

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
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 enable the steps involved in the granting of certain loans by co-operative housing societies to be simplified (so that the borrowers concerned will have sufficient time to exercise their rights under the proposed legislative scheme to defeat gazumping);
- (b) to simplify the procedure under which certain lending bodies may obtain Government guarantees for the repayment of money advanced by them to those societies;
- (c) to continue in force certain indemnities and guarantees that have already been given; and
- (d) to make other changes intended to improve the administration of that Act.

The Bill also makes minor consequential amendments to the Government Guarantees Act 1934.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Clause 4 makes consequential amendments to the Government Guarantees Act 1934 by omitting provisions authorising the Treasurer to execute guarantees in favour of lenders to co-operative housing societies.

Schedule 1 (1) amends section 16A (Approval of additional security required in certain cases) of the Principal Act in minor respects to conform with the proposed new scheme for granting indemnities under section 17AB of that Act.

Co-operation (Indemnities and Guarantees) Amendment 1987

Schedule 1 (2) amends section 17AB (Indemnity where loan made by building society) of the Principal Act so as to restate with modifications the power of the Treasurer to provide indemnities required by co-operative building societies which lend (up to a prescribed limit) a high proportion of the value of residential land. Under the proposed amendments, it will not be necessary for an indemnity to be separately recommended and granted for each loan which meets certain guidelines. Apart from conditions already imposed by the Principal Act on any such indemnity, the Treasurer is to be authorised to impose additional terms and conditions.

Schedule 1 (3) repeals and re-enacts section 17AC of the Principal Act and inserts proposed section 17AD into that Act. Of the proposed sections:

Section 17AC (Guarantee where loan made to co-operative housing society) restates in simpler terms the provisions under which the Treasurer may execute guarantees in favour of banks, friendly societies and certain other bodies which advance money to co-operative housing societies. The current requirement for approval of such guarantees by the Governor-in-Council is to be omitted.

Section 17AD (Delegation by Treasurer) permits the Treasurer to delegate to the Minister, or to the registrar or deputy registrar under the Principal Act, any or all of the Treasurer's functions under amended section 17AB and proposed section 17AC.

Schedule 1 (4) amends section 18A (Valuers) of the Principal Act so as to enable regulations to be made setting out circumstances in which valuations of land proposed to be mortgaged in favour of certain co-operative building societies may be dispensed with.

Schedule 1 (5) amends section 95A (Appointment of administrator of society) of the Principal Act so that the appointment of a liquidator of a society registered under the Principal Act will immediately revoke the appointment of any administrator of the society.

Schedule 1 (6) inserts clause 8 (Savings relating to indemnities and guarantees) into the Fifth Schedule to the Principal Act. The proposed clause will save indemnities issued under that Act and guarantees executed under the Government Guarantees Act 1934 in accordance with provisions to be repealed and re-enacted in modified form in the Principal Act.

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 1, 1924
4. Amendment of Act No. 57, 1934

SCHEDULE 1—AMENDMENTS

THE UNIVERSITY OF CHICAGO
LIBRARY

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Co-operation Act 1923 so as to expedite the granting of certain housing loans; and for other purposes.

Co-operation (Indemnities and Guarantees) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Co-operation (Indemnities and Guarantees) Amendment Act 1987.

5 Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on a day to be appointed by proclamation.

(2) Schedule 1 (4) and (5), and section 3 in its application to those provisions, shall commence on the date of assent to this Act.

10 Amendment of Act No. 1, 1924

3. The Co-operation Act 1923 is amended as set out in Schedule 1.

Amendment of Act No. 57, 1934

4. The Government Guarantees Act 1934 is amended—

- 15 (a) by inserting in section 3 (2) (b) after the word “society” the words “(other than a co-operative housing society)”;
- (b) by omitting the first proviso to section 3 (2) and the proviso to section 3 (2A);
- (c) by inserting in section 3 (2A) after the words “building society” the words “(other than a co-operative housing society)”;
- 20 (d) by omitting section 4A.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 16A (**Approval of additional security required in certain cases**)—
- 25 (a) Section 16A (2) (b)—
Omit “takes”, insert instead “obtains”.
- (b) Section 16A (3)—
Omit “take”, insert instead “obtain”.
- (c) Section 16A (3) (b)—
- 30 Omit the paragraph, insert instead:
(b) an indemnity granted under section 17AB;
- (2) Section 17AB (**Indemnity where loan made by building society**)—
- (a) Section 17AB (1)–(2D)—
Omit section 17AB (1) and (2), insert instead:

*Co-operation (Indemnities and Guarantees) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(1) The Treasurer may grant a written indemnity for a building society which indemnifies the society against loss suffered by the society in respect of a loan made or to be made by the society.

5 (2) The maximum loss against which a society is indemnified in respect of a loan is the balance of the prescribed amount after deducting from that amount—

- (a) the value of the share capital of the member; and
- (b) any amount that would, but for neglect or misconduct of the society or its servants or agents, have been received by the society with respect to the loan.

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(2A) In subsection (2)—

“prescribed amount”, in relation to a loan, means the amount by which the loan exceeds 80 per cent of the value of the security for the loan when the loan was made.

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(2B) An indemnity granted in respect of a loan made by a society is enforceable by the society only if—

- (a) in relation to the loan, the society complies with the guidelines approved by the Co-operative Housing Societies Advisory Committee and in force when the loan is made; or
- (b) the indemnity was granted on the recommendation of that Committee,

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and the society has not, in relation to the loan, contravened any of the terms or prescribed or other conditions to which the indemnity is subject.

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(2C) An indemnity in respect of a loan made by a society is subject to—

- (a) the terms and conditions set out in the indemnity when it is granted;
- (b) the prescribed conditions in force when the loan is made; and
- (c) any other terms and conditions imposed by the Treasurer, notice of which has been served on the society before the loan is made.

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(2D) An indemnity may apply—

- (a) with respect to a particular loan; or
- (b) with respect to loans of any class, whether or not made or to be made by the same society.

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(b) Section 17AB (3)—

*Co-operation (Indemnities and Guarantees) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

Omit “conditions subject to which the Treasurer agrees to indemnify a society under subsection (1)”, insert instead “prescribed conditions referred to in this section”.

(c) Section 17AB (3) (i)—

5 Omit the paragraph, insert instead:

- (i) such other conditions as may be declared by the regulations to be prescribed conditions for the purposes of indemnities under this section.

(d) Section 17AB (4), (5)—

10 Omit the subsections.

(e) Section 17AB (6)—

Omit “by way of”, insert instead “in connection with an”.

(f) Section 17AB (7)—

Omit the subsection, insert instead:

15 (7) If a term, a prescribed condition or any other condition to which an indemnity relating to a society is subject is contravened, the Treasurer may, by notice served on the society, cancel the indemnity—

20 (a) where it was granted in respect of a particular loan—wholly; or

(b) where it was granted in respect of loans of a class made or to be made by that society—wholly or to the extent to which it applied in respect of any one or more of those loans.

(g) Section 17AB (8)—

Omit “to which he has agreed under this section”.

(3) Sections 17AC, 17AD—

Omit section 17AC, insert instead:

Guarantee where loan made to co-operative housing society

30 17AC. (1) The Treasurer may, on the recommendation of the Co-operative Housing Societies Advisory Committee, execute a guarantee in favour of—

(a) any bank;

35 (b) any society registered under the Friendly Societies Act 1912;

(c) the Government Insurance Office of New South Wales; or

(d) any other person approved by the Treasurer,

SCHEDULE 1—AMENDMENTS—*continued*

for the repayment of any advance to a co-operative housing society made or to be made by the bank, society, office or other person.

5 (2) Except as provided by subsections (3) and (4), sections 4 and 5 of the Government Guarantees Act 1934 apply to a guarantee authorised by this section in the same way as they apply to a guarantee authorised by that Act.

10 (3) The guarantee shall be part of a three-party loan and guarantee agreement between the lender (being the bank, friendly society, Government Insurance Office or approved person concerned), the Treasurer and the co-operative housing society under which, in consideration for the advance to be made by the lender to the co-operative housing society and the guarantee to be given by the Treasurer—

15 (a) the co-operative housing society and the lender undertake to observe the terms and conditions specified in the agreement; and

20 (b) the co-operative housing society creates a charge in favour of the Treasurer over the securities given to the society by its members in respect of loans to be made from the advance.

(4) The guarantee is enforceable against the Treasurer and the Consolidated Fund even though the lender is not authorised—

25 (a) to hold any security in respect of the debt guaranteed (other than the guarantee); or

(b) to appoint a receiver or manager of the property of the co-operative housing society.

Delegation by Treasurer

30 17AD. The Treasurer may delegate to the Minister, the registrar or the deputy registrar any or all of the Treasurer's powers, authorities, duties or functions under section 17AB or 17AC or both of those sections.

(4) Section 18A (**Valuers**)—

Section 18A (4)—

35 After section 18A (3), insert:

(4) The regulations may prescribe circumstances in which and conditions subject to which a valuation as referred to in subsection (1) is not necessary.

(5) Section 95A (**Appointment of administrator of society**)—

40 (a) Section 95A (5A)—

Co-operation (Indemnities and Guarantees) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

After section 95A (5), insert:

(5A) When a liquidator of a society is appointed, the appointment of any administrator of the society is revoked.

(b) Section 95A (6)—

5 Before “section 95B (2)”, insert “subsection (5A) or”.

(6) Fifth Schedule—

At the end of the Fifth Schedule, insert:

Co-operation (Indemnities and Guarantees) Amendment Act 1987

Savings relating to indemnities and guarantees

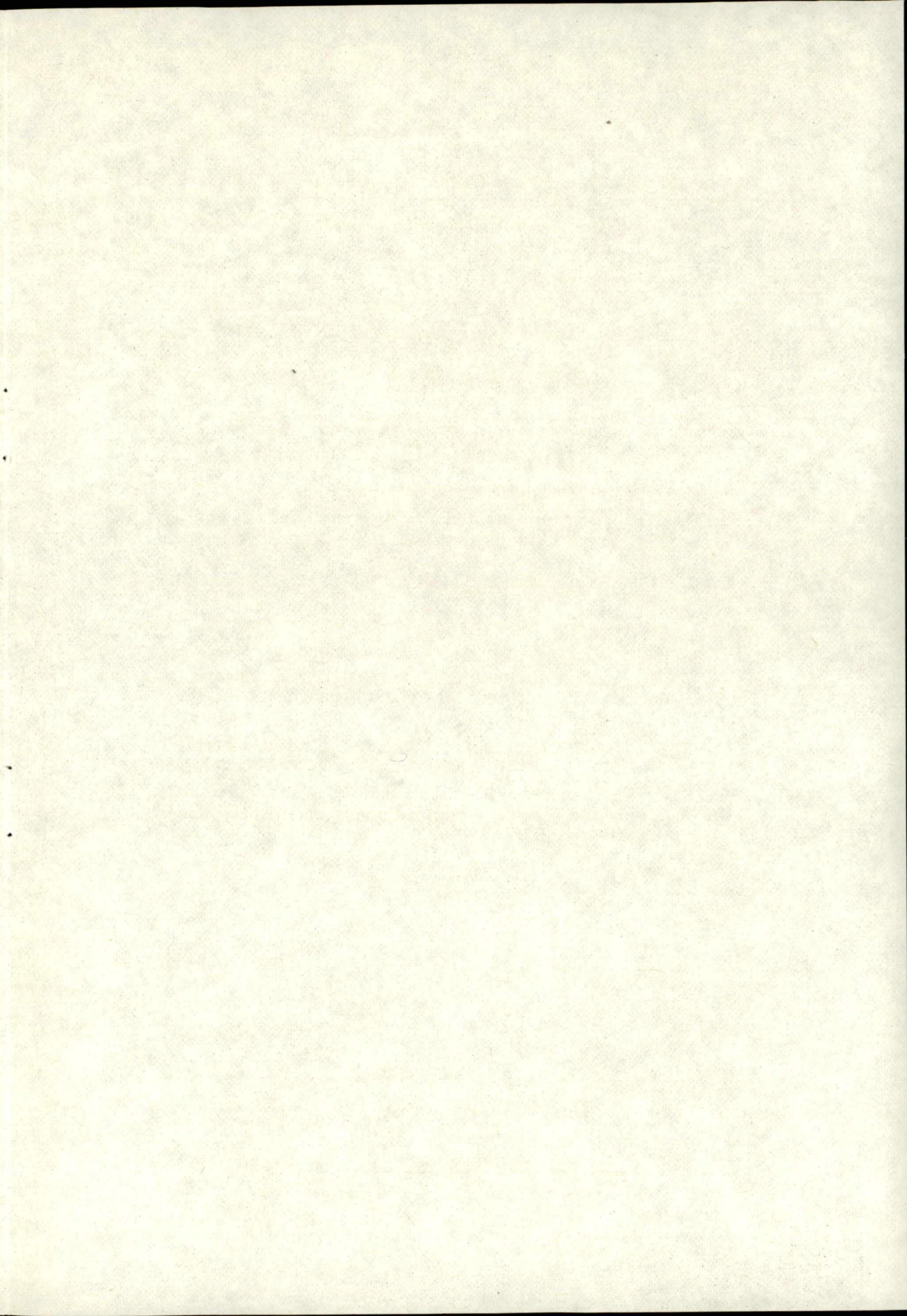
10 8. (1) Any indemnity granted under section 17AB and in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987 shall be deemed to have been granted under that section, as amended by that Act.

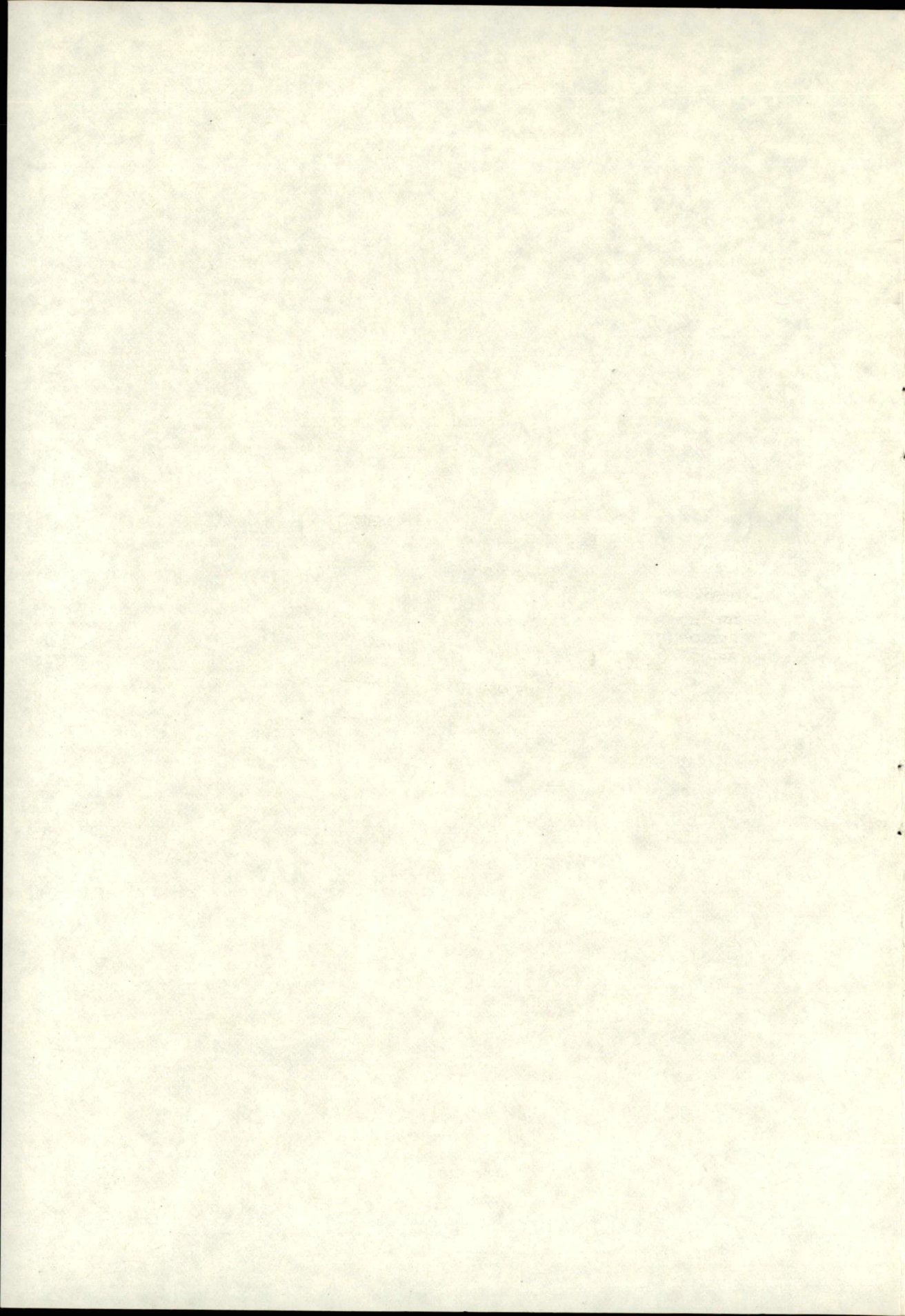
15 (2) Any guarantee—

(a) which was executed under section 3 (2) or (2A) of the Government Guarantees Act 1934 for the repayment of any advance made or to be made to a co-operative housing society; and

20 (b) which was in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987,

shall be deemed to have been executed under section 17AC, as re-enacted by the latter Act.





**CO-OPERATION (INDEMNITIES AND GUARANTEES)
AMENDMENT ACT 1987 No. 247**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 1, 1924
4. Amendment of Act No. 57, 1934

SCHEDULE 1—AMENDMENTS

REPORT OF THE DIRECTOR OF THE
BUREAU OF REVENUE

FOR THE YEAR 1917

DEPARTMENT OF THE TREASURY
WASHINGTON, D. C.

1918

**CO-OPERATION (INDEMNITIES AND GUARANTEES)
AMENDMENT ACT 1987 No. 247**

NEW SOUTH WALES



Act No. 247, 1987

An Act to amend the Co-operation Act 1923 so as to expedite the granting of certain housing loans; and for other purposes. [Assented to 16 December 1987]

Co-operation (Indemnities and Guarantees) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Co-operation (Indemnities and Guarantees) Amendment Act 1987.

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on a day to be appointed by proclamation.

(2) Schedule 1 (4) and (5), and section 3 in its application to those provisions, shall commence on the date of assent to this Act.

Amendment of Act No. 1, 1924

3. The Co-operation Act 1923 is amended as set out in Schedule 1.

Amendment of Act No. 57, 1934

4. The Government Guarantees Act 1934 is amended—

- (a) by inserting in section 3 (2) (b) after the word “society” the words “(other than a co-operative housing society)”;
- (b) by omitting the first proviso to section 3 (2) and the proviso to section 3 (2A);
- (c) by inserting in section 3 (2A) after the words “building society” the words “(other than a co-operative housing society)”;
- (d) by omitting section 4A.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 16A (**Approval of additional security required in certain cases**)—
 - (a) Section 16A (2) (b)—
Omit “takes”, insert instead “obtains”.
 - (b) Section 16A (3)—
Omit “take”, insert instead “obtain”.
 - (c) Section 16A (3) (b)—
Omit the paragraph, insert instead:
 - (b) an indemnity granted under section 17AB;
- (2) Section 17AB (**Indemnity where loan made by building society**)—
 - (a) Section 17AB (1)–(2D)—
Omit section 17AB (1) and (2), insert instead:

SCHEDULE 1—AMENDMENTS—*continued*

(1) The Treasurer may grant a written indemnity for a building society which indemnifies the society against loss suffered by the society in respect of a loan made or to be made by the society.

(2) The maximum loss against which a society is indemnified in respect of a loan is the balance of the prescribed amount after deducting from that amount—

- (a) the value of the share capital of the member; and
- (b) any amount that would, but for neglect or misconduct of the society or its servants or agents, have been received by the society with respect to the loan.

(2A) In subsection (2)—

“prescribed amount”, in relation to a loan, means the amount by which the loan exceeds 80 per cent of the value of the security for the loan when the loan was made.

(2B) An indemnity granted in respect of a loan made by a society is enforceable by the society only if—

- (a) in relation to the loan, the society complies with the guidelines approved by the Co-operative Housing Societies Advisory Committee and in force when the loan is made; or
- (b) the indemnity was granted on the recommendation of that Committee,

and the society has not, in relation to the loan, contravened any of the terms or prescribed or other conditions to which the indemnity is subject.

(2C) An indemnity in respect of a loan made by a society is subject to—

- (a) the terms and conditions set out in the indemnity when it is granted;
- (b) the prescribed conditions in force when the loan is made; and
- (c) any other terms and conditions imposed by the Treasurer, notice of which has been served on the society before the loan is made.

(2D) An indemnity may apply—

- (a) with respect to a particular loan; or
- (b) with respect to loans of any class, whether or not made or to be made by the same society.

(b) Section 17AB (3)—

Co-operation (Indemnities and Guarantees) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

Omit “conditions subject to which the Treasurer agrees to indemnify a society under subsection (1)”, insert instead “prescribed conditions referred to in this section”.

(c) Section 17AB (3) (i)—

Omit the paragraph, insert instead:

- (i) such other conditions as may be declared by the regulations to be prescribed conditions for the purposes of indemnities under this section.

(d) Section 17AB (4), (5)—

Omit the subsections.

(e) Section 17AB (6)—

Omit “by way of”, insert instead “in connection with an”.

(f) Section 17AB (7)—

Omit the subsection, insert instead:

(7) If a term, a prescribed condition or any other condition to which an indemnity relating to a society is subject is contravened, the Treasurer may, by notice served on the society, cancel the indemnity—

- (a) where it was granted in respect of a particular loan—wholly; or
- (b) where it was granted in respect of loans of a class made or to be made by that society—wholly or to the extent to which it applied in respect of any one or more of those loans.

(g) Section 17AB (8)—

Omit “to which he has agreed under this section”.

(3) Sections 17AC, 17AD—

Omit section 17AC, insert instead:

Guarantee where loan made to co-operative housing society

17AC. (1) The Treasurer may, on the recommendation of the Co-operative Housing Societies Advisory Committee, execute a guarantee in favour of—

- (a) any bank;
- (b) any society registered under the Friendly Societies Act 1912;
- (c) the Government Insurance Office of New South Wales; or
- (d) any other person approved by the Treasurer,

*Co-operation (Indemnities and Guarantees) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

for the repayment of any advance to a co-operative housing society made or to be made by the bank, society, office or other person.

(2) Except as provided by subsections (3) and (4), sections 4 and 5 of the Government Guarantees Act 1934 apply to a guarantee authorised by this section in the same way as they apply to a guarantee authorised by that Act.

(3) The guarantee shall be part of a three-party loan and guarantee agreement between the lender (being the bank, friendly society, Government Insurance Office or approved person concerned), the Treasurer and the co-operative housing society under which, in consideration for the advance to be made by the lender to the co-operative housing society and the guarantee to be given by the Treasurer—

(a) the co-operative housing society and the lender undertake to observe the terms and conditions specified in the agreement; and

(b) the co-operative housing society creates a charge in favour of the Treasurer over the securities given to the society by its members in respect of loans to be made from the advance.

(4) The guarantee is enforceable against the Treasurer and the Consolidated Fund even though the lender is not authorised—

(a) to hold any security in respect of the debt guaranteed (other than the guarantee); or

(b) to appoint a receiver or manager of the property of the co-operative housing society.

Delegation by Treasurer

17AD. The Treasurer may delegate to the Minister, the registrar or the deputy registrar any or all of the Treasurer's powers, authorities, duties or functions under section 17AB or 17AC or both of those sections.

(4) Section 18A (**Valuers**)—

Section 18A (4)—

After section 18A (3), insert:

(4) The regulations may prescribe circumstances in which and conditions subject to which a valuation as referred to in subsection (1) is not necessary.

(5) Section 95A (**Appointment of administrator of society**)—

(a) Section 95A (5A)—

Co-operation (Indemnities and Guarantees) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

After section 95A (5), insert:

(5A) When a liquidator of a society is appointed, the appointment of any administrator of the society is revoked.

(b) Section 95A (6)—

Before “section 95B (2)”, insert “subsection (5A) or”.

(6) Fifth Schedule—

At the end of the Fifth Schedule, insert:

Co-operation (Indemnities and Guarantees) Amendment Act 1987

Savings relating to indemnities and guarantees

8. (1) Any indemnity granted under section 17AB and in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987 shall be deemed to have been granted under that section, as amended by that Act.

(2) Any guarantee—

(a) which was executed under section 3 (2) or (2A) of the Government Guarantees Act 1934 for the repayment of any advance made or to be made to a co-operative housing society; and

(b) which was in force immediately before the commencement of the Co-operation (Indemnities and Guarantees) Amendment Act 1987,

shall be deemed to have been executed under section 17AC, as re-enacted by the latter Act.
