

# CO-OPERATION (AMENDMENT) ACT 1988 No. 107

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Co-operation Act 1923 (1924 No. 1)

### SCHEDULE 1—AMENDMENTS

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**CO-OPERATION (AMENDMENT) ACT 1988 No. 107**

NEW SOUTH WALES



**Act No. 107, 1988**

An Act to amend the Co-operation Act 1923 to make further provision with respect to the acquisition of shares in co-operative societies and the entitlements of inactive members of those societies and for other purposes.  
[Assented to 21 December 1988]

*Co-operation (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Co-operation (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Co-operation Act 1923 (1924 No. 1)**

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

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 2 (Division into Parts)—**

Omit the section.

**(2) Sections 47BB–47BD—**

After section 47BA, insert:

**Restrictions on significant share offers**

47BB. (1) This section applies to an offer to purchase shares in a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) if—

- (a) the offer is made as part of a proposal for, or is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the society; or
- (b) the offer is made as part of a proposal for, or is conditional on, the registration of the society as a company under the Companies (New South Wales) Code; or
- (c) the offer is made as part of a proposal for, or is conditional on, the winding-up of the society; or
- (d) a contravention of section 47 (10) (maximum shareholding) would result were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

(2) A person shall not make an offer to which this section applies if—

- (a) the offer operates or would operate to discriminate between members who are active members and members who are not active members; or

**SCHEDULE 1—AMENDMENTS—*continued***

- (b) the offer is made without the appropriate approvals.
- (3) An offer shall be regarded as having been made with the appropriate approvals only if—
  - (a) at a postal ballot of the members of the society held in the prescribed manner and in accordance with section 79A, at least three-quarters of the formal votes cast are in favour of the offer being made; and
  - (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the offer being made; and
  - (c) the offer is made in accordance with the conditions of the Minister's approval.
- (4) The Minister may direct that one or more of the requirements of this section do not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Certain discriminatory share offers prohibited**

- 47BC. (1) A person shall not make an offer to purchase shares in a society if—
- (a) the offeror would become a substantial shareholder in the society (within the meaning of section 47BA) were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer; and
  - (b) the offer operates or would operate to discriminate between members who are active members and members who are not active members.
- (2) The Minister may direct that this section does not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Consequences of prohibited offer**

- 47BD. (1) If a person makes an offer to purchase shares in a society in contravention of section 47BB or 47BC—
- (a) the person is not entitled to be registered as the holder of the shares concerned; and
  - (b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the society.

SCHEDULE 1—AMENDMENTS—*continued*

- (2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section shall be disregarded.
- (3) Section 79A (**Special postal ballots**)—
- (a) Section 79A (1)—  
Omit “section 64”, insert instead “section 47BB, 64”.
- (b) Section 79A (1A)—  
After section 79 (1), insert:  
(1A) The only persons eligible to vote in the postal ballot are those members of the society who are entitled to vote at meetings of the society and who under this Act are not otherwise prevented from voting.
- (c) Section 79A (2)—  
Omit “its members”, insert instead “the members entitled to vote”.
- (4) Section 79B (**Approval of the Minister etc.—ss. 47BB, 64, 70, 92**)—
- (a) Section 79B (1)—  
Omit “by a society”.
- (b) Section 79B (1)—  
Omit “section 64”, insert instead “section 47BB, 64”.
- (c) Section 79B (3) (a)—  
Omit “transaction”, insert instead “action”.
- (d) Section 79B (8)—  
After section 79B (7), insert:  
(8) In the case of a proposed offer to which section 47BB applies, the Minister’s approval under this section may be given subject to such conditions as the Minister thinks appropriate.
- (5) Section 80FA—  
After section 80F, insert:  
**Failure to alter rules—active membership provisions**  
80FA. (1) If the rules of a society do not contain active membership provisions as required by section 80F, the Advisory Council may by resolution alter the rules of the society so that the rules contain active membership provisions.  
(2) The active membership provisions shall be provisions that in the opinion of the Advisory Council are appropriate to the society concerned, having regard to—  
(a) the objects and rules of the society; and

*Co-operation (Amendment) 1988***SCHEDULE 1—AMENDMENTS—***continued*

- (b) the membership structure of the society; and
  - (c) such other matters as the Advisory Council thinks are relevant.
- (3) Before taking action under this section, the Advisory Council shall—
- (a) give notice in writing to the society concerned that it proposes to take the action; and
  - (b) take into account any representations made by the society concerning the matter within the time allowed by the notice for the making of representations.
- (4) A resolution of the Advisory Council under this section operates to alter the rules of the society accordingly, but section 83 (4) applies to any such alteration (so as to require registration and certification by the registrar before the alteration takes effect).
- (5) The fact that active membership provisions in the rules of a society resulted from the operation of this section does not prevent the alteration of those provisions in accordance with this Act.
- (6) Section 80z (**Eligibility to vote—active membership**)—
- Section 80z (1)—
- After “meeting of the society”, insert “or in any ballot of members of the society (whether or not a postal ballot)”.
- (7) Part 3A, Division 5—
- After Division 4, insert:
- Division 5—Entitlements of ex-shareholders**
- Ex-shareholders to be regarded as shareholders for certain purposes**
- 80AC. (1) Even though a person’s shares in a society have been forfeited under Division 4, the person shall be regarded as being the holder of shares in the society (the same in all respects as those that were forfeited) for the following purposes:
- (a) the entitlements of a shareholder in respect of the purchase of shares in the society pursuant to an offer described in section 47BB (1) (a), (b) or (c), or the purchase of all the shares in the society, if the offer or purchase occurs within 5 years after the person’s shares were forfeited;
  - (b) the entitlement of a shareholder when the society becomes registered as a company if the relevant special resolution under section 70 (2) is passed within 5 years after the person’s shares were forfeited;

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the society that commences within 5 years after the person's shares were forfeited.
- (2) Subsection (1) (a) does not apply in respect of—
  - (a) an offer described in section 47BB (1) (a) or (c) that is made by another society; or
  - (b) the purchase of all the shares in the society by another society.
- (3) Subsection (1) (c) does not apply if the winding-up is for the purposes of an amalgamation under section 43.
- (4) To remove any doubt, it is declared that the entitlement under subsection (1) (a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.
- (5) This section does not apply to a forfeited shareholding in a society if section 80AD operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another society.

**Entitlements of ex-shareholders on mergers etc.**

80AD. (1) If within 5 years after a person's shares in a society ("the original society") are forfeited under Division 4—

- (a) the original society becomes a subsidiary of another society ("the new society"); or
- (b) another society ("the new society") is created as a result of an amalgamation under section 43 involving the original society; or
- (c) the engagements of the original society are transferred to another society ("the new society") under section 69,

the person shall, for the purposes of the operation of section 80AC (and the further operation of this section) be regarded as being the holder of shares in the new society (being the shareholding determined in accordance with subsection (2)) that were forfeited under Division 4 when the person's shares in the original society were forfeited.

(2) The forfeited shareholding in the new society is the shareholding determined in accordance with the following:

- (a) if the entitlement of active members of the original society in the circumstances concerned is solely an entitlement to be allotted shares in the new society, the forfeited shareholding in the new society is the shareholding to which the person would have been entitled had the person's shares in the original society not been forfeited;



*Co-operation (Amendment) 1988***SCHEDULE 1—AMENDMENTS—***continued*

- (b) in any other case, the forfeited shareholding in the new society is the shareholding that is the same in all respects as the forfeited shareholding in the original society.
- (3) The determination under subsection (2) (a) of the person's shareholding in the new society shall be made—
  - (a) solely on the basis of the person's shareholding in the original society when the shares were forfeited or (in a further operation of this section in respect of the person) when the person was first to be regarded as having a forfeited shareholding in the original society; and
  - (b) without regard to any additional shareholding in the original society to which the person would have become entitled had the shares not been forfeited, whether as a result of any bonus share issue or otherwise.

**Set-off of amounts repaid etc. on forfeited shares**

80AE. (1) If a person has an entitlement because of the operation of section 80AC, the entitlement operates to extinguish any liability of the society—

- (a) to repay to the person under section 80x any amount in respect of the forfeited shares concerned; or
  - (b) in respect of a deposit held by the society, or debentures allotted to the person, under section 80x in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).
- (2) If an amount has been repaid to a person under section 80x or 80y, the amount repaid shall be set-off against any entitlement of the person under section 80AC in respect of the forfeited shares concerned.
- (3) If the amount repaid cannot be set-off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the society the amount repaid to the person and does so within the period required under subsection (4).
- (4) If the circumstances specified in subsection (3) arise, the society concerned shall—
- (a) give notice in writing of the matter by post to the person concerned at the person's address last known to the society, specifying a period of not less than 30 days after the notice is given during which any amount repaid must be paid to the society; and

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) publish a general notice to that effect in a newspaper circulating in the district in which the registered office of the society is situated.

**Minister may exempt societies from provisions**

80AF. (1) The Minister may, after consultation with the Advisory Council, by order in writing direct that all or specified provisions of this Division do not apply (either generally or in a particular case) to or in respect of a specified society or a society that is a member of a specified class of societies.

- (2) Such a direction has effect accordingly.

**(8) Fifth Schedule (Savings and transitional provisions)—**

At the end of the Schedule, insert:

*Co-operation (Amendment) Act 1988*

**Prohibition on certain offers**

9. Sections 47BB—47BD apply to and in respect of an offer to purchase shares made before those sections commenced unless the offer was accepted and the transfer of the shares concerned registered before that commencement.

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[*Minister's second reading speech made in—  
Legislative Assembly on 17 November 1988  
Legislative Council on 14 December 1988*]





# CO-OPERATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Co-operation Act 1923 (1924 No. 1)

SCHEDULE 1—AMENDMENTS

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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, , 1988*

NEW SOUTH WALES



**Act No. , 1988**

An Act to amend the Co-operation Act 1923 to make further provision with respect to the acquisition of shares in co-operative societies and the entitlements of inactive members of those societies and for other purposes.

**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Co-operation (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Co-operation Act 1923 (1924 No. 1)**

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

**SCHEDULE 1—AMENDMENTS**

10

(Sec. 3)

**(1) Section 2 (Division into Parts)—**

Omit the section.

**(2) Sections 47BB–47BD—**

After section 47BA, insert:

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**Restrictions on significant share offers**

47BB. (1) This section applies to an offer to purchase shares in a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) if—

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(a) the offer is made as part of a proposal for, or is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the society; or

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(b) the offer is made as part of a proposal for, or is conditional on, the registration of the society as a company under the Companies (New South Wales) Code; or

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(c) the offer is made as part of a proposal for, or is conditional on, the winding-up of the society; or

(d) a contravention of section 47 (10) (maximum shareholding) would result were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

(2) A person shall not make an offer to which this section applies if—

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(a) the offer operates or would operate to discriminate between members who are active members and members who are not active members; or



SCHEDULE 1—AMENDMENTS—*continued*

(b) the offer is made without the appropriate approvals.

(3) An offer shall be regarded as having been made with the appropriate approvals only if—

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

10 (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the offer being made; and

(c) the offer is made in accordance with the conditions of the Minister's approval.

15 (4) The Minister may direct that one or more of the requirements of this section do not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Certain discriminatory share offers prohibited**

20 47BC. (1) A person shall not make an offer to purchase shares in a society if—

25 (a) the offeror would become a substantial shareholder in the society (within the meaning of section 47BA) were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer; and

(b) the offer operates or would operate to discriminate between members who are active members and members who are not active members.

30 (2) The Minister may direct that this section does not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Consequences of prohibited offer**

35 47BD. (1) If a person makes an offer to purchase shares in a society in contravention of section 47BB or 47BC—

(a) the person is not entitled to be registered as the holder of the shares concerned; and

(b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the society.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section shall be disregarded.

(3) Section 79A (**Special postal ballots**)—

5 (a) Section 79A (1)—  
Omit “section 64”, insert instead “section 47BB, 64”.

## (b) Section 79A (1A)—

After section 79 (1), insert:

10 (1A) The only persons eligible to vote in the postal ballot are those members of the society who are entitled to vote at meetings of the society and who under this Act are not otherwise prevented from voting.

## (c) Section 79A (2)—

15 Omit “its members”, insert instead “the members entitled to vote”.

(4) Section 79B (**Approval of the Minister etc.—ss. 47BB, 64, 70, 92**)—

## (a) Section 79B (1)—

Omit “by a society”.

## (b) Section 79B (1)—

20 Omit “section 64”, insert instead “section 47BB, 64”.

## (c) Section 79B (3) (a)—

Omit “transaction”, insert instead “action”.

## (d) Section 79B (8)—

After section 79B (7), insert:

25 (8) In the case of a proposed offer to which section 47BB applies, the Minister’s approval under this section may be given subject to such conditions as the Minister thinks appropriate.

## (5) Section 80FA—

After section 80F, insert:

30 **Failure to alter rules—active membership provisions**

80FA. (1) If the rules of a society do not contain active membership provisions as required by section 80F, the Advisory Council may by resolution alter the rules of the society so that the rules contain active membership provisions.

35 (2) The active membership provisions shall be provisions that in the opinion of the Advisory Council are appropriate to the society concerned, having regard to—

(a) the objects and rules of the society; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the membership structure of the society; and
- (c) such other matters as the Advisory Council thinks are relevant.

5 (3) Before taking action under this section, the Advisory Council shall—

- (a) give notice in writing to the society concerned that it proposes to take the action; and
- (b) take into account any representations made by the society concerning the matter within the time allowed by the notice for the making of representations.

10 (4) A resolution of the Advisory Council under this section operates to alter the rules of the society accordingly, but section 83 (4) applies to any such alteration (so as to require registration and certification by the registrar before the alteration takes effect).

15 (5) The fact that active membership provisions in the rules of a society resulted from the operation of this section does not prevent the alteration of those provisions in accordance with this Act.

(6) Section 80Z (**Eligibility to vote—active membership**)—

20 Section 80Z (1)—

After “meeting of the society”, insert “or in any ballot of members of the society (whether or not a postal ballot),”.

(6) Part 3A, Division 5—

After Division 4, insert:

25 **Division 5—Entitlements of ex-shareholders**

**Ex-shareholders to be regarded as shareholders for certain purposes**

30 80AC. (1) Even though a person’s shares in a society have been forfeited under Division 4, the person shall be regarded as being the holder of shares in the society (the same in all respects as those that were forfeited) for the following purposes:

- (a) the entitlements of a shareholder in respect of the purchase of shares in the society pursuant to an offer described in section 47BB (1) (a), (b) or (c), or the purchase of all the shares in the society, if the offer or purchase occurs within 5 years after the person’s shares were forfeited;
- (b) the entitlement of a shareholder when the society becomes registered as a company if the relevant special resolution under section 70 (2) is passed within 5 years after the person’s shares were forfeited;

SCHEDULE 1—AMENDMENTS—*continued*

(c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the society that commences within 5 years after the person's shares were forfeited.

(2) Subsection (1) (a) does not apply in respect of—

(a) an offer described in section 47BB (1) (a) or (c) that is made by another society; or

(b) the purchase of all the shares in the society by another society.

(3) Subsection (1) (c) does not apply if the winding-up is for the purposes of an amalgamation under section 43.

(4) To remove any doubt, it is declared that the entitlement under subsection (1) (a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.

(5) This section does not apply to a forfeited shareholding in a society if section 80AD operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another society.

**Entitlements of ex-shareholders on mergers etc.**

80AD. (1) If within 5 years after a person's shares in a society ("the original society") are forfeited under Division 4—

(a) the original society becomes a subsidiary of another society ("the new society"); or

(b) another society ("the new society") is created as a result of an amalgamation under section 43 involving the original society; or

(c) the engagements of the original society are transferred to another society ("the new society") under section 69,

the person shall, for the purposes of the operation of section 80AC (and the further operation of this section) be regarded as being the holder of shares in the new society (being the shareholding determined in accordance with subsection (2)) that were forfeited under Division 4 when the person's shares in the original society were forfeited.

(2) The forfeited shareholding in the new society is the shareholding determined in accordance with the following:

(a) if the entitlement of active members of the original society in the circumstances concerned is solely an entitlement to be allotted shares in the new society, the forfeited shareholding in the new society is the shareholding to which the person would have been entitled had the person's shares in the original society not been forfeited.

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

(b) in any other case, the forfeited shareholding in the new society is the shareholding that is the same in all respects as the forfeited shareholding in the original society.

5 (3) The determination under subsection (2) (a) of the person's shareholding in the new society shall be made—

(a) solely on the basis of the person's shareholding in the original society when the shares were forfeited or (in a further operation of this section in respect of the person) when the person was first to be regarded as having a  
10 forfeited shareholding in the original society; and

(b) without regard to any additional shareholding in the original society to which the person would have become entitled had the shares not been forfeited, whether as a result of any bonus share issue or otherwise.

15 **Set-off of amounts repaid etc. on forfeited shares**

80AE. (1) If a person has an entitlement because of the operation of section 80AC, the entitlement operates to extinguish any liability of the society—

(a) to repay to the person under section 80X any amount in  
20 respect of the forfeited shares concerned; or

(b) in respect of a deposit held by the society, or debentures allotted to the person, under section 80X in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).

25 (2) If an amount has been repaid to a person under section 80X or 80Y, the amount repaid shall be set-off against any entitlement of the person under section 80AC in respect of the forfeited shares concerned.

30 (3) If the amount repaid cannot be set-off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the society the amount repaid to the person and does so within the period required under subsection (4).

35 (4) If the circumstances specified in subsection (3) arise, the society concerned shall—

(a) give notice in writing of the matter by post to the person concerned at the person's address last known to the society, specifying a period of not less than 30 days after the notice is given during which any amount repaid must  
40 be paid to the society; and

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) publish a general notice to that effect in a newspaper circulating in the district in which the registered office of the society is situated.

**Minister may exempt societies from provisions**

5 80AF. (1) The Minister may, after consultation with the Advisory Council, by order in writing direct that all or specified provisions of this Division do not apply (either generally or in a particular case) to or in respect of a specified society or a society that is a member of a specified class of societies.

10 (2) Such a direction has effect accordingly.

**(7) Fifth Schedule (Savings and transitional provisions)—**

At the end of the Schedule, insert:

*Co-operation (Amendment) Act 1988*

**Prohibition on certain offers**

15 9. Sections 47BB—47BD apply to and in respect of an offer to purchase shares made before those sections commenced unless the offer was accepted and the transfer of the shares concerned registered before that commencement.







## CO-OPERATION (AMENDMENT) BILL 1988

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—

- (a) to prohibit the making of certain offers to purchase shares in a society unless they do not discriminate between active and inactive members, are approved by a three-quarter majority of members in a postal ballot and are approved by the Minister (these requirements will apply to offers that are part of a proposal to purchase the society as a going concern, to register it as a company or to wind it up and to offers that would result in the offeror holding more than the maximum allowable shareholding); and
- (b) to prohibit the making of an offer to purchase shares if the purchase would result in the offeror becoming a substantial shareholder and the offer discriminates between active and inactive members; and
- (c) to provide that members of co-operative societies who have their shares forfeited because they are inactive members are, for a period of 5 years after forfeiture, to be regarded as shareholders for the purpose of enabling them to participate as shareholders in the sale of the society as a going concern, in its registration as a company or in any surplus in a winding-up; and
- (d) to enable the Advisory Council to insert active membership provisions in the rules of a society that has failed to do so within the time required by that Act.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Co-operation Act 1923.

*Co-operation (Amendment) 1988***SCHEDULE 1—AMENDMENTS****Prohibition against certain share purchase offers**

The Bill inserts provisions that prohibit the making of certain significant offers to purchase shares in a society:

- An offer to purchase shares for the purpose of effecting the purchase of the society's undertaking, registration of the society as a company or the winding-up of the society, or that would result in the maximum shareholding level (generally 20 per cent) being exceeded, is prohibited if the offer discriminates against inactive members or is made without the required approvals. The approvals required are the approval of a three-quarter majority in a postal ballot of members and the approval of the Minister (after consideration of the matter by the Advisory Council).
- An offer to purchase shares that would lead to the offeror becoming a substantial shareholder (a shareholding of at least 10 per cent) is prohibited if it discriminates against inactive members.

If a person makes such a prohibited offer, the person is not entitled to be registered as the holder of the shares concerned and, if registered, is not entitled to vote at meetings.

The proposed provisions apply to offers made before the provisions commence unless the share transfer has been registered. They do not apply to building societies. (Schedule 1 (2)—proposed sections 47BB–47BD)

**Entitlements of former inactive members after share forfeiture**

The Bill inserts provisions that confer certain entitlements on persons whose shares in a society have been forfeited because they were inactive members.

Those persons are to be regarded as still being shareholders for the following purposes:

- the purchase of shares in the society in situations that (under the prohibited share offer provisions above) require the Minister's consent before they can proceed, occurring within 5 years after the person's shares were forfeited;
- the entitlement of a person as a shareholder in the society when the society becomes registered as a company within 5 years after the person's shares were forfeited;
- the entitlement of a shareholder to a distribution of surplus in a winding-up of the society within 5 years after the person's shares were forfeited.

In a situation where the society concerned becomes the subsidiary of another society, has its engagements transferred to another society or amalgamates to form another society, a forfeited shareholder is to be regarded as a forfeited shareholder of the other society for the purposes of the above entitlements.

Any amount that a person has been, or is entitled to be, repaid by the society in respect of forfeited shares is required to be set-off against any entitlement arising under the proposed provisions.

The Minister can exempt a society from some or all of the proposed provisions. (Schedule 1 (6)—proposed Division 5 of Part 3A)

**Power of Advisory Council to insert active membership provisions into rules of society**

The Bill inserts a provision that authorises the Advisory Council to alter the rules of a society so that the rules make provision for active membership if the society has not done so within the period currently required under section 80F of the Principal Act.

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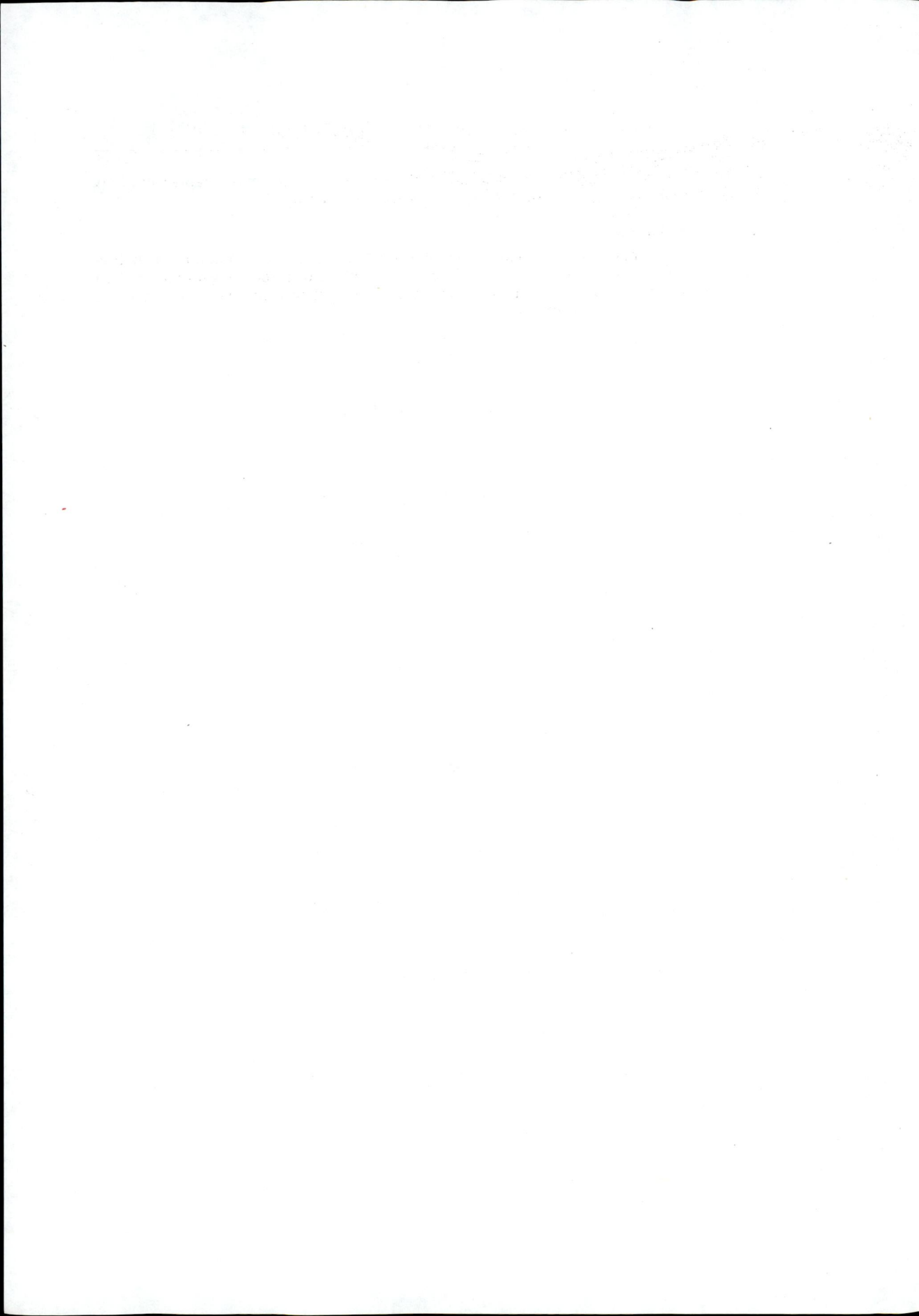
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The society concerned must be given an opportunity to make representations concerning the matter. (Schedule 1 (5)—proposed section 80FA)

**Other amendments**

The Bill also makes other amendments of a minor or consequential nature, including an amendment that makes it clear that the only members of a society who are entitled to vote in a postal ballot of members are those members who are entitled to vote at meetings (Schedule 1 (3) (b) and (c)).

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# CO-OPERATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



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# CO-OPERATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act to amend the Co-operation Act 1923 to make further provision with respect to the acquisition of shares in co-operative societies and the entitlements of inactive members of those societies and for other purposes.

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*Co-operation (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Co-operation (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Co-operation Act 1923 (1924 No. 1)**

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

**SCHEDULE 1—AMENDMENTS**

10

(Sec. 3)

- (1) Section 2 (**Division into Parts**)—

Omit the section.

- (2) Sections 47BB–47BD—

After section 47BA, insert:

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**Restrictions on significant share offers**

47BB. (1) This section applies to an offer to purchase shares in a society (other than a co-operative housing society, a non-terminating building society or a society mentioned in the Second Schedule) if—

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(a) the offer is made as part of a proposal for, or is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the society; or

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(b) the offer is made as part of a proposal for, or is conditional on, the registration of the society as a company under the Companies (New South Wales) Code; or

(c) the offer is made as part of a proposal for, or is conditional on, the winding-up of the society; or

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(d) a contravention of section 47 (10) (maximum shareholding) would result were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

(2) A person shall not make an offer to which this section applies if—

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(a) the offer operates or would operate to discriminate between members who are active members and members who are not active members; or



SCHEDULE 1—AMENDMENTS—*continued*

(b) the offer is made without the appropriate approvals.

(3) An offer shall be regarded as having been made with the appropriate approvals only if—

- 5 (a) at a postal ballot of the members of the society held in the prescribed manner and in accordance with section 79A, at least three-quarters of the formal votes cast are in favour of the offer being made; and
- 10 (b) the Minister, after consideration of the matter by the Advisory Council under section 79B, approves of the offer being made; and
- (c) the offer is made in accordance with the conditions of the Minister's approval.

15 (4) The Minister may direct that one or more of the requirements of this section do not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Certain discriminatory share offers prohibited**

20 47BC. (1) A person shall not make an offer to purchase shares in a society if—

- 25 (a) the offeror would become a substantial shareholder in the society (within the meaning of section 47BA) were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer; and
- (b) the offer operates or would operate to discriminate between members who are active members and members who are not active members.

30 (2) The Minister may direct that this section does not apply (either generally or in a particular case) to a specified society or to a society that is a member of a specified class of societies, and such a direction has effect accordingly.

**Consequences of prohibited offer**

35 47BD. (1) If a person makes an offer to purchase shares in a society in contravention of section 47BB or 47BC—

- (a) the person is not entitled to be registered as the holder of the shares concerned; and
- (b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the society.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section shall be disregarded.

(3) Section 79A (**Special postal ballots**)—

5 (a) Section 79A (1)—

Omit “section 64”, insert instead “section 47BB, 64”.

(b) Section 79A (1A)—

After section 79 (1), insert:

10 (1A) The only persons eligible to vote in the postal ballot are those members of the society who are entitled to vote at meetings of the society and who under this Act are not otherwise prevented from voting.

(c) Section 79A (2)—

15 Omit “its members”, insert instead “the members entitled to vote”.

(4) Section 79B (**Approval of the Minister etc.—ss. 47BB, 64, 70, 92**)—

(a) Section 79B (1)—

Omit “by a society”.

(b) Section 79B (1)—

20 Omit “section 64”, insert instead “section 47BB, 64”.

(c) Section 79B (3) (a)—

Omit “transaction”, insert instead “action”.

(d) Section 79B (8)—

After section 79B (7), insert:

25 (8) In the case of a proposed offer to which section 47BB applies, the Minister’s approval under this section may be given subject to such conditions as the Minister thinks appropriate.

## (5) Section 80FA—

After section 80F, insert:

30 **Failure to alter rules—active membership provisions**

80FA. (1) If the rules of a society do not contain active membership provisions as required by section 80F, the Advisory Council may by resolution alter the rules of the society so that the rules contain active membership provisions.

35 (2) The active membership provisions shall be provisions that in the opinion of the Advisory Council are appropriate to the society concerned, having regard to—

(a) the objects and rules of the society; and

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) the membership structure of the society; and
- (c) such other matters as the Advisory Council thinks are relevant.

5 (3) Before taking action under this section, the Advisory Council shall—

- (a) give notice in writing to the society concerned that it proposes to take the action; and
- 10 (b) take into account any representations made by the society concerning the matter within the time allowed by the notice for the making of representations.

(4) A resolution of the Advisory Council under this section operates to alter the rules of the society accordingly, but section 83 (4) applies to any such alteration (so as to require registration and certification by the registrar before the alteration takes effect).

15 (5) The fact that active membership provisions in the rules of a society resulted from the operation of this section does not prevent the alteration of those provisions in accordance with this Act.

(6) Part 3A, Division 5—

20 After Division 4, insert:

**Division 5—Entitlements of ex-shareholders**

**Ex-shareholders to be regarded as shareholders for certain purposes**

25 80AC. (1) Even though a person's shares in a society have been forfeited under Division 4, the person shall be regarded as being the holder of shares in the society (the same in all respects as those that were forfeited) for the following purposes:

- 30 (a) the entitlements of a shareholder in respect of the purchase of shares in the society pursuant to an offer described in section 47BB (1) (a), (b) or (c), or the purchase of all the shares in the society, if the offer or purchase occurs within 5 years after the person's shares were forfeited;
- (b) the entitlement of a shareholder when the society becomes registered as a company if the relevant special resolution under section 70 (2) is passed within 5 years after the person's shares were forfeited;
- 35 (c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the society that commences within 5 years after the person's shares were forfeited.

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 SCHEDULE 1—AMENDMENTS—*continued*

(2) Subsection (1) (a) does not apply in respect of—

- (a) an offer described in section 47BB (1) (a) or (c) that is made by another society; or
- (b) the purchase of all the shares in the society by another society.

(3) Subsection (1) (c) does not apply if the winding-up is for the purposes of an amalgamation under section 43.

(4) To remove any doubt, it is declared that the entitlement under subsection (1) (a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.

**Entitlements of ex-shareholders on mergers etc.**

80AD. (1) If within 5 years after a person's shares in a society ("the original society") are forfeited under Division 4—

- (a) the original society becomes a subsidiary of another society ("the new society"); or
- (b) another society ("the new society") is created as a result of an amalgamation under section 43 involving the original society; or
- (c) the engagements of the original society are transferred to another society ("the new society") under section 69,

the person shall, for the purposes of the operation of section 80AC (and the further operation of this section) be regarded as being the holder of shares in the new society that were forfeited under Division 4 when the person's shares in the original society were forfeited.

(2) The forfeited shareholding in the new society shall be regarded as being the same in all respects as the forfeited shareholding in the original society.

**Set-off of amounts repaid etc. on forfeited shares**

80AE. (1) If a person has an entitlement because of the operation of section 80AC, the entitlement operates to extinguish any liability of the society—

- (a) to repay to the person under section 80X any amount in respect of the forfeited shares concerned; or
- (b) in respect of a deposit held by the society, or debentures allotted to the person, under section 80X in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).

*Co-operation (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

(2) If an amount has been repaid to a person under section 80X or 80Y, the amount repaid shall be set-off against any entitlement of the person under section 80AC in respect of the forfeited shares concerned.

5 (3) If the amount repaid cannot be set-off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the society the amount repaid to the person and does so within the period required under subsection (4).

10 (4) If the circumstances specified in subsection (3) arise, the society concerned shall—

15 (a) give notice in writing of the matter by post to the person concerned at the person's address last known to the society, specifying a period of not less than 30 days after the notice is given during which any amount repaid must be paid to the society; and

(b) publish a general notice to that effect in a newspaper circulating in the district in which the registered office of the society is situated.

20 **Minister may exempt societies from provisions**

80AF. (1) The Minister may, after consultation with the Advisory Council, by order in writing direct that all or specified provisions of this Division do not apply (either generally or in a particular case) to or in respect of a specified society or a society that is a member of a specified class of societies.

25 (2) Such a direction has effect accordingly.

(7) Fifth Schedule (**Savings and transitional provisions**)—

At the end of the Schedule, insert:

*Co-operation (Amendment) Act 1988*

30 **Prohibition on certain offers**

9. Sections 47BB—47BD apply to and in respect of an offer to purchase shares made before those sections commenced unless the offer was accepted and the transfer of the shares concerned registered before that commencement.



