

FIRST PRINT

## CO-OPERATION (FURTHER AMENDMENT) BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Co-operation Act 1923 so as—

- (a) to introduce the concept of active membership of a society (meaning, generally, the utilisation or support of the activities of the society concerned with its primary objects) and to provide—
  - (i) that a person is not qualified to be admitted to membership of a society unless the person is likely to be an active member;
  - (ii) that the shares of a member who has been inactive for 2 years are to be forfeited;
  - (iii) for the repayment of amounts paid up on shares forfeited and for the liability of such a member in a winding-up which commences within 2 years after forfeiture of the shares;
  - (iv) that a director of a society is required to be an active member; and
  - (v) for the loss of entitlement to vote by an inactive member;
- (b) to require the board of a society to forfeit shares in the society held by a person above the maximum permissible level of shareholding;
- (c) to provide that shares in a society may only be sold or transferred to a person qualified to be admitted to membership of the society;
- (d) to impose a limit on the number of shares in a society which may be sold or transferred in a financial year;



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- (e) to require persons to give notice to a society if they sell, transfer or dispose of the beneficial interest in shares of the society, or agree to do so, or who commence to hold shares in the society on behalf of a person;
- (f) to impose additional requirements on certain societies to ascertain the views of active members and to obtain the approval of the Minister before selling or leasing any part of the undertaking of the society as a going concern, applying for registration as a company or voluntarily winding-up;
- (g) to provide for the method by which a casual vacancy on the board of certain societies is to be filled;
- (h) to provide for the loss of a member's entitlement to vote if another member has a relevant interest in the shares concerned;
- (i) to enable a society to be wound-up if its rules do not contain active membership provisions;
- (j) to make special provision for the liability on a winding-up of a society of a former member whose shares were forfeited, purchased or repaid in certain circumstances;
- (k) to prevent a person from representing more than 1 body corporate member of a society and more than 1 member under a power of attorney; and
- (l) to make other amendments of a minor, consequential or ancillary nature.

The Bill—

- (a) inserts various provisions inserted by uncommenced provisions of the Acts referred to in clauses 4 and 5 which will now not be commenced; and
- (b) also makes savings and transitional provisions.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with minor exceptions, the proposed Act will commence on a day or days appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 repeals certain uncommenced provisions of the Co-operation (Amendment) Act 1986 which will now be dealt with by the proposed Act.

Clause 5 repeals certain uncommenced provisions of the Co-operation (Amendment) Act 1987 which will now be dealt with by the proposed Act.

SCHEDULE 1—AMENDMENTS TO THE CO-OPERATION ACT 1923

Schedule 1 (1) is a consequential amendment.



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Schedule 1 (2) inserts proposed sections 5A and 5B into the Principal Act:

- (a) Proposed section 5A specifies certain principles as co-operative principles, being the principles adopted by the International Co-operative Alliance.
- (b) Proposed section 5B defines what constitutes a subsidiary corporation or subsidiary society of a society. Generally, a corporation or society is a subsidiary of a society if the society controls the composition of the board of directors, controls more than half of the votes that might be cast at a general meeting or holds more than half of its issued share capital.

Schedule 1 (3) provides that a person is not qualified to be admitted to membership of a society (other than a building society or an association of building societies) unless there are reasonable grounds for believing that the person will be an active member under proposed Part IIIA of the Principal Act.

Schedule 1 (4) (a) prevents a person from representing a body corporate as a member of a society if the person also represents another body corporate.

Schedule 1 (4) (b) prevents a person from representing a member of a society under a power of attorney if the person also represents another member under a power of attorney.

Schedule 1 (5) (a) requires the board of a society to forfeit any shares held by a person above the maximum permissible shareholding in a society. Provision is also made for the repayment of amounts due in respect of forfeited shares.

Schedule 1 (5) (b) inserts provisions which—

- (a) make it clear that a share in a society may be transferred on death or incapacity without the consent of the board of the society;
- (b) provide that, except as provided in paragraph (a), shares in a society may only be sold or transferred with the consent of the board to a person qualified to be admitted to membership of the society;
- (c) impose a limit on the volume of sales and transfers of shares to which the board of a society (other than a non-terminating building society or a society mentioned in the Second Schedule to the Principal Act) may consent during a financial year;
- (d) provide that the limit for the purposes of paragraph (c) is one-fifth (or other prescribed proportion), or a lesser proportion prescribed by the society's rules, of the issued share capital of the society at the start of the financial year concerned;
- (e) empower the Minister (on the advice of the Advisory Council) to approve, or the regulations to provide for, exemption from the limit in paragraph (c) for a particular sale or transfer;
- (f) require a person who sells, transfers or disposes of his or her beneficial interest in shares in a society, or who agrees to do so, to give notice to the society; and
- (g) require a person who commences to hold shares in a society on behalf of a person to give notice to the society.



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Schedule 1 (6) imposes restrictions on the power of a society (other than a co-operative housing society, a non-terminating building society or a Second Schedule society) to sell or lease any part of the society's undertaking as a going concern. The society will now have to conduct a postal ballot of members and 75 per cent of the formal votes will have to be in favour of the sale or lease. The Minister's approval is also required before the sale or lease can proceed and the Advisory Council considers the matter and reports to the Minister. Generally, the society's rules will also have to contain active membership provisions under proposed Part IIIA of the Principal Act.

Schedule 1 (7) imposes restrictions on the power of certain societies to apply for registration as a company under the Companies (New South Wales) Code. In the case of a non-terminating building society or a Second Schedule society, details of the proposed application have to be submitted to the registrar and the provisions of the Permanent Building Societies Act 1967 relating to the review of such proposed applications must be complied with. An application by any other society (except a co-operative housing society) is subject to the restrictions referred to in Schedule 1 (6).

Schedule 1 (8) inserts proposed sections 79A and 79B:

- (a) Proposed section 79A makes provision for the postal ballots required under Schedule 1 (6), (7) and (14). A society is required to send with the ballot papers a statement concerning certain matters, including the interests of directors in the proposal concerned.
- (b) Proposed section 79B makes provision for the approval of the Minister under Schedule 1 (6), (7) and (14). The proposal concerned is considered by the Advisory Council which makes a recommendation to the Minister who may approve or refuse to approve of the proposal.

Schedule 1 (9) inserts proposed Part IIIA into the Principal Act (proposed sections 80A-80AB):

- (a) Proposed section 80A provides that the proposed new Part does not apply to a building society or to an association the majority of the component societies of which are building societies.
- (b) Proposed section 80B defines—
  - (i) "chief primary object" of a society to mean an object which the rules of the society specify as a chief primary object; and
  - (ii) "primary object" of a society to mean an object which the rules of a society specify as a chief primary object or primary object of the society.
- (c) Proposed section 80C defines what constitutes active membership of a society. Generally, a member is an active member if the member—
  - (i) utilises or supports an activity of the society or maintains a relationship or an arrangement with the society, in connection with a primary object of the society, in the manner required by the rules of the society; or
  - (ii) maintains any other prescribed relationship or arrangement with the society in connection with a primary object of the society.



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- (d) Proposed section 80D defines—
- (i) “active membership provisions” to mean provisions in a society’s rules which specify the matters necessary to determine who are the active members of the society; and
  - (ii) “active membership resolution” to mean a resolution which inserts active membership provisions into the rules of a society.
- (e) Proposed section 80E requires a society to have at least 1 primary object. A society registered before the commencement of the proposed section is required to have at least 1 chief primary object until its rules contain active membership provisions relating to a primary object other than a chief primary object.
- (f) Proposed section 80F requires the board of a society to ensure that the rules of a society contain appropriate active membership provisions. The board must comply, generally, within 12 months after the commencement of the proposed section. An extension may be granted in certain circumstances.
- (g) Proposed section 80G empowers the Minister to specify factors and considerations to be taken into account in determining appropriate active membership provisions.
- (h) Proposed section 80H enables active membership provisions to provide that the payment of a regular subscription by a member in connection with a primary object is sufficient to establish active membership.
- (i) Proposed section 80I places restrictions on the type of active membership provisions which may be adopted by “goods and produce” societies.
- (j) Proposed section 80J provides that an active membership resolution cannot be proposed at a meeting of the society unless the registrar has approved of the resolution.
- (k) Proposed section 80K provides for a review by the Advisory Council of a decision of the registrar to refuse to approve of a proposed active membership resolution.
- (l) Proposed section 80L requires at least 21 days’ notice to be given to members of a society of a meeting at which an active membership resolution is to be proposed. The notice must state whether the member is eligible to vote on the resolution.
- (m) Proposed section 80M sets out the requirements for a member to be eligible to vote on an active membership resolution. Generally, to be eligible, a member must currently be an active member. In the absence of active membership provisions, eligibility is determined on the basis of active membership under resolutions already passed and proposed to be passed at the meeting concerned.
- (n) Proposed section 80N prevents a director voting at a meeting of the board of a society on a proposal to submit an active membership resolution to members unless the director would be eligible to vote on the resolution at the meeting of members.



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- (o) Proposed section 80O provides for the order in which proposed active membership resolutions are to be considered at a meeting of a society and for the automatic failure of proposed resolutions which conflict with resolutions already passed.
- (p) Proposed section 80P makes it clear that loss of entitlement to vote on a resolution does not affect any other entitlement or right of a member.
- (q) Proposed section 80Q requires the board of a society to forfeit the shares of a member if—
  - (i) the whereabouts of the member have been unknown for 2 years; or
  - (ii) the member has not been an active member for the last 2 years.
- (r) Proposed section 80R empowers the Minister to order in appropriate cases that the shares of a member not be forfeited under proposed section 80Q.
- (s) Proposed section 80S empowers the board of a society to defer forfeitures of shares if it thinks that an active membership resolution may be proposed which would affect the forfeiture.
- (t) Proposed section 80T empowers the registrar to exempt a society from forfeiture provisions on the basis that its records do not allow it to discover who is not an active member.
- (u) Proposed section 80U prohibits forfeiture of shares in certain unusual circumstances, such as where the society is in the course of being wound-up.
- (v) Proposed section 80V requires notice to be sent to a shareholder whose shares are about to be forfeited.
- (w) Proposed section 80W enables directors of a society to be prosecuted if they fail to use all due diligence to prevent the board failing to carry out its duty to forfeit shares.
- (x) Proposed section 80X makes provision for the repayment to a member whose shares are forfeited of the amount paid up on those shares. An amount due to a member may, in some circumstances, be transferred to a debenture of or a deposit with the society, instead of being repaid.
- (y) Proposed section 80Y makes provision for the interest payable on, and the repayment of, a debenture or deposit to which a member's funds are transferred under proposed section 80X.
- (z) Proposed section 80Z prevents a member voting at a meeting of the society unless the member is an active member.
- (aa) Proposed section 80AA requires a society to keep a register of shareholders whose shares have been forfeited because they were inactive members.
- (ab) Proposed section 80AB provides that money required to be repaid to a shareholder is not subject to the Unclaimed Money Act 1982 until it is required to be repaid to the member.



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Schedule 1 (10) adds active membership provisions to the list of matters for which a society's rules are required to provide.

Schedule 1 (11) (a) and (b) require a director of a society to be an active member and provide for a director who is not to vacate office.

Schedule 1 (11) (c) requires a casual vacancy on the board of a society (other than a building society) to be filled by election held at a general meeting, by postal ballot or by the same method as for ordinary elections of directors. Provision is also made for the board to appoint directors if the number of directors falls below a quorum plus 1.

Schedule 1 (12) provides that a member whose shares are required to be forfeited under proposed Part IIIA of the Principal Act is not entitled to be present at a meeting of the society.

Schedule 1 (13) (a) provides that if a member has a relevant interest in shares held by another member or other members, only one of those members is eligible to vote. The Advisory Council may restore entitlement to vote if satisfied that loss of the entitlement would be unjust or unreasonable.

Schedule 1 (13) (b) provides that a member is not entitled to vote at a meeting if—

- (a) the member's shares are required to be forfeited under proposed Part IIIA of the Principal Act; or
- (b) the member has sold, transferred or disposed of the beneficial interest in his or her shares or has agreed to do so.

Schedule 1 (14) (a) enables a society to be wound-up on a certificate of the registrar if the board has, after notice from the registrar, failed to ensure that the rules of the society contain active membership provisions.

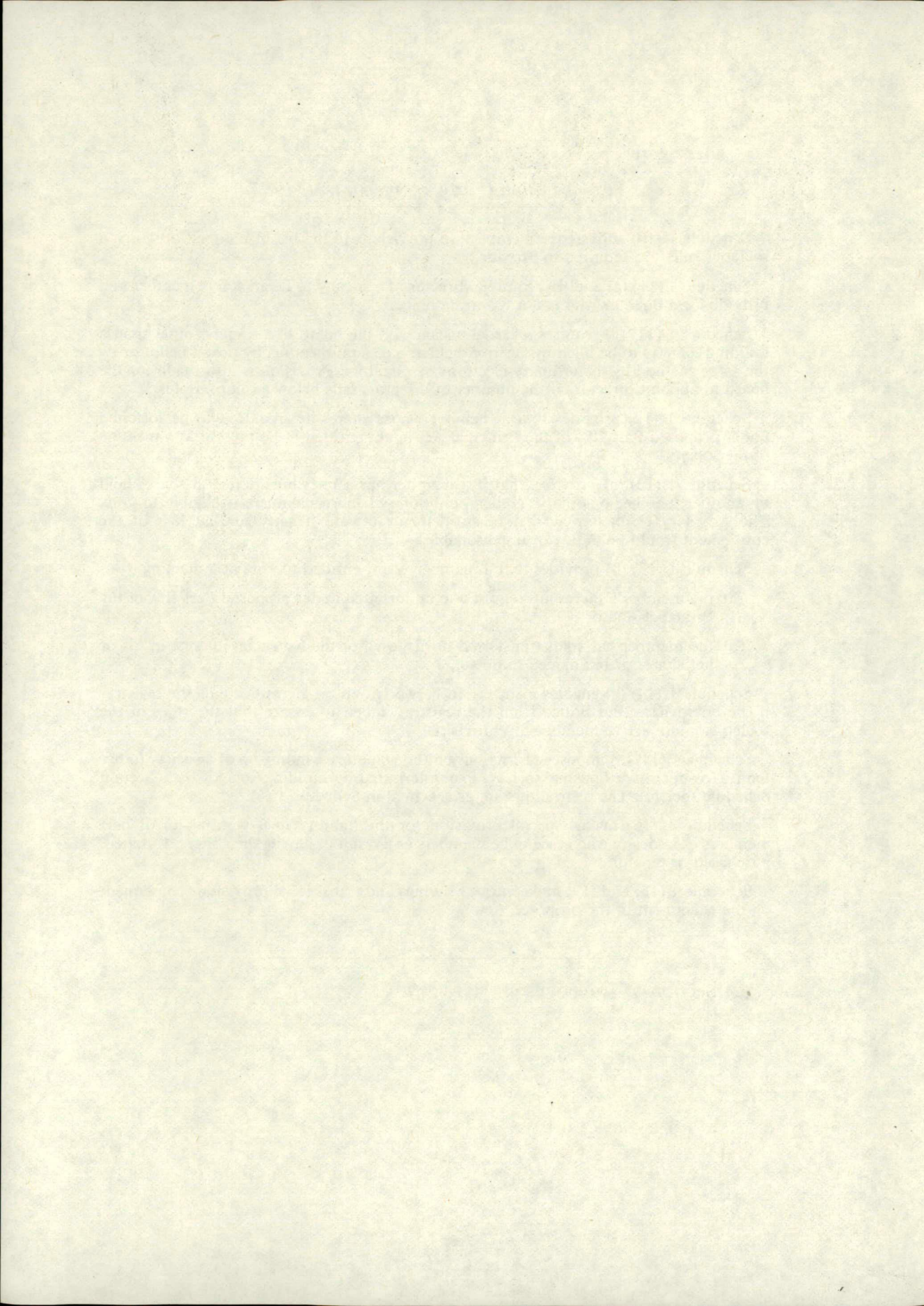
Schedule 1 (14) (b) imposes restrictions on the voluntary winding-up of a society (other than a co-operative housing society, a non-terminating building society or a Second Schedule society). The restrictions are as specified in Schedule 1 (6).

Schedule 1 (15) makes special provision for the liability in a winding-up of past members of a society who cease to be members as a result of having their shares forfeited, purchased or repaid.

Schedule 1 (16) and (17) make various savings and transitional provisions consequent on the enactment of the proposed Act.

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# CO-OPERATION (FURTHER AMENDMENT) BILL 1987

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SCHEDULE 1—AMENDMENTS TO THE CO-OPERATION ACT 1923

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# CO-OPERATION (FURTHER AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

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## A BILL FOR

An Act to amend the Co-operation Act 1923 to make further provision with respect to the rights and obligations of members of co-operative societies; and for other purposes.

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*Co-operation (Further Amendment) 1987*

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

**5 Short title**

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

**Commencement**

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

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

(3) Section 3, in its application to a provision of Schedule 1, shall  
15 commence on the day on which the provision commences.

**Amendment of Act No. 1, 1924**

3. The Co-operation Act 1923 is amended in the manner set forth in Schedule 1.

**Amendment of Act No. 106, 1986**

20 4. The Co-operation (Amendment) Act 1986 is amended—

(a) by omitting items (2), (9) (b), (13) (c), (13) (d), (20), (23), (26), (31) (a), (33) (a), (33) (d), (33) (f), (37), (38) (b), (38) (c), (41) (a), (41) (c) and (42) from Schedule 1;

(b) by omitting clauses 1-4 and 12 from Schedule 3.

**25 Amendment of Act No. 19, 1987**

5. The Co-operation (Amendment) Act 1987 is amended—

(a) by omitting item (7) (a) and (b) from Schedule 1;

(b) by omitting from item (3) in Schedule 2 the words "(within the meaning of section 5C)".

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## SCHEDULE 1

(Sec. 3)

## AMENDMENTS TO THE CO-OPERATION ACT 1923

(1) Section 5 (**Interpretation**)—

## 5 (a) Section 5, definition of “Primary object”—

Omit the definition, insert instead:

“Primary object” is defined by section 80B.

## (b) Section 5, definition of “Subsidiary corporation” and “subsidiary society”—

## 10 Omit the definition of “Subsidiary corporation”, insert instead:

“Subsidiary corporation” and “subsidiary society” are defined by section 5B.

## (2) Sections 5A, 5B—

After section 5, insert:

15 **Co-operative principles:**

5A. (1) In this Act, a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

**Voluntary association and open membership:**

20 Membership of a co-operative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.

25 **Democratic control:**

30 Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Limited interest on capital:**

Share capital shall only receive a strictly limited rate of interest, if any.

**Equitable division of surplus:**

5 The economic results arising out of the operations of the society belong to the members of that society and shall be distributed in such a manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows:

- 10 (i) by provision for development of the business of the co-operative;
- (ii) by provision of common services; or
- (iii) by distribution among the members in proportion to their transactions with the society.

**15 Co-operative education:**

All co-operative societies shall make provision for the education of their members, officers, and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic.

**20 Co-operation among co-operatives:**

All co-operative organisations, in order to best serve the interests of their members and communities shall actively co-operate in every practical way with other co-operatives at local, national and international levels.

25 (2) Any requirement in this Act that a society function in accordance with co-operative principles shall not be construed—

- (a) as requiring the society to function in accordance with all of the principles set out in subsection (1); or
- 30 (b) as authorising the society to contravene any other provision of this Act or of its rules.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) The Governor may, by order published in the Gazette, amend the principles set out in subsection (1) so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

5      **Subsidiary corporations**

5B. (1) For the purposes of this Act, a corporation or society shall be deemed to be a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of the corporation or society;
- 10      (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation or society; or
- 15      (c) holds more than one-half of the issued share capital of the corporation or society (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

20      (2) Without limiting by implication the circumstances in which the composition of a corporation's or society's board of directors is to be taken to be controlled by a society, the composition of a corporation's or society's board of directors shall be taken to be controlled by a society if the society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the society, can appoint or

25      remove all or a majority of the directors, and, for the purposes of this section, the society shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in that person's favour by the society of such a
- 30      power; or
- (b) a person's appointment as a director follows necessarily from that person's being a director or other officer of the society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) In determining whether a corporation or society is a subsidiary of a society (in this section referred to as “the society concerned”)—

- 5 (a) any shares held or power exercisable by the society concerned in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
- 10 (i) by any person as a nominee for the society concerned (except where the society is concerned only in a fiduciary capacity); or
- (ii) by, or by a nominee for, a subsidiary of the society, not being a subsidiary that is concerned only in a fiduciary capacity,
- 15 shall be treated as held or exercisable by the society;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation or society, or of a trust deed for securing any issue of any such debentures, shall be disregarded; and
- 20 (d) any shares held or power exercisable by, or by a nominee for, the society concerned (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of
- 25 money.
- (4) In this section—
- 30 “corporation” has the meaning ascribed to that expression by the Companies (New South Wales) Code, and includes a society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(3) Section 38 (**Liability and membership**)—

Section 38 (7)—

After section 38 (6), insert:

- 5 (7) A person is not qualified to be admitted to membership of a society (except a building society or an association the majority of the component societies of which are building societies) unless there are reasonable grounds for believing that the person will be an active member of the society.

(4) Section 46 (**Members**)—

- 10 (a) Section 46 (7AA)—

Omit the subsection, insert instead:

(7AA) A person is not entitled to represent a body corporate if the person has been appointed to represent another body corporate and that appointment is still in force.

- 15 (b) Section 46 (7D)—

After section 46 (7C), insert:

- 20 (7D) A person is not entitled to exercise, under a power of attorney, the power of a member to vote if the person has that power in respect of another member under another power of attorney.

(5) Section 47 (**Shares**)—

- (a) Section 47 (11), (11A)—

After section 47 (10), insert:

- 25 (11) Where a person holds shares in a society in contravention of subsection (10), the board of the society shall declare to be forfeited sufficient of those shares to remedy the contravention, being—

- (a) those shares nominated by the person for the purpose; or



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) in the absence of such a nomination—those shares which have been held by the person for the shortest time,

and any such declaration shall have effect according to its tenor.

(11A) Sections 80x and 80y (repayment of and interest on amounts due in respect of forfeited shares) apply to and in respect of shares forfeited under subsection (11) in the same manner as they apply to and in respect of shares forfeited under Division 4 of Part IIIA.

(b) Section 47 (17)–(22)—

Omit section 47 (17) and (18), insert instead:

(17) A share in a society cannot be sold or transferred except—

(a) in accordance with section 58 or 59 on the death of a member;

(b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or

(c) with the consent of the board, to a person who is qualified to be admitted to membership of the society under section 38 (7) (active membership).

(18) The board of a society (except a non-terminating building society or a society mentioned in the Second Schedule) shall not consent to the sale or transfer of shares if the sale or transfer would cause the nominal value of all shares sold or transferred since the commencement of the current financial year of the society to exceed the appropriate proportion of the nominal value of the issued share capital of the society as at that commencement.

(19) The appropriate proportion of the nominal value of issued share capital is—

(a) one-fifth or such other proportion as may be prescribed by the regulations; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) if the rules of the society provide for a lesser proportion, that lesser proportion.
- (20) Subsection (18) does not prevent the board from consenting to a sale or transfer—
- 5 (a) if the Minister approves, on the recommendation of the Advisory Council, either generally or in a particular case; or
- (b) in such circumstances as may be prescribed by the regulations.
- 10 (21) A person who sells or transfers, or disposes of the beneficial interest in, his or her shares in a society or who agrees to do any of those things shall, within 14 days, give notice in writing to the society of the fact.
- 15 (22) A person shall within 14 days after commencing to hold shares in a society as trustee for, or otherwise on behalf of or on account of, a person give notice in writing to the society giving details of the shareholding.
- (6) Section 64—
- Omit the section, insert instead:
- 20 **Property—power to acquire and dispose of**
64. (1) This section does not apply to a non-terminating building society.
- (2) A society may, in accordance with this Act—
- 25 (a) acquire by lease, purchase, donation, devise, bequest or otherwise any real or personal property for any objects of the society; and
- (b) sell or lease any such real or personal property.
- 30 (3) The acquisition by a society of real or personal property primarily or mainly required for business or office accommodation of the society or of the society and other societies is an acquisition of real or personal property for the objects of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

5 (4) A sale or lease of the undertaking, or any part of the undertaking, as a going concern, of a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) shall be invalid unless—

(a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;

10 (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the sale or lease; and

15 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

(5) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of this section and section 79A.

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

20 (a) Section 70 (1)–(1C)—

Omit section 70 (1) and (1A), insert instead:

(1) A co-operative housing society may by special resolution determine that the society shall apply to be registered as a company under the Companies (New South Wales) Code.

25 (1A) A non-terminating building society or a society mentioned in the Second Schedule, other than a society prohibited from doing so by its rules, may apply to be registered as a company under the Companies (New South Wales) Code if—

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

(b) the provisions of Division 6 of Part III of the Permanent Building Societies Act 1967 have been complied with in respect of the proposal.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(1B) Any other society may apply to be registered as a company under the Companies (New South Wales) Code if—

- 5 (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;
- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the application being made; and
- 10 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

15 (1C) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of subsection (1B) and section 79A.

(b) Section 70 (7) (a)—

Omit the paragraph.

(8) Sections 79A, 79B—

After section 79, insert:

20 **Special postal ballots**

79A. (1) This section applies to a postal ballot held by a society for the purposes of section 64, 70 or 92.

25 (2) The society shall send to each of its members, along with any other material required in connection with the postal ballot, a statement concerning—

- (a) the financial position of the society;
- 30 (b) the interests of the directors of the society in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal;



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(c) any compensation or consideration to be paid to officers or members of the society in connection with the proposal; and

(d) such other matters as the registrar directs.

5 (3) The contents of the statement must have been approved by the registrar.

10 (4) If the registrar so requires, the statement shall be accompanied by a report made by an independent person approved by the registrar concerning such matters as the registrar directs.

(5) On the declaration by the returning officer of the result of the ballot, the secretary of the society shall make an entry in the minute book of the society showing—

(a) the number of formal votes cast in favour of the proposal;

15 (b) the number of formal votes cast against the proposal; and

(c) the number of informal votes cast.

20 (6) If at least three-quarters of the formal votes cast are in favour of the proposal, the secretary shall, within 10 days after the declaration of the result, file with the registrar a copy signed by the secretary of the entry so made.

**Approval of the Minister etc.—ss. 64, 70, 92**

25 79B. (1) This section applies to action by a society for which, under section 64, 70 or 92, the approval of the Minister is required, given after consideration of the matter by the Advisory Council.

(2) The Advisory Council shall consider a proposed action to which this section applies and for that purpose, without limiting its power to consider other matters, may consider—

30 (a) the interests of members or a class of members of the society concerned;

(b) the interests of members of societies generally; and



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(c) the interests of co-operation.

(3) The Advisory Council shall, after considering proposed action to which this section applies—

5 (a) recommend to the Minister that the transaction be approved; or

(b) refuse to make such a recommendation to the Minister.

(4) If the Advisory Council refuses to make a recommendation to the Minister—

10 (a) it shall give notice to the Minister and to the society concerned accordingly; and

(b) the society concerned may, within 14 days of receipt of the notice, make representations to the Minister concerning the matter.

15 (5) If the Advisory Council does not make a decision in respect of the proposed action within a reasonable time, the Minister may consider the matter.

20 (6) The Minister shall approve or refuse to approve the proposed action and for that purpose shall have regard to, but shall not be bound by, any recommendation of the Advisory Council.

(7) Without limiting the Minister's power to refuse approval of the proposed action, the Minister may refuse approval if of the opinion that the proposed action—

25 (a) would adversely affect a significant number of the members of the society;

(b) in the case of action under section 64, would adversely affect the efficiency, viability or profitability of the society;

30 (c) in the case of action under section 70 or 92, would adversely affect the efficiency, viability or profitability of any other society engaged in an activity in which the society is engaged; or

(d) would not be in the public interest.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (9) Part IIIA—

After Part III, insert:

## PART IIIA

## ACTIVE MEMBERSHIP

5

DIVISION 1—*Interpretation etc.***Application of Part to societies**

80A. (1) This Part does not apply to a building society or to an association the majority of the component societies of which are building societies.

10

(2) References in this Part to a society shall be construed accordingly.

**Primary objects—interpretation**

15

80B. (1) A chief primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object of the society.

(2) A primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object or a primary object of the society.

**Active membership—interpretation**

20

80C. For the purposes of this Act, a member of a society is an active member of the society if the member—

25

(a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in the manner and to the extent which the rules of the society provide is sufficient to establish active membership; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) maintains such other relationship or arrangement with the society in connection with the carrying on of a primary object of the society as the regulations provide is sufficient to establish active membership.

5           **Active membership provisions and resolutions—interpretation**

80D. (1) Active membership provisions in the rules of a society are provisions in the rules which specify—

- (a) which of the objects of the society are the primary objects of the society; and
- 10           (b) the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active
- 15           membership of the society.

(2) An active membership resolution is a resolution which would, if given effect to, make active membership provisions in the rules of a society.

- 20           (3) If an active membership resolution concerns a proposed chief primary object of the society it must not be concerned with any other object.

(4) An active membership resolution may be passed only by a special resolution.

DIVISION 2—*Active membership provisions*25           **Number of primary objects**

80E. (1) A society must have at least 1 chief primary object.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) A society registered under this Act before the commencement of this section must have at least 1 chief primary object until its rules contain active membership provisions concerned with a primary object other than a chief primary object.

5      **Rules to contain active membership provisions**

80F. (1) The board of a society shall ensure that the rules of the society contain active membership provisions in accordance with this Part.

10      (2) The board shall comply with that requirement as soon as practicable after the commencement of this section and in any case within 12 months after that commencement.

(3) The period within which the requirement must be complied with may be extended for a particular society by order in writing—

15      (a) by the registrar, for a further period of up to 3 months or (after consultation with the Advisory Council) up to 2 years; or

(b) by the Minister, for such further period as the Minister determines after consultation with the Advisory Council.

20      (4) The registrar shall not grant an extension unless satisfied that it would not be reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.

25      (5) An alteration of the rules of a society effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 83 (3).

**Ministerial orders as to active membership provisions**

30      80G. (1) The Minister may by order published in the Gazette specify factors and considerations to be taken into account in determining—

(a) which of the objects of a society are its chief primary objects;



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) which of the objects of a society are its other primary objects; and

5 (c) the manner and extent to which a member is required to utilise or support an activity of, or maintain a relationship with, a society, in connection with the carrying on of a primary object of the society, to establish active membership of the society.

10 (2) Factors and considerations may be specified so as to apply to societies generally, to a specified class of societies or to a specified individual society.

(3) The directors of a society shall ensure that any such factors and considerations are taken into account accordingly.

**Regular subscription—active membership**

15 80H. (1) Active membership provisions may include provision that the payment of a regular subscription by a member of the society, to be applied in connection with a primary object of the society, is sufficient to establish active membership of the society.

20 (2) A member of a society who would, on payment of such a subscription, be an active member of a society shall be deemed to be an active member until—

(a) the subscription is due and payable; or

(b) the expiration of the period of 12 months after the commencement of this section,

whichever is earlier.

25 **Active membership provisions—supply or purchase of goods or produce**

80I. (1) This section applies to a society if the primary objects of the society include the supply to or purchase from the society by its members of goods or produce.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) The only active membership provisions which may be contained in the rules of a society to which this section applies are—

- 5 (a) provisions requiring a member to utilise an activity of the society in connection with the carrying on of a primary object specified in the provisions to establish active membership; and
- (b) such other active membership provisions as the Minister may approve after consultation with the Advisory Council.

10 (3) A reference in this section, and in any active membership provisions of the rules of a society, to the supply to or purchase from a society by a member of goods or produce includes a reference to—

- 15 (a) the supply to or purchase from a corporation constituted by an Act for the purpose of the marketing of goods or produce if the corporation in turn supplies to or purchases from the society; and
- 20 (b) the existence of a relationship or arrangement between the member and the society which is prescribed by the regulations as being sufficient to establish the relationship of supplier or purchaser.

DIVISION 3—*Active membership resolution***Prior approval of active membership resolutions**

25 80J. (1) An active membership resolution cannot be proposed at a meeting of a society unless—

- (a) before the meeting, the registrar has approved in writing of the terms of the proposed resolution; or
- 30 (b) the active membership provisions which would result from the proposed resolution fall within parameters approved of in writing by the registrar before the meeting.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) Before giving an approval under this section, the registrar may require additional information from the proposers of the resolution for the purpose of deciding whether or not to approve of the resolution.

5      **Appeal against refusal of approval**

80K. (1) If the registrar refuses to approve of a proposed active membership resolution on the basis that the resolution would not result in active membership provisions which are appropriate for the society concerned or which would result in unreasonable active membership provisions—

- 10
- (a) the registrar shall inform the society in writing of the reasons for the refusal; and
  - (b) the Advisory Council shall, at the request of the society, review the registrar's decision to refuse approval.

15      (2) After its review, the Advisory Council may recommend to the registrar that the registrar approve of the proposed resolution and the registrar shall comply with such a recommendation.

**Notice of meeting**

20      80L. (1) At least 21 days' written notice shall be given to members of a society of a meeting at which an active membership resolution is to be proposed.

(2) The notice shall, in addition to the other matters required to be specified—

- 25
- (a) specify whether the member is eligible to vote on the resolution;
  - (b) specify the full text of the proposed resolution; and
  - (c) contain a copy of section 80Q (forfeiture of shares of inactive members).

30      (3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the society, apply to the registrar for a determination as to the member's eligibility.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) The registrar may determine the matter, on the information available to the registrar, by direction in writing to the society and the member.

5 (5) The registrar's determination as to eligibility has effect but only if given before the meeting concerned is due to be held.

**Eligibility to vote on active membership resolutions**

10 80M. (1) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society contain active membership provisions are those members who at the time of the vote are active members of the society.

(2) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society do not contain active membership provisions are—

15 (a) if the resolution concerns a chief primary object—those members who at the time of the vote would (if the resolution were given effect to) be active members of the society in relation to that chief primary object; or

20 (b) if the resolution does not concern a chief primary object—those members who at the time of the vote would be active members of the society if any active membership resolution concerning a chief primary object already passed at the meeting had taken effect as soon as it was passed.

**Eligibility of directors to vote at board meetings**

25 80N. At a meeting of the board of a society, a director is not eligible to vote on a proposal to submit an active membership resolution to a meeting of the society unless—

(a) the director will be eligible to vote on the resolution at a meeting of the society; or

30 (b) less than 2 directors of the society (whether or not they are present at the meeting of the board) will be eligible to vote on the resolution at a meeting of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Consideration of active membership resolutions**

80o. (1) At a meeting of a society, proposed active membership resolutions shall be considered in the following order:

- 5 (a) a resolution proposed by the board shall be considered before any other resolution;
- (b) subject to paragraph (a), a resolution shall be considered before another resolution proposed after it for consideration at the meeting.

10 (2) If a proposed active membership resolution which concerns a proposed or current chief primary object of the society is passed at a meeting of the society, any other proposed active membership resolution for consideration at the meeting fails if—

- (a) it concerns a proposed or current chief primary object of the society; and
- 15 (b) it would make provision which would conflict or overlap with provision to be made by the resolution already passed.

**Other entitlements etc. of members**

20 80p. A provision of this Division which renders a member of a society ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

*DIVISION 4—Forfeiture of shares etc.—inactive members***Forfeiture of shares**

25 80q. (1) The board of a society with limited liability shall declare to be forfeited the shares of a member if—

- (a) the whereabouts of the member are not presently known to the society and have not been known to the society for a continuous period of at least 2 years before that time; or
- 30 (b) the member is not presently an active member of the society and has not been an active member of the society at any time during the past 2 years immediately before that time.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) This section applies to a member only if he or she was a member of the society throughout the 2 year period in question.

(3) The question of whether a member was an active member at a particular time in the past shall be determined as if the active membership provisions concerned had been in force at that time.

(4) The board's declaration under this section has the effect of forfeiting the shares concerned.

**Order of Minister against forfeiture**

80R. (1) The Minister may, if satisfied in a particular case after consultation with the Advisory Council that the forfeiture of shares under this section was or would be unreasonable, direct by order in writing that the shares should not have been forfeited or should not be forfeited.

(2) While such an order is in force—

(a) the shares concerned are not required to be forfeited; and

(b) the person who was the holder of any forfeited shares concerned is entitled to be reinstated as a member of the society with all the rights and entitlements attaching to or arising from the former membership.

(3) Reinstatement of a member under this section shall be effected in accordance with the directions of the Minister.

**Deferral of forfeiture by board**

80s. The board of a society is entitled to defer forfeiture of a member's shares for up to one year (or such other period as may be prescribed) if—

(a) the board thinks that during that period an active membership resolution may be put to the members of the society; and



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) the effect of the resolution would be relevant to the question of whether the member is an active member.

**Special provisions—knowledge of societies before commencement of provisions**

5 80T. (1) The registrar may by order in writing direct that a society is not required to forfeit the shares of a member—

10 (a) on the ground specified in section 80Q (1) (a)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member's whereabouts have not been known to the society; or

15 (b) on the ground specified in section 80Q (1) (b)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.

(2) Any such direction has effect for the period specified by the registrar which—

20 (a) shall not be longer than 3 months except after consultation with the Advisory Council; and

(b) in any case shall not be longer than 2 years.

**Forfeiture prohibited in certain circumstances**

25 80U. Unless the regulations otherwise provide, the board of a society shall not declare shares of a member to be forfeited under this section—

(a) if the society is under official management;

(b) if a compromise or an arrangement is being administered in respect of the society;

(c) if the society is in the course of being wound-up;

30 (d) if an appointment of a receiver of any property of the society is in force;



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(e) if the society has, for the purposes of being registered as a company under the Companies (New South Wales) Code, filed with the registrar a copy of the entry made in the minute book of the society under section 79A (5); or

5 (f) in such other circumstances as may be prescribed.

**Notice of intention to forfeit shares**

80v. (1) The board of a society shall ensure that not less than one month's notice of its intention to declare the shares of a member to be forfeited is given to the member—

10 (a) by notice in writing sent to the member by post; or

(b) where the member's whereabouts are unknown to the society, by notice published in a newspaper circulating in the district in which the registered office of the society is situated.

15 (2) No notice is required to be given under this section where the member's whereabouts are unknown to the society and the amount subscribed in respect of the shares to be forfeited does not exceed \$50.

**Failure to forfeit shares—offence by directors**

20 80w. If the board of a society fails to declare the shares of a member to be forfeited as required by this Division, a director of the society who did not use all due diligence to prevent that failure is guilty of an offence and liable to a penalty not exceeding \$1,000.

**Repayment of amounts due in respect of forfeited shares**

25 80x. (1) If the shares of a member of a society are forfeited under this Division, the society shall, within 12 months after the date of forfeiture—

(a) repay to the former member the amount paid up in respect of the forfeited shares; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

5 (b) if the board is of the opinion that repayment would adversely affect the financial position of the society—apply that amount as a deposit by the former member with the society or allot debentures of the society to the former member in satisfaction of that amount.

(2) If the former member is subsequently readmitted to membership, any amount held by the society under this section shall, at the request of the member, be applied towards the cost of subscription for share capital.

10 **Interest on and repayment of deposits and debentures**

80Y. (1) A deposit or debenture to which an amount due to a former member in respect of forfeited shares is transferred under this Division bears interest during any period—

15 (a) at the rate (or, where there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the society; or

20 (b) where the rate of dividend payable in respect of that period has not been determined—at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined.

(2) Such a deposit or debenture shall be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the society.

25 (3) Such a deposit or debenture shall in any case be repaid within 10 years (or within such shorter period as the rules of the society may require) after forfeiture of the member's shares.

(4) The Advisory Council may extend the period for repayment under subsection (3) if satisfied that repayment of the amount within that period would cause the society financial hardship.

30 (5) An extension of a period by the Advisory Council shall be for such period as it considers reasonable and may be given subject to conditions.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(6) The period for repayment is extended accordingly, so long as the society complies with any conditions to which the extension is subject.

**Eligibility to vote—active membership**

5           80z. (1) A member of a society is not entitled to vote at a meeting of the society unless he or she is an active member of the society.

(2) This section does not operate until the rules of the society contain active membership provisions.

10           **Register of forfeited shares**

80AA. A society shall keep a register, in the prescribed form, specifying the prescribed particulars of shareholders whose shares have been forfeited under this Division.

**Unclaimed Money Act 1982**

15           80AB. The Unclaimed Money Act 1982 does not operate to require money to be paid to the Treasurer under section 6 of that Act before the money is required to be repaid to a former member of a society under this Division.

(10) Section 82 (**Rules**)—

20           Section 82 (1) (d1)—

After section 82 (1) (d), insert:

(d1) active membership provisions (within the meaning of Part IIIA) except in the case of a building society or an association the majority of the component societies of which are building societies;

25

(11) Section 84 (**Board of directors**)—

(a) Section 84 (7) (b) (i)—

After “that society”, insert “(being a member whose shares are not required to be forfeited under Part IIIA—active membership)”.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (b) Section 84 (11) (e)—

After section 84 (11) (d), insert:

- (e) if the shares of the director are required to be forfeited under Part IIIA (active membership);

## 5 (c) Section 84 (14)–(14B)—

Omit section 84 (14), insert instead:

(14) A casual vacancy on the board of a society (other than a building society), being a vacancy under subsection (11), shall be filled by election by the members held—

10

(a) at a general meeting of the society;

(b) by means of a postal ballot; or

(c) in the manner specified in the rules of the society for the ordinary election of directors.

15

(14A) If at any time the number of directors of a society (other than a building society) is the same as or less than the number of directors required to constitute a quorum of the board—

(a) the board may appoint sufficient directors so that the number of directors is one more than a quorum; and

20

(b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum shall be the number of directors at that time.

(14B) A casual vacancy on the board of a building society shall be filled as prescribed by the rules of the society.

25 (12) Section 85 (**Meetings of the society**)—

Section 85 (4)—

After section 85 (3), insert:

30

(4) At any meeting of the society, a member whose shares are required to be forfeited under Part IIIA (active membership) is not entitled to be present.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(13) Section 86 (**Votes of members**)—

## (a) Section 86 (3)–(7)—

Omit the subsections, insert instead:

5 (3) If a member of a society has a relevant interest (as defined for the purposes of section 47B) in any shares held by another member or other members of the society, of the member and the other member or other members only one shall have a vote.

(4) Of those members, the one who has the vote is—

10 (a) the member nominated by those members for the purpose;  
or

(b) in the absence of such a nomination, the member whose name appears first in the register of members.

(5) A member who is thereby not entitled to vote may apply to the Advisory Council for a review of the matter.

15 (6) The Advisory Council may order that the member is entitled to vote if it is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable.

(7) The order of the Advisory Council has effect accordingly.

## (b) Section 86 (8A), (8B)—

20 After section 86 (8), insert:

(8A) If the shares of a member are required to be forfeited under Part IIIA (active membership), the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.

25 (8B) If a member has sold or transferred, or disposed of the beneficial interest in, his or her shares, or agreed to do any of those things, the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(14) Section 92 (**Winding-up**)—

## (a) Section 92 (3) (g1)—

After section 92 (3) (g), insert:

- 5 (g1) that the board of the society has, after notice from the registrar, failed to ensure that the rules of the society contain active membership provisions in accordance with Part IIIA;

## (b) Section 92 (7)—(7AB)—

Omit section 92 (7), insert instead:

- 10 (7) If a society is not a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule, it may be wound-up voluntarily only by a creditors' voluntary winding-up or if—

- 15 (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;

- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the voluntary winding-up of the society; and

- 20 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

- 25 (7AA) The Minister may, by order in writing, exempt a society or class of societies from compliance with all or specified provisions of subsection (7) and section 79A.

- 30 (7AB) A voluntary winding-up of a society pursuant to any such postal ballot shall be deemed to commence at the time the secretary of the society makes the entry in the minute book of the society under section 79A (6).

## (c) Section 92 (7A)—

Omit "subsection (7)", insert instead "section 79A".



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(d) Section 92 (7B)—

Omit “subsection (7) (c)”, insert instead “section 79A (6)”.

(15) Section 93A—

After section 92C, insert:

5     **Liability of member to contribute in a winding-up where shares  
forfeited etc.**

93A. (1) If a person ceases to be a member of a society within  
2 years before the commencement of the winding-up of the society  
because the person’s shares were cancelled under Part IIIA (active  
10 membership), the person is liable on the winding-up to contribute  
to the property of the society the nominal value of the cancelled  
shares immediately before their cancellation.

(2) If under section 52 a society (other than a building  
society)—

15     (a) purchases any share of a member in the society; or

(b) repays to a member the whole or any part of the amount  
paid up on any share held by a member,

20     within 2 years before the commencement of the winding-up of the  
society, the member or former member is liable on the winding-  
up to contribute to the property of the society the amount which  
was paid by the society to the member or former member in  
respect of the purchase or repayment together with any amount  
unpaid on those shares immediately before the purchase or  
repayment.

25     (3) If, pursuant to a liability under subsection (1) or (2), a  
person contributes to the property of a society on a winding-up  
of the society, the amount contributed shall, for the purposes of  
the winding-up, be treated as having been paid up by the person  
on shares of the society.

30     (4) The liability of a member or former member of a society  
under this section is in addition to any other liability of the  
member or former member to contribute to the property of the  
society on a winding-up of the society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (16) Section 123A—

After section 123, insert:

**Savings and transitional provisions—amending Acts**

123A. The Fifth Schedule has effect.

## 5 (17) Fifth Schedule—

After the Fourth Schedule, insert:

## FIFTH SCHEDULE

(Sec. 123A)

## SAVINGS AND TRANSITIONAL PROVISIONS

10

*Co-operation (Further Amendment) Act 1987***Representation of body corporate members**

1. Section 46 (7AA), as repealed and re-enacted by the Co-operation (Further Amendment) Act 1987—

15

(a) applies in respect of an appointment to represent a body corporate even if the appointment was made before that repeal and re-enactment; and

(b) does not prevent a person appointed to represent a non-terminating building society or a society mentioned in the Second Schedule from representing that society so long as the appointment was made before the commencement of the Co-operation and Other Acts (Amendment) Act 1973.

20

**Registration as a company**

2. (1) On and from 12 May 1987, a society cannot apply to be registered as a company under the Companies (New South Wales) Code unless it complies with the provisions of section 70 of this Act as amended by the Co-operation (Further Amendment) Act 1987.

25

(2) For the purposes of the application of section 70 to a society, the amendments effected by the Co-operation (Further Amendment) Act 1987 shall be deemed to have commenced on 12 May 1987.

30

(3) This clause applies to a society even if before 12 May 1987 the society determined by special resolution that the society shall apply to be registered as a company under the Companies (New South Wales) Code.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Regulations—special postal ballots**

3. A regulation in force for the purposes of section 64, 70 or 92 immediately before the commencement of this clause shall, on that commencement, be deemed to have been made under this Act as amended by the Co-operation (Further Amendment) Act 1987.

**Qualifications for membership—likelihood of active membership**

4. Section 38 (7) does not apply to a society until the rules of the society contain active membership provisions in accordance with Part IIIA.

**Entitlement to more than one vote**

5. If, immediately before the commencement of Schedule 1 (13) to the Co-operation (Further Amendment) Act 1987, a member of a society was entitled to more than one vote, that entitlement of the member continues (notwithstanding the amendment of section 86 by that Act) until—

(a) 12 months after the commencement of this clause; or

(b) the rules of the society first contain active membership provisions, whichever is sooner.

**Liability on winding-up**

6. Section 93A (2) does not apply to a member if the purchase of the share of the member or the repayment of an amount paid up on the share of the member occurred before the commencement of that subsection.

**Regulations**

7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of the Co-operation (Further Amendment) Act 1987.

(2) A provision made under subclause (1) may take effect as from the date of assent to that Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

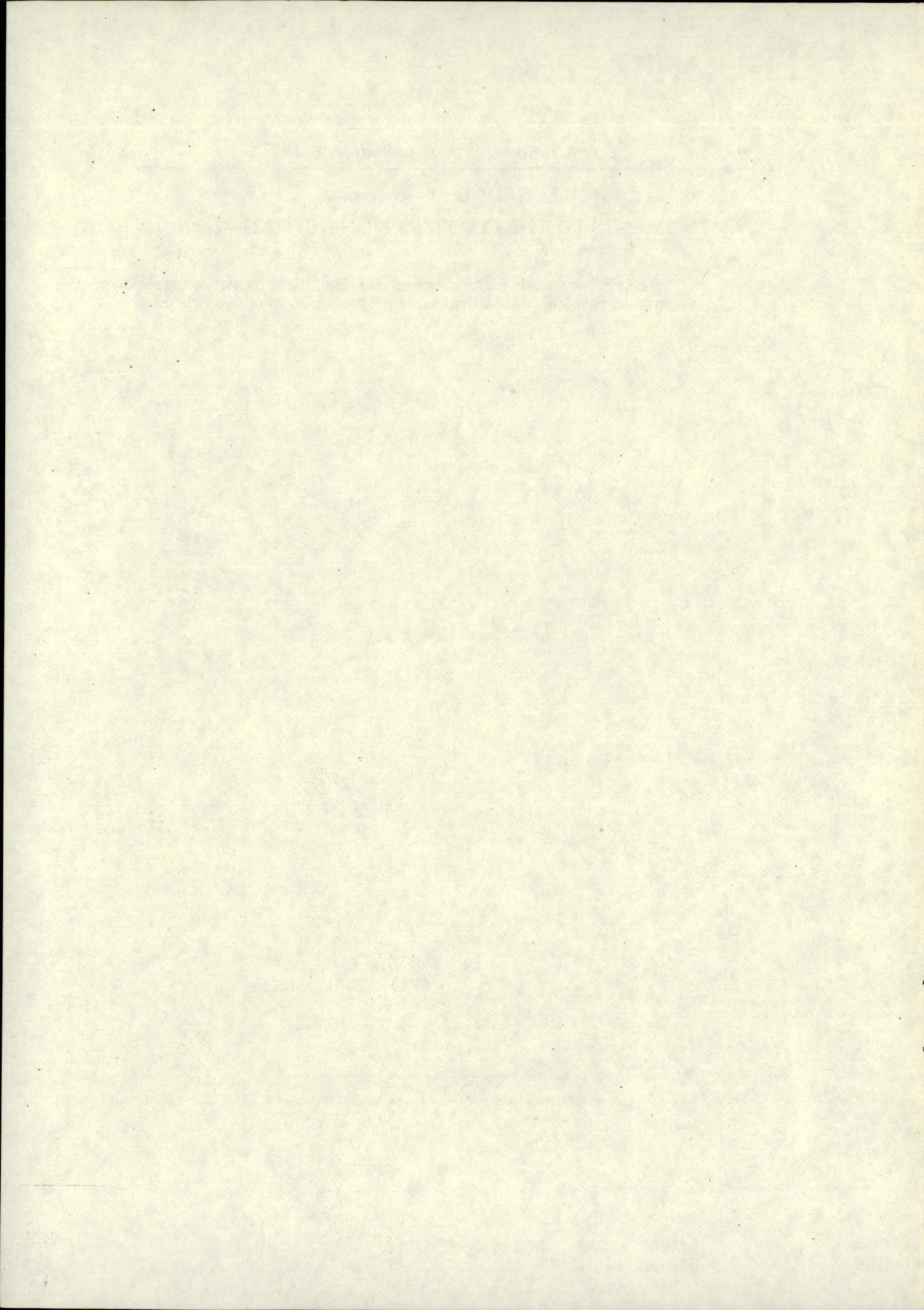


SCHEDULE 1—*continued*

AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the other clauses of this Schedule.







# CO-OPERATION (FURTHER AMENDMENT) BILL 1987

NEW SOUTH WALES



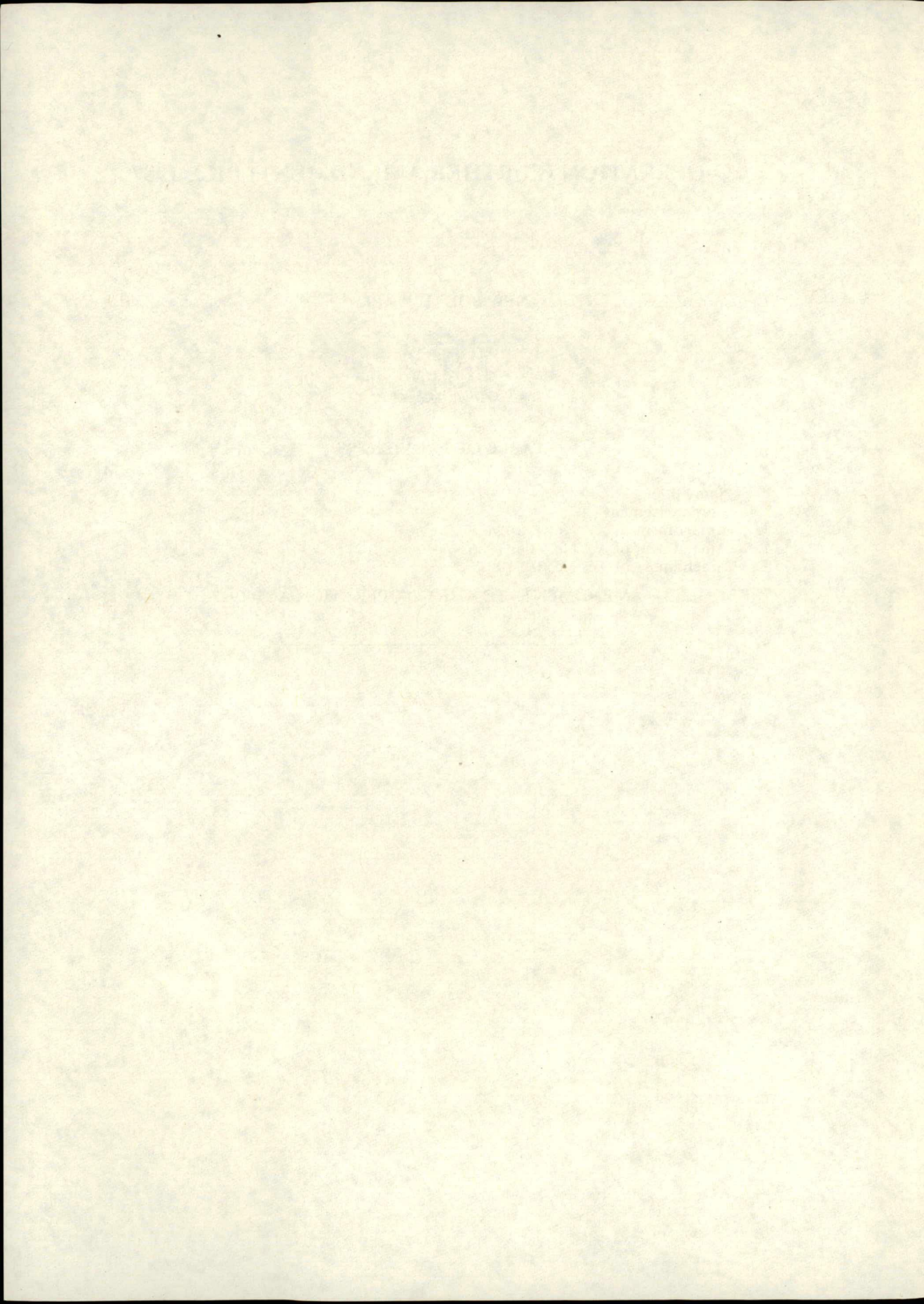
## TABLE OF PROVISIONS

1. Short title
2. Commencement
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4. Amendment of Act No. 106, 1986
5. Amendment of Act No. 19, 1987

SCHEDULE 1—AMENDMENTS TO THE CO-OPERATION ACT 1923

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*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.*

*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, , 1987*

NEW SOUTH WALES



Act No. , 1987

An Act to amend the Co-operation Act 1923 to make further provision with respect to the rights and obligations of members of co-operative societies; and for other purposes.



*Co-operation (Further Amendment) 1987*

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

**5 Short title**

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

**Commencement**

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

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

(3) Section 3, in its application to a provision of Schedule 1, shall  
15 commence on the day on which the provision commences.

**Amendment of Act No. 1, 1924**

3. The Co-operation Act 1923 is amended in the manner set forth in Schedule 1.

**Amendment of Act No. 106, 1986**

20 4. The Co-operation (Amendment) Act 1986 is amended—

(a) by omitting items (2), (9) (b), (13) (c), (13) (d), (20), (23), (26), (31) (a), (33) (a), (33) (d), (33) (f), (37), (38) (b), (38) (c), (41) (a), (41) (c) and (42) from Schedule 1;

(b) by omitting clauses 1-4 and 12 from Schedule 3.

**25 Amendment of Act No. 19, 1987**

5. The Co-operation (Amendment) Act 1987 is amended—

(a) by omitting item (7) (a) and (b) from Schedule 1;

(b) by omitting from item (3) in Schedule 2 the words "(within the meaning of section 5c)".



## SCHEDULE 1

(Sec. 3)

## AMENDMENTS TO THE CO-OPERATION ACT 1923

(1) Section 5 (**Interpretation**)—

## 5 (a) Section 5, definition of “Primary object”—

Omit the definition, insert instead:

“Primary object” is defined by section 80B.

## (b) Section 5, definition of “Subsidiary corporation” and “subsidiary society”—

## 10 Omit the definition of “Subsidiary corporation”, insert instead:

“Subsidiary corporation” and “subsidiary society” are defined by section 5B.

## (2) Sections 5A, 5B—

After section 5, insert:

15 **Co-operative principles:**

5A. (1) In this Act, a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

**Voluntary association and open membership:**

20 Membership of a co-operative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.

25 **Democratic control:**

30 Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Limited interest on capital:**

Share capital shall only receive a strictly limited rate of interest, if any.

**Equitable division of surplus:**

5 The economic results arising out of the operations of the society belong to the members of that society and shall be distributed in such a manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows:

- 10 (i) by provision for development of the business of the co-operative;
- (ii) by provision of common services; or
- (iii) by distribution among the members in proportion to their transactions with the society.

**15 Co-operative education:**

All co-operative societies shall make provision for the education of their members, officers, and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic.

**20 Co-operation among co-operatives:**

All co-operative organisations, in order to best serve the interests of their members and communities shall actively co-operate in every practical way with other co-operatives at local, national and international levels.

25 (2) Any requirement in this Act that a society function in accordance with co-operative principles shall not be construed—

- (a) as requiring the society to function in accordance with all of the principles set out in subsection (1); or
- 30 (b) as authorising the society to contravene any other provision of this Act or of its rules.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) The Governor may, by order published in the Gazette, amend the principles set out in subsection (1) so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

5      **Subsidiary corporations**

5B. (1) For the purposes of this Act, a corporation or society shall be deemed to be a subsidiary of a society—

- (a) controls the composition of the board of directors of the corporation or society;
- 10      (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation or society; or
- 15      (c) holds more than one-half of the issued share capital of the corporation or society (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(2) Without limiting by implication the circumstances in which the composition of a corporation's or society's board of directors is to be taken to be controlled by a society, the composition of a corporation's or society's board of directors shall be taken to be controlled by a society if the society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the society, can appoint or remove all or a majority of the directors, and, for the purposes of this section, the society shall be deemed to have power to make such an appointment if—

- 20      (a) a person cannot be appointed as a director without the exercise in that person's favour by the society of such a power; or
- 25      (b) a person's appointment as a director follows necessarily from that person's being a director or other officer of the society.
- 30



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) In determining whether a corporation or society is a subsidiary of a society (in this section referred to as “the society concerned”)—

5 (a) any shares held or power exercisable by the society concerned in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

10 (i) by any person as a nominee for the society concerned (except where the society is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of the society, not being a subsidiary that is concerned only in a fiduciary capacity,

15 shall be treated as held or exercisable by the society;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation or society, or of a trust deed for securing any issue of any such debentures, shall be disregarded; and

20 (d) any shares held or power exercisable by, or by a nominee for, the society concerned (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.

25

(4) In this section—

30 “corporation” has the meaning ascribed to that expression by the Companies (New South Wales) Code, and includes a society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(3) Section 38 (**Liability and membership**)—

Section 38 (7)—

After section 38 (6), insert:

5 (7) A person is not qualified to be admitted to membership of a society (except a building society or an association the majority of the component societies of which are building societies) unless there are reasonable grounds for believing that the person will be an active member of the society.

(4) Section 46 (**Members**)—

10 (a) Section 46 (7AA)—

Omit the subsection, insert instead:

(7AA) A person is not entitled to represent a body corporate if the person has been appointed to represent another body corporate and that appointment is still in force.

15 (b) Section 46 (7D)—

After section 46 (7C), insert:

20 (7D) A person is not entitled to exercise, under a power of attorney, the power of a member to vote if the person has that power in respect of another member under another power of attorney.

(5) Section 47 (**Shares**)—

(a) Section 47 (11), (11A)—

After section 47 (10), insert:

25 (11) Where a person holds shares in a society in contravention of subsection (10), the board of the society shall declare to be forfeited sufficient of those shares to remedy the contravention, being—

(a) those shares nominated by the person for the purpose; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) in the absence of such a nomination—those shares which have been held by the person for the shortest time,

and any such declaration shall have effect according to its tenor.

(11A) Sections 80X and 80Y (repayment of and interest on amounts due in respect of forfeited shares) apply to and in respect of shares forfeited under subsection (11) in the same manner as they apply to and in respect of shares forfeited under Division 4 of Part IIIA.

(b) Section 47 (17)–(22)—

Omit section 47 (17) and (18), insert instead:

(17) A share in a society cannot be sold or transferred except—

(a) in accordance with section 58 or 59 on the death of a member;

(b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or

(c) with the consent of the board, to a person who is qualified to be admitted to membership of the society under section 38 (7) (active membership).

(18) The board of a society (except a non-terminating building society or a society mentioned in the Second Schedule) shall not consent to the sale or transfer of shares if the sale or transfer would cause the nominal value of all shares sold or transferred since the commencement of the current financial year of the society to exceed the appropriate proportion of the nominal value of the issued share capital of the society as at that commencement.

(19) The appropriate proportion of the nominal value of issued share capital is—

(a) one-fifth or such other proportion as may be prescribed by the regulations; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) if the rules of the society provide for a lesser proportion, that lesser proportion.
- (20) Subsection (18) does not prevent the board from consenting to a sale or transfer—
- 5 (a) if the Minister approves, on the recommendation of the Advisory Council, either generally or in a particular case; or
- (b) in such circumstances as may be prescribed by the regulations.
- 10 (21) A person who sells or transfers, or disposes of the beneficial interest in, his or her shares in a society or who agrees to do any of those things shall, within 14 days, give notice in writing to the society of the fact.
- 15 (22) A person shall within 14 days after commencing to hold shares in a society as trustee for, or otherwise on behalf of or on account of, a person give notice in writing to the society giving details of the shareholding.
- (6) Section 64—
- Omit the section, insert instead:
- 20 **Property—power to acquire and dispose of**
64. (1) This section does not apply to a non-terminating building society.
- (2) A society may, in accordance with this Act—
- 25 (a) acquire by lease, purchase, donation, devise, bequest or otherwise any real or personal property for any objects of the society; and
- (b) sell or lease any such real or personal property.
- (3) The acquisition by a society of real or personal property primarily or mainly required for business or office accommodation of the society or of the society and other societies is an acquisition of real or personal property for the objects of the society.
- 30



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

5 (4) A sale or lease of the undertaking, or any part of the undertaking, as a going concern, of a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) shall be invalid unless—

(a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;

10 (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the sale or lease; and

15 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

(5) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of this section and section 79A.

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

20 (a) Section 70 (1)–(1C)—

Omit section 70 (1) and (1A), insert instead:

(1) A co-operative housing society may by special resolution determine that the society shall apply to be registered as a company under the Companies (New South Wales) Code.

25 (1A) A non-terminating building society or a society mentioned in the Second Schedule, other than a society prohibited from doing so by its rules, may apply to be registered as a company under the Companies (New South Wales) Code if—

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

(b) the provisions of Division 6 of Part III of the Permanent Building Societies Act 1967 have been complied with in respect of the proposal.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(1B) Any other society may apply to be registered as a company under the Companies (New South Wales) Code if—

- 5 (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;
- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the application being made; and
- 10 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

15 (1C) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of subsection (1B) and section 79A.

(b) Section 70 (7) (a)—

Omit the paragraph.

(c) Section 70 (7) (b) (ii)—

Omit the subparagraph, insert instead:

- 20 (ii) a copy of any special resolution required under this section, verified by the registrar, and a copy of any approval of the Minister required under this section, concerning the application;

(8) Sections 79A, 79B—

25 After section 79, insert:

**Special postal ballots**

79A. (1) This section applies to a postal ballot held by a society for the purposes of section 64, 70 or 92.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) The society shall send to each of its members, along with any other material required in connection with the postal ballot, a statement concerning—

(a) the financial position of the society;

5 (b) the interests of the directors of the society in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal;

10 (c) any compensation or consideration to be paid to officers or members of the society in connection with the proposal; and

(d) such other matters as the registrar directs.

(3) The contents of the statement must have been approved by the registrar.

15 (4) If the registrar so requires, the statement shall be accompanied by a report made by an independent person approved by the registrar concerning such matters as the registrar directs.

20 (5) On the declaration by the returning officer of the result of the ballot, the secretary of the society shall make an entry in the minute book of the society showing—

(a) the number of formal votes cast in favour of the proposal;

(b) the number of formal votes cast against the proposal; and

(c) the number of informal votes cast.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(6) If at least three-quarters of the formal votes cast are in favour of the proposal, the secretary shall, within 10 days after the declaration of the result, file with the registrar a copy signed by the secretary of the entry so made.

5      **Approval of the Minister etc.—ss. 64, 70, 92**

79B. (1) This section applies to action by a society for which, under section 64, 70 or 92, the approval of the Minister is required, given after consideration of the matter by the Advisory Council.

10      (2) The Advisory Council shall consider a proposed action to which this section applies and for that purpose, without limiting its power to consider other matters, may consider—

(a) the interests of members or a class of members of the society concerned;

15      (b) the interests of members of societies generally; and

(c) the interests of co-operation.

(3) The Advisory Council shall, after considering proposed action to which this section applies—

20      (a) recommend to the Minister that the transaction be approved; or

(b) refuse to make such a recommendation to the Minister.

(4) If the Advisory Council refuses to make a recommendation to the Minister—

25      (a) it shall give notice to the Minister and to the society concerned accordingly; and

(b) the society concerned may, within 14 days of receipt of the notice, make representations to the Minister concerning the matter.

30      (5) If the Advisory Council does not make a decision in respect of the proposed action within a reasonable time, the Minister may consider the matter.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(6) The Minister shall approve or refuse to approve the proposed action and for that purpose shall have regard to, but shall not be bound by, any recommendation of the Advisory Council.

5 (7) Without limiting the Minister's power to refuse approval of the proposed action, the Minister may refuse approval if of the opinion that the proposed action—

(a) would adversely affect a significant number of the members of the society;

10 (b) in the case of action under section 64, would adversely affect the efficiency, viability or profitability of the society;

(c) in the case of action under section 70 or 92, would adversely affect the efficiency, viability or profitability of any other society engaged in an activity in which the society is engaged; or

15 (d) would not be in the public interest.

(9) Part IIIA—

After Part III, insert:

## PART IIIA

## ACTIVE MEMBERSHIP

DIVISION 1—*Interpretation etc.***Application of Part to societies**

20 80A. (1) This Part does not apply to a building society or to an association the majority of the component societies of which are building societies.

(2) References in this Part to a society shall be construed accordingly.

**Primary objects—interpretation**

30 80B. (1) A chief primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) A primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object or a primary object of the society.

**Active membership—interpretation**

5           80C. For the purposes of this Act, a member of a society is an active member of the society if the member—

10           (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in the manner and to the extent which the rules of the society provide is sufficient to establish active membership; or

15           (b) maintains such other relationship or arrangement with the society in connection with the carrying on of a primary object of the society as the regulations provide is sufficient to establish active membership.

**Active membership provisions and resolutions—interpretation**

20           80D. (1) Active membership provisions in the rules of a society are provisions in the rules which specify—

(a) which of the objects of the society are the primary objects of the society; and

25           (b) the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active membership of the society.

30           (2) An active membership resolution is a resolution which would, if given effect to, make active membership provisions in the rules of a society.

(3) If an active membership resolution concerns a proposed chief primary object of the society it must not be concerned with any other object.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) An active membership resolution may be passed only by a special resolution.

DIVISION 2—*Active membership provisions***Number of primary objects**

5           80E. (1) A society must have at least 1 chief primary object.

(2) A society registered under this Act before the commencement of this section must have at least 1 chief primary object until its rules contain active membership provisions concerned with a primary object other than a chief primary object.

10           **Rules to contain active membership provisions**

80F. (1) The board of a society shall ensure that the rules of the society contain active membership provisions in accordance with this Part.

15           (2) The board shall comply with that requirement as soon as practicable after the commencement of this section and in any case within 12 months after that commencement.

(3) The period within which the requirement must be complied with may be extended for a particular society by order in writing—

20           (a) by the registrar, for a further period of up to 3 months or (after consultation with the Advisory Council) up to 2 years; or

(b) by the Minister, for such further period as the Minister determines after consultation with the Advisory Council.

25           (4) The registrar shall not grant an extension unless satisfied that it would not be reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(5) An alteration of the rules of a society effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 83 (3).

**Ministerial orders as to active membership provisions**

- 5           80G. (1) The Minister may by order published in the Gazette specify factors and considerations to be taken into account in determining—
- 10           (a) which of the objects of a society are its chief primary objects;
- (b) which of the objects of a society are its other primary objects; and
- 15           (c) the manner and extent to which a member is required to utilise or support an activity of, or maintain a relationship with, a society, in connection with the carrying on of a primary object of the society, to establish active membership of the society.
- (2) Factors and considerations may be specified so as to apply to societies generally, to a specified class of societies or to a specified individual society.
- 20           (3) The directors of a society shall ensure that any such factors and considerations are taken into account accordingly.

**Regular subscription—active membership**

- 25           80H. (1) Active membership provisions may include provision that the payment of a regular subscription by a member of the society, to be applied in connection with a primary object of the society, is sufficient to establish active membership of the society.
- (2) A member of a society who would, on payment of such a subscription, be an active member of a society shall be deemed to be an active member until—
- 30           (a) the subscription is due and payable; or



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) the expiration of the period of 12 months after the commencement of this section,

whichever is earlier.

5       **Active membership provisions—supply or purchase of goods or produce**

80i. (1) This section applies to a society if the primary objects of the society include the supply to or purchase from the society by its members of goods or produce.

10       (2) The only active membership provisions which may be contained in the rules of a society to which this section applies are—

- 15           (a) provisions requiring a member to utilise an activity of the society in connection with the carrying on of a primary object specified in the provisions to establish active membership; and

- (b) such other active membership provisions as the Minister may approve after consultation with the Advisory Council.

20       (3) A reference in this section, and in any active membership provisions of the rules of a society, to the supply to or purchase from a society by a member of goods or produce includes a reference to—

- 25           (a) the supply to or purchase from a corporation constituted by an Act for the purpose of the marketing of goods or produce if the corporation in turn supplies to or purchases from the society; and

- (b) the existence of a relationship or arrangement between the member and the society which is prescribed by the regulations as being sufficient to establish the relationship of supplier or purchaser.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*DIVISION 3—*Active membership resolution***Prior approval of active membership resolutions**

80J. (1) An active membership resolution cannot be proposed at a meeting of a society unless—

- 5 (a) before the meeting, the registrar has approved in writing of the terms of the proposed resolution; or
- (b) the active membership provisions which would result from the proposed resolution fall within parameters approved of in writing by the registrar before the meeting.

10 (2) Before giving an approval under this section, the registrar may require additional information from the proposers of the resolution for the purpose of deciding whether or not to approve of the resolution.

**Appeal against refusal of approval**

15 80K. (1) If the registrar refuses to approve of a proposed active membership resolution on the basis that the resolution would not result in active membership provisions which are appropriate for the society concerned or which would result in unreasonable active membership provisions—

- 20 (a) the registrar shall inform the society in writing of the reasons for the refusal; and
- (b) the Advisory Council shall, at the request of the society, review the registrar's decision to refuse approval.

25 (2) After its review, the Advisory Council may recommend to the registrar that the registrar approve of the proposed resolution and the registrar shall comply with such a recommendation.

**Notice of meeting**

30 80L. (1) At least 21 days' written notice shall be given to members of a society of a meeting at which an active membership resolution is to be proposed.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) The notice shall, in addition to the other matters required to be specified—

(a) specify whether the member is eligible to vote on the resolution;

5 (b) specify the full text of the proposed resolution; and

(c) contain a copy of section 80Q (forfeiture of shares of inactive members).

10 (3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the society, apply to the registrar for a determination as to the member's eligibility.

(4) The registrar may determine the matter, on the information available to the registrar, by direction in writing to the society and the member.

15 (5) The registrar's determination as to eligibility has effect but only if given before the meeting concerned is due to be held.

**Eligibility to vote on active membership resolutions**

20 80M. (1) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society contain active membership provisions are those members who at the time of the vote are active members of the society.

(2) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society do not contain active membership provisions are—

25 (a) if the resolution concerns a chief primary object—those members who at the time of the vote would (if the resolution were given effect to) be active members of the society in relation to that chief primary object; or



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- 5 (b) if the resolution does not concern a chief primary object—those members who at the time of the vote would be active members of the society if any active membership resolution concerning a chief primary object already passed at the meeting had taken effect as soon as it was passed.

**Eligibility of directors to vote at board meetings**

80N. At a meeting of the board of a society, a director is not eligible to vote on a proposal to submit an active membership resolution to a meeting of the society unless—

- 10 (a) the director will be eligible to vote on the resolution at a meeting of the society; or
- (b) less than 2 directors of the society (whether or not they are present at the meeting of the board) will be eligible to vote on the resolution at a meeting of the society.

15 **Consideration of active membership resolutions**

80O. (1) At a meeting of a society, proposed active membership resolutions shall be considered in the following order:

- (a) a resolution proposed by the board shall be considered before any other resolution;
- 20 (b) subject to paragraph (a), a resolution shall be considered before another resolution proposed after it for consideration at the meeting.

- 25 (2) If a proposed active membership resolution which concerns a proposed or current chief primary object of the society is passed at a meeting of the society, any other proposed active membership resolution for consideration at the meeting fails if—

- (a) it concerns a proposed or current chief primary object of the society; and



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) it would make provision which would conflict or overlap with provision to be made by the resolution already passed.

**Other entitlements etc. of members**

- 5 80P. A provision of this Division which renders a member of a society ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

DIVISION 4—*Forfeiture of shares etc.—inactive members***Forfeiture of shares**

- 10 80Q. (1) The board of a society with limited liability shall declare to be forfeited the shares of a member if—

- (a) the whereabouts of the member are not presently known to the society and have not been known to the society for a continuous period of at least 2 years before that time; or
- 15 (b) the member is not presently an active member of the society and has not been an active member of the society at any time during the past 2 years immediately before that time.

- 20 (2) This section applies to a member only if he or she was a member of the society throughout the 2 year period in question.

(3) The question of whether a member was an active member at a particular time in the past shall be determined as if the active membership provisions concerned had been in force at that time.

- 25 (4) The board's declaration under this section has the effect of forfeiting the shares concerned.

**Order of Minister against forfeiture**

- 30 80R. (1) The Minister may, if satisfied in a particular case after consultation with the Advisory Council that the forfeiture of shares under this section was or would be unreasonable, direct by order in writing that the shares should not have been forfeited or should not be forfeited.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) While such an order is in force—

- (a) the shares concerned are not required to be forfeited; and  
 (b) the person who was the holder of any forfeited shares concerned is entitled to be reinstated as a member of the society with all the rights and entitlements attaching to or arising from the former membership.

(3) Reinstatement of a member under this section shall be effected in accordance with the directions of the Minister.

**Deferral of forfeiture by board**

80s. The board of a society is entitled to defer forfeiture of a member's shares for up to one year (or such other period as may be prescribed) if—

- (a) the board thinks that during that period an active membership resolution may be put to the members of the society; and  
 (b) the effect of the resolution would be relevant to the question of whether the member is an active member.

**Special provisions—knowledge of societies before commencement of provisions**

80t. (1) The registrar may by order in writing direct that a society is not required to forfeit the shares of a member—

- (a) on the ground specified in section 80Q (1) (a)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member's whereabouts have not been known to the society; or  
 (b) on the ground specified in section 80Q (1) (b)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) Any such direction has effect for the period specified by the registrar which—

(a) shall not be longer than 3 months except after consultation with the Advisory Council; and

5 (b) in any case shall not be longer than 2 years.

**Forfeiture prohibited in certain circumstances**

80U. Unless the regulations otherwise provide, the board of a society shall not declare shares of a member to be forfeited under this section—

10 (a) if the society is under official management;

(b) if a compromise or an arrangement is being administered in respect of the society;

(c) if the society is in the course of being wound-up;

15 (d) if an appointment of a receiver of any property of the society is in force;

(e) if the society has, for the purposes of being registered as a company under the Companies (New South Wales) Code, filed with the registrar a copy of the entry made in the minute book of the society under section 79A (5); or

20 (f) in such other circumstances as may be prescribed.

**Notice of intention to forfeit shares**

80v. (1) The board of a society shall ensure that not less than one month's notice of its intention to declare the shares of a member to be forfeited is given to the member—

25 (a) by notice in writing sent to the member by post; or

(b) where the member's whereabouts are unknown to the society, by notice published in a newspaper circulating in the district in which the registered office of the society is situated.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) No notice is required to be given under this section where the member's whereabouts are unknown to the society and the amount subscribed in respect of the shares to be forfeited does not exceed \$50.

5        **Failure to forfeit shares—offence by directors**

80w. If the board of a society fails to declare the shares of a member to be forfeited as required by this Division, a director of the society who did not use all due diligence to prevent that failure is guilty of an offence and liable to a penalty not exceeding \$1,000.

10       **Repayment of amounts due in respect of forfeited shares**

80x. (1) If the shares of a member of a society are forfeited under this Division, the society shall, within 12 months after the date of forfeiture—

15            (a) repay to the former member the amount paid up in respect of the forfeited shares; or

20            (b) if the board is of the opinion that repayment would adversely affect the financial position of the society—apply that amount as a deposit by the former member with the society or allot debentures of the society to the former member in satisfaction of that amount.

(2) If the former member is subsequently readmitted to membership, any amount held by the society under this section shall, at the request of the member, be applied towards the cost of subscription for share capital.

25       **Interest on and repayment of deposits and debentures**

80y. (1) A deposit or debenture to which an amount due to a former member in respect of forfeited shares is transferred under this Division bears interest during any period—

30            (a) at the rate (or, where there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the society; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) where the rate of dividend payable in respect of that period has not been determined—at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined.

5 (2) Such a deposit or debenture shall be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the society.

10 (3) Such a deposit or debenture shall in any case be repaid within 10 years (or within such shorter period as the rules of the society may require) after forfeiture of the member's shares.

(4) The Advisory Council may extend the period for repayment under subsection (3) if satisfied that repayment of the amount within that period would cause the society financial hardship.

15 (5) An extension of a period by the Advisory Council shall be for such period as it considers reasonable and may be given subject to conditions.

(6) The period for repayment is extended accordingly, so long as the society complies with any conditions to which the extension is subject.

20 **Eligibility to vote—active membership**

80z. (1) A member of a society is not entitled to vote at a meeting of the society unless he or she is an active member of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) This section does not operate until the rules of the society contain active membership provisions.

**Register of forfeited shares**

5 80AA. A society shall keep a register, in the prescribed form, specifying the prescribed particulars of shareholders whose shares have been forfeited under this Division.

**Unclaimed Money Act 1982**

10 80AB. The Unclaimed Money Act 1982 does not operate to require money to be paid to the Treasurer under section 6 of that Act before the money is required to be repaid to a former member of a society under this Division.

**(10) Section 82 (Rules)—**

Section 82 (1) (d1)—

After section 82 (1) (d), insert:

15 (d1) active membership provisions (within the meaning of Part IIIA) except in the case of a building society or an association the majority of the component societies of which are building societies;

**(11) Section 84 (Board of directors)—**

20 (a) Section 84 (7) (b) (i)—

After “that society”, insert “(being a member whose shares are not required to be forfeited under Part IIIA—active membership)”.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (b) Section 84 (11) (e)—

After section 84 (11) (d), insert:

- (e) if the shares of the director are required to be forfeited under Part IIIA (active membership);

## 5 (c) Section 84 (14)—(14B)—

Omit section 84 (14), insert instead:

(14) A casual vacancy on the board of a society (other than a building society), being a vacancy under subsection (11), shall be filled by election by the members held—

- 10 (a) at a general meeting of the society;  
 (b) by means of a postal ballot; or  
 (c) in the manner specified in the rules of the society for the ordinary election of directors.

15 (14A) If at any time the number of directors of a society (other than a building society) is the same as or less than the number of directors required to constitute a quorum of the board—

- 20 (a) the board may appoint sufficient directors so that the number of directors is one more than a quorum; and  
 (b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum shall be the number of directors at that time.

(14B) A casual vacancy on the board of a building society shall be filled as prescribed by the rules of the society.

25 (12) Section 85 (**Meetings of the society**)—

Section 85 (4)—

After section 85 (3), insert:

- 30 (4) At any meeting of the society, a member whose shares are required to be forfeited under Part IIIA (active membership) is not entitled to be present.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(13) Section 86 (**Votes of members**)—

## (a) Section 86 (3)–(7)—

Omit the subsections, insert instead:

5 (3) If a member of a society has a relevant interest (as defined for the purposes of section 47B) in any shares held by another member or other members of the society, of the member and the other member or other members only one shall have a vote.

(4) Of those members, the one who has the vote is—

10 (a) the member nominated by those members for the purpose;  
or

(b) in the absence of such a nomination, the member whose name appears first in the register of members.

(5) A member who is thereby not entitled to vote may apply to the Advisory Council for a review of the matter.

15 (6) The Advisory Council may order that the member is entitled to vote if it is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable.

(7) The order of the Advisory Council has effect accordingly.

## (b) Section 86 (8A), (8B)—

20 After section 86 (8), insert:

(8A) If the shares of a member are required to be forfeited under Part IIIA (active membership), the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.

25 (8B) If a member has sold or transferred, or disposed of the beneficial interest in, his or her shares, or agreed to do any of those things, the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(14) Section 92 (**Winding-up**)—

## (a) Section 92 (3) (g1)—

After section 92 (3) (g), insert:

5 (g1) that the board of the society has, after notice from the registrar, failed to ensure that the rules of the society contain active membership provisions in accordance with Part IIIA;

## (b) Section 92 (7)—(7AB)—

Omit section 92 (7), insert instead:

10 (7) If a society is not a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule, it may be wound-up voluntarily only by a creditors' voluntary winding-up or if—

15 (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;

(b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the voluntary winding-up of the society; and

20 (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

25 (7AA) The Minister may, by order in writing, exempt a society or class of societies from compliance with all or specified provisions of subsection (7) and section 79A.

30 (7AB) A voluntary winding-up of a society pursuant to any such postal ballot shall be deemed to commence at the time the secretary of the society makes the entry in the minute book of the society under section 79A (6).

## (c) Section 92 (7A)—

Omit "subsection (7)", insert instead "section 79A".



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(d) Section 92 (7B)—

Omit “subsection (7) (c)”, insert instead “section 79A (6)”.

(15) Section 93A—

After section 92C, insert:

5       **Liability of member to contribute in a winding-up where shares  
forfeited etc.**

93A. (1) If a person ceases to be a member of a society within  
2 years before the commencement of the winding-up of the society  
because the person’s shares were cancelled under Part IIIA (active  
10       membership), the person is liable on the winding-up to contribute  
to the property of the society the nominal value of the cancelled  
shares immediately before their cancellation.

(2) If under section 52 a society (other than a building  
society)—

- 15       (a) purchases any share of a member in the society; or  
       (b) repays to a member the whole or any part of the amount  
          paid up on any share held by a member,

within 2 years before the commencement of the winding-up of the  
society, the member or former member is liable on the winding-  
up to contribute to the property of the society the amount which  
20       was paid by the society to the member or former member in  
respect of the purchase or repayment together with any amount  
unpaid on those shares immediately before the purchase or  
repayment.

25       (3) If, pursuant to a liability under subsection (1) or (2), a  
person contributes to the property of a society on a winding-up  
of the society, the amount contributed shall, for the purposes of  
the winding-up, be treated as having been paid up by the person  
on shares of the society.

30       (4) The liability of a member or former member of a society  
under this section is in addition to any other liability of the  
member or former member to contribute to the property of the  
society on a winding-up of the society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (16) Section 123A—

After section 123, insert:

**Savings and transitional provisions—amending Acts**

123A. The Fifth Schedule has effect.

## 5 (17) Fifth Schedule—

After the Fourth Schedule, insert:

## FIFTH SCHEDULE

(Sec. 123A)

## SAVINGS AND TRANSITIONAL PROVISIONS

10

*Co-operation (Further Amendment) Act 1987***Representation of body corporate members**

1. Section 46 (7AA), as repealed and re-enacted by the Co-operation (Further Amendment) Act 1987—

15

(a) applies in respect of an appointment to represent a body corporate even if the appointment was made before that repeal and re-enactment; and

20

(b) does not prevent a person appointed to represent a non-terminating building society or a society mentioned in the Second Schedule from representing that society so long as the appointment was made before the commencement of the Co-operation and Other Acts (Amendment) Act 1973.

**Registration as a company**

25

2. (1) On and from 12 May 1987, a society cannot apply to be registered as a company under the Companies (New South Wales) Code unless it complies with the provisions of section 70 of this Act as amended by the Co-operation (Further Amendment) Act 1987.

(2) For the purposes of the application of section 70 to a society, the amendments effected by the Co-operation (Further Amendment) Act 1987 shall be deemed to have commenced on 12 May 1987.

30

(3) This clause applies to a society even if before 12 May 1987 the society determined by special resolution that the society shall apply to be registered as a company under the Companies (New South Wales) Code.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Regulations—special postal ballots**

5 3. A regulation in force for the purposes of section 64, 70 or 92 immediately before the commencement of this clause shall, on that commencement, be deemed to have been made under this Act as amended by the Co-operation (Further Amendment) Act 1987.

**Qualifications for membership—likelihood of active membership**

4. Section 38 (7) does not apply to a society until the rules of the society contain active membership provisions in accordance with Part IIIA.

**Entitlement to more than one vote**

10 5. If, immediately before the commencement of Schedule 1 (13) to the Co-operation (Further Amendment) Act 1987, a member of a society was entitled to more than one vote, that entitlement of the member continues (notwithstanding the amendment of section 86 by that Act) until—

- 15 (a) 12 months after the commencement of this clause; or  
 (b) the rules of the society first contain active membership provisions, whichever is sooner.

**Liability on winding-up**

20 6. Section 93A (2) does not apply to a member if the purchase of the share of the member or the repayment of an amount paid up on the share of the member occurred before the commencement of that subsection.

**Regulations**

25 7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of the Co-operation (Further Amendment) Act 1987.

(2) A provision made under subclause (1) may take effect as from the date of assent to that Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- 30 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or  
 35 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.



SCHEDULE 1—*continued*

AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the other clauses of this Schedule.



**CO-OPERATION (FURTHER AMENDMENT) ACT 1987**  
**No. 118**

NEW SOUTH WALES



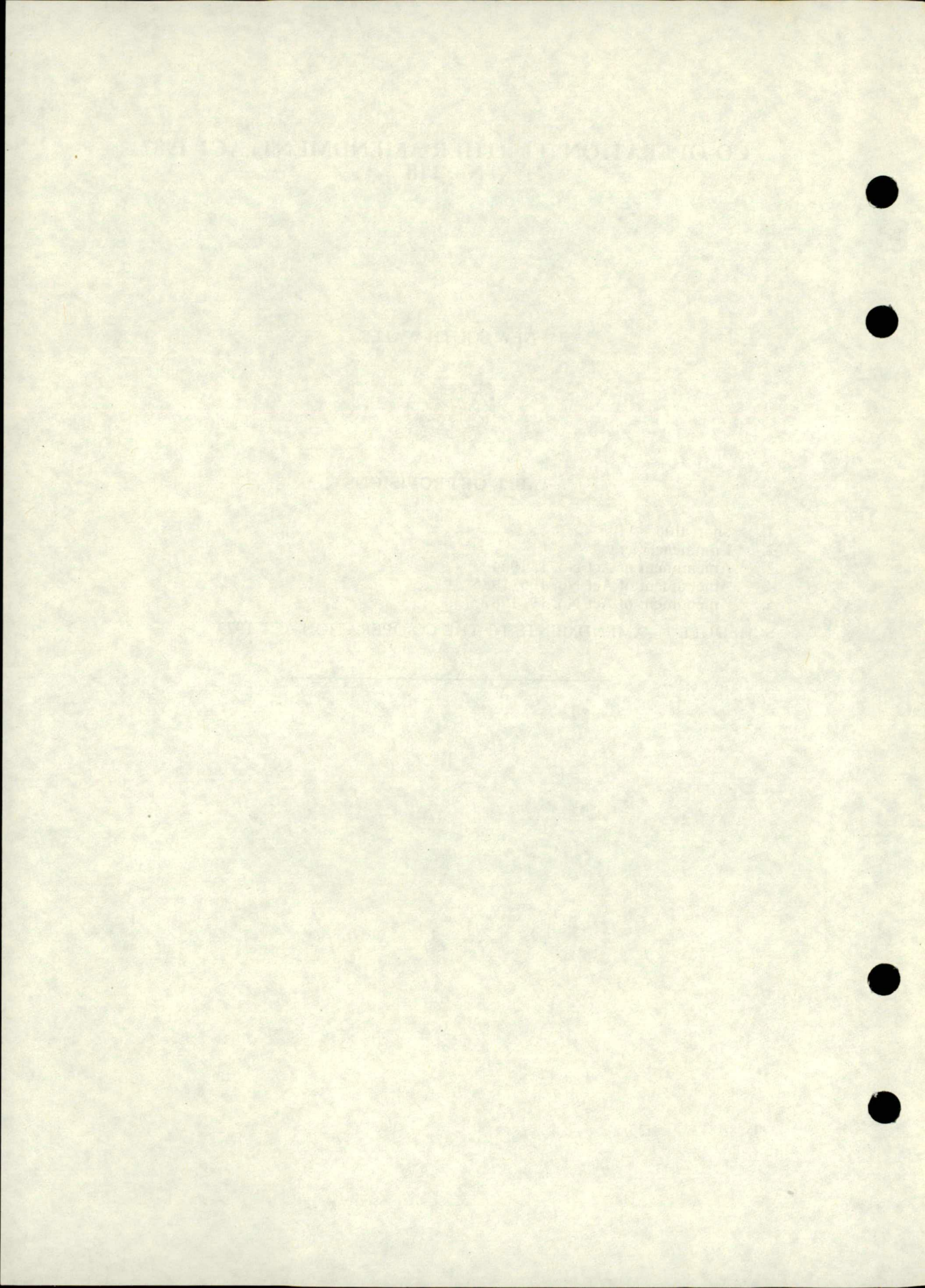
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SCHEDULE 1—AMENDMENTS TO THE CO-OPERATION ACT 1923

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**CO-OPERATION (FURTHER AMENDMENT) ACT 1987 No. 118**

NEW SOUTH WALES



**Act No. 118, 1987**

An Act to amend the Co-operation Act 1923 to make further provision with respect to the rights and obligations of members of co-operative societies; and for other purposes. [Assented to 16 June 1987]



*Co-operation (Further Amendment) 1987*

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

**Short title**

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

**Commencement**

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

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

(3) Section 3, in its application to a provision of Schedule 1, shall commence on the day on which the provision commences.

**Amendment of Act No. 1, 1924**

3. The Co-operation Act 1923 is amended in the manner set forth in Schedule 1.

**Amendment of Act No. 106, 1986**

4. The Co-operation (Amendment) Act 1986 is amended—

(a) by omitting items (2), (9) (b), (13) (c), (13) (d), (20), (23), (26), (31) (a), (33) (a), (33) (d), (33) (f), (37), (38) (b), (38) (c), (41) (a), (41) (c) and (42) from Schedule 1;

(b) by omitting clauses 1–4 and 12 from Schedule 3.

**Amendment of Act No. 19, 1987**

5. The Co-operation (Amendment) Act 1987 is amended—

(a) by omitting item (7) (a) and (b) from Schedule 1;

(b) by omitting from item (3) in Schedule 2 the words "(within the meaning of section 5c)".

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## SCHEDULE 1

(Sec. 3)

## AMENDMENTS TO THE CO-OPERATION ACT 1923

(1) Section 5 (**Interpretation**)—

## (a) Section 5, definition of “Primary object”—

Omit the definition, insert instead:

“Primary object” is defined by section 80B.

## (b) Section 5, definition of “Subsidiary corporation” and “subsidiary society”—

Omit the definition of “Subsidiary corporation”, insert instead:

“Subsidiary corporation” and “subsidiary society” are defined by section 5B.

## (2) Sections 5A, 5B—

After section 5, insert:

**Co-operative principles:**

5A. (1) In this Act, a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

**Voluntary association and open membership:**

Membership of a co-operative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.

**Democratic control:**

Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Limited interest on capital:**

Share capital shall only receive a strictly limited rate of interest, if any.

**Equitable division of surplus:**

The economic results arising out of the operations of the society belong to the members of that society and shall be distributed in such a manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows:

- (i) by provision for development of the business of the co-operative;
- (ii) by provision of common services; or
- (iii) by distribution among the members in proportion to their transactions with the society.

**Co-operative education:**

All co-operative societies shall make provision for the education of their members, officers, and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic.

**Co-operation among co-operatives:**

All co-operative organisations, in order to best serve the interests of their members and communities shall actively co-operate in every practical way with other co-operatives at local, national and international levels.

- (2) Any requirement in this Act that a society function in accordance with co-operative principles shall not be construed—
- (a) as requiring the society to function in accordance with all of the principles set out in subsection (1); or
  - (b) as authorising the society to contravene any other provision of this Act or of its rules.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) The Governor may, by order published in the Gazette, amend the principles set out in subsection (1) so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

**Subsidiary corporations**

5B. (1) For the purposes of this Act, a corporation or society shall be deemed to be a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of the corporation or society;
- (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation or society; or
- (c) holds more than one-half of the issued share capital of the corporation or society (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(2) Without limiting by implication the circumstances in which the composition of a corporation's or society's board of directors is to be taken to be controlled by a society, the composition of a corporation's or society's board of directors shall be taken to be controlled by a society if the society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the society, can appoint or remove all or a majority of the directors, and, for the purposes of this section, the society shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in that person's favour by the society of such a power; or
- (b) a person's appointment as a director follows necessarily from that person's being a director or other officer of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(3) In determining whether a corporation or society is a subsidiary of a society (in this section referred to as “the society concerned”)—

- (a) any shares held or power exercisable by the society concerned in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for the society concerned (except where the society is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of the society, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by the society;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation or society, or of a trust deed for securing any issue of any such debentures, shall be disregarded; and
  - (d) any shares held or power exercisable by, or by a nominee for, the society concerned (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.
- (4) In this section—

“corporation” has the meaning ascribed to that expression by the Companies (New South Wales) Code, and includes a society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(3) Section 38 (**Liability and membership**)—

Section 38 (7)—

After section 38 (6), insert:

(7) A person is not qualified to be admitted to membership of a society (except a building society or an association the majority of the component societies of which are building societies) unless there are reasonable grounds for believing that the person will be an active member of the society.

(4) Section 46 (**Members**)—

(a) Section 46 (7AA)—

Omit the subsection, insert instead:

(7AA) A person is not entitled to represent a body corporate if the person has been appointed to represent another body corporate and that appointment is still in force.

(b) Section 46 (7D)—

After section 46 (7C), insert:

(7D) A person is not entitled to exercise, under a power of attorney, the power of a member to vote if the person has that power in respect of another member under another power of attorney.

(5) Section 47 (**Shares**)—

(a) Section 47 (11), (11A)—

After section 47 (10), insert:

(11) Where a person holds shares in a society in contravention of subsection (10), the board of the society shall declare to be forfeited sufficient of those shares to remedy the contravention, being—

(a) those shares nominated by the person for the purpose; or



*Co-operation (Further Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) in the absence of such a nomination—those shares which have been held by the person for the shortest time,

and any such declaration shall have effect according to its tenor.

(11A) Sections 80X and 80Y (repayment of and interest on amounts due in respect of forfeited shares) apply to and in respect of shares forfeited under subsection (11) in the same manner as they apply to and in respect of shares forfeited under Division 4 of Part IIIA.

- (b) Section 47 (17)–(22)—

Omit section 47 (17) and (18), insert instead:

- (17) A share in a society cannot be sold or transferred except—

- (a) in accordance with section 58 or 59 on the death of a member;
- (b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or
- (c) with the consent of the board, to a person who is qualified to be admitted to membership of the society under section 38 (7) (active membership).

(18) The board of a society (except a non-terminating building society or a society mentioned in the Second Schedule) shall not consent to the sale or transfer of shares if the sale or transfer would cause the nominal value of all shares sold or transferred since the commencement of the current financial year of the society to exceed the appropriate proportion of the nominal value of the issued share capital of the society as at that commencement.

(19) The appropriate proportion of the nominal value of issued share capital is—

- (a) one-fifth or such other proportion as may be prescribed by the regulations; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) if the rules of the society provide for a lesser proportion, that lesser proportion.

(20) Subsection (18) does not prevent the board from consenting to a sale or transfer—

(a) if the Minister approves, on the recommendation of the Advisory Council, either generally or in a particular case; or

(b) in such circumstances as may be prescribed by the regulations.

(21) A person who sells or transfers, or disposes of the beneficial interest in, his or her shares in a society or who agrees to do any of those things shall, within 14 days, give notice in writing to the society of the fact.

(22) A person shall within 14 days after commencing to hold shares in a society as trustee for, or otherwise on behalf of or on account of, a person give notice in writing to the society giving details of the shareholding.

(6) Section 64—

Omit the section, insert instead:

**Property—power to acquire and dispose of**

64. (1) This section does not apply to a non-terminating building society.

(2) A society may, in accordance with this Act—

(a) acquire by lease, purchase, donation, devise, bequest or otherwise any real or personal property for any objects of the society; and

(b) sell or lease any such real or personal property.

(3) The acquisition by a society of real or personal property primarily or mainly required for business or office accommodation of the society or of the society and other societies is an acquisition of real or personal property for the objects of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) A sale or lease of the undertaking, or any part of the undertaking, as a going concern, of a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) shall be invalid unless—

- (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;
- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the sale or lease; and
- (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

(5) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of this section and section 79A.

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

(a) Section 70 (1)–(1C)—

Omit section 70 (1) and (1A), insert instead:

(1) A co-operative housing society may by special resolution determine that the society shall apply to be registered as a company under the Companies (New South Wales) Code.

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

- (a) details of the proposed application have first been submitted to the registrar; and
- (b) the provisions of Division 6 of Part III of the Permanent Building Societies Act 1967 have been complied with in respect of the proposal.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(1B) Any other society may apply to be registered as a company under the Companies (New South Wales) Code if—

- (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;
- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the application being made; and
- (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

(1C) The Minister may, by order in writing, exempt a society from compliance with all or specified provisions of subsection (1B) and section 79A.

(b) Section 70 (7) (a)—

Omit the paragraph.

(c) Section 70 (7) (b) (ii)—

Omit the subparagraph, insert instead:

- (ii) a copy of any special resolution required under this section, verified by the registrar, and a copy of any approval of the Minister required under this section, concerning the application;

(8) Sections 79A, 79B—

After section 79, insert:

**Special postal ballots**

79A. (1) This section applies to a postal ballot held by a society for the purposes of section 64, 70 or 92.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) The society shall send to each of its members, along with any other material required in connection with the postal ballot, a statement concerning—

- (a) the financial position of the society;
- (b) the interests of the directors of the society in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal;
- (c) any compensation or consideration to be paid to officers or members of the society in connection with the proposal; and
- (d) such other matters as the registrar directs.

(3) The contents of the statement must have been approved by the registrar.

(4) If the registrar so requires, the statement shall be accompanied by a report made by an independent person approved by the registrar concerning such matters as the registrar directs.

(5) On the declaration by the returning officer of the result of the ballot, the secretary of the society shall make an entry in the minute book of the society showing—

- (a) the number of formal votes cast in favour of the proposal;
- (b) the number of formal votes cast against the proposal; and
- (c) the number of informal votes cast.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(6) If at least three-quarters of the formal votes cast are in favour of the proposal, the secretary shall, within 10 days after the declaration of the result, file with the registrar a copy signed by the secretary of the entry so made.

**Approval of the Minister etc.—ss. 64, 70, 92**

79B. (1) This section applies to action by a society for which, under section 64, 70 or 92, the approval of the Minister is required, given after consideration of the matter by the Advisory Council.

(2) The Advisory Council shall consider a proposed action to which this section applies and for that purpose, without limiting its power to consider other matters, may consider—

- (a) the interests of members or a class of members of the society concerned;
- (b) the interests of members of societies generally; and
- (c) the interests of co-operation.

(3) The Advisory Council shall, after considering proposed action to which this section applies—

- (a) recommend to the Minister that the transaction be approved; or
- (b) refuse to make such a recommendation to the Minister.

(4) If the Advisory Council refuses to make a recommendation to the Minister—

- (a) it shall give notice to the Minister and to the society concerned accordingly; and
- (b) the society concerned may, within 14 days of receipt of the notice, make representations to the Minister concerning the matter.

(5) If the Advisory Council does not make a decision in respect of the proposed action within a reasonable time, the Minister may consider the matter.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(6) The Minister shall approve or refuse to approve the proposed action and for that purpose shall have regard to, but shall not be bound by, any recommendation of the Advisory Council.

(7) Without limiting the Minister's power to refuse approval of the proposed action, the Minister may refuse approval if of the opinion that the proposed action—

- (a) would adversely affect a significant number of the members of the society;
- (b) in the case of action under section 64, would adversely affect the efficiency, viability or profitability of the society;
- (c) in the case of action under section 70 or 92, would adversely affect the efficiency, viability or profitability of any other society engaged in an activity in which the society is engaged; or
- (d) would not be in the public interest.

(9) Part IIIA—

After Part III, insert:

## PART IIIA

## ACTIVE MEMBERSHIP

DIVISION 1—*Interpretation etc.***Application of Part to societies**

80A. (1) This Part does not apply to a building society or to an association the majority of the component societies of which are building societies.

(2) References in this Part to a society shall be construed accordingly.

**Primary objects—interpretation**

80B. (1) A chief primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) A primary object of a society is an object of the society which is specified in the rules of the society as a chief primary object or a primary object of the society.

**Active membership—interpretation**

80C. For the purposes of this Act, a member of a society is an active member of the society if the member—

- (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in the manner and to the extent which the rules of the society provide is sufficient to establish active membership; or
- (b) maintains such other relationship or arrangement with the society in connection with the carrying on of a primary object of the society as the regulations provide is sufficient to establish active membership.

**Active membership provisions and resolutions—interpretation**

80D. (1) Active membership provisions in the rules of a society are provisions in the rules which specify—

- (a) which of the objects of the society are the primary objects of the society; and
- (b) the manner in which and the extent to which a member of the society is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the society, in connection with the carrying on of a primary object of the society, in order to establish active membership of the society.

(2) An active membership resolution is a resolution which would, if given effect to, make active membership provisions in the rules of a society.

(3) If an active membership resolution concerns a proposed chief primary object of the society it must not be concerned with any other object.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) An active membership resolution may be passed only by a special resolution.

DIVISION 2—*Active membership provisions***Number of primary objects**

80E. (1) A society must have at least 1 chief primary object.

(2) A society registered under this Act before the commencement of this section must have at least 1 chief primary object until its rules contain active membership provisions concerned with a primary object other than a chief primary object.

**Rules to contain active membership provisions**

80F. (1) The board of a society shall ensure that the rules of the society contain active membership provisions in accordance with this Part.

(2) The board shall comply with that requirement as soon as practicable after the commencement of this section and in any case within 12 months after that commencement.

(3) The period within which the requirement must be complied with may be extended for a particular society by order in writing—

- (a) by the registrar, for a further period of up to 3 months or (after consultation with the Advisory Council) up to 2 years; or
- (b) by the Minister, for such further period as the Minister determines after consultation with the Advisory Council.

(4) The registrar shall not grant an extension unless satisfied that it would not be reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(5) An alteration of the rules of a society effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 83 (3).

**Ministerial orders as to active membership provisions**

80G. (1) The Minister may by order published in the Gazette specify factors and considerations to be taken into account in determining—

- (a) which of the objects of a society are its chief primary objects;
- (b) which of the objects of a society are its other primary objects; and
- (c) the manner and extent to which a member is required to utilise or support an activity of, or maintain a relationship with, a society, in connection with the carrying on of a primary object of the society, to establish active membership of the society.

(2) Factors and considerations may be specified so as to apply to societies generally, to a specified class of societies or to a specified individual society.

(3) The directors of a society shall ensure that any such factors and considerations are taken into account accordingly.

**Regular subscription—active membership**

80H. (1) Active membership provisions may include provision that the payment of a regular subscription by a member of the society, to be applied in connection with a primary object of the society, is sufficient to establish active membership of the society.

(2) A member of a society who would, on payment of such a subscription, be an active member of a society shall be deemed to be an active member until—

- (a) the subscription is due and payable; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) the expiration of the period of 12 months after the commencement of this section,

whichever is earlier.

**Active membership provisions—supply or purchase of goods or produce**

80I. (1) This section applies to a society if the primary objects of the society include the supply to or purchase from the society by its members of goods or produce.

(2) The only active membership provisions which may be contained in the rules of a society to which this section applies are—

- (a) provisions requiring a member to utilise an activity of the society in connection with the carrying on of a primary object specified in the provisions to establish active membership; and
- (b) such other active membership provisions as the Minister may approve after consultation with the Advisory Council.

(3) A reference in this section, and in any active membership provisions of the rules of a society, to the supply to or purchase from a society by a member of goods or produce includes a reference to—

- (a) the supply to or purchase from a corporation constituted by an Act for the purpose of the marketing of goods or produce if the corporation in turn supplies to or purchases from the society; and
- (b) the existence of a relationship or arrangement between the member and the society which is prescribed by the regulations as being sufficient to establish the relationship of supplier or purchaser.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*DIVISION 3—*Active membership resolution***Prior approval of active membership resolutions**

80J. (1) An active membership resolution cannot be proposed at a meeting of a society unless—

- (a) before the meeting, the registrar has approved in writing of the terms of the proposed resolution; or
- (b) the active membership provisions which would result from the proposed resolution fall within parameters approved of in writing by the registrar before the meeting.

(2) Before giving an approval under this section, the registrar may require additional information from the proposers of the resolution for the purpose of deciding whether or not to approve of the resolution.

**Appeal against refusal of approval**

80K. (1) If the registrar refuses to approve of a proposed active membership resolution on the basis that the resolution would not result in active membership provisions which are appropriate for the society concerned or which would result in unreasonable active membership provisions—

- (a) the registrar shall inform the society in writing of the reasons for the refusal; and
- (b) the Advisory Council shall, at the request of the society, review the registrar's decision to refuse approval.

(2) After its review, the Advisory Council may recommend to the registrar that the registrar approve of the proposed resolution and the registrar shall comply with such a recommendation.

**Notice of meeting**

80L. (1) At least 21 days' written notice shall be given to members of a society of a meeting at which an active membership resolution is to be proposed.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) The notice shall, in addition to the other matters required to be specified—

- (a) specify whether the member is eligible to vote on the resolution;
- (b) specify the full text of the proposed resolution; and
- (c) contain a copy of section 80Q (forfeiture of shares of inactive members).

(3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the society, apply to the registrar for a determination as to the member's eligibility.

(4) The registrar may determine the matter, on the information available to the registrar, by direction in writing to the society and the member.

(5) The registrar's determination as to eligibility has effect but only if given before the meeting concerned is due to be held.

**Eligibility to vote on active membership resolutions**

80M. (1) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society contain active membership provisions are those members who at the time of the vote are active members of the society.

(2) The only members of a society who are eligible to vote on an active membership resolution when the rules of the society do not contain active membership provisions are—

- (a) if the resolution concerns a chief primary object—those members who at the time of the vote would (if the resolution were given effect to) be active members of the society in relation to that chief primary object; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) if the resolution does not concern a chief primary object—those members who at the time of the vote would be active members of the society if any active membership resolution concerning a chief primary object already passed at the meeting had taken effect as soon as it was passed.

**Eligibility of directors to vote at board meetings**

80N. At a meeting of the board of a society, a director is not eligible to vote on a proposal to submit an active membership resolution to a meeting of the society unless—

- (a) the director will be eligible to vote on the resolution at a meeting of the society; or
- (b) less than 2 directors of the society (whether or not they are present at the meeting of the board) will be eligible to vote on the resolution at a meeting of the society.

**Consideration of active membership resolutions**

80O. (1) At a meeting of a society, proposed active membership resolutions shall be considered in the following order:

- (a) a resolution proposed by the board shall be considered before any other resolution;
- (b) subject to paragraph (a), a resolution shall be considered before another resolution proposed after it for consideration at the meeting.

(2) If a proposed active membership resolution which concerns a proposed or current chief primary object of the society is passed at a meeting of the society, any other proposed active membership resolution for consideration at the meeting fails if—

- (a) it concerns a proposed or current chief primary object of the society; and



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

- (b) it would make provision which would conflict or overlap with provision to be made by the resolution already passed.

**Other entitlements etc. of members**

80P. A provision of this Division which renders a member of a society ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

DIVISION 4—*Forfeiture of shares etc.—inactive members***Forfeiture of shares**

80Q. (1) The board of a society with limited liability shall declare to be forfeited the shares of a member if—

- (a) the whereabouts of the member are not presently known to the society and have not been known to the society for a continuous period of at least 2 years before that time; or
- (b) the member is not presently an active member of the society and has not been an active member of the society at any time during the past 2 years immediately before that time.

(2) This section applies to a member only if he or she was a member of the society throughout the 2 year period in question.

(3) The question of whether a member was an active member at a particular time in the past shall be determined as if the active membership provisions concerned had been in force at that time.

(4) The board's declaration under this section has the effect of forfeiting the shares concerned.

**Order of Minister against forfeiture**

80R. (1) The Minister may, if satisfied in a particular case after consultation with the Advisory Council that the forfeiture of shares under this section was or would be unreasonable, direct by order in writing that the shares should not have been forfeited or should not be forfeited.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) While such an order is in force—

- (a) the shares concerned are not required to be forfeited; and
- (b) the person who was the holder of any forfeited shares concerned is entitled to be reinstated as a member of the society with all the rights and entitlements attaching to or arising from the former membership.

(3) Reinstatement of a member under this section shall be effected in accordance with the directions of the Minister.

**Deferral of forfeiture by board**

80s. The board of a society is entitled to defer forfeiture of a member's shares for up to one year (or such other period as may be prescribed) if—

- (a) the board thinks that during that period an active membership resolution may be put to the members of the society; and
- (b) the effect of the resolution would be relevant to the question of whether the member is an active member.

**Special provisions—knowledge of societies before commencement of provisions**

80t. (1) The registrar may by order in writing direct that a society is not required to forfeit the shares of a member—

- (a) on the ground specified in section 80Q (1) (a)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member's whereabouts have not been known to the society; or
- (b) on the ground specified in section 80Q (1) (b)—if the registrar is satisfied that it is not reasonably practicable for the society to determine for how long before the commencement of this section a member has not been an active member of the society.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) Any such direction has effect for the period specified by the registrar which—

- (a) shall not be longer than 3 months except after consultation with the Advisory Council; and
- (b) in any case shall not be longer than 2 years.

**Forfeiture prohibited in certain circumstances**

80U. Unless the regulations otherwise provide, the board of a society shall not declare shares of a member to be forfeited under this section—

- (a) if the society is under official management;
- (b) if a compromise or an arrangement is being administered in respect of the society;
- (c) if the society is in the course of being wound-up;
- (d) if an appointment of a receiver of any property of the society is in force;
- (e) if the society has, for the purposes of being registered as a company under the Companies (New South Wales) Code, filed with the registrar a copy of the entry made in the minute book of the society under section 79A (5); or
- (f) in such other circumstances as may be prescribed.

**Notice of intention to forfeit shares**

80v. (1) The board of a society shall ensure that not less than one month's notice of its intention to declare the shares of a member to be forfeited is given to the member—

- (a) by notice in writing sent to the member by post; or
- (b) where the member's whereabouts are unknown to the society, by notice published in a newspaper circulating in the district in which the registered office of the society is situated.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) No notice is required to be given under this section where the member's whereabouts are unknown to the society and the amount subscribed in respect of the shares to be forfeited does not exceed \$50.

**Failure to forfeit shares—offence by directors**

80w. If the board of a society fails to declare the shares of a member to be forfeited as required by this Division, a director of the society who did not use all due diligence to prevent that failure is guilty of an offence and liable to a penalty not exceeding \$1,000.

**Repayment of amounts due in respect of forfeited shares**

80x. (1) If the shares of a member of a society are forfeited under this Division, the society shall, within 12 months after the date of forfeiture—

- (a) repay to the former member the amount paid up in respect of the forfeited shares; or
- (b) if the board is of the opinion that repayment would adversely affect the financial position of the society—apply that amount as a deposit by the former member with the society or allot debentures of the society to the former member in satisfaction of that amount.

(2) If the former member is subsequently readmitted to membership, any amount held by the society under this section shall, at the request of the member, be applied towards the cost of subscription for share capital.

**Interest on and repayment of deposits and debentures**

80y. (1) A deposit or debenture to which an amount due to a former member in respect of forfeited shares is transferred under this Division bears interest during any period—

- (a) at the rate (or, where there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the society; or



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(b) where the rate of dividend payable in respect of that period has not been determined—at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined.

(2) Such a deposit or debenture shall be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the society.

(3) Such a deposit or debenture shall in any case be repaid within 10 years (or within such shorter period as the rules of the society may require) after forfeiture of the member's shares.

(4) The Advisory Council may extend the period for repayment under subsection (3) if satisfied that repayment of the amount within that period would cause the society financial hardship.

(5) An extension of a period by the Advisory Council shall be for such period as it considers reasonable and may be given subject to conditions.

(6) The period for repayment is extended accordingly, so long as the society complies with any conditions to which the extension is subject.

**Eligibility to vote—active membership**

80z. (1) A member of a society is not entitled to vote at a meeting of the society unless he or she is an active member of the society.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(2) This section does not operate until the rules of the society contain active membership provisions.

**Register of forfeited shares**

80AA. A society shall keep a register, in the prescribed form, specifying the prescribed particulars of shareholders whose shares have been forfeited under this Division.

**Unclaimed Money Act 1982**

80AB. The Unclaimed Money Act 1982 does not operate to require money to be paid to the Treasurer under section 6 of that Act before the money is required to be repaid to a former member of a society under this Division.

**(10) Section 82 (Rules)—**

Section 82 (1) (d1)—

After section 82 (1) (d), insert:

(d1) active membership provisions (within the meaning of Part IIIA) except in the case of a building society or an association the majority of the component societies of which are building societies;

**(11) Section 84 (Board of directors)—**

(a) Section 84 (7) (b) (i)—

After “that society”, insert “(being a member whose shares are not required to be forfeited under Part IIIA—active membership)”.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

## (b) Section 84 (11) (e)—

After section 84 (11) (d), insert:

- (e) if the shares of the director are required to be forfeited under Part IIIA (active membership);

## (c) Section 84 (14)–(14B)—

Omit section 84 (14), insert instead:

(14) A casual vacancy on the board of a society (other than a building society), being a vacancy under subsection (11), shall be filled by election by the members held—

- (a) at a general meeting of the society;  
(b) by means of a postal ballot; or  
(c) in the manner specified in the rules of the society for the ordinary election of directors.

(14A) If at any time the number of directors of a society (other than a building society) is the same as or less than the number of directors required to constitute a quorum of the board—

- (a) the board may appoint sufficient directors so that the number of directors is one more than a quorum; and  
(b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum shall be the number of directors at that time.

(14B) A casual vacancy on the board of a building society shall be filled as prescribed by the rules of the society.

(12) Section 85 (**Meetings of the society**)—

Section 85 (4)—

After section 85 (3), insert:

(4) At any meeting of the society, a member whose shares are required to be forfeited under Part IIIA (active membership) is not entitled to be present.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(13) Section 86 (**Votes of members**)—

## (a) Section 86 (3)–(7)—

Omit the subsections, insert instead:

(3) If a member of a society has a relevant interest (as defined for the purposes of section 47B) in any shares held by another member or other members of the society, of the member and the other member or other members only one shall have a vote.

(4) Of those members, the one who has the vote is—

(a) the member nominated by those members for the purpose;  
or

(b) in the absence of such a nomination, the member whose name appears first in the register of members.

(5) A member who is thereby not entitled to vote may apply to the Advisory Council for a review of the matter.

(6) The Advisory Council may order that the member is entitled to vote if it is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable.

(7) The order of the Advisory Council has effect accordingly.

## (b) Section 86 (8A), (8B)—

After section 86 (8), insert:

(8A) If the shares of a member are required to be forfeited under Part IIIA (active membership), the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.

(8B) If a member has sold or transferred, or disposed of the beneficial interest in, his or her shares, or agreed to do any of those things, the member is not entitled to vote and any vote cast by or on behalf of the member when not entitled to vote shall be disregarded.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*(14) Section 92 (**Winding-up**)—

## (a) Section 92 (3) (g1)—

After section 92 (3) (g), insert:

- (g1) that the board of the society has, after notice from the registrar, failed to ensure that the rules of the society contain active membership provisions in accordance with Part IIIA;

## (b) Section 92 (7)—(7AB)—

Omit section 92 (7), insert instead:

(7) If a society is not a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule, it may be wound-up voluntarily only by a creditors' voluntary winding-up or if—

- (a) at a postal ballot of the members held in the prescribed manner and in accordance with section 79A at least three-quarters of the formal votes cast are in favour;
- (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the voluntary winding-up of the society; and
- (c) the rules of the society contain active membership provisions or steps have been taken, as required by the Advisory Council, to determine the preferences of active members.

(7AA) The Minister may, by order in writing, exempt a society or class of societies from compliance with all or specified provisions of subsection (7) and section 79A.

(7AB) A voluntary winding-up of a society pursuant to any such postal ballot shall be deemed to commence at the time the secretary of the society makes the entry in the minute book of the society under section 79A (6).

## (c) Section 92 (7A)—

Omit “subsection (7)”, insert instead “section 79A”.



SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(d) Section 92 (7B)—

Omit “subsection (7) (c)”, insert instead “section 79A (6)”.

(15) Section 93A—

After section 92C, insert:

**Liability of member to contribute in a winding-up where shares forfeited etc.**

93A. (1) If a person ceases to be a member of a society within 2 years before the commencement of the winding-up of the society because the person’s shares were cancelled under Part IIIA (active membership), the person is liable on the winding-up to contribute to the property of the society the nominal value of the cancelled shares immediately before their cancellation.

(2) If under section 52 a society (other than a building society)—

- (a) purchases any share of a member in the society; or
- (b) repays to a member the whole or any part of the amount paid up on any share held by a member,

within 2 years before the commencement of the winding-up of the society, the member or former member is liable on the winding-up to contribute to the property of the society the amount which was paid by the society to the member or former member in respect of the purchase or repayment together with any amount unpaid on those shares immediately before the purchase or repayment.

(3) If, pursuant to a liability under subsection (1) or (2), a person contributes to the property of a society on a winding-up of the society, the amount contributed shall, for the purposes of the winding-up, be treated as having been paid up by the person on shares of the society.

(4) The liability of a member or former member of a society under this section is in addition to any other liability of the member or former member to contribute to the property of the society on a winding-up of the society.



*Co-operation (Further Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(16) Section 123A—

After section 123, insert:

**Savings and transitional provisions—amending Acts**

123A. The Fifth Schedule has effect.

(17) Fifth Schedule—

After the Fourth Schedule, insert:

FIFTH SCHEDULE

(Sec. 123A)

SAVINGS AND TRANSITIONAL PROVISIONS

*Co-operation (Further Amendment) Act 1987*

**Representation of body corporate members**

1. Section 46 (7AA), as repealed and re-enacted by the Co-operation (Further Amendment) Act 1987—

- (a) applies in respect of an appointment to represent a body corporate even if the appointment was made before that repeal and re-enactment; and
- (b) does not prevent a person appointed to represent a non-terminating building society or a society mentioned in the Second Schedule from representing that society so long as the appointment was made before the commencement of the Co-operation and Other Acts (Amendment) Act 1973.

**Registration as a company**

2. (1) On and from 12 May 1987, a society cannot apply to be registered as a company under the Companies (New South Wales) Code unless it complies with the provisions of section 70 of this Act as amended by the Co-operation (Further Amendment) Act 1987.

(2) For the purposes of the application of section 70 to a society, the amendments effected by the Co-operation (Further Amendment) Act 1987 shall be deemed to have commenced on 12 May 1987.

(3) This clause applies to a society even if before 12 May 1987 the society determined by special resolution that the society shall apply to be registered as a company under the Companies (New South Wales) Code.



*Co-operation (Further Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued***Regulations—special postal ballots**

3. A regulation in force for the purposes of section 64, 70 or 92 immediately before the commencement of this clause shall, on that commencement, be deemed to have been made under this Act as amended by the Co-operation (Further Amendment) Act 1987.

**Qualifications for membership—likelihood of active membership**

4. Section 38 (7) does not apply to a society until the rules of the society contain active membership provisions in accordance with Part IIIA.

**Entitlement to more than one vote**

5. If, immediately before the commencement of Schedule 1 (13) to the Co-operation (Further Amendment) Act 1987, a member of a society was entitled to more than one vote, that entitlement of the member continues (notwithstanding the amendment of section 86 by that Act) until—

(a) 12 months after the commencement of this clause; or

(b) the rules of the society first contain active membership provisions, whichever is sooner.

**Liability on winding-up**

6. Section 93A (2) does not apply to a member if the purchase of the share of the member or the repayment of an amount paid up on the share of the member occurred before the commencement of that subsection.

**Regulations**

7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of the Co-operation (Further Amendment) Act 1987.

(2) A provision made under subclause (1) may take effect as from the date of assent to that Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.



SCHEDULE 1—*continued*

AMENDMENTS TO THE CO-OPERATION ACT 1923—*continued*

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the other clauses of this Schedule.