

**PERMANENT BUILDING SOCIETIES (AMENDMENT) ACT, 1985,
No. 84**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 84, 1985.

An Act to amend the Permanent Building Societies Act, 1967, for the purpose of making further provision with respect to the objects and powers of permanent building societies; and for other purposes.
[Assented to, 4th June, 1985.]

See also Co-operation (Amendment) Act, 1985.

Permanent Building Societies (Amendment) 1985

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 "Permanent Building Societies (Amendment) Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Permanent Building Societies Act, 1967, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

SCHEDULE 7.—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.

SCHEDULE 8.—AMENDMENTS TO PART IX OF THE PRINCIPAL ACT.

SCHEDULE 9.—AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

SCHEDULE 10.—AMENDMENTS TO PART XI OF THE PRINCIPAL ACT.

SCHEDULE 11.—INSERTION OF SCHEDULE 3 INTO THE PRINCIPAL ACT.

SCHEDULE 12.—SAVINGS AND TRANSITIONAL PROVISIONS.

Permanent Building Societies (Amendment) 1985

Amendment of Act No. 18, 1967.

5. The Principal Act is amended in the manner set forth in Schedules 1-11.

Savings and transitional provisions.

6. Schedule 12 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) Section 2—

Omit the section.

(2) (a) Section 3 (1), definition of "Capital adequacy"—

After the definition of "Bond", insert:—

"Capital adequacy" means capital adequacy as referred to in section 63C.

(b) Section 3 (1), definition of "Crown lands legislation"—

Omit the definition of "Crown Lands Act", insert instead:—

"Crown lands legislation" means—

- (a) the Crown Lands Consolidation Act, 1913, and any other Act relating to the disposition and holding of lands of the Crown;
- (b) any Act or law of the Commonwealth, another State or a Territory relating to the disposition and holding of lands of the Crown; or
- (c) any Act or law, or part of an Act or law, of the Commonwealth, another State or a Territory (not being an Act or law referred to in paragraph (b)) which is declared by the regulations to be Crown lands legislation for the purposes of this Act.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(c) Section 3 (1), definitions of “Fixed share”, “Member”—

Before the definition of “Mortgage”, insert:—

“Fixed share” means a share in the share capital of a society, where, under the rules of the society, the share is (subject to this Act)—

(a) not withdrawable by the member whose share it is; or

(b) not withdrawable by the member whose share it is, except at the direction of or with the approval or concurrence of the society,

but does not include a share that is of a class or description of shares prescribed as not being fixed shares.

“Member” means a member of a society.

(d) Section 3 (1), definition of “Mortgage-backed security”—

After the definition of “Mortgage”, insert:—

“Mortgage-backed security” has the meaning ascribed to that expression by section 84^{FA} of the Stamp Duties Act, 1920, and includes any security of a class of securities prescribed as mortgage-backed securities for the purposes of this Act.

(e) Section 3 (1), definition of “Officer”—

After “director,”, insert “principal executive officer,”.

(f) Section 3 (1), definition of “Power”—

After the definition of “Permanent building society”, insert:—

“Power” includes capacity, right and privilege.

(g) Section 3 (1), definitions of “Primary loan”, “Primary object”, “Principal executive officer”, “Records”—

After the definition of “Prescribed”, insert:—

“Primary loan” means a loan referred to in section 4A (2) (a) or (b).

Permanent Building Societies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

“Primary object” means a primary object as referred to in section 4A.

“Principal executive officer”, in relation to a society or to a subsidiary corporation of a society, means the principal executive officer of the society or a corporation (respectively) for the time being, by whatever name called, and whether or not that officer is a director or the secretary.

“Records” includes books, accounts, minutes, registers, deeds, writings, documents and any other sources of information compiled, recorded, or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means.

(h) Section 3 (1), definition of “Secondary object”—

After the definition of “Rule”, insert:—

“Secondary object” means a secondary object as referred to in section 4B.

(i) Section 3 (1), definitions of “Special resolution”, “Special services body corporate”, “Subsidiary corporation”, “Withdrawable share”—

After the definition of “Share”, insert:—

“Special resolution” has the meaning ascribed to that expression by section 77.

“Special services body corporate”, in relation to a society, means a body corporate (whether or not incorporated in New South Wales) that—

(a) has objects or powers which include the provision of; or

(b) has agreed to provide,

special services to the society to enable the society to further its objects or to the members of the society in their capacity as such.

Permanent Building Societies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

“Subsidiary corporation” has the meaning ascribed to that expression by section 3A.

“Withdrawable share” means a share in the share capital of a society, where, under the rules of the society, the share is (subject to this Act) withdrawable by the member whose share it is, and includes a share of a class of shares prescribed as not being fixed shares, but does not include a fixed share.

(j) Section 3 (3)–(5)—

After section 3 (2), insert:—

(3) In this Act, a reference to an alteration of the rules of a society is—

- (a) a reference to the omission of a rule or of matter from a rule;
- (b) a reference to the omission of a rule or of matter from a rule and the substitution of another rule or of other matter in the rule; or
- (c) a reference to the insertion of an additional rule or of additional matter in a rule.

(4) In this Act, a reference to a breach of, non-compliance with or a contravention of this Act or a provision of this Act includes a reference to the commission of, or the failure to do, any act, matter or thing, being a commission or failure that constitutes an offence against this Act or a provision of this Act.

(5) In this Act, a reference to another State is a reference to a State of the Commonwealth other than New South Wales and a reference to a Territory is a reference to a Territory of the Commonwealth.

Permanent Building Societies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(3) Section 3A—

After section 3, insert:—

Subsidiary corporations.

3A. (1) For the purpose of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of the corporation;
- (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
- (c) holds more than one-half of the issued share capital of the corporation (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 board of directors is to be taken to be controlled by a society, the composition of a corporation'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.

(3) In determining whether a corporation is a subsidiary of a society—

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

Permanent Building Societies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

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

(i) by any person as a nominee for the society (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 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 (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.

Permanent Building Societies (Amendment) 1985

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Sections 4-7—

Omit the sections, insert instead:—

Objects generally.

4. A society (other than an association) must have primary objects and may have secondary objects.

Primary objects.

4A (1) In this section, a reference to a society does not include a reference to an association.

(2) Subject to this Act, the regulations and clause 1 of the Schedule 12 to the Permanent Building Societies (Amendment) Act, 1985, the primary objects of a society must comprise—

- (a) the making of loans (referred to in this Act as “primary loans”) to its members—
 - (i) on the security of a mortgage over freehold or leasehold land that is situated in Australia and used or to be used wholly or partly for residential purposes; or
 - (ii) on the security of a mortgage over land that is of any tenure under any Crown lands legislation, being land situated in Australia and used or to be used wholly or partly for residential purposes;
- (b) except to the extent provided by the rules of a society, the making of other loans (also referred to in this Act as “primary loans”) to its members, being loans of a class that are prescribed as primary loans for the purposes of this Act; and
- (c) except to the extent provided by the rules of the society, such other activities as are of a class prescribed as primary objects for the purposes of this Act.

(3) A society shall not, without the approval of the Advisory Committee, make any primary loan on the security of a mortgage of land of such tenure as may be prescribed as a tenure not acceptable for the purposes of this section.

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(4) Nothing in this section shall be construed as precluding a society from accepting such collateral security for further securing a primary loan as the board may determine, including security of the kind referred to in section 7 (2) (c).

(5) The Minister may, from time to time, after consultation with the Advisory Committee and with the concurrence of the Treasurer, fix, by order published in the Gazette, for the purposes of this section—

- (a) a rate of interest in respect of prescribed primary loans generally; or
- (b) rates of interest in respect of prescribed primary loans of such classes or descriptions as are specified in the order,

and a society shall not, in respect of a prescribed primary loan made by it, charge a rate of interest in excess of the rate for the time being so fixed and applicable to the loan.

(6) Without affecting the generality of subsection (5), an order under that subsection may be limited in its application by specified exceptions or factors.

(7) A reference in this section to a prescribed primary loan is a reference to a primary loan advanced on the security of a mortgage of land that was, at the time the loan was approved by the society, occupied or intended to be occupied by the mortgagor personally for residential purposes.

Secondary objects.

4B. (1) The secondary objects of a society (other than an association) registered under this Act shall be such objects relating to the making of loans to its members and other matters (whether or not related to the making of loans) as are specified as secondary objects in the rules of the society, but any such objects shall not be inconsistent with this Act or the regulations.

(2) The regulations may make provision for or with respect to the secondary objects of a society (other than an association) and, in particular, may—

- (a) prohibit the specification of secondary objects of a class or description referred to in the regulations;

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) cancel secondary objects of a class or description referred to in the regulations already specified in the rules;
- (c) restrict the application or scope of secondary objects (whether by the imposition of conditions or otherwise); or
- (d) make provisions of a savings or transitional nature consequent on any such prohibition, cancellation or restriction.

Loans to non-members prohibited.

4C. A society shall not make a loan to a person who is not a member of the society.

Powers generally.

5. (1) Subject to this Act and the regulations and to the rules of the society, a society has the powers of a natural person for the purpose of carrying out any of its objects and, without limiting the generality of the foregoing, has power—

- (a) to raise money, by the taking of subscriptions of its members and as otherwise authorised by this Act;
- (b) to give guarantees on behalf of its members or depositors;
- (c) to act as a trustee and to accept and hold in trust real and personal property; and
- (d) to subscribe for or otherwise acquire shares in a body corporate (being a body corporate which has a share capital and whether or not incorporated in New South Wales) that—
 - (i) has objects or powers which include the provision of; or
 - (ii) has agreed to provide,

special services to the society to enable the society to further its objects or to the members of the society in their capacity as such.

(2) The rules of a society may restrict or prohibit the exercise by the society of any of the powers referred to in subsection (1).

(3) The regulations may prohibit, restrict or impose conditions on the exercise by a society of its powers, whether or not conferred by or under this Act.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(4) Subject to express provisions made by this Act, the specification in this Act of a particular power of a society does not limit the powers that the society has by virtue of this section.

Powers of society to operate outside New South Wales.

5A. Subject to this Act and the regulations and to the rules of the society, a society has the capacity to carry out its objects and to exercise its powers at any place outside New South Wales but within Australia.

Restrictions on societies.

6. (1) Subject to this Act and the regulations, a society shall not—

- (a) exercise any power that the society is prohibited by its rules from exercising;
- (b) exercise any power contrary to a restriction on the exercise of that power contained in its rules; or
- (c) do any act otherwise than in pursuance of its objects.

(2) An officer of a society shall not be in any way, by act or omission, directly or indirectly, knowingly concerned in, or knowingly a party to, a contravention by the society of subsection (1).

(3) An act of a society, including the making of an agreement by a society and a transfer of property to or by a society, is not invalid by reason only that the doing of the act is prohibited by subsection (1) or by the rules of the society.

(4) An act of an officer of a society is not invalid by reason only that the doing of the act is prohibited by subsection (2).

Requirements to be satisfied in relation to loans.

7. (1) A society shall not lend money on the security of a mortgage unless such requirements imposed by the regulations in relation to such a loan are complied with.

(2) Without affecting the generality of the kind of requirements that may be imposed, those requirements may relate to—

- (a) the maximum amount of a loan in relation to the value of the land over which the security is to be taken;

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) the necessity for the approval of the Advisory Committee;
- (c) the necessity for, and the nature of, additional security (whether by way of indemnity or guarantee or by way of charge or assignment of a life insurance policy, or otherwise); and
- (d) the circumstances in which a loan may or may not be given on the security of a mortgage that is subject to one or more prior mortgages.

(3) The Advisory Committee is empowered to grant or otherwise deal with any application made to it for approval under the requirements imposed pursuant to this section, and any such approval may be given subject to such terms and conditions as the Advisory Committee thinks fit.

(4) If any loan is made in contravention of any of the requirements imposed pursuant to this section, or in contravention of any terms or conditions imposed by the Advisory Committee pursuant to subsection (3), the members of the board who authorised the loan shall be jointly and severally liable for any loss on the loan occasioned to the society.

(2) (a) Section 8 (1)—

Omit:—

Where a member of a society, being a member under the age of 18 years, executes a mortgage in favour of the society to secure the repayment of moneys lent by the society to such member, and such member—

- (a) is married; or

insert instead:—

Where—

- (a) a member of a society who is under the age of 18 years and is married borrows money from a society; and
- (b) the loan is secured by a mortgage over land,

*Permanent Building Societies (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 8 (3), (4)—

After section 8 (2), insert:—

(3) Where—

(a) a member of a society who is under the age of 18 years and is married borrows money from a society; and

(b) the loan is not secured by a mortgage over land,

the member shall, in respect of the member's agreement to repay the loan and in respect of any security for repayment of the loan given by the member to the society, be subject to the same liabilities and obligations as the member would have been subjected to, and shall have the same rights as the member would have had, if the member had attained the age of 18 years at the time the loan was made.

(4) Any guarantee or surety given by any person in respect of a loan referred to in subsection (3) shall be as binding and effectual as if the person who borrowed the money had attained the age of 18 years at the time the guarantee or surety was given.

(3) Sections 9-11—

Omit the sections.

(4) Sections 11A, 11B—

Before section 12, insert:—

Minimum percentage of assets to be associated with primary objects.

11A. (1) In this section—

“prescribed percentage” means—

(a) except where a percentage is prescribed for the purposes of paragraph (b)—50 per cent; or

(b) such other percentage as may be prescribed;

“society” does not include an association.

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2) Subject to this Act, a society is guilty of an offence if at any time less than the prescribed percentage of the value of the society's assets is associated with its primary objects.

Penalty: \$2,000. Default penalty.

(3) For the purpose of this section, the value of a society's assets as at a particular time is (subject to regulations under subsection (4)) the value of the society's assets, as recorded in the society's accounting records, with such adjustments as are necessary to take into account any entries that might have been made as at that time.

(4) The regulations may make provision for or with respect to—

- (a) determining what are or are not to be treated as assets of a society for the purposes of this section;
- (b) determining the value of any of the assets of a society for the purposes of this section; or
- (c) determining whether or not any of the assets of a society are associated with its primary objects,

and, without affecting the generality of the foregoing, may provide that—

- (d) any of the assets of a society, or assets of a class, as at a particular date or time, with such adjustments (if any) as may be provided, may be or are to be treated as assets, or assets of a class, as at a later date or time; and
- (e) the value of any assets (or assets of a class) as shown in the last balance-sheet of a society, with such adjustments (if any) as may be prescribed, may be or are to be treated as the value of those assets (or assets of a class) as at a later date or time.

(5) If so required by the registrar, by notice in writing served on a society, the society shall, within such a period as is specified in the notice, submit a return in the prescribed form, and certified as prescribed, to the registrar, showing—

- (a) all the assets of the society as at a date or time specified in the notice;
- (b) the value of the respective assets as at that date or time; and

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (c) which of the assets were associated with the society's primary objects as at that date or time,

together with a report, containing the prescribed particulars, of a person having the prescribed qualifications.

(6) A notice may not be served on a society under subsection (5) in respect of the affairs of a society as at a date or time that is earlier than 3 years before the notice is served or that is earlier than the commencement of this section.

(7) On application made by the society concerned and with the concurrence of the Minister, the registrar may, by order in writing served on a society, suspend the society's liability for a breach of subsection (2) for such period as is specified in the order, either unconditionally or subject to such conditions as are specified in the order.

(8) The Minister may, by order published in the Gazette, specify—

- (a) what matters are or are not to be taken into consideration in deciding whether an order of the registrar should be made under subsection (7);
- (b) the manner of taking into consideration any matter that is to be taken into consideration; and
- (c) what kinds of conditions may be specified in an order of the registrar under subsection (7).

(9) The registrar, in making or deciding whether to make an order under subsection (7)—

- (a) shall have regard to the orders of the Minister for the time being in force under subsection (8); and
- (b) may, subject to those orders, have regard to such other matters as the registrar considers relevant.

(10) A society shall not contravene or fail to comply with any condition specified in an order of the registrar made under subsection (7) in relation to the society.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(11) While the liability of a society is suspended under this section, no proceedings may be commenced for an offence under subsection (2), but (subject to the foregoing) neither this subsection nor the suspension of liability affects the operation of any other provision of this Act in relation to the breach of that subsection.

(12) If at the end of a period for which a society's liability for a breach of subsection (2) has been suspended the society is not then in breach of that subsection, no proceeding may be commenced for an offence arising out of the first-mentioned breach, but this subsection does not affect the operation of any other provision of this Act in relation to the first-mentioned breach.

Minimum percentage of loans to be secured by mortgage over owner-occupied residential land.

11B. (1) In this section—

“land” includes freehold or leasehold land and land that is of any tenure under any Crown lands legislation;

“prescribed percentage” means—

- (a) except where a percentage is prescribed for the purposes of paragraph (b)—60 per cent; or
- (b) such other percentage as may be prescribed;

“society” does not include an association.

(2) A society is guilty of an offence if, during a financial year of the society, less than the prescribed percentage of the money advanced during that year by the society on loans (whether or not primary loans) is advanced on loans on the security of mortgages of parcels of land that were, at the time the loans were approved by the society, occupied or intended to be occupied by the mortgagors personally for residential purposes.

Penalty: \$2,000.

(3) For the purposes of this section, it shall be presumed that, at the time a loan was approved by a society, land was neither occupied nor intended to be occupied by a particular person for residential purposes unless—

- (a) the society establishes the contrary; or

*Permanent Building Societies (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) the society establishes that the person made a statement in the application for the loan, or in a document given to the society in relation to the application, to the effect that the person occupied or intended to occupy the land for those purposes.

(4) If so required by the registrar, by notice in writing served on a society, the society shall, within such period as is specified in the notice, submit a return in the prescribed form, and certified as prescribed, showing—

(a) how much money was advanced on loans by the society during a financial year or part of a financial year of the society as specified in the notice; and

(b) how much of the money so advanced was advanced on loans to which subsection (2) applies,

together with a report, containing the prescribed particulars, of a person having the prescribed qualifications.

(5) A notice may not be served on a society under subsection (4) in respect of a financial year that ended more than 3 years before the notice is served or that ended before the commencement of this section.

(5) Section 12—

Omit the first paragraph, insert instead:—

A society may, with the authority of the Advisory Committee, lend money to a building society registered under this or any other Act or under a law of another State or a Territory.

(6) (a) Section 13 (1)—

After “a member”, insert “, where the loan is to be secured by a mortgage over land,”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 13 (4)—

After section 13 (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.

(7) Section 16—

Omit the section, insert instead:—

Property.

16. A society may, for the purpose of carrying out any of its objects, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property.

(8) (a) Section 20 (1)—(2B)—

Omit section 20 (1)—(2), insert instead:—

(1) Where authorised by its rules, a society may, subject to this section and subject to and in accordance with any prescribed conditions—

- (a) raise money on loan or obtain other financial accommodation; and
- (b) receive money on deposit at interest,

to be applied or used for the purposes of the society.

(2) Where a society is authorised by its rules to raise money on loan or obtain other financial accommodation, the society may raise that money or obtain that other financial accommodation in such manner as the board thinks fit, and, without limiting the generality of the foregoing—

- (a) by legal or equitable mortgage charged on the undertaking of the society or on all or any part of the property of the society, including its uncalled or unpaid capital subscriptions, loan payments and other money;

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) by issuing, discounting or otherwise dealing with bills of exchange, promissory notes and mortgage-backed securities; and
- (c) by arrangements involving—
 - (i) the issue of letters of credit; and
 - (ii) the indemnification of any person or body in respect of any payment made pursuant to such a letter of credit, whether or not the indemnification is secured by a legal or equitable mortgage or otherwise.

(2A) No society shall raise money on loan from a source outside Australia (not being money repayable as a fixed amount of Australian currency) unless—

- (a) the approval of the Treasurer has first been obtained; or
- (b) the society has—
 - (i) entered into a currency futures contract as a hedge against any currency exchange loss that may, by reason of a reduction in the value of Australian currency as compared with the currency in which the loan is to be repaid and interest on the loan is to be paid, be incurred when repaying the loan or in paying interest in respect of it; or
 - (ii) taken such other measures to protect itself against such a loss as may be prescribed for the purposes of this subparagraph.

(2B) Without limiting the power to make regulations pursuant to section 5 (3), the regulations may prohibit, restrict or impose conditions on the exercise by a society of its powers to raise money or obtain other financial accommodation and, without affecting the generality of the foregoing, may prescribe a maximum on total borrowings by a society or on any class of borrowings by a society (including borrowings from persons who are not members of the society).

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 20 (5), (5A), (6)—

Omit the subsections.

(9) Section 20A—

Omit the section.

(10) Section 21—

Omit the section, insert instead:—

Investment.

21. (1) Subject to this section and subject to and in accordance with any prescribed terms and conditions, a society may invest any of its funds (whether or not held in trust) in accordance with and subject to the Trustee Act, 1925, or, except as provided by the rules of the society, in such other manner as the society thinks fit.

(2) A society shall not invest any of its funds contrary to any prescribed prohibition or restriction.

(3) To the extent that a society is or is acting as a trustee, the provisions of section 14 (4) (a) of the Trustee Act, 1925, do not apply to the investment under subsection (1) of funds of a society in securities guaranteed by the Government of New South Wales or securities issued by the council of a city, municipality or shire constituted in New South Wales or by a county council so constituted or a prescribed public authority.

(11) Section 23—

Omit the section, insert instead:—

Guarantee arrangements.

23. (1) In this section—

“approved institution” means—

(a) a society; or

(b) a building society, or an association or federation of building societies, registered or incorporated under any other Act or under a law of another State or a Territory;

*Permanent Building Societies (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

“prescribed guarantor corporation” means a body corporate, whether incorporated in New South Wales or elsewhere, which is prescribed for the purposes of this section and whose functions are or include—

- (a) making funds available to meet losses incurred by persons investing in, or lending money to, approved institutions;
- (b) guaranteeing the liquidity of approved institutions; or
- (c) any other prescribed functions;

“society” does not include an association.

(2) A society shall not—

- (a) become or remain a party to an arrangement with a prescribed guarantor corporation; or
- (b) become or remain a member of a prescribed guarantor corporation,

in contravention of any prohibition, restriction or condition prescribed for the purposes of this section.

Penalty: \$1,000. Default penalty.

(3) Without limiting the generality of subsection (2), a prohibition, restriction or condition referred to in that subsection may be or relate to a requirement to obtain the approval of the registrar to any arrangement or change in arrangement, to any function or change in function of a prescribed guarantor corporation, or to any other matter.

(4) The Minister may, by order published in the Gazette—

- (a) direct a society to be a party to an arrangement of a kind to which subsection (2) applies;
- (b) direct a society to be a member of a corporation of a kind to which that subsection applies;
- (c) direct a society to be both a party to such an arrangement and a member of such a corporation; or

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (d) direct a society to be either a party to such an arrangement or a member of such a corporation, at the discretion of the society,

within such period as is specified in the direction, and such a direction may apply to all societies, a specified class of societies or any specified society.

- (5) A society shall not contravene a direction under subsection (4) that applies to the society.

Penalty: \$500.

- (6) It is a defence to a prosecution for an offence arising under subsection (5) if it is established that the contravention of the direction was caused by circumstances beyond the society's control and that of its officers, and that it took all such steps as were reasonably available to comply with the direction.

- (7) A society may make any payments, or meet any financial obligations, to a prescribed guarantor corporation arising from an arrangement with, or membership of, the corporation.

- (8) A society shall not apply funds in excess of such amount as the Minister may, from time to time, fix by order published in the Gazette, in—

- (a) entering into or remaining a party to an arrangement of a kind to which subsection (2) applies;
- (b) becoming or remaining a member of a prescribed guarantor corporation; or
- (c) making any payments or meeting any financial obligations referred to in subsection (7).

Permanent Building Societies (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(12) Section 24—

Omit the section, insert instead:—

Power of society to act as agent.

24. A society may act as an agent in respect of any matter on behalf of any person or body of persons, whether incorporated or not, to the same extent as a natural person may act as the agent of a person or body of persons in relation to a similar matter.

(13) Section 24A—

Omit the section.

(14) Section 25 (2), (3)—

Omit the subsections.

(15) Section 26 (5)—

After section 26 (4), insert:—

(5) Subsection (1) does not apply to an advertisement in so far as it indicates that a society is a party to an arrangement with or a member of a prescribed guarantor corporation referred to in section 23.

SCHEDULE 3.

(Sec.5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) (a) Section 30 (4) (b)—

Omit “, and has not borrowed, including amounts received on deposit, more than four-fifths of the amount due to the society under mortgages given to it by its members; and”, insert instead “money received on deposit from members or other persons, or both such capital and money received on deposit;”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(b) Section 30 (4) (c), (d)—

At the end of section 30 (4) (c), insert:—

; and

(d) as to such other matters as may be prescribed for the purposes of this subsection,

(2) Section 31—

Omit the section, insert instead:—

Contents of rules.

31. The rules of a society shall include rules relating to matters for the time being set forth in Schedule 1, and may include rules relating to other matters.

(3) Section 32 (3)—

After section 32 (2), insert:—

(3) In the event of an inconsistency between a provision of the rules of a society and a provision of this Act or of the regulations, the second mentioned provision shall prevail to the extent of the inconsistency.

(4) Section 33—

Omit the section, insert instead:—

Alteration of rules.

33. (1) The rules of a society shall not be altered except by a special resolution passed by the members or as provided by subsection (2).

(2) The rules of a society may be altered by a resolution passed by the board but only where the alteration does no more than—

(a) give effect to a requirement, restriction or prohibition imposed by or under the authority of this Act or the regulations; or

(b) deal with a matter specified in an order under subsection (7) in such manner, if any, as may be specified in that order.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(3) Where a resolution to alter the rules of a society has been passed as referred to in subsection (1) or (2), the society shall, within the prescribed period and in the prescribed manner, apply to the registrar to have the alteration registered.

(4) Where an application for the registration of an alteration of the rules of a society is made in accordance with subsection (3), the registrar shall, if satisfied—

(a) that the alteration is not contrary to this Act or the regulations and is such as may reasonably be approved by the registrar; and

(b) that there is no reasonable cause why the alteration should not be registered,

register the alteration as prescribed but, until the alteration is so registered, it shall not have effect.

(5) Where the rules of a society are altered pursuant to subsection (2), the society shall cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the date on which notice in accordance with section 73 is given to those members of the next general meeting of the society following the taking effect of the alteration.

(6) Subsection (2) (b) does not apply to a society to the extent that the rules of the society so provide.

(7) The Minister may, by order published in the Gazette, specify—

(a) matters that may be dealt with by the board of a society under subsection (2) (b); and

(b) the manner in which any such matter shall be so dealt with.

(5) (a) Section 35 (2)–(3H)—

Omit sections 35 (2), (3), insert instead:—

(2) Subsection (1) does not apply to or in respect of a body of persons that is for the time being exempted under subsection (3A) from the operation of subsection (1).

Permanent Building Societies (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(3) Any body of persons, whether incorporated or unincorporated and whether formed in New South Wales or elsewhere, may make an application in writing for exemption from the operation of subsection (1).

(3A) Where an application is made under subsection (3) for exemption from the operation of subsection (1), the registrar may grant or refuse the exemption.

(3B) In granting an exemption under subsection (3A), the registrar may impose such conditions and restrictions as the registrar considers appropriate.

(3C) Subject to subsection (3F), the registrar may from time to time vary or revoke a condition or restriction to which an exemption granted under subsection (3A) is subject.

(3D) If the registrar is satisfied that a body of persons for the time being exempted from the operation of subsection (1) has failed to comply with or contravened any condition or restriction subject to which the exemption was granted, the registrar may revoke the exemption.

(3E) The registrar shall not—

(a) refuse to grant an exemption applied for under subsection (3); or

(b) impose conditions or restrictions under subsection (3B), without first having afforded the body concerned an opportunity to make written submissions to the registrar in relation to the matter.

(3F) The registrar shall not—

(a) vary a condition or restriction imposed in respect of an exemption granted under subsection (3A); or

(b) revoke an exemption so granted, without first having afforded the body concerned an opportunity to be heard by, or, if the body concerned prefers, to make written submissions to, the registrar in relation to the matter.

Permanent Building Societies (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(3G) Where an exemption is granted under subsection (3A), or revoked under subsection (3D), the registrar shall forthwith notify the Corporate Affairs Commission of the grant or, as the case may be, the revocation of the exemption.

(3H) Such of the provisions of this Act as are prescribed shall, with such modifications, if any, as may be prescribed, apply to or in respect of a body of persons for the time being exempted from the operation of subsection (1), and so apply as if references in those provisions to a society included a reference to such a body.

(b) Section 35 (4)—

Omit the subsection.

(6) Section 36 (1)—

After “office” where firstly occurring, insert “within New South Wales”.

(7) (a) Section 44 (1)—

Omit “the registrar under the Building and Co-operative Societies Act, 1901, or”.

(b) Section 44 (1)—

Omit “, as the case may require, and the registrar to whom notice is so given”, insert instead “who”.

(c) Section 44 (1)—

Before “register”, insert “relevant”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 47 (2) (i)—

After section 47 (2) (h), insert:—

- (i) To do such other things as may be prescribed.

(2) Section 47 (3)—

Omit the subsection.

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 49 (7)–(10)—

After section 49 (6), insert:—

- (7) In order to become or remain a member of a society a person must hold shares in the society.

(8) The rules of a society—

- (a) shall specify the number of withdrawable shares, or the number of withdrawable shares of a particular class or particular classes, that a person must subscribe for or hold in order to be and remain a member of the society; and

- (b) subject to subsection (9), may provide that fixed shares, if held by a member, may be counted for that purpose as if they were withdrawable shares.

- (9) Notwithstanding anything in this Act, no member shall be compelled, whether by the rules of a society or otherwise, to subscribe for or hold fixed shares.

- (10) Subsections (8) and (9) do not apply to or in respect of an association.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(2) Section 50 (3)—

Omit “twenty-one years”, insert instead “18 years”.

(3) (a) Section 52 (1), (1A), (1B), (2)—

Omit the subsections, insert instead:—

(1) A society may from time to time—

(a) raise funds by the issue of shares of one or more denomination, either as shares paid up in full or as shares to be paid for by periodical or other subscription; and

(b) issue shares that are subject to a condition that prevents the withdrawal of those shares before the expiration of a specified period of time.

(2) The rules of a society may provide—

(a) for rights entitling the holder of any class of shares to receive, instead of a dividend, interest on the shares of that class which are fully paid up at such rate as may be determined by the board; and

(b) for the payment of a greater rate of dividend in respect of paid up shares than in respect of shares that are not paid up shares.

(b) Section 52 (3) (a)—

Before “capital”, insert “share”.

(c) Section 52 (3) (c)—

Omit the paragraph.

(d) Section 52 (3) (d)—

After “capital”, insert “or money received on deposit from members or other persons, or both such capital and money so received on deposit”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(e) Section 52 (4)—

Omit “: Provided however, that no one class of share shall have priority in respect of the payment of dividend or upon winding up”.

(f) Section 52 (10)—

After section 52 (9), insert:—

(10) The rules of a society (other than an association) must provide that a depositor has a continuing opportunity of becoming a member of the society by subscribing for such number of withdrawable shares as is necessary for that purpose.

(4) (a) Section 52A (1) (a1)—

After section 52A (1) (a), insert:—

(a1) a person has a relevant interest in a share in a society if the person has power to exercise, or to control the exercise of, any right to vote conferred on a holder of the share;

(b) Section 52A (2)–(8)—

Omit section 52A (2), insert instead:—

(2) Where a person has relevant interests in shares in a society exceeding in nominal value the prescribed proportion of the nominal value of all shares issued by the society, the society shall, subject to subsection (4), cancel the excess shares and pay to the person the amount paid up on the cancelled shares, together with any other money to which the person may be entitled in respect of those shares.

(3) Subsection (2) applies whether or not the rules of the society concerned make provision for the matters dealt with by that subsection.

(4) Shares of a society may be cancelled under this section only to the extent that the cancellation would not result in the society concerned (not being an association) failing to maintain its capital adequacy.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(5) Where subsection (4) prevents the cancellation of excess shares, dividend, interest and other amounts continue to be payable in respect of the shares in all respects as if they were not excess shares.

(6) Where subsection (4) prevents the cancellation of excess shares, the society concerned shall so conduct its business as to ensure that, before the end of—

(a) the period of 12 months, or, if another period is prescribed, that other period, after that subsection commenced to operate to prevent those excess shares from being cancelled; or

(b) such further period or periods as the Minister may in any particular case allow,

such of those shares as remain excess shares are cancelled in accordance with this section.

(7) While subsection (4) is operating to prevent the cancellation of excess shares, no proceedings may be commenced for an offence arising out of a failure to comply with subsection (2) in relation to those shares, but, subject to the foregoing, neither this subsection nor subsection (4) affects the operation of any other provision of this Act in relation to such a failure.

(8) Where, because of the operation of subsection (4), any question arises as to the order in which excess shares are to be cancelled, the question shall be determined in accordance with the rules of the society concerned or, to the extent that the rules do not make provision for the determination of the question, in such manner as the board thinks appropriate.

(5) Sections 52B–52F—

After section 52A, insert:—

Withdrawal of share capital.

52B. (1) The rules of a society may provide for the withdrawal by a member of the member's share capital, but any such rules have effect subject to this Act.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(2) Where the rules of a society provide for the withdrawal of share capital, the rules may authorise the board to regulate the withdrawal in such manner as may be specified in the rules.

(3) The registrar shall not register any rules authorising a board to regulate the withdrawal of share capital, unless the registrar approves the manner of regulating withdrawals set forth in the rules.

(4) Share capital of a society (other than an association) may be withdrawn only to the extent that the withdrawal would not result in the society failing to maintain its capital adequacy.

(5) Fixed share capital of a society (other than an association) may not be withdrawn unless, except as prescribed, each director of the society makes a written declaration that there are no circumstances known to the director why the withdrawal should not take place.

(6) If share capital of a society is withdrawn in contravention of subsection (4) or (5), the society, and every officer of the society who is in default, is guilty of an offence.

Penalty: \$500.

Cancellation of shares.

52c. (1) The rules of a society may provide for the cancellation by the society of any shares in the society, but any such rules have effect subject to this Act.

(2) Notwithstanding anything in the rules of a society, fixed shares may not be cancelled by the society except—

- (a) at the request or with the concurrence of the member concerned;
- (b) pursuant to a provision of this Act;
- (c) in circumstances prescribed for the purposes of this subsection; or
- (d) with the approval of the registrar and in accordance with any conditions imposed by the registrar.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(3) Notwithstanding anything in the rules of a society, withdrawable shares of the society may not be cancelled by the society if, on cancellation, the member concerned would cease to be a member or the member's voting rights would be extinguished or reduced, except—

- (a) at the request or with the concurrence of the member concerned; or
- (b) in circumstances prescribed for the purposes of this subsection.

(4) Where, in accordance with the rules of a society, the society cancels any shares in the society, the society shall, subject to subsection (5), pay to the member concerned the amount paid up on the cancelled shares, together with any other money to which the member may be entitled in respect of those shares.

(5) Where a society cancels shares pursuant to a scheme under section 52D, the society shall cause an amount equal to the amount paid up on the cancelled shares, together with any other money to which the member concerned may be entitled in respect of those shares, to be entered up in the records of the society as a deposit or as deposits of that member.

(6) Shares of a society (not being an association) may not be cancelled to the extent that the cancellation would result in the society failing to maintain its capital adequacy.

Scheme for conversion of withdrawable share capital to deposits.

52D. (1) In this section and in section 52E, a reference to a society does not include a reference to an association.

(2) If authorised by its rules, a society may, by special resolution, establish a scheme for the conversion of any withdrawable share capital of the society to deposits.

(3) A scheme under this section shall, subject to this Act, provide for—

- (a) the cancellation of withdrawable shares to which the scheme applies; and

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) an amount equal to the amount paid up on the shares, together with any other money to which the members concerned may be entitled in respect of those shares, to be entered in the records of the society as a deposit or as deposits of those members.
- (4) Subject to subsection (5), a scheme under this section—
 - (a) shall provide, in relation to each member of the society who is affected by the scheme, that either—
 - (i) such a number of withdrawable shares as is necessary for the member to retain the status of member are not to be subject to cancellation pursuant to the scheme; or
 - (ii) the member is to have the right to retain such number of withdrawable shares as is necessary for the member to retain the status of member,except in so far as the member elects to subscribe for any fixed shares as referred to in paragraph (b); and
 - (b) may provide, in relation to each such member of the society, that the member is to have the right to elect to subscribe for such number of fixed shares in the society as is necessary for the member to retain the status of member.
- (5) A scheme under this section may contain such other provisions as are approved by the registrar as appropriate to protect the rights of members of the society instead of the provisions referred to in subsection (4) (a) or (b).
- (6) A scheme under this section may provide for any rights attaching to one or more shares that are to be cancelled to become rights attaching to one or more other shares held or to be held by the member after the cancellation takes effect.
- (7) Special resolutions may be passed at the one meeting of a society for the purposes of—
 - (a) altering the rules of a society so as to authorise the society to establish a scheme under this section; and
 - (b) establishing such a scheme,

*Permanent Building Societies (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

but, except to the extent necessary to enable both special resolutions to be passed, the special resolutions shall not take effect until registered as required by this Act.

Notice to, and rights of, creditors on conversion of withdrawable shares.

52E. (1) A scheme under section 52D shall not take effect before the society concerned has—

- (a) given any notice required to be given under subsection (2); and
- (b) issued the certificate referred to in subsection (4).

(2) The society shall, in accordance with the regulations, give notice of the scheme to persons who are creditors of the society as at the prescribed time.

(3) A creditor, other than a creditor of a prescribed class, is, on application made to the society within the prescribed period, entitled to obtain payment in full from the society of all or any amounts owing to the creditor.

(4) The society may, as prescribed, issue a certificate stating that all creditors who have applied to obtain payment in accordance with this section have been paid in full or that arrangements satisfactory to the registrar have been made to ensure that payment will be made in full.

(5) If, in a certificate issued under this section, a society makes any statement that is false or misleading in a material particular, every officer of the society in default is guilty of an offence.

Penalty: \$1,000.

(6) The regulations may make provision for or with respect to notices, applications and certificates under this section and, without limiting the generality of the foregoing, may—

- (a) provide that publication of such a notice in one or more newspapers, or the display of such a notice in premises of the society, is sufficient for the purposes of this section;

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) allow the registrar's discretion to be exercised as to any matters relating to such a notice, application or certificate; and
- (c) specify the circumstances in which the giving of such a notice may be dispensed with.

(7) In this section, "creditor" includes a depositor with the society, except in so far as the deposits are for a fixed term.

Fixed share issues.

52F. (1) A society shall not—

- (a) issue fixed shares unless authorised to do so by its rules; or
- (b) where the society is so authorised, issue fixed shares in contravention of any provision of the regulations.

(2) The regulations may make provision for or with respect to the issue of fixed shares by a society and, in particular but without limiting the generality of the foregoing, for or with respect to—

- (a) the issue of fixed shares to members or to persons who are seeking to become members, or both;
- (b) the rights of members to subscribe for an issue of fixed shares made by the society;
- (c) the circumstances in which fixed shares may be issued only to persons who were not already members when they applied, or immediately before they subscribed, for the shares;
- (d) the priority to be given to members in an issue of fixed shares;
- (e) the manner of allocating fixed shares, or fixed shares of a class, where the number applied for exceeds the number to be issued; and
- (f) the circumstances in which an application for a number of fixed shares may be treated as an application for a smaller number of fixed shares.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (3) Regulations made for the purposes of this section do not apply to or in relation to—
- (a) a society whose members or any of them hold fixed shares at the commencement of this section, except in so far as the regulations otherwise expressly provide; or
 - (b) an association.
- (6) (a) Section 58—
- After “balance”, insert “and deposits”.
- (b) Section 58—
- Omit “sum credited or payable to a member or past member”, insert instead “amount paid on account of that share or otherwise, or any amount credited or payable to the member or past member.”.
- (c) Section 58—
- After “enforced”, insert “, at any time after 7 day’s notice to the member or past member.”.
- (d) Section 58—
- Omit “capital or interest”, insert instead “capital, interest or deposit”.
- (7) (a) Section 62 (4)—
- Omit the subsection, insert instead:—
- (4) The rate or amount of dividend, bonus or rebate, or of any interest as referred to in section 52 (2) (a), payable in respect of a fixed share in any financial year of a society (other than an association) shall not exceed—
- (a) the rate or amount (if any) fixed by the Minister by order published in the Gazette after consultation with the Advisory Committee; or
 - (b) if a higher rate or amount is fixed by the Minister in any particular case, that higher rate or amount.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(b) Section 62 (4A)—

Omit “rates of dividend”, insert instead “rates or amounts”.

(c) Section 62 (4B)—

Omit the subsection, insert instead:—

(4B) Subsection (4) does not apply in respect of fixed shares of a society that were issued before 1st July, 1972, or in the event of the winding up of a society.

(d) Section 62 (5)—

Omit the subsection.

(8) (a) Section 63 (2)—

Omit the subsection, insert instead:—

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

- (a) funds in the form of cash at a bank (after allowing for cheques or other bills of exchange drawn but not presented for payment) and cash in hand;
- (b) investments in securities authorised by law for the investment of trust funds (other than mortgages of estates or interests in land) that are redeemable within 10 years or such other period as may be prescribed of their acquisition;
- (c) investments in mortgages of estates or interests in land, whether situated in New South Wales or elsewhere, and mortgage-backed securities, being mortgages and securities of prescribed classes;
- (d) investments in any prescribed bank;
- (e) investments in the purchase of transferable deposits issued by the Australian Resources Development Bank Limited notwithstanding that the deposits may be

*Permanent Building Societies (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

redeemable and that the price paid or agreed to be paid for those deposits exceeds their face value, providing the deposits are redeemable within 10 years after their acquisition or, if another period is prescribed for the purposes of this paragraph, within the period so prescribed; and

- (f) investments that are prescribed investments or that are investments in any loan or class of loan secured by a prescribed security,

but such a reference does not include any such funds or investments to the extent of the amount necessary to satisfy any lien or charge on those funds or investments, other than a floating charge.

- (b) Section 63 (3)—

Omit “paragraph (b) of subsection (2)”, insert instead “subsection (2) (b), (c) and (f)”.

- (9) Part V, Division 2A (sections 63A–63H)—

Omit section 64, insert instead—

DIVISION 2A.—*Capital Adequacy.*

Interpretation.

63A. In this Division—

“designated capital” means designated capital as referred to in section 63E;

“prescribed minimum percentage” means—

- (a) except where a percentage is prescribed for the purpose of paragraph (b)—3 per cent; or

- (b) such other percentage as may be prescribed;

“society” does not include an association;

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

“weighted amount”, in relation to a Society, means an amount equal to the sum of the amounts obtained by multiplying the value of each class of assets of the society (being a class specified in an order in force under section 63D(1)) by the relevant weighted percentage applicable to that class;

“weighted percentage”, in relation to a class of assets of a society, means the percentage specified in relation to that class in an order in force under section 63D (1).

Obligation of societies to maintain capital adequacy.

63B. A society which—

(a) fails to maintain its capital adequacy; or

(b) having failed to maintain its capital adequacy—

(i) does not take all such steps as are necessary to restore its capital adequacy as soon as practicable after the failure; or

(ii) does not take all such steps as are necessary to ensure that the extent by which the society has at a particular time failed to maintain its capital adequacy is not subsequently increased,

is guilty of an offence.

Penalty: \$2,000. Default penalty.

Meaning of failure to maintain capital adequacy.

63C. (1) For the purposes of this Act, a society fails to maintain its capital adequacy if the designated capital of the society is less than the minimum amount applicable to the society under subsection (2).

(2) The minimum amount applicable to a society is—

(a) the total of—

(i) the weighted amount applicable to the society; and

(ii) such amounts (if any) as are specified in, or calculated in accordance with, an order in force under section 63D (2), so far as the order imposes additional requirements on the society; or

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued*.

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*.

- (b) the amount obtained by multiplying the value of the assets of the society by the prescribed minimum percentage,

whichever is the greater, if they are not equal.

Orders in respect of capital adequacy.

63D. (1) The Minister may, by order published in the Gazette, specify—

- (a) classes of assets of societies; and
(b) a percentage (referred to in this Division as a “weighted percentage”), in relation to each such class of assets,

for the purpose of determining the minimum amount of capital that societies are required by this Act to maintain.

(2) The Minister may, by order published in the Gazette, specify additional requirements that are to be complied with by societies in relation to the minimum amount of capital to be maintained, based on—

- (a) such activities of societies;
(b) such circumstances affecting societies; or
(c) such other factors,

as may be referred to in the order.

Meaning of designated capital.

63E. (1) For the purposes of this Division, the designated capital of a society at a particular time consists of the sum of the values of the following:—

- (a) fixed shares in the society to the extent that they are paid up, being fixed shares which, in the event of the winding up of the society, rank in priority after all withdrawable share capital in the society;
(b) realised profits, including realised profits transferred to reserves;

*Permanent Building Societies (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (c) subject to subsection (2), 50 per cent or, if another percentage is fixed under subsection (3), that other percentage or revaluation reserves in respect of real property owned by the society;
- (d) subordinated deposits not repayable by the society within the next 3 years after that time or, if another period is fixed under subsection (3), within that other period after that time;
- (e) capital of such class as may be prescribed as being designated capital,

but does not include capital of such class or description as may be prescribed as not being designated capital.

(2) Notwithstanding subsection (1) (c)—

- (a) a revaluation reserve shall be disregarded for the purposes of this section if the real property to which the reserve relates has not been valued by a prescribed person within the period of 3 years immediately preceding the time referred to in subsection (1) or, if another period is fixed under subsection (3), within that period; and
- (b) if real property has been revalued by a prescribed person within that period of 3 years or, as the case may be, that period fixed under subsection (3), the reserve shall be disregarded for the purposes of this section to the extent to which the reserve is not supported by the valuation.

(3) The Minister may, by order published in the Gazette, fix all or any of the following:—

- (a) a percentage for the purposes of subsection (1) (c);
- (b) a period for the purposes of subsection (1) (d);
- (c) a period for the purposes of subsection (2) (a).

(4) A reference in this section to a subordinated deposit is a reference to money invested with a society on deposit under an agreement whereby, in the event of the winding up of the society, any claim of the depositor against the society in respect of the deposit shall rank in priority—

- (a) equally with the claim of any other depositor who is a party to a similar agreement; and

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) except as provided by paragraph (a), after the claims of any other creditor of the society and after the claims of members to repayment of any share capital in the society, other than fixed share capital.

Determination of assets and value of assets.

63F. (1) For the purposes of this Division, the value of the assets, or of a class of the assets, of a society as at a particular time is, subject to regulations under subsection (2), the value of the society's assets or that class of assets, as recorded in the society's accounting records, with such adjustments as are necessary to take into account any entries that might have been made as at that time.

- (2) The regulations may make provision for or with respect to—
 - (a) determining what are or are not to be treated as assets, or a class of assets, of a society for the purposes of this Division; and
 - (b) determining the value of any of the assets, or a class of assets, of a society for the purposes of this Division,

and, without affecting the generality of the foregoing, may provide that—

- (c) any of the assets, or of a class of assets, of a society as at a particular date or time, with such adjustments (if any) as may be prescribed, may be or are to be treated as assets, or as a class of assets, as at a later date or time; and
- (d) the value of any assets, or of a class of assets, as shown in the last balance-sheet of a society made up to a specified or ascertainable date or time, with such adjustments (if any) as may be prescribed, may be or are to be treated as the value of those assets, or of that class of assets, as at a later date or time.

Registrar to be notified of failure to maintain capital adequacy.

63G. A society which does not forthwith notify the registrar of any failure by the society to maintain its capital adequacy is guilty of an offence.

Penalty: \$500. Default penalty.

Permanent Building Societies (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

Returns relating to capital adequacy.

63H. (1) A society shall, if so required by the registrar by notice served on the society, submit a return in the prescribed form within such period as is specified in the notice, showing—

- (a) all the assets of the society as at a date or time specified in the notice;
- (b) the value of the respective assets as at that date or time;
- (c) all the designated capital of the society as at that date or time;
- (d) the value of each class of the designated capital of the society as at that date or time; and
- (e) such other particulars as may be prescribed, being particulars that are relevant to this Division,

together with a report, containing the prescribed particulars, of a person having the prescribed qualifications.

(2) A notice may not be served on a society under subsection (1) in respect of the affairs of a society as at a date or time that is earlier than 3 years before the notice is served or that is earlier than the commencement of this section.

(3) A society which fails to comply with subsection (1) is guilty of an offence.

Penalty: \$500. Default penalty.

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

(1) Section 65 (2)—

Omit "The", insert instead "Without affecting section 6, the".

(2) (a) Section 66 (1)—

Omit "Subject to the provisions of this section no", insert instead "No".

(b) Section 66 (6)—

Omit the subsection.

(3) Section 68 (4)—

After "director" where firstly occurring, insert "(other than a director appointed by the registrar under section 86A)".

(4) Section 70A (1) (b)—

Omit "\$50,000", insert instead "\$100,000".

(5) Section 75 (3), (3A)—

Omit subsection (3), insert instead:—

(3) The rules of a society may provide that a person's entitlement to vote in accordance with subsection (2) may not be exercised, or the person's entitlement to receive notices of meetings is suspended, unless the person has—

(a) such minimum amount of paid-up share capital as may be specified in the rules of the society; or

(b) such minimum amount by way of deposits, or by way of deposits of a particular class or particular classes, as may be specified in the rules of the society,

or both, but the registrar shall not register such a rule or any alteration of such a rule unless the registrar approves of the minimum amount or minimum amounts as set forth in those rules.

(3A) A person who is entitled to vote in accordance with this section (whether or not that entitlement is suspended pursuant to subsection (3)) is not entitled to any additional votes by virtue of any deposits which the person has with the society concerned.

Permanent Building Societies (Amendment) 1985

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(6) (a) Section 78 (1)—

Omit “accounts”, insert instead “accounting records”.

(b) Section 78 (5), (6)—

Omit “account” wherever occurring, insert instead “accounting record”.

(7) Section 78AA—

After section 78, insert:—

Certain records to be kept for the purposes of sections 11A, 11B and 63B.

78AA. (1) Subject to the regulations, a society (other than an association) shall keep such records as are necessary to disclose whether or not the society is in breach of sections 11A (2), 11B (2) and 63B.

(2) The regulations may make provision for or with respect to the keeping, retention and inspection of any records referred to in subsection (1).

(8) Section 78A (2) (a)—

Omit the paragraph.

(9) (a) Section 79 (1)—

After “member”, insert “or creditor of the society”.

(b) Section 79 (1)—

Omit “, securities given and bonds issued”, insert instead “and securities given”.

(10) (a) Section 81 (2) (a), (b)—

After “society” wherever occurring, insert “or of a subsidiary corporation of the society”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(b) Section 81 (3A)—

After section 81 (3), insert:—

(3A) The board of a society shall, within the prescribed period after each financial year of the society, cause to be prepared—

- (a) a balance-sheet made up to the end of that financial year, being a balance-sheet that gives a true and fair view of the state of affairs of the society as at the end of that financial year; and
- (b) an income and expenditure account for that financial year, being an income and expenditure account which gives a true and fair view of the surplus or deficit for its financial year,

and cause those documents, duly audited by the society's auditors, to be laid before the next annual general meeting of the society following the close of that financial year, together with the auditors' report in respect of the society's accounts made in accordance with subsection (4).

(c) Section 81 (4) (b), (c)—

Omit "books of account" wherever occurring, insert instead "accounting records".

(d) Section 81 (4) (b)—

Omit "those books", insert instead "those records".

(e) Section 81 (4) (d)—

Omit "the said accounts", insert instead "the documents prepared in accordance with subsection (3A)".

(f) Section 81 (5)—

Omit "books, accounts, vouchers, securities and documents", insert instead "accounting records and securities".

Permanent Building Societies (Amendment) 1985

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(11) (a) Section 82 (1), (1A)—

Omit the subsections, insert instead:—

(1) A society shall, within 14 days after the appointment of a person—

(a) as a director of the society or of any subsidiary corporation of the society; or

(b) as the principal executive officer or secretary of the society or of any subsidiary corporation of the society,

and within 14 days after any such appointment ceases, submit to the registrar a notice in writing specifying the prescribed particulars of the appointment or cessation of appointment.

(1A) Whenever a society is required to submit to the registrar a notice under subsection (1) specifying particulars of the appointment of a person as a director of the society or of any subsidiary corporation of the society, it shall also specify in the notice the prescribed particulars of any other corporation of which the person is, according to any notice or notices given under section 78A, a director.

(b) Section 82 (2) (a)–(d)—

Omit the paragraphs, insert instead:—

(a) a list specifying the directors and the principal executive officers of the society and of each subsidiary corporation of the society, as at the date of the return;

(b) the balance-sheet of the society at the close of its financial year then last past together with the income and expenditure account and of the society for that financial year;

(c) the balance-sheet, at the close of its financial year then last past, of each subsidiary corporation of the society together with the profit and loss account of each such subsidiary corporation for that financial year;

(d) a copy of any report by the auditors on the balance-sheets and accounts referred to in paragraphs (b) and (c); and

Permanent Building Societies (Amendment) 1985

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(c) Section 82 (3)—

After “the society”, insert “, and of each subsidiary corporation of the society,”.

(12) (a) Section 83 (1) (a)–(d)—

Omit “the manager” except where lastly occurring, insert instead “the principal executive officer”.

(b) Section 83 (1) (a)—

After “society”, insert “or of any subsidiary corporation of the society”.

(c) Section 83 (1) (b)–(d)—

After “society” wherever occurring, insert “, or of any subsidiary corporation of the society,”.

(d) Section 83 (1) (d)—

Omit “general manager”, insert instead “principal executive officer”.

(e) Section 83 (1)—

Omit “manager” where lastly occurring, insert instead “principal executive officer”.

(f) Section 83 (2)—

Omit “manager”, insert instead “principal executive officer”.

(g) Section 83 (2)—

After “a society”, insert “, or of a subsidiary corporation of a society,”.

(13) Section 84 (1) (b)—

Omit the paragraph, insert instead:—

- (b) all mortgages which have been transferred, and all mortgage-backed securities which have been issued or otherwise dealt with, by the society during that financial year.

(14) Section 84A (2)—

Omit the subsection.

Permanent Building Societies (Amendment) 1985

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(15) Section 84B—

After section 84A, insert:—

Other returns.

84B. Nothing in this Division affects the obligation of a society to submit a return in accordance with—

- (a) section 11A (5) (minimum percentage of assets to be associated with primary objects);
- (b) section 11B (4) (minimum percentage of loans to be secured by mortgage over owner-occupied residential land); or
- (c) section 63H (1) (returns relating to capital adequacy),

and nothing in any of those sections affects the obligation of a society to submit any return in accordance with this Division.

SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.

(1) (a) Section 86A (3) (b)—

Omit “and”.

(b) Section 86A (3) (c), (d)—

At the end of section 86A (3) (c), insert:—

; and

- (d) any delegation made by the board of the society is revoked.

(c) Section 86A (5) (a1)—

Before section 86A (5) (a), insert:—

- (a1) appoint another person as administrator;

Permanent Building Societies (Amendment) 1985

SCHEDULE 7—*continued.*

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

(d) Section 86A (5A), (5B)—

After section 86A (5), insert:—

(5A) Directors of a society appointed by the registrar under subsection (5) (b) may be appointed to hold office for the same or different periods, but no director shall be so appointed to hold office for more than 3 years.

(5B) Where a vacancy occurs in the office of a director appointed under subsection (5) (b), the registrar shall appoint a person to fill the vacancy and a person so appointed shall, subject to subsection (6B), hold office for the remainder of the term of office of the person's predecessor in office.

(e) Section 86A (6)–(6B)—

Omit section 86A (6), insert instead:—

(6) Directors elected under subsection (5) (a) or appointed under subsection (5) (b) take office on revocation of the appointment of the administrator.

(6A) A director appointed under subsection (5) (b) shall, subject to subsection (6B), hold office for the period for which the appointment was made.

(6B) Directors appointed by the registrar under this section cease to hold office on the expiry of the periods for which their appointments were made and in any of the circumstances specified in section 68 (4) (a), (b), (c), (d), (f), (h), (j), (l) or (m), but not otherwise.

(2) (a) Section 87 (3) (e)—

After "breach" where firstly occurring, insert "of".

(b) Section 87 (3) (e1), (e2)—

After section 87 (3) (e), insert:—

(e1) that the society has failed to comply with a direction given to the society under section 115A;

(e2) that, in the case of a society that is not an association, the society is failing to maintain its capital adequacy;

Permanent Building Societies (Amendment) 1985

SCHEDULE 7—*continued.*

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

(c) Section 87 (4)—

After “(e),” insert “(e1), (e2),”.

(d) Section 87 (7) (a)—

After “this Part”, insert “and with such modifications as may be prescribed”.

(e) Section 87 (7) (b)—

Omit “society—”, insert instead “society, in addition to any modifications prescribed under paragraph (a), those provisions shall apply with the following modifications:—”.

(f) Section 87 (8)—

After section 87 (7), insert:—

(8) Without affecting the generality of the foregoing provisions of this section, the provisions of Subdivision F of Division 4 of Part XII of the Companies (New South Wales) Code apply, subject to this Part and with such modifications as may be prescribed, to the dissolution of a society.

(3) (a) Section 90A (1)—

After “apply”, insert “, with such modifications as may be prescribed,”.

(b) Section 90A (2)—

Omit “For the purposes of subsection (1), the provisions referred to therein shall be construed”, insert instead “In addition to any modifications prescribed under subsection (1), the provisions referred to in that subsection shall apply to and in respect of a society”.

Permanent Building Societies (Amendment) 1985

SCHEDULE 8.

(Sec. 5.)

AMENDMENTS TO PART IX OF THE PRINCIPAL ACT.

(1) Section 96 (3)—

Omit the subsection.

(2) Section 96A—

After section 96, insert:—

Offences by officers.

96A. (1) Where a society contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the society shall be deemed to have contravened the same provision unless the officer satisfies the court that—

- (a) the society contravened the provision without the knowledge of the officer;
- (b) the officer was not in a position to influence the conduct of the society in relation to its contravention of the provision; or
- (c) the officer, being in such a position, used all due diligence to prevent the contravention by the society.

(2) An officer of a society may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the society has been proceeded against or convicted under that provision.

(3) An officer proceeded against and convicted under a provision pursuant to subsection (1) is liable to a penalty not exceeding the maximum penalty to which a society would be liable if convicted under the provision.

(3) Section 101—

Omit the section, insert instead:—

Falsification of records.

101. If any person makes, orders or allows to be made any entry or erasure in, or any omission from—

- (a) any balance-sheet, income and expenditure account or other accounting record of a society or of a subsidiary corporation of a society; or

Permanent Building Societies (Amendment) 1985

SCHEDULE 8—*continued.*

AMENDMENTS TO PART IX OF THE PRINCIPAL ACT—*continued.*

(b) any return, document or other record required to be sent, produced or delivered for the purposes of this Act, with intent to falsify it, or to evade any of the provisions of this Act, that person is guilty of a misdemeanour.

(4) Section 103A (2)—

At the end of section 103A, insert:—

(2) Subsection (1) does not apply in relation to any transaction or proposed transaction associated with a secondary object of a society, where the board has approved, whether generally or in the particular circumstances, of the officer receiving a commission, fee or reward as referred to in that subsection.

(5) Section 104 (3)—

After section 104 (2), insert:—

(3) Subsection (1) does not apply in relation to any transaction associated with a secondary object of a society, where the board has approved, whether generally or in the particular circumstances, of the officer receiving a commission, fee or reward as referred to in that subsection.

(6) (a) Section 105 (1)—

After “thereof”, insert “shall be guilty of an offence and”.

(b) Section 105 (4)—

Omit the subsection.

(7) Section 105A—

After section 105, insert:—

Notice to be given of conviction for offence.

105A. Where after the commencement of this section a society or an officer of a society is convicted of an offence against a provision of this Act or the regulations, the society shall, not later than 15 months after the date on which the conviction is recorded, give to each member of the society a notice in writing specifying—

(a) the conviction;

*Permanent Building Societies (Amendment) 1985*SCHEDULE 8—*continued.*AMENDMENTS TO PART IX OF THE PRINCIPAL ACT—*continued.*

- (b) any penalty imposed in respect of the offence to which the conviction relates; and
- (c) the nature of the offence to which the conviction relates.

SCHEDULE 9.

(Sec.5.)

AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

(1) Section 107 (8)—

Omit "With the approval of the Minister first obtained, the ", insert instead "The".

(2) Section 107A—

After "regulations", insert ", a direction of the registrar".

(3) Section 108 (3)—

After section 108 (2), insert:—

(3) A return submitted pursuant to section 11A (5), 11B (4), 63H (1) or 84A (1) is not a document to which subsection (1) applies.

(4) (a) Section 110 (1)—

After "and (d)", insert ", and the society shall comply with the direction".

(b) Section 110 (5)—

Omit the subsection, insert instead:—

(5) A society that contravenes subsection (1) or (4) is guilty of an offence and liable on conviction to a penalty not exceeding \$400.

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(5) (a) Section 112 (1)—

Omit the subsection, insert instead:—

(1) The registrar and any inspector appointed under section 114 and authorised in writing by the registrar either generally or specially to do so—

(a) may inspect any records, or examine the affairs, of a society or of any subsidiary corporation or prescribed special services body corporate of a society, whether or not the society, corporation or body corporate is in the course of being wound up; and

(b) where a society or a subsidiary corporation or prescribed special services body corporate of a society is in the course of being wound up, may inspect any records kept by the liquidator in respect of the society, corporation or body corporate.

(b) Section 112 (2)—

After “society”, insert “or of a subsidiary corporation or prescribed special services body corporate of a society”.

(6) (a) Section 113 (1)—

Omit “volition—”, insert instead “volition, do either or both of the following:—”.

(b) Section 113 (1) (b)—

After “society”, insert “or of a subsidiary corporation of the society”.

(c) Section 113 (1A)—

After section 113 (1), insert:—

(1A) The registrar may hold an inquiry into the affairs, including the working and financial condition, of a prescribed special services body corporate of a society.

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(d) Section 113 (7)—

Omit the subsection, insert instead:—

(7) All expenses of and incidental to a meeting called or an inquiry held under subsection (1) or (1A) shall be defrayed, in such proportions as the registrar directs—

(a) in the case of a meeting called or an inquiry held under subsection (1)—

(i) by the applicants;

(ii) out of the funds of the society to which the meeting or inquiry related or, as the case may be, the society whose subsidiary corporation was the subject of the inquiry; or

(iii) by any officer, member, former officer or former member of the society; or

(b) in the case of an inquiry held under subsection (1A), out of the funds of the special services body corporate to which the inquiry related or out of the funds of the society whose special services body corporate was the subject of the inquiry,

and may be recovered in any court of competent jurisdiction as a debt due to the registrar.

(e) Section 113 (8)—

After “society”, insert “, subsidiary corporation or special services body corporate”.

(f) Section 113 (9)—

After section 113 (8), insert:—

(9) Without limiting the operation of section 107 (8), the registrar may delegate any of the registrar’s duties, powers and authorities under this section (other than this power of delegation) to any person who in the registrar’s opinion is suitably qualified to perform those duties and to exercise those powers and authorities, including a person outside New South Wales.

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(7) Section 115—

Omit the section, insert instead:—

Powers of registrar and inspectors.

115. (1) The registrar or an inspector appointed under section 114 may, for the purpose of any inquiry or inspection under this Act, exercise all or any of the following powers:—

- (a) administer an oath to any person;
- (b) by notice in writing require the attendance of any person at a time and place specified in the notice and at that time and place require the person—
 - (i) to answer any question put by the registrar or inspector in relation to the subject-matter of the inquiry or inspection;
 - (ii) to produce to the registrar or inspector for inspection all or any of the records of a society, or of a subsidiary corporation or prescribed special services body corporate of a society, which the registrar or inspector believes on reasonable grounds to be in the person's possession; or
 - (iii) to do both of those things;
- (c) require any officer of a society—
 - (i) to furnish to the registrar or inspector any information relating to the affairs of the society, or of any subsidiary corporation or prescribed special services body corporate of the society, or the subject-matter of any inquiry into the working and financial condition of such a society, corporation or body corporate;
 - (ii) to produce to the registrar or inspector for inspection all or any of the records of such a society, corporation or body corporate; or
 - (iii) to do both of those things;

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

- (d) require any officer of a subsidiary corporation or prescribed special services body corporate of a society—
 - (i) to furnish to the registrar or inspector any information relating to the affairs of that corporation or body corporate, or of the society of which it is a subsidiary corporation or special services body corporate, or the subject-matter of any inquiry into the working and financial condition of that corporation or body corporate, or of the society of which it is a subsidiary corporation or special services body corporate;
 - (ii) to produce to the registrar or inspector all or any of the records of that corporation or body corporate, or of the society of which it is a subsidiary corporation or special services body corporate; or
 - (iii) to do both of those things;
- (e) enter, at any reasonable time—
 - (i) the registered office of a society or of a subsidiary corporation or prescribed special services body corporate of a society; or
 - (ii) any other premises or place in which the registrar or inspector believes on reasonable grounds the affairs of a society, or of a subsidiary corporation or prescribed special services body corporate of a society, are being carried on or in which any records relating to the affairs of a society, or of a subsidiary corporation or prescribed special services body corporate of a society, are kept.

(2) Subsection (1) (e) does not authorise the registrar or an inspector to enter that part of any premises that is used for residential purposes, without the consent of the occupier of that part.

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

- (3) Any person who, without lawful excuse—
- (a) refuses or fails to comply with any requirement lawfully made by the registrar or by an inspector for the purposes of this Act; or
 - (b) assaults or wilfully obstructs, hinders or otherwise interferes with the registrar or an inspector in the exercise or performance of any of the duties, powers, authorities or functions of the registrar or of an inspector under this Act,

is guilty of an offence and liable on conviction to a penalty not exceeding \$600 or to imprisonment for a period not exceeding 6 months, or to both.

(4) In subsection (3), a reference to the registrar includes a reference to a person to whom any of the duties, powers and authorities of the registrar have been delegated under this Act.

(5) The registrar may disclose to a person performing under a law of another State or of a Territory functions similar to those performed by the registrar under this Act any information concerning a society, a subsidiary corporation of a society or a prescribed special services body corporate of a society where the information was obtained by the registrar or an inspector in the course of the exercise or performance of any of the duties, powers, authorities or functions of the registrar or inspector under this Act.

(6) The registrar is not liable to any civil or criminal proceedings in respect of a disclosure made or proposed to be made in good faith under subsection (5).

- (7) A notice referred to in subsection (1) (b) may be served—
- (a) where it is addressed to an officer of a society, in the appropriate manner specified in section 36A; or
 - (b) where it is addressed to any other person, personally or sent by post to the address of that other person last known to the registrar or to the inspector concerned.

*Permanent Building Societies (Amendment) 1985*SCHEDULE 9—*continued.*AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(8) Sections 115A, 115B—

After section 115, insert:—

Direction to remedy breach.

115A. (1) Where, following an inquiry into the affairs of a society under section 113, the registrar is of the opinion that the society is in breach of a provision of this Act or the regulations or of the rules of the society, the registrar may, within 12 months after the date on which the inquiry is completed, by notice in writing served on the society, direct the society to remedy the breach before the expiration of a period specified in the notice.

(2) Where the registrar is of the opinion that a society is failing to maintain capital adequacy, the registrar may, by notice in writing served on the society, direct the society to remedy the failure before the expiration of a period specified in the notice.

(3) The registrar may withdraw a direction under this section.

(4) A society which fails to comply with a direction under this section which has not been withdrawn is guilty of an offence.

Penalty: \$1,000. Default penalty.

Fees.

115B. (1) The Minister may, by order published in the Gazette, fix—

- (a) fees for inspections carried out under this Act; or
- (b) annual supervision fees,

to be paid to the registrar by societies or by any subsidiary corporation or prescribed special services body corporate of a society.

(2) Different fees may be fixed according to different factors.

(3) Any such fee may be recovered by or on behalf of the registrar in any court of competent jurisdiction as a debt due to the Crown.

(4) Nothing in this section affects any power to prescribe fees by regulation.

Permanent Building Societies (Amendment) 1985

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(5) The registrar may waive payment of the whole or any part of a fee payable under this Act.

(9) Section 117 (8)—

After section 117 (7), insert:—

(8) The committee shall have such other powers, authorities, duties or functions as are conferred or imposed on it by or under this or any other Act.

SCHEDULE 10.

(Sec. 5.)

AMENDMENTS TO PART XI OF THE PRINCIPAL ACT.

(1) (a) Section 119 (1)—

Omit “may prescribe—” and paragraphs (a) and (b), insert instead:—

may—

- (a) prescribe offences for breaches of the regulations;
- (b) provide for a penalty, not exceeding \$100, to be imposed for any offence so prescribed or for differing penalties, not exceeding that amount, to be imposed in cases of successive offences so prescribed;
- (c) provide for a daily penalty, not exceeding \$5 a day, or for a weekly penalty not exceeding \$25 a week, to be imposed for any continuing offence so prescribed; and
- (d) without limiting the generality of the foregoing—
 - (i) provide for a penalty, not exceeding an amount referred to in paragraph (b) or (c), according to the particular case, to be imposed for any offence which involves a breach of any prohibition, restriction or condition imposed

Permanent Building Societies (Amendment) 1985

SCHEDULE 10—*continued.*

AMENDMENTS TO PART XI OF THE PRINCIPAL ACT—*continued.*

by the regulations (including any prohibition, restriction or condition specially authorised by this Act to be so imposed); and

- (ii) provide for a penalty, not exceeding such an amount, to be imposed on a society or an officer of a society for any offence so prescribed.

(b) Section 119 (2A)—

After section 119 (2), insert:—

(2A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(c) Section 119 (3)—

After “Schedule 1”, insert “or Part 2 of Schedule 3”.

(d) Section 119 (4)—

Omit “Subject to subsection (5), section”, insert instead “Section”.

(e) Section 119 (5)—

Omit the subsection.

Permanent Building Societies (Amendment) 1985

SCHEDULE 10—*continued.*

AMENDMENTS TO PART XI OF THE PRINCIPAL ACT—*continued.*

(2) Part XI, Division 4 (section 127)—

After Division 3 of Part XI, insert:—

DIVISION 4.—*Application of Act to certain building societies not registered under this Act.*

Application of Act to certain societies mentioned in or registered under Co-operation Act.

127. (1) The provisions of this Act specified in Schedule 3 (including any regulation, order or direction having effect by, under or for the purposes of any of those provisions) apply, with such modifications as may be prescribed, to and in respect of—

- (a) a society mentioned in the Second Schedule to the Co-operation Act, 1923; or
- (b) a non-terminating building society registered under the Co-operation Act, 1923,

in the same manner as those provisions would so apply if a reference in this Act to a society included a reference to a society referred to in paragraph (a) or (b).

(2) The provisions referred to in Part 2 of Schedule 3 apply by virtue of subsection (1) only for the purposes of or for purposes connected with the provisions referred to in Part 1 of that Schedule applying by virtue of that subsection.

(3) Where, in relation to any matter, a provision of this Act which applies by virtue of subsection (1) to a society referred to in subsection (1) (a) or (b)—

- (a) conflicts with a provision of or made pursuant to the Building and Co-operative Societies Act, 1901, or the Co-operation Act, 1923, which applies to the society; or
- (b) makes provision with respect to that matter in a manner which differs from a provision made with respect to that matter by a provision of or made pursuant to either of those Acts which so applies to the society,

*Permanent Building Societies (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART XI OF THE PRINCIPAL ACT—*continued.*

that provision of this Act shall apply to the society in relation to that matter to the exclusion of any other provision referred to in this subsection.

(4) For the purposes of its application under subsection (1) of this section to a society referred to in that subsection, paragraph (a) of section 79 (1) of this Act shall be construed as if references in that paragraph to "this Act" and to "the regulations" were references to such of the provisions of this Act, and to such of the provisions of the regulations, as apply to the society by virtue of subsection (1) of this section.

SCHEDULE 11.

(Sec. 5.)

INSERTION OF SCHEDULE 3 INTO THE PRINCIPAL ACT.

Schedule 3—

After Schedule 2, insert:—

SCHEDULE 3.

(Sec. 127.)

PROVISIONS OF THIS ACT APPLICABLE TO CERTAIN BUILDING SOCIETIES NOT REGISTERED UNDER THIS ACT.

PART 1.—*Principal provisions.*

Sections 4, 4A, 4B, 4C, 5, 5A, 6, 7, 8, 11A, 11B, 12, 13, 16, 20, 21, 23, 24, 36, 49 (7)–(9), 52 (10), 52B–52F, 62 (4)–(4B), 63, 63A–63H, 78AA, 79, 82 (1) (subsection (1) (a) excepted), 82 (2)–(5), 83, 84, 84A, 103A, 104, 105A, 112, 113, 115, 115A and 115B.

PART 2.—*Ancillary provisions.*

Sections 36A, 38, 91, 94, 95, 96 (except subsection (4)), 96A, 98, 101, 105, 106, 106A, 107A, 108, 109, 117 and 118.

Permanent Building Societies (Amendment) 1985

SCHEDULE 12.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Primary objects.

1. (1) The objects of a society as in existence immediately before the commencement of section 4A of the Principal Act, as inserted by this Act, shall be deemed to be the primary objects of the society, unless the rules of the society have, on or after the date of assent to this Act but before that commencement, been altered so as to specify as the primary objects of the society the object set out in subsection (2) (a) of that section and such other of the objects set out in subsection (2) of that section as may be referred to in the resolution by which the rules were so altered, but no such alteration shall take effect until that commencement.

(2) Without limiting the generality of clause 10, regulations under that clause may require a society referred to in subclause (1) to alter its rules at any time after the commencement of section 4A of the Principal Act, as inserted by this Act, so as to adopt as its primary objects the object set out in subsection (2) (a) of that section.

Minimum percentage of loans to be secured by mortgage over owner-occupied land.

2. (1) If section 11B of the Principal Act, as inserted by this Act, commences during but not at the start of a financial year of a society, then, for the purposes of that section and this clause—

(a) so much of that financial year of that society as ended immediately before that commencement; and

(b) so much of that financial year of that society as follows that commencement,

shall be treated as 2 separate financial years of that society.

(2) Section 11B of the Principal Act, as inserted by this Act, does not apply to or in respect of money advanced by a society during a financial year of the society that ended before the commencement of that section, but does apply to and in respect of money advanced by the society during a financial year of the society that commences on or after that commencement, whether the advance was approved before or after that commencement.

Financial accommodation.

3. Where—

(a) a society has raised any money or obtained other financial accommodation before the commencement of the amendments made by this Act to section 20 of the Principal Act; and

(b) the raising of that money or the obtaining of that other financial accommodation was beyond power but would have been valid if those amendments had been in force at all relevant times,

the raising of that money or the obtaining of that other financial accommodation, and any associated transaction or arrangement, are hereby validated.

Permanent Building Societies (Amendment) 1985

SCHEDULE 12—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Exemptions—use of words “permanent building society”.

4. Where a society or company formed or incorporated outside New South Wales has been granted an exemption from the provisions of section 35 (1) of the Principal Act and that exemption was subsisting immediately before the commencement of Schedule 3 (5) (a) to this Act, that society or company shall be deemed to be a body of persons exempted under section 35 (3A) of the Principal Act (as in force after that commencement) and that exemption shall be deemed to be subject to the same conditions and restrictions as those to which the exemption was subject immediately before that commencement.

Rate of dividend, etc., on fixed shares.

5. (1) If section 62 (4) of the Principal Act, as amended by this Act, commences during but not at the start of a financial year of a society, then, for the purposes of that subsection and this clause—

(a) so much of that financial year of that society as ended immediately before that commencement; and

(b) so much of that financial year of that society as follows that commencement, shall be treated as 2 separate financial years of that society.

(2) Section 62 (4) of the Principal Act, as amended by this Act, does not apply to or in respect of the rate or amount of dividend, bonus or rebate (or any interest as referred to in section 52 (1) (b) (ii) of the Principal Act) payable in any financial year of a society that ended before the commencement of Schedule 5 (7) to this Act.

Directors.

6. Where a person of or over the age of 72 years was appointed or re-appointed as a director of a society under section 66 (6) of the Principal Act and was holding office as such a director immediately before the commencement of Schedule 6 (2) to this Act—

(a) that person may continue to hold office as such a director until the conclusion of the annual general meeting of the society next following that commencement, whereupon the office of the director shall become vacant; but

(b) that person is not eligible for appointment or re-appointment as a director of a society after that commencement.

Returns, etc.

7. (1) Section 82 (1) of the Principal Act applies in relation to a change in the membership of a board that occurred before the commencement of Schedule 6 (9) (a) to this Act as if this Act had not been enacted.

(2) Sections 82 (2), 83 and 84 of the Principal Act apply in relation to a society's financial year that ends before the commencement of Schedules 6 (9)–(11) to this Act as if this Act had not been enacted.

(3) Section 105 (4) of the Principal Act applies in relation to a penalty imposed before the commencement of Schedule 8 (6) (b) to this Act as if this Act had not been enacted.

Permanent Building Societies (Amendment) 1985

SCHEDULE 12—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Offences by directors.

8. Section 96A of the Principal Act, as inserted by this Act, does not apply to or in respect of a contravention committed by a society before the commencement of that section.

Application of savings and transitional provisions to certain societies mentioned in or registered under Co-operation Act.

9. Clauses 1, 2, 3, 5, 7 and 8 apply to and in respect of—

(a) a society mentioned in the Second Schedule to the Co-operation Act, 1923; or

(b) a non-terminating building society registered under the Co-operation Act, 1923,

in the same way as they apply to and in respect of a society within the meaning of the Principal Act, but so apply only in relation to provisions of the Principal Act that apply to and in respect of such a society by virtue of section 127 (1) of the Principal Act and only to the extent that those provisions so apply.

Regulations.

10. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

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

(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 therein; 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 therein.

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