner as the Co-operative Building Advisory Committee may direct.

10 (e) by inserting next after section 17B the following ^{New} new section : — _{sec. 17c.}

15 17c. (1) Nothing in this Act precludes a non-terminating building society from lending to a member on such security as is mentioned in subsection one of section sixteen of this Act the whole or part of an amount necessary to meet a single premium payable in respect of an appropriate policy of life assurance and any amount so lent shall not be taken into account for the purposes of sections 16A and eighteen of this Act. ^{Loan to cover single premium life policy. Act No. 18, 1967, s. 7.}

20 (2) A policy of life assurance is, for the purposes of subsection one of this section, an appropriate policy if—

25 (a) it is issued by an insurance company registered under the Life Insurance Act 1945 of the Commonwealth or a friendly society registered under the Friendly Societies Act, 1912;

30 (b) it is a policy of life assurance on the life of the member or the spouse or son or daughter of the member; and

(c) it provides, in the event of the death before the loan has been repaid of the person on whose life the policy is effected, for payment of an amount not exceeding the amount

Co-operation (Amendment).

5 amount sufficient to defray the amounts which are, at and after the time of the death, payable to the society in respect of the loan as increased by the amount of the additional loan made by the society under the power conferred by this section.

(f) by omitting section eighteen and by inserting in lieu thereof the following section : — Subst. sec. 18.

10 18. (1) A building society shall not lend money on the security of a mortgage over land that is subject to a prior mortgage or mortgages unless the provisions of this section are complied with. Second or subsequent mortgage.

15 (2) A building society, other than a Starr-Bowkett society, may lend money on the security of a mortgage over land that is subject to a prior mortgage or prior mortgages, or on such a security with additional security as provided by section 16A of this Act if, where the prior mortgage is, or the prior mortgages are, mortgages to the society, the aggregate of—

20 (a) the amount owing under the prior mortgage or mortgages at the time the loan is made; and

(b) the amount of the loan,
25 does not exceed the amount of the maximum loan the society would be authorised to make on the security of a first mortgage over the land or, where the additional security is taken, on the security of a first mortgage and that additional security.

30 (3) A building society, other than a Starr-Bowkett society, may lend money on the security of a mortgage over land that is subject to a prior mortgage

Co-operation (Amendment).

mortgage or prior mortgages if, where any prior mortgage is not a mortgage to the society—

(a) the aggregate of—

5 (i) the amount owing under all prior mortgages (including any to the society) at the time the loan is made; and

10 (ii) the amount of the loan, does not exceed seventy per centum, or such higher proportion as may in a particular case be approved by the Co-operative Building Advisory Committee, of the valuation of the land over which security is to be taken; or

15 (b) the society has obtained an indemnity or guarantee by the Housing Loans Insurance Corporation referred to in paragraph (c) of subsection three of section 16A of this Act, or an insurance company so referred to, securing the repayment to the society of an amount being the lesser of the amount of the loan and an amount equivalent to the amount by which the aggregate of—

20 (i) the amount owing under all prior mortgages (including any to the society) at the time the loan is made; and

25 (ii) the amount of the loan, exceeds the amount of the maximum loan the society is authorised to make under paragraph (a) of this subsection.

(4) A Starr-Bowkett society shall not advance to a member by way of a second or subsequent mortgage of any land such an amount as,

when

Co-operation (Amendment).

5 when added to the principal sum owing under the
prior mortgage, or all the prior mortgages, of the
land (together with any interest or charges then
due thereunder) reduced by the value of the share
capital of the member in the society and, where the
prior mortgage or, as the case may be, one or more
of the prior mortgages is or are held by another
society or societies, also reduced by the value of
10 the share capital of the member in that other society
or those other societies, as the case may be, would
exceed ninety per centum of the value of the
property.

15 (5) If any loan is made in contravention of
this section, the members of the board who
authorised the loan shall be jointly and severally
liable for any loss on the loan occasioned to the
society.

20 (6) This section does not prevent a society
from taking from its mortgagor or any other person
a second or subsequent mortgage by way of
collateral security.

25 (7) A building society, other than a non-
terminating building society or a Starr-Bowkett
society, shall not, without the consent of the Co-
operative Building Advisory Committee, postpone
the priority of a mortgage held by the society.

(g) by inserting next after section forty-one the follow-
ing new section :— New
sec. 41A.

30 41A. (1) Where a society specified in the
Second Schedule to this Act applies for incorpora-
tion under this Act, the registrar shall issue a
certificate that the society is so incorporated and
notify the issue of the certificate in the Gazette as
prescribed. Incorporation
of
societies in
Second
Schedule.

(2)

Co-operation (Amendment).

5 (2) Upon the issue of a certificate of incorporation of a society being notified in the Gazette under subsection one of this section, the provisions of subsections eight to fifteen of section forty-one of this Act shall apply to and in respect of the society as if the notification in the Gazette were a notification of the issue of a certificate of incorporation of the society under section forty-one of this Act.

10 (3) Subject to the provisions of subsection two of this section, a society so incorporated shall not be subject to any provisions of this Act other than those specified in the Third Schedule to this Act but shall, for the purposes of the definition of
15 "Corporation" in subsection one of section five of the Companies Act, 1961, be deemed to be registered under this Act.

(h) by omitting subsection seven of section forty-six Sec. 46. and by inserting in lieu thereof the following (Members.) subsections :—
20

(7) Subject to this section, where a body corporate is a member of a society it may, by instrument in writing served on the society appoint a person to represent it in respect of the shares held
25 by it.

(7A) An appointee under subsection seven of this section—

(a) shall be entitled to receive notice of all meetings in the same manner as the members and shall be entitled to exercise the same rights to vote as a member ; and
30

(b) shall be eligible to be elected to the board of directors if the body corporate holds such qualifications, other than those relating to age, as may be requisite for holding office as a director.
35

(7B)

Co-operation (Amendment).

5 (7B) A society which is a member of an association may, by instrument in writing served on the association, appoint such number of its members, not exceeding three, as may be provided for in the rules of the association to represent it on the association and the provisions of subsection (7A) of this section shall apply to any such appointees.

10 (7C) An association which is a member of a union of associations may, by instrument in writing served on the union, appoint such number of persons, not exceeding three, as may be provided for in the rules of the union to represent it on the union and the provisions of subsection (7A) of this section shall apply to any such appointees but no person shall be appointed under this subsection unless he is a member of a society that is a member of an association that is a member of the union of associations.

20 (i) (i) by omitting from paragraph (a) of subsection Sec. 47. (5B) of section forty-seven the word "four- (Shares.) teen" and by inserting in lieu thereof the figures and letter "(14A)";

25 (ii) by omitting subsection fourteen of the same section and by inserting in lieu thereof the following subsection :—

30 (14) In the case of a rural credit society with unlimited liability, no dividend shall be paid to a member in respect of any share held by him and, in the case of any other society (not being a non-terminating building society) the maximum rate of dividend in respect of a share held by a member shall not exceed ten per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette on the recommendation of the advisory council constituted under section one hundred and fourteen of this Act, that other rate.

35

(iii)

Co-operation (Amendment).

(iii) by inserting next after the same subsection the following new subsection :—

(14A) In the case of a non-terminating building society the maximum rate of dividend in respect of—

5

(a) shares issued by the society after the thirtieth day of June, one thousand nine hundred and seventy-two; and

10

(b) shares issued by the society before that day that are withdrawable pursuant to the rules of the society and are transferred after that day,

15

shall not exceed six and one-half per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette on the recommendation of the Co-operative Building Advisory Committee, that other rate.

20

(j) (i) by omitting subsection one of section forty-eight and by inserting in lieu thereof the following subsections :—

Sec. 48.
(Reserve funds of building societies.)

25

(1) A non-terminating building society shall, at the end of its financial year, transfer to reserve five per centum or, where some other proportion has been prescribed, that proportion, of the sum of the surplus arising in that year and the interest paid or payable on share capital in respect of that year less the total amount of interest and dividend paid or payable on shares which have been issued by the society on conditions contained in the rules of the society requiring a member to subscribe for shares of a number and value depending on the amount of any loan obtained by him from the society.

30

35

Such

Co-operation (Amendment).

5 Such transfers shall be made until such time as the amount of the reserve so created is an amount that is not less than seven and one-half per centum or, where some other proportion has been prescribed, that other proportion, of the total amount of members' paid up share capital and deposits held by the society.

10 (1A) Moneys appropriated to reserve pursuant to subsection one of this section—

(a) shall not be distributed among members of the society except in the event of winding up; and

15 (b) shall be applicable to any purpose to which the capital of the society is applicable.

(ii) by omitting subsection two of the same section;

20 (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection : —

(4) Subject to subsection one of this section, where the rules of a society—

25 (a) authorise the society to apply for any charitable purpose, or for promoting co-operation or any community advancement, a part of the surplus arising in any year from the business of the society; and

30 (b) limit the amount that may be so applied to a specified proportion of that surplus,

the society may so apply a part of that surplus that does not exceed that proportion thereof.

(k)

Co-operation (Amendment).

- (k) by inserting next after subsection five of section sixty-six the following new subsection :—

Sec. 66.

(Loans and deposits.)

5 (5A) The maximum rate of interest payable by a non-terminating building society in respect of deposits received by it after the thirtieth day of June, one thousand nine hundred and seventy-two, shall not exceed six and one-half per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette
10 on the recommendation of the Co-operative Building Advisory Committee, that other rate.

- (l) by inserting next after section 66A the following new section :—

New

sec. 66B.

15 66B. (1) A society may act as a collecting agent on behalf of any company, society, person or body of persons for the collection and payment to that company, society, person or body of persons of any premiums payable by a member in respect of any policy of insurance covering any property held by
20 the society as security for a loan to the member or in respect of any life, endowment, sickness or accident policy taken out by a member as a result of any terms and conditions imposed upon the granting of a loan or under any arrangement
25 entered into by the member whereby the proceeds of the policy would be payable to the society in repayment of the whole or part of the member's liability under any mortgage to the society.

Society as collecting agent.

Act No. 18, 1967, s. 24.

30 (2) A society may act as collecting agent for any other society in respect of any moneys due to that society by its members.

- (m) (i) by inserting in subsection one of section sixty-eight after the word "society" where firstly occurring the words "other than a non-terminating building society";

Sec. 68.

(Investment.)

35

(ii)

(ii)

Co-operation (Amendment).

(ii) by inserting next after the same subsection the following new subsections :—

5 (1A) Notwithstanding anything contained in section sixteen of this Act, a non-terminating building society may invest any of its funds not immediately required for any of its objects, or purposes incidental thereto, in any of the following securities :—

10 (a) securities authorised by law for the investment of trust funds otherwise than by way of loan secured by mortgage over land;

(b) deposit in any prescribed bank;

15 (c) shares not exceeding a total nominal value of ten thousand dollars or, where some other amount is prescribed, the prescribed amount, in any co-operative insurance society registered under this Act;

20 (d) any prescribed securities.

25 (1B) A society shall not pursuant to paragraph (a) of subsection (1A) of this section invest in any securities which are not redeemable within ten years of their acquisition by the society or, where some other period is prescribed, within the prescribed period.

30 (1C) Nothing in this section shall affect the validity of any investment made by a society before the commencement of paragraph (m) of section two of the Co-operation (Amendment) Act, 1972, but any re-investment of such an investment shall be made only in conformity with this section.

(n)

Co-operation (Amendment).

- (n) by omitting subsection four of section seventy-four Sec. 74.
and by inserting in lieu thereof the following (Registers and accounts.)
subsections :—

5 (4) Except as provided in this section, no notice of any trust express, implied or constructive shall be entered in any register or account kept by a society or be received by a society or the registrar.

10 (5) Where the rules of a non-terminating building society so provide, an entry in a register or account kept by the society in respect of any shares in the society or moneys deposited with the society may, in the circumstances and in the manner authorised by the rules, be made so as to indicate that the shares or the moneys are held by or vested in a person upon trust.

(6) No liabilities shall be affected by anything done in pursuance of subsection five of this section and the society concerned shall not be affected with notice of any trust by anything so done.

- 20 (o) (i) by inserting in subsection one of section Sec. 79. seventy-nine after the word "rules" the words (Fines.) "or by-laws";

25 (ii) by omitting from the same subsection the words "one dollar" and by inserting in lieu thereof the words "five dollars";

- (p) by omitting from paragraph (y) of subsection one Sec. 82. of section eighty-two the words "maximum allowed (Rules.) by this Act" and by inserting in lieu thereof the words "prescribed maximum amount";

Co-operation (Amendment).

- (q) (i) by inserting next after subsection nine Sec. 84.
of section eighty-four the following new (Board of directors.)
subsection :—

5 (9A) Notwithstanding anything in this Act,
the rules of a society may provide for one
employee of a society to be nominated by the
directors for the purposes of this subsection
and, if so nominated, to be elected by the
members as a director of the society.

10 (ii) by omitting from paragraph (g) of subsection
eleven of the same section the words “and his
resignation is accepted by the board”;

15 (iii) by omitting paragraph (i) of the same subsec-
tion and by inserting in lieu thereof the
following paragraph :—

(i) if he or his employer, employee or
partner is an employee of, or acts
as, a solicitor, valuer, auditor or
accountant to the society.

20 (iv) by omitting subsection twelve of the same
section;

(v) by omitting subsection 12A of the same section
and by inserting in lieu thereof the following
subsection :—

25 (12A) A director of a community settle-
ment society shall not, except pursuant to and
in accordance with a special resolution of the
society, sell land to the society.

(vi)

Co-operation (Amendment).

(vi) by omitting subsection thirteen of the same section and by inserting in lieu thereof the following subsections :—

5

(13) Subject to subsection 13A of this section, a director of a society shall not vote upon any question involving a matter in which he, or any body corporate of which he is the appointee, has, otherwise than as a member and in common with the other members of the society, any direct or indirect pecuniary interest and, if he does so vote, his vote shall not be counted.

10

15

(13A) Except in the case of a vote by a director of a building society or a society specified in the Second Schedule to this Act, subsection thirteen of this section does not extend, and shall be deemed never to have extended, to or in respect of a vote relating to a transaction referred to in paragraph (a), (b), (c) or (d) of subsection seven of section 84AB of this Act.

20

(r) by inserting next after the same section the following new sections :—

New secs. 84AA and 84AB.

25

84AA. (1) A person who, being an undischarged bankrupt, acts as a director of, or directly or indirectly takes part in or is concerned in the management of a society except with the leave of the Supreme Court shall be guilty of an offence against this Act and liable on summary conviction to a penalty not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

Leave of Court required before certain persons may act as directors of society.

30

(2) Where a person is convicted whether within or without the State—

35

(a) on indictment of any offence in connection with the promotion, formation or management of a society, company or other corporation;

(b)

Co-operation (Amendment).

- 5 (b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more;
- (c) of any offence and sentenced to any period of imprisonment without the option of a fine; or
- 10 (d) of any offence referred to in paragraph (c) of subsection one of section one hundred and twenty-two of the Companies Act, 1961,

15 and that person, within a period of five years after his conviction, or if he is sentenced to imprisonment, after his release from prison, without the leave of the Supreme Court is a director of or is in any way whether directly or indirectly concerned or takes part in the management of a society he shall be guilty of an offence against this Act and liable on summary conviction to a penalty not exceeding four hundred dollars or imprisonment for 20 a period not exceeding six months or to both such penalty and imprisonment.

(3) A person intending to apply for leave of the Supreme Court under this section shall give to the Minister not less than ten days' notice of his 25 intention so to apply.

(4) On the hearing of any application under this section the Minister may be represented at the hearing of and may oppose the granting of the application.

30 84AB. (1) Subject to this section, a director of a society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society (not being a contract or proposed contract to repay a loan made to him by a building society in the ordinary course of its business) shall declare the nature of his interest to the board in accordance with this section.

Director to disclose interest in certain contracts.

(2)

Co-operation (Amendment).

5 (2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he becomes interested in the proposed contract.

10 (3) Where a director becomes interested in a contract with the society after it is made, the declaration required by this section shall be made at the first meeting of the directors held after he becomes interested in the contract.

15 (4) For the purposes of this section, a general notice in writing given by a director to the effect that he is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of notice, be made with that company or firm is a sufficient declaration to a director to whom it is given of the interest of the director by whom it is given in any contract made after that date with that company or firm.

25 (5) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors, if he takes reasonable steps to ensure that the declaration or notice is brought up and read at the meeting.

30 (6) A director who fails to comply with the provisions of subsection one of this section shall be liable to a penalty not exceeding five hundred dollars.

35 (7) The interest in a contract or proposed contract that a director is, pursuant to this section, required to declare does not include an interest in—

(a) a contract or proposed contract for the purchase of goods by the director from the society;

(b)

Co-operation (Amendment).

- (b) a contract or proposed contract for the sale of agricultural products or live stock by the director to the society;
- 5 (c) a contract or proposed contract that, pursuant to the objects of the society, may be made between the society and a member; or
- 10 (d) a contract or proposed contract of a class of contracts prescribed for the purposes of this subsection,
- if the contract is made in good faith, in the ordinary course of the business of the society, and on such terms as are usual and proper in similar dealings between the society and its members.
- 15 (8) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a society from having any interest in contracts with the society.
- 20 (s) (i) by inserting in subsection one of section eighty-Sec. 88. eight after the word "officer" where firstly (Officers.) occurring the words "of a society that is not a building society";
- 25 (ii) by omitting from the same subsection the words "the society" where secondly occurring and by inserting in lieu thereof the words "a society that is not a building society";
- 30 (iii) by omitting from the same subsection the words ", provided that this subsection shall not affect an advance made to a director of a Starr-Bowkett society in accordance with its rules";
- 35 (t) (i) by omitting from section 88A the words "shall Sec. 88A. not, except where specifically authorised by a (Certain dealings prohibited.) special resolution of the society" and by inserting in lieu thereof the words "on his own account

Co-operation (Amendment).

- 5 account or in partnership with any other person or any body of persons incorporated or unincorporated shall not, without the approval of all the directors present and voting at a meeting of the board at which a quorum is present”;
- (ii) by omitting from paragraph (c) of the same section the word “member.” and by inserting in lieu thereof the words “member; or”;
- 10 (iii) by inserting at the end of the same section the following new paragraph and subsections :—
- (d) borrow from the society.
- (2) For the purposes of this section, an act done by an exempt proprietary company within the meaning of the Companies Act, 1961, shall, where a director or other officer of a building society is a member of the company, be deemed to have been done by that director or, as the case may be, by that officer.
- 15 (3) A person who contravenes the provisions of this section shall be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.
- 20 (u) by omitting from subsections four and seven of section eighty-nine the words “profit and loss” wherever occurring and by inserting in lieu thereof the words “income and expenditure”;
- 25 (u) by omitting from subsections four and seven of section eighty-nine the words “profit and loss” (Accounts and audit.) wherever occurring and by inserting in lieu thereof the words “income and expenditure”;
- (v) by inserting next after subsection seven of section ninety-two the following new subsections :—
- 30 (7A) Where a postal ballot is held under subsection seven of this section, the members may, by means of the same ballot, by simple majority—
- (a) appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company; and
- 35 (b)

Co-operation (Amendment).

(b) fix the remuneration to be paid to him or them.

5 (7B) Votes cast at a postal ballot on the questions referred to in subsection (7A) of this section shall be deemed to have been cast at a general meeting of the society but do not have effect unless and until the secretary of the society makes in the minute book of the society the entry referred to in paragraph (c) of subsection seven of this section.

10 (w) by inserting next after section 118A the following new section :— New sec. 118B.

15 118B. (1) If, with respect to a non-terminating building society, the registrar considers it expedient to do so in the interest of persons who may become members of or invest in or deposit money with the society, he may, by notice in writing served on the society with the approval of the Minister, direct that subsection two of this section shall apply to the society and that subsection shall thereupon apply accordingly. Power to suspend raising of funds.

20 (2) Subject to the provisions of this section, while this subsection applies to a society, the society shall not—

25 (a) accept the deposit of, or otherwise borrow, any money; or

30 (b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the society, other than—

(i) a payment which fell due before the giving of the direction applying this subsection to the society; or

(ii)

Co-operation (Amendment).

(ii) a payment in respect of shares issued by the society on conditions contained in the rules of the society requiring a member to subscribe for shares of a number and value depending on the amount of any loan obtained by him from the society.

(3) This section does not make it unlawful for a society, with the consent in writing of the registrar, to borrow money from a banking or finance company, from another society, or from a director or other officer of the society.

(4) Where the registrar gives a direction under subsection one of this section, the society to which the direction is given may make representations to the Co-operative Building Advisory Committee with respect to the direction and that Committee shall, where any such representations are made to it, report thereon to the Minister.

(x) by omitting the provisions specified in the Third Schedule and by inserting in lieu thereof the following provisions :—

Subsection (1C) of section 16; sections 16A, 16B, 16C, 16D, 17AB, 17B and 17C; sections 18, 18A, 18E, 18F, 18G and 41A; subsections (5B), (10) and (14A) of section 47; sections 48, 52 and 54; subsection (3) of section 65; subsections (1), (5), (5A), (7), (8), (9), (10), (11) and (12) of section 66; section 66A; subsections (1A), (1B) and (1C) of section 68; sections 74, 75, 76, 78 and 80; subsections (9A), (11A) and (13) of section 84; sections 84AA, 84AB, 88A, 89, 91, 102, 108, 109A, 110, 111, 113, 116, 117, 118, 118B, 119, 120, 121, 122 and 124.

Co-operation (Amendment).

3. The Co-operation Act, 1923, is further amended—

Further
amendment
of Act No.
1, 1924.

- 5 (a) (i) by omitting from paragraph (a) of subsection four of section sixty-one the figures "1899" and by inserting in lieu thereof the figures "1961";
- (ii) by omitting from subsection (4A) of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";
- 10 (b) (i) by omitting from subsection three of section sixty-five the word "Registrar" and by inserting in lieu thereof the word "Commission";
- (ii) by omitting from subsection four of the same section the word "Registrar" and by inserting in lieu thereof the word "Commission";
- 15 (c) (i) by omitting from subsection seven of section seventy the words "Registrar of Companies" wherever occurring and by inserting in lieu thereof the words "Corporate Affairs Commission";
- 20 (ii) by omitting from subsection eight of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";
- 25 (iii) by omitting from the same subsection the words "under his hand";
- 30 (iv) by omitting from subsection nine of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";

(v)

Co-operation (Amendment).

- (v) by inserting in subsection twelve of the same section after the word "Companies" where secondly occurring the words "or by the Corporate Affairs Commission";
- 5 (d) by omitting from section 91A the word "Registrar" and by inserting in lieu thereof the word "Commission"; Sec. 91A. (Official management.)
- 10 (e) by omitting subparagraph (ii) of paragraph (b) of subsection six of section ninety-two and by inserting in lieu thereof the following subparagraph :— Sec. 92. (Winding-up.)
- (ii) a reference in any of those provisions to the Commission shall be construed as a reference to the registrar of co-operative societies under this Act.
- 15 4. (1) In this section—
- "prescribed financial year" in relation to a society means the financial year of the society during which paragraph (x) of section two of this Act commences and each of the two next succeeding financial years of the society; Postponement of operation of certain amendments.
- 20 "Principal Act" means the Co-operation Act, 1923;
- "registrar" means the registrar of co-operative societies for the time being holding office under section one hundred and fifteen of the Principal Act;
- 25 "society" means society specified in the Second Schedule to the Principal Act.

Co-operation (Amendment).

(2) Subsection one of section forty-eight of the Principal Act, as amended by this Act, does not apply to or in respect of a society in relation to a prescribed financial year for the society if—

- 5 (a) the registrar so notifies the society; and
(b) the society complies with any conditions specified by the registrar when so notifying the society.

BY AUTHORITY

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

[25c]

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 14 March, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 18, 1972.

An Act to simplify the manner in which the Treasurer may indemnify certain building societies against certain losses; to extend to non-terminating building societies and societies registered under the Building and Co-operative Societies Act, 1901, the same controls over dividend rates and interest rates on shares and deposits as are applicable to permanent building societies; to make further provisions with respect to building and other co-operative societies; for these and other purposes to amend the Co-operation Act, 1923; and for purposes connected therewith. [Assented to, 29th March, 1972.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Co-operation (Amendment).

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
and com-
mencement.

1. (1) This Act may be cited as the "Co-operation (Amendment) Act, 1972".

(2) This section commences upon the day on which this Act receives the Royal assent.

(3) Subject to subsection two of this section, a provision of this Act commences on the day that the Governor appoints, by proclamation published in the Gazette, as the day on which the provision is to commence.

Amendment
of Act No.
1, 1924.

2. The Co-operation Act, 1923, is amended—

Sec. 5.
(Interpre-
tation.)

(a) by inserting in section five after the definition of "Bond" the following new definition :—

"Co-operative Building Advisory Committee"
means the committee constituted under
section 114A of this Act.

New sec.
16D.

(b) by inserting next after section 16C the following new section :—

Liquidity.
Act No. 18,
1967, s. 63.

16D. (1) A non-terminating building society shall not approve of a loan unless, at the time the approval is given, the society holds liquid funds equal to not less than seven and one-half per

centum

Co-operation (Amendment).

centum or, where some other proportion is prescribed, that other proportion, of the total of members' paid up share capital and deposits held by the society.

(2) In this Act, a reference to liquid funds held by a society at a particular time is a reference to the total amount of funds held by the society at that time—

(a) as cash at the bank (after allowing for cheques or other bills of exchange drawn but not presented for payment) or in hand;

(b) as investments made in the manner authorised by paragraph (a) of subsection (1A) of section sixty-eight of this Act, as qualified by subsection (1B) of that section; and

(c) as moneys deposited in the manner authorised by paragraph (b) of subsection (1A) of section sixty-eight of this Act.

(3) For the purpose of calculating the proportion referred to in subsection one of this section, investments referred to in paragraph (b) of subsection two of this section shall be taken at their cost or market value, whichever is the lesser.

(c) by inserting next after subsection six of section 17A the following new subsection :—

(7) On or after the day appointed under subsection one of section 17AB of this Act the Co-operative Building Advisory Committee shall not recommend that the approval of the Governor be given to enter into any agreement under this section.

Sec. 17A.
(Treasurer may undertake to indemnify building societies against loss in certain circumstances.)

(d)

Co-operation (Amendment).

New
sec. 17AB.

(d) by inserting next after section 17AA the following
new section :—

Treasurer
may under-
take to
make good
certain
losses.

17AB. (1) On and after a day appointed by the Governor and notified by proclamation published in the Gazette the Treasurer may, on the recommendation of the Co-operative Building Advisory Committee, agree to indemnify a building society, subject to the prescribed conditions in force at the time of the agreement, in respect of such part of any loss suffered by the society as does not exceed the amount referred to in subsection four of this section.

(2) The Treasurer shall be deemed to have agreed to indemnify a society as provided by subsection one of this section when the registrar notifies the society that the Treasurer has so agreed in respect of a specified loan and a specified amount.

(3) The conditions subject to which the Treasurer agrees to indemnify a society under subsection one of this section are—

(a) that the loss indemnified is loss directly attributable to the fact that the society lent to a member an amount that, reduced by the value of the share capital of the member, exceeded eighty per centum of the value of the security for the loan;

(b) that the amount so lent does not exceed an amount equal to ninety-five per centum or, where the regulations prescribe some other proportion for the purposes of this paragraph, that other proportion, of the value of the security for the loan;

(c)

Co-operation (Amendment).

- (c) that the amount so lent, reduced by the amount of the share capital of the member or the prescribed amount, whichever is the lesser amount, does not exceed the prescribed maximum amount where—
 - (i) the prescribed amount is five hundred and forty dollars or, where the regulations prescribe some other amount for the purposes of this subparagraph, that other amount; and
 - (ii) the prescribed maximum amount is ten thousand eight hundred dollars or, where the regulations prescribe some other amount for the purposes of this subparagraph, that other amount;
- (d) that security for the repayment of the amount so lent is taken by way of a first mortgage over land on which is erected a dwelling house used, or intended to be used, by the borrower as a home for himself, his family and his dependants;
- (e) that, where the borrower owns a dwelling house at the time the loan is made, the Co-operative Building Advisory Committee is satisfied that there are special reasons why the Treasurer should indemnify the society;
- (f) that the society will, at all times, comply with the provisions of this Act, the regulations made thereunder and its rules, in so far as they affect it;
- (g) that the society will not, without the previous consent in writing of the Treasurer, assign or encumber the benefit of the indemnity;

(h)

Co-operation (Amendment).

- (h) that the society will, upon request made to it by the Co-operative Building Advisory Committee, furnish at the expense of the society a valuation of the security for the loan; and
- (i) such other conditions as may be prescribed.

(4) The amount of an indemnity referred to in subsection one of this section in relation to a loan by a society is the amount specified under subsection two of this section in relation to that loan, reduced by any amount that would, but for the neglect or misconduct of the society or its servants or agents, have been received by the society.

(5) The Treasurer shall not agree to indemnify a society under this section if he would thereby be involved in a liability which, when added to the total liability of the Treasurer in respect of other indemnities entered into by the Treasurer during the preceding three months would exceed an amount of one million dollars but a contravention of this section does not invalidate the indemnity in respect of which the contravention occurs.

(6) An amount payable by way of indemnity under this section shall be paid out of moneys provided by Parliament.

(7) The Treasurer may cancel an indemnity to which he has agreed under this section if the conditions subject to which he agreed to the indemnity are not complied with.

(8) The Treasurer ceases to be liable in respect of an indemnity to which he has agreed under this section when the amount of the loan to

which

Co-operation (Amendment).

which the indemnity relates is reduced to an amount that does not exceed the equivalent of eighty per centum of the value of the security for the loan when the loan was made.

(9) A valuation of security and calculation of share capital for the purposes of this section shall be made in such manner as the Co-operative Building Advisory Committee may direct.

(e) by inserting next after section 17B the following ^{New} new section : — _{sec. 17c.}

17c. (1) Nothing in this Act precludes a non-terminating building society from lending to a member on such security as is mentioned in subsection one of section sixteen of this Act the whole or part of an amount necessary to meet a single premium payable in respect of an appropriate policy of life assurance and any amount so lent shall not be taken into account for the purposes of sections 16A and eighteen of this Act.

Loan to cover single premium life policy.
Act No. 18, 1967, s. 7.

(2) A policy of life assurance is, for the purposes of subsection one of this section, an appropriate policy if—

- (a) it is issued by an insurance company registered under the Life Insurance Act 1945 of the Commonwealth or a friendly society registered under the Friendly Societies Act, 1912;
- (b) it is a policy of life assurance on the life of the member or the spouse or son or daughter of the member; and
- (c) it provides, in the event of the death before the loan has been repaid of the person on whose life the policy is effected, for payment of an amount not exceeding the amount

Co-operation (Amendment).

amount sufficient to defray the amounts which are, at and after the time of the death, payable to the society in respect of the loan as increased by the amount of the additional loan made by the society under the power conferred by this section.

Subst.
sec. 18.

- (f) by omitting section eighteen and by inserting in lieu thereof the following section : —

Second or
subsequent
mortgage.

18. (1) A building society shall not lend money on the security of a mortgage over land that is subject to a prior mortgage or mortgages unless the provisions of this section are complied with.

(2) A building society, other than a Starr-Bowkett society, may lend money on the security of a mortgage over land that is subject to a prior mortgage or prior mortgages, or on such a security with additional security as provided by section 16A of this Act if, where the prior mortgage is, or the prior mortgages are, mortgages to the society, the aggregate of—

- (a) the amount owing under the prior mortgage or mortgages at the time the loan is made; and
- (b) the amount of the loan,

does not exceed the amount of the maximum loan the society would be authorised to make on the security of a first mortgage over the land or, where the additional security is taken, on the security of a first mortgage and that additional security.

(3) A building society, other than a Starr-Bowkett society, may lend money on the security of a mortgage over land that is subject to a prior

mortgage

Co-operation (Amendment).

mortgage or prior mortgages if, where any prior mortgage is not a mortgage to the society—

(a) the aggregate of—

(i) the amount owing under all prior mortgages (including any to the society) at the time the loan is made; and

(ii) the amount of the loan,

does not exceed seventy per centum, or such higher proportion as may in a particular case be approved by the Co-operative Building Advisory Committee, of the valuation of the land over which security is to be taken; or

(b) the society has obtained an indemnity or guarantee by the Housing Loans Insurance Corporation referred to in paragraph (c) of subsection three of section 16A of this Act, or an insurance company so referred to, securing the repayment to the society of an amount being the lesser of the amount of the loan and an amount equivalent to the amount by which the aggregate of—

(i) the amount owing under all prior mortgages (including any to the society) at the time the loan is made; and

(ii) the amount of the loan,

exceeds the amount of the maximum loan the society is authorised to make under paragraph (a) of this subsection.

(4) A Starr-Bowkett society shall not advance to a member by way of a second or subsequent mortgage of any land such an amount as,

when

Co-operation (Amendment).

when added to the principal sum owing under the prior mortgage, or all the prior mortgages, of the land (together with any interest or charges then due thereunder) reduced by the value of the share capital of the member in the society and, where the prior mortgage or, as the case may be, one or more of the prior mortgages is or are held by another society or societies, also reduced by the value of the share capital of the member in that other society or those other societies, as the case may be, would exceed ninety per centum of the value of the property.

(5) If any loan is made in contravention of this section, the members of the board who authorised the loan shall be jointly and severally liable for any loss on the loan occasioned to the society.

(6) This section does not prevent a society from taking from its mortgagor or any other person a second or subsequent mortgage by way of collateral security.

(7) A building society, other than a non-terminating building society or a Starr-Bowkett society, shall not, without the consent of the Co-operative Building Advisory Committee, postpone the priority of a mortgage held by the society.

New
sec. 41A.

(g) by inserting next after section forty-one the following new section :—

Incorporation of societies in Second Schedule.

41A. (1) Where a society specified in the Second Schedule to this Act applies for incorporation under this Act, the registrar shall issue a certificate that the society is so incorporated and notify the issue of the certificate in the Gazette as prescribed.

(2)

Co-operation (Amendment).

(2) Upon the issue of a certificate of incorporation of a society being notified in the Gazette under subsection one of this section, the provisions of subsections eight to fifteen of section forty-one of this Act shall apply to and in respect of the society as if the notification in the Gazette were a notification of the issue of a certificate of incorporation of the society under section forty-one of this Act.

(3) Subject to the provisions of subsection two of this section, a society so incorporated shall not be subject to any provisions of this Act other than those specified in the Third Schedule to this Act but shall, for the purposes of the definition of "Corporation" in subsection one of section five of the Companies Act, 1961, be deemed to be registered under this Act.

- (h) by omitting subsection seven of section forty-six Sec. 46. and by inserting in lieu thereof the following (Members.) subsections :—

(7) Subject to this section, where a body corporate is a member of a society it may, by instrument in writing served on the society appoint a person to represent it in respect of the shares held by it.

(7A) An appointee under subsection seven of this section—

- (a) shall be entitled to receive notice of all meetings in the same manner as the members and shall be entitled to exercise the same rights to vote as a member; and
- (b) shall be eligible to be elected to the board of directors if the body corporate holds such qualifications, other than those relating to age, as may be requisite for holding office as a director.

(7B)

Co-operation (Amendment).

(7B) A society which is a member of an association may, by instrument in writing served on the association, appoint such number of its members, not exceeding three, as may be provided for in the rules of the association to represent it on the association and the provisions of subsection (7A) of this section shall apply to any such appointees.

(7C) An association which is a member of a union of associations may, by instrument in writing served on the union, appoint such number of persons, not exceeding three, as may be provided for in the rules of the union to represent it on the union and the provisions of subsection (7A) of this section shall apply to any such appointees but no person shall be appointed under this subsection unless he is a member of a society that is a member of an association that is a member of the union of associations.

Sec. 47.
(Shares.)

- (i) (i) by omitting from paragraph (a) of subsection (5B) of section forty-seven the word "fourteen" and by inserting in lieu thereof the figures and letter "(14A)";
- (ii) by omitting subsection fourteen of the same section and by inserting in lieu thereof the following subsection :—

(14) In the case of a rural credit society with unlimited liability, no dividend shall be paid to a member in respect of any share held by him and, in the case of any other society (not being a non-terminating building society) the maximum rate of dividend in respect of a share held by a member shall not exceed ten per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette on the recommendation of the advisory council constituted under section one hundred and fourteen of this Act, that other rate.

(iii)

Co-operation (Amendment).

- (iii) by inserting next after the same subsection the following new subsection :—

(14A) In the case of a non-terminating building society the maximum rate of dividend in respect of—

- (a) shares issued by the society after the thirtieth day of June, one thousand nine hundred and seventy-two; and
- (b) shares issued by the society before that day that are withdrawable pursuant to the rules of the society and are transferred after that day,

shall not exceed six and one-half per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette on the recommendation of the Co-operative Building Advisory Committee, that other rate.

- (j) (i) by omitting subsection one of section forty-eight and by inserting in lieu thereof the following subsections :—

Sec. 48.
(Reserve funds of building societies.)

(1) A non-terminating building society shall, at the end of its financial year, transfer to reserve five per centum or, where some other proportion has been prescribed, that proportion, of the sum of the surplus arising in that year and the interest paid or payable on share capital in respect of that year less the total amount of interest and dividend paid or payable on shares which have been issued by the society on conditions contained in the rules of the society requiring a member to subscribe for shares of a number and value depending on the amount of any loan obtained by him from the society.

Such

Co-operation (Amendment).

Such transfers shall be made until such time as the amount of the reserve so created is an amount that is not less than seven and one-half per centum or, where some other proportion has been prescribed, that other proportion, of the total amount of members' paid up share capital and deposits held by the society.

(1A) Moneys appropriated to reserve pursuant to subsection one of this section—

- (a) shall not be distributed among members of the society except in the event of winding up; and
 - (b) shall be applicable to any purpose to which the capital of the society is applicable.
- (ii) by omitting subsection two of the same section;
- (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

(4) Subject to subsection one of this section, where the rules of a society—

- (a) authorise the society to apply for any charitable purpose, or for promoting co-operation or any community advancement, a part of the surplus arising in any year from the business of the society; and
- (b) limit the amount that may be so applied to a specified proportion of that surplus,

the society may so apply a part of that surplus that does not exceed that proportion thereof.

(k)

Co-operation (Amendment).

- (k) by inserting next after subsection five of section sixty-six the following new subsection :—

Sec. 66.

(Loans and deposits.)

(5A) The maximum rate of interest payable by a non-terminating building society in respect of deposits received by it after the thirtieth day of June, one thousand nine hundred and seventy-two, shall not exceed six and one-half per centum per annum or, where some other rate is fixed by the Minister by order published in the Gazette on the recommendation of the Co-operative Building Advisory Committee, that other rate.

- (l) by inserting next after section 66A the following new section :—

New

sec. 66B.

66B. (1) A society may act as a collecting agent on behalf of any company, society, person or body of persons for the collection and payment to that company, society, person or body of persons of any premiums payable by a member in respect of any policy of insurance covering any property held by the society as security for a loan to the member or in respect of any life, endowment, sickness or accident policy taken out by a member as a result of any terms and conditions imposed upon the granting of a loan or under any arrangement entered into by the member whereby the proceeds of the policy would be payable to the society in repayment of the whole or part of the member's liability under any mortgage to the society.

Society as collecting agent.

Act No. 18, 1967, s. 24.

(2) A society may act as collecting agent for any other society in respect of any moneys due to that society by its members.

- (m) (i) by inserting in subsection one of section sixty-eight after the word "society" where firstly occurring the words "other than a non-terminating building society";

Sec. 68.

(Investment.)

(ii)

Co-operation (Amendment).

- (ii) by inserting next after the same subsection the following new subsections :—

(1A) Notwithstanding anything contained in section sixteen of this Act, a non-terminating building society may invest any of its funds not immediately required for any of its objects, or purposes incidental thereto, in any of the following securities :—

- (a) securities authorised by law for the investment of trust funds otherwise than by way of loan secured by mortgage over land;
- (b) deposit in any prescribed bank;
- (c) shares not exceeding a total nominal value of ten thousand dollars or, where some other amount is prescribed, the prescribed amount, in any co-operative insurance society registered under this Act;
- (d) any prescribed securities.

(1B) A society shall not pursuant to paragraph (a) of subsection (1A) of this section invest in any securities which are not redeemable within ten years of their acquisition by the society or, where some other period is prescribed, within the prescribed period.

(1C) Nothing in this section shall affect the validity of any investment made by a society before the commencement of paragraph (m) of section two of the Co-operation (Amendment) Act, 1972, but any re-investment of such an investment shall be made only in conformity with this section.

(n)

Co-operation (Amendment).

- (n) by omitting subsection four of section seventy-four Sec. 74.
and by inserting in lieu thereof the following (Registers
and
accounts.)
subsections :—

(4) Except as provided in this section, no notice of any trust express, implied or constructive shall be entered in any register or account kept by a society or be received by a society or the registrar.

(5) Where the rules of a non-terminating building society so provide, an entry in a register or account kept by the society in respect of any shares in the society or moneys deposited with the society may, in the circumstances and in the manner authorised by the rules, be made so as to indicate that the shares or the moneys are held by or vested in a person upon trust.

(6) No liabilities shall be affected by anything done in pursuance of subsection five of this section and the society concerned shall not be affected with notice of any trust by anything so done.

- (o) (i) by inserting in subsection one of section Sec. 79.
seventy-nine after the word "rules" the words (Fines.)
"or by-laws";
- (ii) by omitting from the same subsection the words "one dollar" and by inserting in lieu thereof the words "five dollars";
- (p) by omitting from paragraph (y) of subsection one Sec. 82.
of section eighty-two the words "maximum allowed (Rules.)
by this Act" and by inserting in lieu thereof the words "prescribed maximum amount";

(q)

Co-operation (Amendment).

Sec. 84.
(Board of
directors.)

- (q) (i) by inserting next after subsection nine of section eighty-four the following new subsection :—

(9A) Notwithstanding anything in this Act, the rules of a society may provide for one employee of a society to be nominated by the directors for the purposes of this subsection and, if so nominated, to be elected by the members as a director of the society.

- (ii) by omitting from paragraph (g) of subsection eleven of the same section the words “and his resignation is accepted by the board”;

- (iii) by omitting paragraph (i) of the same subsection and by inserting in lieu thereof the following paragraph :—

(i) if he or his employer, employee or partner is an employee of, or acts as, a solicitor, valuer, auditor or accountant to the society.

- (iv) by omitting subsection twelve of the same section;

- (v) by omitting subsection 12A of the same section and by inserting in lieu thereof the following subsection :—

(12A) A director of a community settlement society shall not, except pursuant to and in accordance with a special resolution of the society, sell land to the society.

(vi)

Co-operation (Amendment).

- (vi) by omitting subsection thirteen of the same section and by inserting in lieu thereof the following subsections :—

(13) Subject to subsection 13A of this section, a director of a society shall not vote upon any question involving a matter in which he, or any body corporate of which he is the appointee, has, otherwise than as a member and in common with the other members of the society, any direct or indirect pecuniary interest and, if he does so vote, his vote shall not be counted.

(13A) Except in the case of a vote by a director of a building society or a society specified in the Second Schedule to this Act, subsection thirteen of this section does not extend, and shall be deemed never to have extended, to or in respect of a vote relating to a transaction referred to in paragraph (a), (b), (c) or (d) of subsection seven of section 84AB of this Act.

- (r) by inserting next after the same section the following new sections :—

New secs.
84AA and
84AB.

84AA. (1) A person who, being an undischarged bankrupt, acts as a director of, or directly or indirectly takes part in or is concerned in the management of a society except with the leave of the Supreme Court shall be guilty of an offence against this Act and liable on summary conviction to a penalty not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

Leave of
Court
required
before
certain
persons may
act as
directors of
society.

(2) Where a person is convicted whether within or without the State—

- (a) on indictment of any offence in connection with the promotion, formation or management of a society, company or other corporation;

(b)

Co-operation (Amendment).

- (b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more;
- (c) of any offence and sentenced to any period of imprisonment without the option of a fine; or
- (d) of any offence referred to in paragraph (c) of subsection one of section one hundred and twenty-two of the Companies Act, 1961,

and that person, within a period of five years after his conviction, or if he is sentenced to imprisonment, after his release from prison, without the leave of the Supreme Court is a director of or is in any way whether directly or indirectly concerned or takes part in the management of a society he shall be guilty of an offence against this Act and liable on summary conviction to a penalty not exceeding four hundred dollars or imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

(3) A person intending to apply for leave of the Supreme Court under this section shall give to the Minister not less than ten days' notice of his intention so to apply.

(4) On the hearing of any application under this section the Minister may be represented at the hearing of and may oppose the granting of the application.

Director
to disclose
interest in
certain
contracts.

84AB. (1) Subject to this section, a director of a society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society (not being a contract or proposed contract to repay a loan made to him by a building society in the ordinary course of its business) shall declare the nature of his interest to the board in accordance with this section.

(2)

Co-operation (Amendment).

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he becomes interested in the proposed contract.

(3) Where a director becomes interested in a contract with the society after it is made, the declaration required by this section shall be made at the first meeting of the directors held after he becomes interested in the contract.

(4) For the purposes of this section, a general notice in writing given by a director to the effect that he is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of notice, be made with that company or firm is a sufficient declaration to a director to whom it is given of the interest of the director by whom it is given in any contract made after that date with that company or firm.

(5) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors, if he takes reasonable steps to ensure that the declaration or notice is brought up and read at the meeting.

(6) A director who fails to comply with the provisions of subsection one of this section shall be liable to a penalty not exceeding five hundred dollars.

(7) The interest in a contract or proposed contract that a director is, pursuant to this section, required to declare does not include an interest in—

(a) a contract or proposed contract for the purchase of goods by the director from the society;

(b)

Co-operation (Amendment).

- (b) a contract or proposed contract for the sale of agricultural products or live stock by the director to the society ;
- (c) a contract or proposed contract that, pursuant to the objects of the society, may be made between the society and a member ;
or
- (d) a contract or proposed contract of a class of contracts prescribed for the purposes of this subsection,

if the contract is made in good faith, in the ordinary course of the business of the society, and on such terms as are usual and proper in similar dealings between the society and its members.

(8) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a society from having any interest in contracts with the society.

Sec. 88.
(Officers.)

- (s) (i) by inserting in subsection one of section eighty-eight after the word "officer" where firstly occurring the words "of a society that is not a building society";
- (ii) by omitting from the same subsection the words "the society" where secondly occurring and by inserting in lieu thereof the words "a society that is not a building society";
- (iii) by omitting from the same subsection the words ", provided that this subsection shall not affect an advance made to a director of a Starr-Bowkett society in accordance with its rules";

Sec. 88A.
(Certain dealings prohibited.)

- (t) (i) by omitting from section 88A the words "shall not, except where specifically authorised by a special resolution of the society" and by inserting in lieu thereof the words "on his own
account

Co-operation (Amendment).

account or in partnership with any other person or any body of persons incorporated or unincorporated shall not, without the approval of all the directors present and voting at a meeting of the board at which a quorum is present”;

- (ii) by omitting from paragraph (c) of the same section the word “member.” and by inserting in lieu thereof the words “member; or”;
- (iii) by inserting at the end of the same section the following new paragraph and subsections :—

(d) borrow from the society.

(2) For the purposes of this section, an act done by an exempt proprietary company within the meaning of the Companies Act, 1961, shall, where a director or other officer of a building society is a member of the company, be deemed to have been done by that director or, as the case may be, by that officer.

(3) A person who contravenes the provisions of this section shall be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

- (u) by omitting from subsections four and seven of section eighty-nine the words “profit and loss” wherever occurring and by inserting in lieu thereof the words “income and expenditure”;

Sec. 89.
(Accounts
and
audit.)

- (v) by inserting next after subsection seven of section ninety-two the following new subsections :—

Sec. 92.
(Winding-
up.)

(7A) Where a postal ballot is held under subsection seven of this section, the members may, by means of the same ballot, by simple majority—

- (a) appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company; and

(b)

Co-operation (Amendment).

(b) fix the remuneration to be paid to him or them.

(7B) Votes cast at a postal ballot on the questions referred to in subsection (7A) of this section shall be deemed to have been cast at a general meeting of the society but do not have effect unless and until the secretary of the society makes in the minute book of the society the entry referred to in paragraph (c) of subsection seven of this section.

New sec.
118B.

(w) by inserting next after section 118A the following new section :—

Power to
suspend
raising of
funds.

118B. (1) If, with respect to a non-terminating building society, the registrar considers it expedient to do so in the interest of persons who may become members of or invest in or deposit money with the society, he may, by notice in writing served on the society with the approval of the Minister, direct that subsection two of this section shall apply to the society and that subsection shall thereupon apply accordingly.

(2) Subject to the provisions of this section, while this subsection applies to a society, the society shall not—

- (a) accept the deposit of, or otherwise borrow, any money; or
- (b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the society, other than—
 - (i) a payment which fell due before the giving of the direction applying this subsection to the society; or

(ii)

Co-operation (Amendment).

(ii) a payment in respect of shares issued by the society on conditions contained in the rules of the society requiring a member to subscribe for shares of a number and value depending on the amount of any loan obtained by him from the society.

(3) This section does not make it unlawful for a society, with the consent in writing of the registrar, to borrow money from a banking or finance company, from another society, or from a director or other officer of the society.

(4) Where the registrar gives a direction under subsection one of this section, the society to which the direction is given may make representations to the Co-operative Building Advisory Committee with respect to the direction and that Committee shall, where any such representations are made to it, report thereon to the Minister.

(x) by omitting the provisions specified in the Third Schedule and by inserting in lieu thereof the following provisions :—

Subsection (1C) of section 16; sections 16A, 16B, 16C, 16D, 17AB, 17B and 17C; sections 18, 18A, 18E, 18F, 18G and 41A; subsections (5B), (10) and (14A) of section 47; sections 48, 52 and 54; subsection (3) of section 65; subsections (1), (5), (5A), (7), (8), (9), (10), (11) and (12) of section 66; section 66A; subsections (1A), (1B) and (1C) of section 68; sections 74, 75, 76, 78 and 80; subsections (9A), (11A) and (13) of section 84; sections 84AA, 84AB, 88A, 89, 91, 102, 108, 109A, 110, 111, 113, 116, 117, 118, 118B, 119, 120, 121, 122 and 124.

Co-operation (Amendment).

Further amendment of Act No. 1, 1924.

3. The Co-operation Act, 1923, is further amended—

Sec. 61.
(Use of word co-operative.)

- (a) (i) by omitting from paragraph (a) of subsection four of section sixty-one the figures "1899" and by inserting in lieu thereof the figures "1961";
- (ii) by omitting from subsection (4A) of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";

Sec. 65.
(Borrowing powers.)

- (b) (i) by omitting from subsection three of section sixty-five the word "Registrar" and by inserting in lieu thereof the word "Commission";
- (ii) by omitting from subsection four of the same section the word "Registrar" and by inserting in lieu thereof the word "Commission";

Sec. 70.
(Registration of society as company.)

- (c) (i) by omitting from subsection seven of section seventy the words "Registrar of Companies" wherever occurring and by inserting in lieu thereof the words "Corporate Affairs Commission";
- (ii) by omitting from subsection eight of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";
- (iii) by omitting from the same subsection the words "under his hand";
- (iv) by omitting from subsection nine of the same section the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";

(v)

Co-operation (Amendment).

- (v) by inserting in subsection twelve of the same section after the word "Companies" where secondly occurring the words "or by the Corporate Affairs Commission";
- (d) by omitting from section 91A the word "Registrar" and by inserting in lieu thereof the word "Commission"; Sec. 91A. (Official management.)
- (e) by omitting subparagraph (ii) of paragraph (b) of subsection six of section ninety-two and by inserting in lieu thereof the following subparagraph :— Sec. 92. (Winding-up.)
- (ii) a reference in any of those provisions to the Commission shall be construed as a reference to the registrar of co-operative societies under this Act.
4. (1) In this section—
- "prescribed financial year" in relation to a society means the financial year of the society during which paragraph (x) of section two of this Act commences and each of the two next succeeding financial years of the society; Postponement of operation of certain amendments.
- "Principal Act" means the Co-operation Act, 1923;
- "registrar" means the registrar of co-operative societies for the time being holding office under section one hundred and fifteen of the Principal Act;
- "society" means society specified in the Second Schedule to the Principal Act.
- (2)

Co-operation (Amendment).

(2) Subsection one of section forty-eight of the Principal Act, as amended by this Act, does not apply to or in respect of a society in relation to a prescribed financial year for the society if—

- (a) the registrar so notifies the society; and
- (b) the society complies with any conditions specified by the registrar when so notifying the society.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 29th March, 1972.*