

WESTERN AUSTRALIA

CREDIT UNIONS ACT 1979

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WESTERN AUSTRALIA

CREDIT UNIONS ACT 1979

AN ACT to provide for the formation, registration, administration and control of credit unions and for incidental and other purposes.

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Credit Unions Act 1979*¹.

Commencement

2. This Act shall come into operation on a date to be fixed by proclamation¹.

[3. *Section 3 repealed by No. 82 of 1984 s. 3.*]

Interpretation

4. (1) In this Act, unless the contrary intention appears—
“bank” means—

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth as amended from time to time; and
- (b) a bank that carries on banking business on behalf of the government of a State under the authority of the laws of that State;

"banker's books" means—

- (a) books of a banker;
- (b) cheques, orders for payment of money, bills of exchange and promissory notes in the possession or under the control of a banker; and
- (c) securities or documents of title to securities in the possession of or under the control of a banker whether by way of pledge or otherwise;

"board" in relation to a credit union means the board of directors of the credit union and includes the committee of management of the credit union;

"books" includes any account, deed, writing or document and any other record of information however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

"certified" in relation to a document, means certified in the prescribed manner to be a true copy of the document;

"continuing credit arrangement" means an agreement whereby a credit union agrees with a member to provide credit to that member in respect of payment by the member to the credit union of amounts owing from time to time to the credit union in respect of—

- (a) cash (including cheques) supplied by the credit union to that member from time to time; or
- (b) the satisfaction by the credit union of liabilities of the member to other persons in respect of payment for goods, services or cash (including cheques) supplied by those other persons to the member from time to time,

and agrees to calculate the amount owing to it from time to time under the agreement on the basis that all amounts owing and all payments made by the member under or in respect of the agreement are entered in the same account;

"corporation" means any body corporate;

"Court" means the Supreme Court, or a Judge of the Supreme Court, or a person acting in the office of, or exercising the powers of, a Judge of the Supreme Court;

"credit limit", in relation to a continuing credit arrangement, means the amount which, under that arrangement, the outstanding balance of the account kept for the purposes of that arrangement is not to exceed;

"credit union" means a credit union (other than a foreign credit union) registered under this Act and includes a credit union formed by amalgamation and registered under this Act;

"debenture" has the same meaning as in section 5 (1) of the *Companies (Western Australia) Code*²;

- “declared law” means a law of another State, or of a Territory of the Commonwealth, being a law in respect of which a declaration referred to in subsection (2) is in force;
- “director” in relation to credit union includes any person occupying the position of a director of the credit union by whatever name called, or acting in that capacity in the business or operations of the credit union pursuant to its rules, this Act or a resolution duly passed by the board of the credit union and includes any person in accordance with whose directions or instructions the director or the other person so acting is accustomed to act;
- “document” includes summons, order and other legal process, and notice and register;
- “financial society” means a financial society registered under this Act and includes a financial society formed by amalgamation and registered under this Act;
- “foreign credit union” means a credit union formed and registered or deemed to be formed and registered, under a declared law of another State or of a Territory of the Commonwealth;
- “independent valuer” means a valuer who is not an officer or employee of the credit union concerned;
- “loan” does not include the provision of credit under a continuing credit arrangement;
- “member” in relation to a credit union means a member of the credit union;
- “mortgage” includes lien, charge and any other security over property;
- “non-withdrawable”, in relation to shares issued by a credit union, refers to shares for which a person has subscribed on terms that do not permit repayment of any of the amount subscribed other than an amount subscribed in excess of the nominal value of the shares except upon the winding up of the credit union;
- “officer” in relation to a credit union means a director, secretary, treasurer, manager or administrator of the credit union and any other person empowered under the rules of the credit union or by this or any other Act to give directions in regard to the conduct of the business of the credit union;
- “prescribed” means prescribed by this Act or by a regulation made under this Act;
- “prescribed corporation” has the meaning ascribed to that expression in section 97 (7) of the *Companies (Western Australia) Code*²;
- “prime net worth”, in relation to a credit union, means—
 - (a) the paid up non-withdrawable share capital of the credit union;

(b) the amount of distributed profits and realized reserves (being the accumulated realized surplus arising from the business of the credit union less the amount of any losses carried forward in the accounts of the credit union) that comprises the reserve account of the credit union; and

(c) reserves established by the revaluation of real property held by the credit union and certified as correct by an independent valuer;

“printed” includes typewritten or lithographed or reproduced by any mechanical means;

“registered company auditor” means a person registered as a company auditor under the *Companies (Western Australia) Code*² and in relation to a foreign credit union, a person qualified to act as auditor of the credit union, under the law of the place in which the credit union, is formed and registered;

“Registrar” means the person holding the office of Registrar of Co-operative and Financial Institutions referred to in section 145 (1) and includes any Deputy Registrar appointed in accordance with section 146 (1) and also includes any person acting in the office of Registrar of Co-operative and Financial Institutions or of such a Deputy Registrar;

“reproduction” in relation to a document has the meaning ascribed to that expression in section 73A of the *Evidence Act 1906*;

“rules” in relation to a credit union means the registered rules of the credit union for the time being in force;

“share” in relation to a credit union means share in the share capital of the credit union;

“special notice” in relation to a general meeting of a credit union means a notice of that meeting given not less than 28 days before the meeting;

“special rule” means a rule the terms of which the Registrar has separately and specifically approved before its registration and includes an altered rule, so approved;

“transparency” in relation to a document has the meaning ascribed to that expression in section 5 of the *Companies (Western Australia) Code*²;

“valuer” means a valuer licensed under the *Land Valuers Licensing Act 1978* or similar legislation of another State or a Territory;

“withdrawable”, in relation to shares issued by a credit union, refers to shares other than non-withdrawable shares.

(1a) A reference in this Act to borrowing from a credit union is a reference to receiving a loan from a credit union or to being provided with credit by a credit union under a continuing credit arrangement.

(1b) A reference in this Act to a person associated with another person shall be construed in accordance with section 9 of the *Companies (Western Australia) Code*² as if the reference were in that Code.

(1c) A reference in this Act to a credit union includes a reference to a financial society except where the reference occurs in any of the following provisions—

- (a) section 4 (1), definition of “credit union”;
- (b) Part III, Division 1 (other than sections 22 and 23) and Division 1a;
- (c) section 29 (3) to (5);
- (d) section 30;
- (e) Part IV;
- (f) section 38 (1) and (3);
- (g) section 45 (1) to (5);
- (h) section 46 (1) to (3);
- (i) section 79 (7) and (8);
- (j) section 80 (1);
- (k) Part VIIIA.

(1d) The Minister, by notice in writing to a financial society, may exempt the financial society from the application of any provision that would otherwise apply to it by reason of subsection (1c).

(1e) Where in any other written law, other than the *Building Societies Act 1976*, there is—

- (a) a reference to a credit union registered or incorporated under this Act; or
- (b) a reference to a credit union as defined by this section; or
- (c) a reference in any other form to a credit union,

that reference includes a reference to a financial society unless the contrary intention appears in the written law.

(2) The Governor may by Order in Council declare any law of another State or of a Territory of the Commonwealth to be a declared law for the purposes of this Act and may by Order in Council vary or revoke such a declaration.

(3) Unless the contrary intention appears a reference in this Act to a Part, Division or provision of this Act includes a reference to regulations made for the purposes of that Part, Division or provision.

[Section 4 amended by No. 10 of 1982 s. 28; No. 82 of 1984 s. 4; No. 120 of 1987 s. 39; No. 90 of 1990 s. 4.]

Application of the *Companies (Western Australia) Code*²

5. (1) Subject to the express provisions of this Act, and to section 581B of that Code, the *Companies (Western Australia) Code*² does not apply to, or to acts, matters, circumstances or things of or in relation to—

- (a) any credit union;
- (b) any foreign credit union registered under Part IX; or
- (c) any credit union, society or corporation in respect of which an exemption granted pursuant to section 30(3) is subsisting.

(2) Where under this Act provisions of the *Companies (Western Australia) Code*² are expressed to be applicable to, or to acts, matters, circumstances or things of or relating to, credit unions or to foreign credit unions registered under Part IX, a reference to the applied provisions shall be construed as including a reference to the *Companies (Application of Laws) Act 1981*³ and any rules and regulations in force for the purposes of the applied provisions and the provisions of that Act and of those rules and regulations shall subject to all necessary modifications and adaptations apply accordingly.

[Section 5 amended by No. 10 of 1982 s. 28.]

Arrangements for commencement of certain sections of the *Credit Unions Amendment Act 1990*¹

5A. (1) The Registrar shall as soon as is practicable after section 5 of the *Credit Unions Amendment Act 1990*¹ comes into operation ensure that such steps are taken as are required to complete the arrangements necessary for the commencement of sections 4, 6, 7, 8, 9, 10 and 11 of that Act.

(2) The arrangements to be so completed are—

- (a) that there is in existence a company limited by guarantee incorporated under the *Companies (Western Australia) Code*² by the name "Credit Unions Savings Protection Board Limited"; and
- (b) that the memorandum and articles of that company—
 - (i) comply in all respects with the provisions of the Act as amended by the sections referred to in subsection (1) and the *Companies (Western Australia) Code*²; and
 - (ii) contain such provisions as are, and are in a form that is, approved by the Minister on the recommendation of the Registrar.

(3) The Registrar may delegate to any person any of the duties required to be performed under subsection (1).

(4) As soon as the Registrar is satisfied that the necessary arrangements have been completed under subsection (1) he or she shall give a certificate to that effect to the Minister and a proclamation may be made under section 2 (2) of the *Credit Unions Amendment Act 1990*¹ at any time after the certificate is so given.

[Section 5A inserted by No. 90 of 1990 s. 5.]

PART II—OBJECTS AND POWERS OF CREDIT UNIONS

Objects of a credit union

6. The objects of a credit union shall be—

- (a) to raise a fund by subscriptions of its members and in any way authorized by this Act;
- (b) to apply that fund, subject to this Act and the rules of the credit union, in making loans to members and providing credit to members;
- (c) to encourage habits of thrift among, and render services to, its members.

[Section 6 amended by No. 82 of 1984 s. 5.]

Powers of a credit union

7. (1) Subject to this Act, a credit union shall have and may exercise such powers, incidental to its objects, as are prescribed or conferred from time to time by its rules and, without limiting the powers which may be so conferred, the rules may confer all or any of the following powers—

- (a) to raise money for any of its objects on loan or by the negotiation of bills of exchange that have been accepted by a bank or a prescribed corporation;
- (b) to receive money on deposit;
- (c) to make and enter into arrangements for the provision of loan protection insurance and life savings insurance;
- (d) to join or become a member of a Mutual Aid or Stabilization Fund, by whatever name it is constituted, approved by the Registrar and whether registered in or forming part of a corporate body registered in this State or elsewhere in the Commonwealth which has been created for the purpose of protecting and stabilizing credit unions in financial difficulties, and assisting in the payment of losses suffered by members, and ancillary objects;
- (e) to arrange insurance on behalf of its members;
- (f) to render advisory or other services to its members in accordance with the rules.

(2) A credit union shall not, without the prior approval in writing of the Registrar, provide a guarantee to any person.

[Section 7 amended by No. 120 of 1987 s. 40.]

Property

8. (1) A credit union may acquire by lease, purchase, donation, devise, bequest or otherwise any real or personal property necessary for the carrying out of any of the objects of the credit union and may sell, mortgage, exchange or lease any such real or personal property.

(2) The acquisition by a credit union of real or personal property primarily or mainly required for business or office accommodation of the credit union, or of the credit union and other credit unions, is a valid exercise of its powers.

(3) Every credit union shall insure and keep insured to an adequate extent against all risks properly insurable against in accordance with good and prudent management, all real or personal property vested in the credit union.

Management contracts

9. (1) In this section "management contract" means a contract or other arrangement to which a credit union is a party whereby the whole or any substantial part of the duties or work of a nature ordinarily performed by the managements or staffs of credit unions is performed for the credit union by a person or persons—

- (a) who are not the members of the management or staff of the credit union; or
- (b) who are members of the management or staff of the credit union but are not performing the duties or work in that capacity.

(2) A credit union shall not, after the coming into operation of this Act, enter into a management contract without having first obtained the approval in writing of the Registrar.

(3) A credit union shall not vary or assign a management contract without having first obtained the approval in writing of the Registrar.

[Section 9 amended by No. 120 of 1987 s. 41.]

Raising of money

10. (1) Subject to this section, a credit union may, if authorized by its rules, and within the limits provided by this section—

- (a) raise money on loan, or receive money on deposit, at interest;
- (b) raise money by negotiation of bills of exchange that have been accepted by a bank or a prescribed corporation; or
- (c) raise money by the issue of promissory notes,

to be applied for the purposes of the credit union.

(2) Where a credit union is authorized by its rules to raise money on loan, the credit union may raise the money in such manner as the board may think fit.

(3) Without limiting in any way the manner in which the credit union may so raise money on loan, money may be raised by legal or equitable mortgage charged upon the undertaking of the credit union or upon all or any part of the property and rights (both present and future) of the credit union including its share capital, subscriptions, loan payments and other moneys, or by the issue of bonds.

(4) A credit union shall not in any month raise on loan or by negotiation of bills of exchange or by issue of promissory notes an amount that, if added to the amount owing as at the last day of the next preceding month by the credit union in respect of all loans made to it and all bills of exchange negotiated by it and all promissory notes issued by it in pursuance of this section would produce an amount greater than 25% of the sum of—

(a) the amount of the paid up share capital of the credit union; and

(b) the amount of the deposits held by the credit union,
as at that day.

(5) Notwithstanding subsection (4) a credit union may with the written approval of the Registrar first obtained raise money on loan or by negotiation of bills of exchange or by issue of promissory notes contrary to the provisions of that subsection—

(a) where the period of 4 years next succeeding the day on which the credit union was first registered under the *Co-operative and Provident Societies Act 1903* or under this Act has not expired; or

(b) where the Registrar is satisfied—

- (i) that the membership of the credit union has not reached its potential and the credit union requires to raise the money for the purpose of increasing its membership;
- (ii) that the credit union requires to raise the money following the extension of the class or classes of persons eligible to borrow;
- (iii) that the credit union desires to raise the money to enable the acquisition of real property necessary for the carrying out of any of the objects of the credit union; or
- (iv) that the moneys to be raised on loan or by negotiation of bills of exchange or by issue of promissory notes are to be used for the purpose of repaying share capital, or deposits.

(6) Where the Registrar gives an approval for the purposes of subsection (5), he may, in granting the approval, impose such terms and conditions to be complied with by the credit union as he deems

appropriate and where default is made in complying with such terms and conditions the credit union and every officer of the credit union who is in default is guilty of an offence.

Penalty: \$1 000.

[(7) repealed]

(8) The Registrar may, by notice in writing served on a credit union, give directions to the credit union as to the maximum amount that may be held by the credit union by way of deposit from any person or associated persons.

(9) A credit union shall not accept a deposit from a person if the amount of the deposit together with all other deposits (if any) held by the credit union in respect of that person, together with all other deposits (if any) held by the credit union in respect of any person associated with that person, exceeds, in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (8).

(10) Any member or other person lending money to or depositing money with a credit union shall not be bound to see to the application thereof or be in any way affected or prejudiced by the fact that the credit union in borrowing the money or receiving the deposit, has contravened any provision of this Act or of the rules of the credit union.

[11 and 12 repealed]

(13) Nothing in this section shall affect the validity of any deposits with or loans to a credit union made before the coming into operation of this Act but any redepositing or relending of the moneys in question shall be made only in conformity with this section.

[Section 10 amended by No. 82 of 1984 s. 6; No. 120 of 1987 s. 42.]

Application of Companies Act and Companies (Western Australia) Code² in relation to mortgages, etc.

11. (1) The provisions of Divisions 4 and 7 of Part IV of the *Companies Act 1961*, and of any rules and regulations made under that Act applicable thereto, as in force immediately prior to the coming into operation of the *Companies (Application of Laws) Act 1981*³ shall, *mutatis mutandis*, and with such modifications, if any, as may be prescribed, apply, subject to subsection (2), to any mortgage or charge created by a credit union, not being a mortgage, charge or encumbrance of specific lands required by law to be registered under any other Act.

(2) For the purposes of the application for the purposes of this Act of provisions specified in subsection (1)—

- (a) a reference in any of those provisions to the Commissioner shall be construed as a reference to the Registrar under this Act;

- (b) a reference in any of those provisions to a company shall be construed as a reference to a credit union; and
- (c) a reference in any of those provisions to a foreign company to which Division 3 of Part XI of the *Companies Act 1961* applies shall be construed as a reference to a foreign credit union to which Part IX of this Act applies.

(3) The provisions of Part X of the *Companies (Western Australia) Code*² shall, *mutatis mutandis*, and with such modifications, if any, as may be prescribed, apply, subject to subsection (4), to and in respect of the appointment of a receiver or manager of a credit union, to and in respect of a receiver or manager so appointed and to and in respect of a credit union of whose property a receiver or manager has been appointed.

(4) For the purpose of the application for the purposes of this Act of provisions specified in subsection (3)—

- (a) a reference in any of those provisions to the Commission shall be construed as a reference to the Registrar under this Act;
- (b) a reference in any of those provisions shall be construed as a reference to a credit union; and
- (c) a reference in any of those provisions to any other corporation includes a reference to a foreign credit union or other corporation to which section 5 (1) (b) or (c) relates.

[Section 11 amended by No. 10 of 1982 s. 28.]

Disposal of certain securities

12. Any property to which a credit union has become absolutely entitled by foreclosure, surrender or other extinguishment of the right of redemption, shall, as soon afterwards as may be reasonable and conveniently practicable, be sold or converted into money.

Staff superannuation

13. A credit union shall have power to create, operate and maintain or join or make arrangement with any other persons or bodies of persons in, or for the creation, operation and maintenance of a fund or scheme for the purpose of providing pension and superannuation benefits for the officers and employees of the credit union and for their dependants but moneys forming part of such a fund shall not be invested with the credit union.

Contracts

14. (1) Contracts on behalf of a credit union may be made, varied or discharged as is provided in this section.

(2) Any contract which, if made between private persons, would be by law required to be in writing and under seal, may be made in the name and on behalf of a credit union in writing under the common seal of the credit union and the contract may be in the same manner varied or discharged.

(3) Any contract which, if made between private persons, would be by law required to be in writing and signed by the party to be charged therewith, may be made in the name and on behalf of a credit union in writing signed by any person acting under the express or implied authority of the credit union and the contract may in the same manner be varied or discharged.

(4) Any contract which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol in the name and on behalf of a credit union by any person acting under the express or implied authority of the credit union and the contract may in the same manner be varied or discharged.

(5) Any contract made according to the provisions of this section shall be effectual and shall be binding upon the credit union and all other parties thereto.

Credit union as agent

15. A credit union may act as an agent for other persons.

[Section 15 inserted by No. 120 of 1987 s. 43.]

Bills of exchange and letters of credit

16. (1) In so far as it is convenient in the furtherance of its objects and the exercise of its powers under this Act or its rules a credit union may draw bills of exchange on banks and prescribed corporations and, after the bills have been accepted by the respective banks or prescribed corporations on which they have been drawn, indorse, discount or otherwise negotiate them.

(2) A credit union may join with—

- (a) credit unions;
- (b) credit unions and associations of credit unions formed and registered in another State or in a Territory of the Commonwealth under a declared law of that State or Territory; or
- (c) any bank,

for the purpose of providing letter of credit facilities for members.

Power to join associations

17. (1) A credit union may join an association of credit unions, whether incorporated or unincorporated and whether or not it is registered under any other Act or under a law of another State or of a Territory of the Commonwealth if in the opinion of the directors membership will assist the credit union in carrying on its business.

(2) Nothing in subsection (1) shall authorize a credit union—

- (a) to subscribe by any means (other than by way of annual subscription) to the funds of any association referred to in subsection (1) a sum that, together with all sums previously so subscribed and not repaid, exceeds the prescribed amount that the credit union is authorized to apply for that purpose; or
- (b) to subscribe by way of annual subscription to the funds of any association referred to in subsection (1) a sum that exceeds the prescribed amount that the credit union is authorized to so subscribe.

(3) The respective amounts referred to in subsection (2) (a) and (b) may be prescribed in relation to a credit union by reference to an amount *per capita* of the membership of the credit union.

PART III—INCORPORATION

Division 1—Formation and Registration of Credit Unions

[Heading to Division 1 amended by No. 120 of 1987 s. 44.]

Formation of credit union

18. (1) Subject to this Act, any 25 or more persons of full capacity and of or above the age of 18 years (which number is in this section referred to as the “minimum number” and which persons are so referred to as “qualified persons”) may form a credit union.

(2) A credit union shall be formed in the following manner—

- (a) not less than the minimum number of qualified persons shall be present at a meeting called for the purpose of forming the credit union and at every subsequent and adjourned meeting called or adjourned for that purpose (which meeting, or meetings, is or are in this Division referred to as “the credit union formation meeting”);
- (b) at the credit union formation meeting there shall be presented—
 - (i) a written statement showing the objects of the credit union, the ways and means proposed to be adopted to finance the credit union, and the reasons for believing that, if registered, it will be able to carry out its objects successfully;
 - (ii) a written statement showing the full particulars of any contract, agreement or arrangement entered into or proposed to be entered into by any of the persons forming the credit union or proposed to be entered into by the credit union after registration, in relation to the purchase of land or the taking on lease or licence of land by the credit union; and

- (iii) a copy of the rules that it is proposed to tender for registration;
- (c) if, at the credit union formation meeting, after consideration of the rules not less than the minimum number of qualified persons—
 - (i) approve the rules with or without amendment; and
 - (ii) sign applications for membership and shares,they shall proceed to elect the first directors of the proposed credit union in accordance with the rules as so approved and thereupon may proceed to appoint the members of such committees as may be provided for in the rules.

Application for registration of credit union

19. (1) An application for registration of a credit union shall be made to the Registrar in the prescribed manner within 2 months, or such further period as the Registrar may allow, after the election of the directors pursuant to section 18.

(2) The application shall be accompanied by—

- (a) a statutory declaration by the chairman and secretary of the credit union formation meeting as to the compliance with the requirements of section 18;
- (b) a copy of the written statements presented to the credit union formation meeting pursuant to section 18 (2) (b) (i) and (ii) signed by the chairman and secretary of the meeting;
- (c) two copies of the proposed rules of the credit union signed by the chairman and secretary of the credit union formation meeting and certified by them as being the rules approved in accordance with section 18 (2) (c), each of whose signatures shall be attested by a witness;
- (d) a list containing the full name and the occupation and residential address of each director and the proposed secretary and such other particulars in relation to those persons as are prescribed;
- (e) a list containing the full name and the occupation and address of each of 25 persons of full capacity and of or above the age of 18 years who attended the credit union formation meeting and applied for membership and shares;
- (ea) a feasibility study of the commercial viability of the proposed credit union prepared in accordance with such requirements as are prescribed and signed by each of the directors and the proposed secretary; and
- (f) such other particulars as may be prescribed.

[Section 19 amended by No. 82 of 1984 s. 8.]

Registration of credit unions

20. (1) If the Registrar is satisfied—

- (a) that the credit union has complied with the provisions of this Act in respect of matters precedent to the registration of the credit union and incidental to its registration;
- (b) that the proposed rules of the credit union are not contrary to the provisions of this Act that are applicable to credit unions, are adequate for the proper conduct and operation of the credit union and are such as may be reasonably registered by him;
- (ba) that there are reasonable grounds for believing that the credit union, if registered, will have available to it by way of non-withdrawable share subscriptions, within 30 days of the issue of a certificate of incorporation, not less than \$5 000 000 or such greater amount as may be prescribed;
- (c) that there are reasonable grounds for believing that the credit union, if registered, will be commercially viable and able to carry out its objects successfully; and
- (d) that there is no reasonable cause why the credit union and its proposed rules should not be registered,

he shall register the credit union and its rules and shall issue a certificate of incorporation in the prescribed form to the effect that the credit union and its rules are registered under this Act on and from the date specified in the certificate.

(2) The statutory declaration mentioned in section 19 (2) (a), may be accepted by the Registrar as sufficient evidence of compliance with the requirements of this Act in respect of matters precedent to the registration of the credit union and incidental to its registration.

(3) The expenses of and incidental to the formation of a credit union may be paid out of capital or income.

[Section 20 amended by No. 82 of 1984 s. 9; No. 120 of 1987 s. 45.]

[21. Section 21 repealed by No. 120 of 1987 s. 46.]

Body corporate

22. On and from the date specified in the certificate of incorporation but subject to this Act, the credit union—

- (a) shall be a body corporate by the name under which it is registered, with perpetual succession and a common seal;
- (b) shall in its corporate name be capable of suing and being sued;
- (c) shall have power to enter into contracts;
- (d) shall have the powers, rights, duties and functions conferred, imposed or prescribed by or under this Act or the rules of the credit union; and
- (e) shall have power to do or suffer all such other acts and things as are necessary to achieve its objects.

Appeal from decisions of Registrar

23. (1) Where the Registrar refuses to register any proposed alteration of the rules of a credit union, or requires the revision or alteration of a rule, or directs a change of name of a credit union, and the credit union, within 14 days of the receipt by it of notification of the refusal, requirement or direction requires the Registrar so to do, the Registrar shall specify in writing under his hand within one month of the date of receipt of the requisition, the grounds of his refusal or, in the case of a requirement or direction by him, the grounds upon which the requirement or direction was made or given.

(2) Within 21 days of the receipt by it of the writing specifying the grounds of the Registrar's refusal, requirement or direction, the credit union may, unless the grounds of the Registrar's refusal, requirement or direction are that the credit union would be, or is, registered by a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, apply to The District Court of Western Australia for review of the refusal, requirement or direction.

(3) On the review—

- (a) the Registrar may be represented and may oppose any modification or reversal of the refusal, requirement or direction;
- (b) the court may confirm, modify or reverse the refusal, requirement or direction and make such further order in the matter (including an order as to costs) as to it seems proper in the circumstances.

(4) In this section a reference to any refusal, requirement or direction of the Registrar shall be construed as extending to any such refusal, requirement or direction of any Deputy Registrar or any person authorized by the Registrar pursuant to section 151.

[Section 23 amended by No. 120 of 1987 s. 47.]

Registration of existing societies

24. (1) On and by force of the coming into operation of this Act each body mentioned in the First Schedule shall cease to be a co-operative and provident society registered under the *Co-operative and Provident Societies Act 1903* and shall be registered as a credit union under this Act.

(2) The identity of a body mentioned in the First Schedule shall not be affected by the coming into operation of this Act and, subject to this Act, it shall continue in existence as the same entity.

(3) After the coming into operation of this Act a reference in any document, or in any other Act, to a credit union, or to the *Co-operative and Provident Societies Act 1903*, or to that Act as amended at any time, shall, insofar as it affects a body mentioned in the First Schedule, be read and construed as a reference to a credit union registered under this Act or, as the case requires, to this Act.

(4) As soon as practicable after the coming into operation of this Act a body mentioned in the First Schedule shall surrender to the Registrar the acknowledgment of registry issued to that body under the *Co-operative and Provident Societies Act 1903* and, on surrender to him of that acknowledgment or production to him of such evidence as to the loss of that acknowledgment as he may require, the Registrar shall issue a certificate of incorporation in the prescribed form.

(5) On and by force of the coming into operation of this Act the rules, as then in force, of a body mentioned in the First Schedule shall be registered as the rules of that body as a credit union under this Act.

Division 1a—Registration of Financial Societies
[Division 1a inserted by No. 120 of 1987 s. 48.]

Application for registration as a financial society

24A. (1) A credit union may apply to the Registrar in the prescribed manner for registration as a financial society.

(2) The application shall be accompanied by—

- (a) a statement setting out or describing the alterations that the credit union proposes to make to its rules so that those rules will not be contrary to the provisions of this Act applicable to financial societies; and
- (b) such other particulars as may be prescribed.

(3) After considering the application the Registrar shall—

- (a) grant provisional approval of the application; or
- (b) reject the application.

(4) In granting provisional approval under subsection (3) (a) the Registrar may impose upon the credit union any conditions or requirements (whether as to cancellation or conversion of shares or any other matter) that the Registrar considers necessary to be complied with before the credit union is registered as a financial society.

(5) Where provisional approval of an application is granted under subsection (3) (a) the applicant may, notwithstanding the provisions of this Act that are applicable to credit unions—

- (a) make alterations to its rules (including a change of name) so that those rules are not contrary to the provisions of this Act that are applicable to financial societies; and
- (b) comply with any condition or requirement imposed under subsection (4).

[Section 24A inserted by No. 120 of 1987 s. 48.]

Registration of a financial society

24B. (1) If the Registrar is satisfied—

- (a) that the credit union has made alterations to its rules in accordance with section 24A (5) (a) and complied with all conditions and requirements imposed under section 24A (4); and
- (b) that there is no reasonable cause why the credit union should not be registered as a financial society,

the Registrar shall, upon the surrender to him of the certificate of incorporation of the credit union or production of such evidence as to the loss of that certificate as the Registrar may require, register the credit union as a financial society, register the alterations mentioned in paragraph (a), and issue a certificate of incorporation in the prescribed form to the effect that the financial society is registered under this section on and from the date specified in the certificate.

[Section 24B inserted by No. 120 of 1987 s. 48.]

Effect of registration

24C. Where a credit union is registered as a financial society under section 24B it shall cease to be registered as a credit union but its identity shall not be affected and it shall continue as the same entity under its name as changed under section 24A (5) (a).

[Section 24C inserted by No. 120 of 1987 s. 48.]

*Division 2—Rules***Rules**

25. The rules of a credit union shall, in addition to rules otherwise required by this Act to be included, include rules not inconsistent with this Act relating to the matters set forth in the Second Schedule.

Copy of rules

26. (1) A credit union shall furnish any person with a copy of its rules on request and on payment by that person of the fee specified in the rules or, where no fee is so specified a fee of 50 cents.

[(2) repealed.]

(3) Where an alteration is made in the rules of a credit union a copy of the rules shall not be issued by the credit union after the date of alteration unless—

- (a) the copy is in accordance with the alteration; or

- (b) a printed copy of the resolution making the alteration is annexed to the copy of the rules and the particular rule or rules affected are indicated in red ink.

[Section 26 amended by No. 120 of 1987 s. 49.]

Member and credit union bound by rules

27. The rules of a credit union shall, when registered, bind the credit union and all members thereof and all persons claiming under those members.

Alteration of rules

28. (1) The rules of a credit union shall not be altered unless the alteration has been approved by a special resolution.

(2) Where the alteration of the rules has been approved by special resolution, the credit union shall within the prescribed time and in the prescribed manner apply to the Registrar to have the alteration registered and shall furnish with the application such documents and particulars as may be prescribed.

(3) If the Registrar is satisfied that the alteration is not contrary to this Act and is such as may reasonably be approved by him and that there is no reasonable cause why the alteration should not be registered, the Registrar shall register the alteration as prescribed.

(4) The alteration shall not have any force or effect until it is registered in accordance with this section.

(5) The rules of the credit union shall be read subject to any alteration registered in accordance with this section.

(6) For the purpose of this Act, alteration of the rules includes an addition to, deletion from, rescission of, and a substitution of a rule.

(7) Where in the opinion of the Registrar the rules of a credit union should be altered to achieve conformity with any requirement of this Act, he may by instrument in writing served upon the credit union, require it, within a period specified in the instrument, to alter its rules in a manner specified in the instrument or otherwise in a manner approved by the Registrar.

(8) If within the period specified in an instrument served pursuant to subsection (7) the credit union fails to alter its rules as required by the instrument, the Registrar may himself, by notation upon the registered copy of the rules, alter the rules of the credit union.

(9) The Registrar shall give notice to a credit union of any alteration of its rules made by him under subsection (8).

(10) Any alteration made by the Registrar to the rules of a credit union under subsection (8) shall be as valid and effectual as an alteration made and registered under this section.

Division 3—Name

Names of credit unions

29. (1) Except with the consent of the Minister, a credit union shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette*.

(3) A credit union shall not be registered by a name that contains the word "co-operative" or any other word importing a similar meaning if, in the opinion of the Registrar, the rules of the credit union do not contain provisions having a similar effect to the provisions that, under section 173 (1) of the *Companies (Co-operative) Act 1943*, are required to be contained in the memorandum and articles of association of a company, society, or association applying for registration as a company under Part VI of that Act and having in its name or title the word "co-operative".

(4) Subsection (3) does not apply to a credit union registered under this Act by virtue of section 24 if, immediately before the coming into operation of this Act, the name of that credit union contained the word "co-operative".

(5) A credit union shall have the word "Limited" or the abbreviation "Ltd" as part of and at the end of its name and shall include in its name the words "credit union", or the words "credit society", in consecutive form.

(5a) A financial society shall not be registered by a name that contains the word "Co-operative" or any other word importing a similar meaning.

(5b) A financial society shall have the word "Limited" or the abbreviation "Ltd" as part of and at the end of its name and shall include in its name the words "financial society" in consecutive form.

(6) No description of a credit union shall be deemed to be inadequate or incorrect by reason of the use of—

(a) the abbreviation "Ltd" in lieu of the word "Limited" contained in the name of the credit union;

(b) the symbol "&" in lieu of the word "and" contained in the name of the credit union;

or

- (c) a word specified in paragraph (a) or (b) in lieu of the corresponding abbreviation or symbol contained in the name of the credit union.

[Section 29 amended by No. 120 of 1987 s. 50.]

Use of words "credit union"

30. (1) Subject to this section, no person or body of persons, whether incorporated or unincorporated other than a credit union, or a foreign credit union, registered under this Act shall—

- (a) trade or carry on business, which expression shall, without limiting the generality thereof, include—

- (i) establishing or using an office for the receipt of share capital, deposits or loan funds;
- (ii) advertising for share capital, deposits or loan funds; or
- (iii) the making of loans to members residing in the State, whether by servants or agents or otherwise, under any name or title of which the words "credit union" or the words "credit society" or any other words importing a similar meaning, form part; or

- (b) in any manner hold out that its trade or business is respectively that of a credit union or a foreign credit union registered under this Act.

(2) Subsection (1) does not prevent an association of credit unions, credit union officers or credit union employees, formed in this State from using the words "credit union" or any other words importing a similar meaning, in its name or title, if that association or union has been approved by the Registrar for the purpose of this subsection and that approval has not been revoked.

(3) Any credit union, society or corporation formed or incorporated outside the State (other than a foreign credit union) that desires to trade or carry on business in the State may apply in the prescribed form to the Registrar for exemption from subsection (1) and that subsection shall not apply to any such credit union, society or company in respect of which the Registrar has granted an exemption, while that exemption subsists.

(4) The Registrar may grant any exemption for the purposes of subsection (3) for such time and upon such conditions as he thinks fit and may revoke the exemption, but the Registrar shall not grant any such exemption unless he is satisfied that the credit union, society or corporation would be able to trade or carry on business in the State in accordance with the principles contained in this Act for the carrying on of the business of a credit union.

(5) Every person contravening subsection (1) and, in the case of a corporation or an unincorporated body of persons contravening subsection (1), every director or other person having the control and management of the affairs of the corporation or body of persons who knowingly and wilfully is guilty of the contravention or authorizes or permits the contravention is guilty of an offence.

Penalty: \$1 000. Default Penalty: \$200.

Change of name

31. (1) Subject to this section, a credit union may, by an alteration of its rules in the manner provided by this Act, change its name to a name by which it could be registered under this Act without contravention of section 29 (1), (3) or (5a).

(2) If a credit union through inadvertence or otherwise, is registered by a name by which the credit union could not be registered without contravention of section 29 (1), (3) or (5a) the credit union shall, if the Registrar with the approval of the Minister, so directs, change its name to a name by which the credit union could be registered without contravention of that subsection.

(3) Upon registration of an alteration of the name of a credit union pursuant to this section, the Registrar shall register the change of name and either note the change of name on the certificate of incorporation, or upon surrender to the Registrar of the certificate of incorporation, or production of such evidence as to its loss as the Registrar may require, issue a new certificate of incorporation in lieu thereof.

(4) Where a change of name of a credit union has been registered pursuant to this section, the last name of the credit union so registered shall be the registered name of the credit union and a reference in this Act to the registered name of a credit union shall in relation to the credit union be construed as a reference to its new name lastly registered pursuant to this section.

(5) A change of name of a credit union shall be published, at the expense of the credit union, in the manner prescribed.

(6) A change of name shall not affect any right or obligation of a credit union or of any member or other person or render defective any legal proceedings by or against the credit union.

(7) After a credit union has changed its name pursuant to this section, any legal proceedings that might have been continued or commenced against the credit union by its former name may be continued or commenced against it by its new name.

(8) Any reference in any share certificate, mortgage, lien, security, bond, debenture, agreement, contract, deed, or other document, instrument or writing whatsoever to the credit union by its former

name shall, on and from the date of the noting of the change in the certificate of incorporation or, as the case may be, issue of the new certificate of incorporation, be read and construed as a reference to the credit union by its new name.

[Section 31 amended by No. 120 of 1987 s. 51.]

Publication of name of credit union

32. Every credit union shall—

- (a) paint or affix, and keep painted or affixed, on the outside of every office or place in which the business of the credit union is carried on, in a conspicuous position and in letters easily legible its registered name and also in the case of the registered office, the words "Registered Office";
- (b) have its registered name inscribed in legible characters on its seal; and
- (c) have its registered name inscribed in legible characters on all business letters, statements of account, invoices, notices, advertisements, and other official publications of the credit union and on all bills of exchange, cheques, promissory notes, or other negotiable instruments, indorsements, orders for money or goods, waybills, invoices, receipts, letters of credit and other documents used in the business of the credit union.

Penalty: \$500. Default penalty.

Credit union using other than registered name

33. (1) Subject to section 29 (4) a credit union shall not use any name or title other than its registered name or an abbreviation or elaboration of that name approved in writing by the Registrar to be used for any specified purpose or purposes.

Penalty: \$500. Default penalty.

(2) If an officer of a credit union or any person on its behalf—

- (a) issues or authorizes the issue of any business letter, statement of account, invoice, notice, advertisement, or other official publication of the credit union wherein the name of the credit union does not appear in legible characters; or
- (b) signs, issues or authorizes to be signed or issued, on behalf of the credit union any bill of exchange, cheque, promissory note or other negotiable instrument or any indorsement, order for money or goods, waybill, invoice, receipt, letter of credit or other document used in the business of the credit union wherein the name of the credit union does not appear in legible characters; or

- (c) uses, or authorizes the use of, any seal purporting to be the seal of the credit union, whereon the name of the credit union does not appear in legible characters,

he is guilty of an offence and where he has signed or authorized to be signed or issued on behalf of the credit union any bill of exchange, cheque, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the credit union.

Penalty: \$100.

Division 4—Office and Service of Documents

Registered office

34. (1) Every credit union shall from the date of its incorporation have a registered office within the State to which all communications and notices may be addressed, and the registered office of the credit union shall, subject to this section, be situated—

- (a) in the case of a credit union registered under this Act by virtue of section 24, at the address of its registered office under the *Co-operative and Provident Societies Act 1903* immediately before the coming into operation of this Act; or
- (b) in the case of any other credit union the address specified in the rules as the address of its first registered office.

(2) A credit union shall not later than 14 days after a change in the address of its registered office, lodge with the Registrar, in the prescribed manner, notice of the change of address and the Registrar shall thereupon register the new address as the address of the registered office of the credit union.

(3) The address specified in the notice lodged pursuant to subsection (2), as from the date specified in the notice as the date on which the change of address occurs or the date of lodgement of the notice whichever is the later, shall be, or be deemed to be, the address of the registered office of the credit union.

Service of documents

35. (1) A document may be served on a credit union by leaving it at the registered office of the credit union or by sending it by post to the credit union at its registered office.

(2) A document may be served on a director or other officer of a credit union by sending it by post to the director or other officer at the last address of the director or other officer as disclosed in returns transmitted to the Registrar pursuant to this Act.

(3) Where a liquidator of a credit union has been appointed, a document may be served on the credit union—

- (a) by leaving it at the office of the liquidator at the last address thereof notice of which has been lodged with the Registrar; or
- (b) by sending it by post to the credit union or to the liquidator thereof, at the address referred to in paragraph (a).

**PART IV—AMALGAMATION, TRANSFER OF ENGAGEMENTS,
AND TAKE-OVERS**

[*Part IV inserted by No. 120 of 1987 s. 52.*]

Interpretation of this Part

36. In this Part—

“amalgamated institution” means the body that is proposed to be formed, or has been formed, by the amalgamation of 2 or more institutions under this Part;

“amalgamating institution” means an institution that has applied under section 37A (1) for approval to amalgamate with one or more other institutions;

“bank” means—

(a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted under the laws of this State;

“institution” means a credit union or a financial society;

“permanent building society” means a permanent society under the *Building Societies Act 1976*.

[*Section 36 inserted by No. 120 of 1987 s. 52.*]

Amalgamation of institutions

37. Subject to this Part—

(a) 2 or more institutions, one or more of which is a financial society, may amalgamate to form a body to be registered as a financial society;

(b) 2 or more credit unions may amalgamate to form a body to be registered as a credit union.

[*Section 37 inserted by No. 120 of 1987 s. 52.*]

Application for amalgamation

37A. (1) Two or more institutions may apply to the Registrar for approval to amalgamate in accordance with section 37.

(2) The application shall be in the prescribed form and shall be accompanied by—

- (a) 2 copies of the proposed rules of the amalgamated institution; and
- (b) such other particulars as many be prescribed.

(3) After considering the application, the rules and particulars referred to in subsection (2) (a) and (b), and any other particulars supplied by the amalgamating institutions at the Registrar's request, the Registrar shall—

- (a) grant provisional approval of the proposed amalgamation and direct that section 37B is to apply to the application;
- (b) grant provisional approval to the proposed amalgamation and direct that section 37C is to apply to the application; or
- (c) reject the application.

[Section 37A inserted by No. 120 of 1987 s. 52.]

Amalgamation with approval of members and Registrar

37B. (1) If the Registrar directs that this section is to apply to an application under section 37A (1)—

- (a) each amalgamating institution shall, unless exempted in writing by the Registrar, send to each of its members a statement the contents of which have been approved by the Registrar concerning—
 - (i) the financial position of each of the amalgamating institutions;
 - (ii) any interest that the officers of any amalgamating institution may have in the amalgamation;
 - (iii) any compensation or other consideration proposed to be paid to the officers of any amalgamating institution;
 - (iv) any payments to be made to members of any amalgamating institution in consideration of the amalgamation; and
 - (v) such other matters as the Registrar may direct;
- (b) each amalgamating institution shall send a notice to each person who is entitled to vote at a general meeting of the institution informing the person that a written objection to the proposed amalgamation may be lodged with the Registrar not more than 28 days after the sending of the notice;

- (c) subject to paragraph (d) the Registrar shall approve the proposed amalgamation if the terms of amalgamation are approved by a special resolution of each of the amalgamating institutions and the Registrar is satisfied that the proposed rules of the amalgamated institution are not contrary to this Act or the regulations;
- (d) the Registrar shall reject the application if, within 28 days after the sending of the notices under paragraph (b) by an institution, written objections to the proposed amalgamation are lodged with the Registrar by persons entitled to cast more than 25% of the maximum number of votes that might be cast at a general meeting of that institution.

(2) A statement sent by an institution under subsection (1) (a) shall be sent so that it will in due course of post reach each member not later than the time at which the member would receive notice of the meeting of the institution called to pass a special resolution for the purposes of subsection (1) (c).

(3) Where statements are sent under subsection (1) (a), the statements sent to the persons who are entitled to vote at a general meeting of the institution shall include or be accompanied by the notices required under subsection (1) (b).

[Section 37B inserted by No. 120 of 1987 s. 52.]

Amalgamation without approval of members

37C. If the Registrar directs that this section is to apply to an application under section 37A (1)—

- (a) the amalgamating institutions shall give notice of the application in such manner and at such times as the Registrar may direct;
- (b) the Registrar may, if he thinks fit, approve the proposed amalgamation;
- (c) before giving approval under paragraph (b), the Registrar may hear the amalgamating institutions, the Credit Unions Savings Protection Board Limited and any other person whom the Registrar may consider entitled to be heard.

[Section 37C inserted by No. 120 of 1987 s. 52; amended by No. 90 of 1990 s. 6.]

Registration of amalgamated institution and effect of amalgamation

37D. (1) If the Registrar approves of a proposed amalgamation under section 37B or 37C, the Registrar shall, upon the surrender to him of the certificate of incorporation of each amalgamating institution or production of such evidence as to the loss of that certificate as the Registrar may require, register the amalgamated institution as a

financial society or a credit union, as the case may require, register the rules of the amalgamated institution, and issue a certificate of incorporation in respect of the amalgamated institution.

(2) The Registrar may, following the issue of the certificate of incorporation of the amalgamated institution, remove from the register the name of any institution that was an amalgamating institution.

(3) Subject to subsection (3a) the amalgamation shall not prejudice any right of a creditor of any amalgamating institution.

(3a) The right of a member of a credit union which is an amalgamating institution to claim under section 104L shall lapse upon issue of the certificate of incorporation of the amalgamated institution.

(4) Upon the issue of the certificate of incorporation of the amalgamated institution the property of each amalgamating institution shall, by virtue of this section without any conveyance, transfer or assignment, vest in the amalgamated institution.

(5) For the purposes of this section the property of an amalgamating institution shall include all estates and interests in property, whether real or personal, vested or contingent.

(6) Upon production of the certificate of the Registrar, and of the appropriate certificates of title (if any) the Registrar of Titles or the Registrar of Deeds, as the case requires, shall make such entries or notations upon existing certificate of title, or shall issue such new certificates of title as are necessary to evidence the vesting of any estate or interest in land in the amalgamated institution pursuant to this section.

(7) Any property that is vested in or transferred to the amalgamated institution by virtue of this section shall be subject to any debt, liability or obligation affecting that property.

(8) Upon the issue of the certificate of incorporation of the amalgamated institution all debts and liabilities, whether certain or contingent and whether then existing or capable of arising at a future time, to or with which an amalgamating institution is liable or charged at the time of the issue of that certificate shall, by virtue of this section become the debts and liabilities of the amalgamated institution.

(9) Section 22 shall apply to the amalgamated institution.

[Section 37D inserted by No. 120 of 1987 s. 52; amended by No. 90 of 1990 s. 7.]

Voluntary transfer of engagements of institutions

37E. (1) Subject to this Part—

- (a) any institution may transfer all its engagements to a financial society that undertakes to fulfil those engagements;

- (b) a financial society may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (a);
- (c) a credit union may transfer all its engagements to another credit union that undertakes to fulfil those engagements;
- (d) a credit union may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (c).

(2) Two institutions may apply to the Registrar for approval of the transfer of all the engagements of one of them to the other in accordance with subsection (1).

(3) The provisions of section 37A (2) (other than paragraph (a)), 37A (3), 37B, 37C and 37D (3) to (8) shall apply, with necessary modifications, to a transfer of engagements under this section and for the purpose of the application of those provisions—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to an amalgamating institution in section 37A (3), 37B or 37C shall be construed as a reference to the institution transferring its engagements or the institution to which the engagements are being transferred;
- (c) a reference to an amalgamating institution in section 37D (3) to (8) shall be construed as a reference to the institution transferring its engagements;
- (d) a reference to the amalgamated institution shall be construed as a reference to the institution to which the engagements are transferred; and
- (e) a reference to the issue of the certificate of incorporation of the amalgamated institution shall be construed as a reference to the approval of the transfer of engagements by the Registrar under section 37B or 37C as applied by this subsection.

(4) Where the engagements of an institution are transferred under this section the institution shall surrender its certificate of incorporation to the Registrar or produce such evidence as to the loss of that certificate as the Registrar may require and the Registrar shall remove the name of the institution from the register.

[Section 37E inserted by No. 120 of 1987 s. 52.]

Amalgamation with, or transfer of engagements to, a permanent building society

37F. (1) An institution may amalgamate with, or transfer all its engagements to a permanent building society under Part IV of the *Building Societies Act 1976*.

(2) Where an amalgamation or transfer of engagements takes place as referred to in subsection (1) the institution shall surrender its certificate of incorporation to the Registrar or produce such evidence as to the loss of the certificate as the Registrar may require and the Registrar shall remove the name of the institution from the register.

[Section 37F inserted by No. 120 of 1987 s. 52.]

Transfer of engagements of institutions by direction of Registrar

37G. (1) Notwithstanding anything to the contrary contained in the rules of an institution, the Registrar may, with the approval of the Minister and agreement of the transferee—

- (a) direct the transfer of all or a part of the engagements of an institution to another institution, a permanent building society, or a bank; and
- (b) give an institution such directions as the Registrar considers necessary to give effect to the transfer of engagements directed under paragraph (a).

(2) A direction under subsection (1) (a) may direct the transfer of engagements—

- (a) of a financial society only to another financial society, a permanent building society, or a bank;
- (b) of a credit union to another credit union, a financial society, a permanent building society, or a bank.

(3) Before submitting a proposed direction for the approval of the Minister under subsection (1) (a) the Registrar shall give the proposed transferor institution and transferee institution, a permanent building society, or a bank and any other person whom the Registrar may consider entitled to be heard, an opportunity to be heard at such time and place and in such manner as the Registrar thinks fit.

(4) When submitting a proposed direction for the approval of the Minister under subsection (1) (a) the Registrar shall furnish to the Minister—

- (a) a certificate setting out the Registrar's reasons for the proposed direction; and
- (b) a report on any representations made to the Registrar under subsection (3).

(5) Subject to subsection (6) subsections (3) to (8) of section 37D shall apply, with necessary modifications, to a transfer of engagements under this section, and for the purpose of the application of those subsections—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;

- (b) a reference to an amalgamating institution shall be construed as a reference to the institution that has its engagements transferred;
- (c) a reference to the amalgamated institution shall be construed as a reference to the institution or permanent building society to which the engagements are transferred; and
- (d) a reference to the issue of the certificate of incorporation of the amalgamated institution shall be construed as a reference to the date specified pursuant to subsection (7).

(6) Where the transfer is of a part of the engagements of an institution section 37D (4) and (8) shall apply in respect only of such property, debts and liabilities as the Registrar specifies in a direction under subsection (1) (b).

(7) Section 37E (4) shall apply to an institution that has all its engagements transferred under this section.

(8) A transfer of engagements under this section takes effect upon a day specified by the Registrar by notice published in the *Gazette*.

(9) An institution given a direction by the Registrar under subsection (1) may within 7 days after receiving the direction make representations in writing to the Minister, and the Registrar shall revoke the direction if the Minister, after considering the representations, so directs.

(10) An officer of an institution who—

- (a) fails to take all reasonable steps to secure compliance by the institution with a direction given under subsection (1); or
- (b) by a wilful act or omission is the cause of a failure by an institution to comply with such direction,

is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months.

[Section 37G inserted by No. 120 of 1987 s. 52.]

Power to undertake to fulfil engagements transferred by direction

37H. An institution may undertake to fulfil the engagements of another institution pursuant to a transfer of engagements under section 37G.

[Section 37H inserted by No. 120 of 1987 s. 52.]

Take-over of financial society

37I. (1) Subject to subsection (2), the Registrar shall not approve, under section 46 (4), of the issue, holding or acquisition of shares of a financial society (in this section called the "target society") if, as a result of the issue, holding, or acquisition, the shares held beneficially by a person or 2 or more associated persons (in this section called "the party seeking control") would entitle the party seeking control to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the target society.

(2) The Registrar may grant approval in a case referred to in subsection (1) if the party seeking control is or includes—

- (a) an institution or a permanent building society;
- (b) a bank; or
- (c) a body corporate approved by the Minister for the purposes of this section.

(3) In granting approval pursuant to subsection (2) the Registrar may impose upon the party seeking control or the target society, or upon each of them, any conditions or requirements that the Registrar considers necessary in order to give effect to the approval and to protect the interests of members of the target society.

(4) Without limiting the generality of subsection (3) the Registrar may impose conditions or requirements under that subsection with respect to—

- (a) the information that must be disclosed to the members of the target society or, if the party seeking control is or includes an institution or a permanent building society, to the members of that institution or society;
- (b) consents or approvals that must be obtained from members of the target society or, if the party seeking control is or includes an institution or a permanent building society, from the members of that institution or society;
- (c) changes that must be made to the rules of the target society;
- (d) the acquisition, by the party seeking control, of shares of other members of the target society;
- (e) the period within which, or time or event before or after which, a condition or requirement must be complied with.

(5) The Registrar may revoke approval granted pursuant to subsection (2) if a condition or requirement imposed under subsection (3) is not complied with.

[Section 37I inserted by No. 120 of 1987 s. 52.]

Direction to permit take-over

37J. (1) Notwithstanding anything in this Act or the rules of a financial society (in this section called "the target society") the Registrar may with the approval of the Minister—

- (a) direct the target society to issue shares of the class mentioned in section 45 (5a) (c) to a person so that, as a result of the issue, the shares held beneficially by a person or 2 or more associated persons (in this section called "the party taking control") would entitle the party taking control to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the target society; and
- (b) give the target society and the party taking control such directions as the Registrar considers necessary in relation to the issue of shares directed under paragraph (a).

(2) A direction shall not be given under subsection (1) (a) unless the party taking control is or includes—

- (a) an institution or a permanent building society;
- (b) a bank; or
- (c) a body corporate approved by the Minister for the purpose of this section.

(3) Before submitting a proposed direction for the approval of the Minister under subsection (1) (a) the Registrar shall give the proposed target society and party taking control, and any other person whom the Registrar may consider entitled to be heard, an opportunity to be heard at such time and place and in such manner as the Registrar thinks fit.

(4) When submitting a proposed direction for the approval of the Minister under subsection (1) (a) the Registrar shall furnish to the Minister—

- (a) a certificate setting out the Registrar's reasons for the proposed direction; and
- (b) a report on any representations made to the Registrar under subsection (3).

(5) A financial society or other person given a direction by the Registrar under subsection (1) may within 7 days after receiving the direction make representations in writing to the Minister, and the Registrar shall revoke the direction if the Minister, after considering the representations, so directs.

(6) An officer of a financial society who—

- (a) fails to take all reasonable steps to secure compliance by the financial society with a direction given under subsection (1);
or

(b) by a wilful act or omission is the cause of a failure by a financial society to comply with such a direction, is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months.

(7) Sections 37I (1) and 46 (4) do not apply to the issue of shares pursuant to a direction under subsection (1) (a).

[Section 37J inserted by No. 120 of 1987 s. 52.]

PART V—MEMBERS AND FUNDS

Division 1—Members

Membership, general

38. (1) The members of a credit union formed under this Act shall be those persons who signed an application for membership on the formation of the credit union, and any other persons who are admitted to membership in accordance with the rules of the credit union.

(1a) The members of a financial society registered under section 24B shall be those persons who were members of the body immediately before it was so registered, and any other persons who are admitted to membership in accordance with the rules of the financial society.

(2) The members of an amalgamated institution within the meaning of Part IV shall be those persons who, at the date of the amalgamation, were members of the amalgamating institutions and any other persons who are admitted to membership in accordance with the rules of the amalgamated institution.

(3) The members of a credit union registered under this Act by virtue of section 24 shall be the persons who were members of that credit union immediately before the coming into operation of this Act and any other persons who are admitted to membership in accordance with the rules of the credit union.

(4) No rights of membership of a credit union shall be exercised by any person unless or until he has made such payments in respect of membership, or acquired such shares or interests, as are required by the rules of the credit union to be made or acquired before those rights may be exercised.

[Section 38 amended by No. 120 of 1987 s. 53.]

Delegation—admission of members

39. (1) Where the rules of a credit union so provide, the board may, by instrument in writing, delegate any or all of its powers to admit persons to membership of the credit union to any person or body of persons of a prescribed class.

(2) The exercise of any delegation under this section shall be subject to and in accordance with such limits and conditions as may be specified in the instrument of delegation and such conditions as may be prescribed.

(3) Notwithstanding any delegation made under this section the board may continue to exercise or perform all or any of the powers so delegated.

(4) Any act or thing done or suffered by the delegate when acting in the exercise of any delegation under this section, and within the terms of the delegation, shall be as effective as if the act or thing had been done or suffered by the board.

(5) A refusal of an application for admission of a person to membership of the credit union in the exercise of any delegation under subsection (1) does not preclude a reconsideration of the application by the board upon a request by the applicant that the application be referred to the board.

(6) The board may, by instrument in writing, revoke wholly or in part any delegation made under subsection (1).

Corporate body as a member

40. (1) Where a corporation is a member of a credit union it may from time to time by notice in writing served on the credit union appoint a person to represent it at any meeting of members of the credit union and may by notice so served revoke any such appointment.

(2) Any person appointed under subsection (1)—

- (a) shall be entitled to receive notice of all meetings in the same manner as other members of the credit union and shall be entitled to exercise the same rights of voting as a natural person who is a member of the credit union; and
- (b) shall be eligible to be elected or appointed to the board of the credit union if the corporation holds such qualifications, other than those relating to age and being a natural person, as may be requisite for holding the office of director.

Minors as members

41. (1) Unless otherwise provided by the rules and subject to this section, a person under the age of 18 years may be a member of a credit union and may, to the extent required by reason of his membership, execute all instruments and give all necessary acquittances, which instruments and acquittances shall be as binding and sufficient in law for all purposes as if he had been of the full age of 18 years at the time he executed the instruments, or gave the acquittances in question.

(2) When a credit union makes a loan to, or a continuing credit arrangement with, a member who is under the age of 18 years and is married, the member shall, in respect of his agreement to repay or pay his indebtedness under the loan or arrangement and in respect of any security for repayment or payment of his indebtedness given by him to the credit union, be subject to the same liabilities and obligations as he would have been subject to, and shall have the same rights as he would have had, if he had been of the full age of 18 years at the time the loan or arrangement was made.

(3) Any guarantee or surety by any person in respect of a loan or continuing credit arrangement referred to in subsection (2) shall be as binding and effectual as if the person who borrowed the money or made the continuing credit arrangement had been of the full age of 18 years when the guarantee or surety was given or entered into.

[Section 41 amended by No. 82 of 1984 s. 10.]

Power to impose fines for breach of rules

42. A credit union may impose a fine not exceeding \$10, or such other amount as may be prescribed, on a member for any infringement by the member of its rules but no fine exceeding \$2, or such other amount as may be prescribed, shall be imposed until written notice of intention to impose the fine and of the reason for its imposition has been given to the member and he has had an opportunity of appearing before the board with or without witnesses, or of sending to the board a written statement, for the purpose of showing cause against the imposition of the fine.

Cessation of membership

43. The rules of a credit union shall specify the circumstances, including those relating to bankruptcy and death, in which membership thereof shall cease.

Expulsion of member

44. (1) Subject to this section, where a member has been expelled from a credit union in accordance with the rules of the credit union, the credit union shall repay to the member the amount paid up on the shares held by him or it at the date of his or its expulsion, less any amount owing by the member to the credit union under the rules of any contract or otherwise.

(2) Where the balance-sheet of the credit union last issued before the date of expulsion of any member disclosed a loss or deficiency, there shall be deducted from any amount due in respect of shares held by him or it at the date of his or its expulsion, an amount that bears to the amount of the loss or deficiency the same proportion as the number of shares held by him or it bore to the total number of shares held by all members as at the date of the member's expulsion.

Division 2—Share Capital

Share capital

45. (1) The capital of a credit union shall vary in amount according to the nominal value of shares from time to time subscribed.

(2) The capital of a credit union shall be divided into shares of a fixed amount which shall be specified in the rules.

(3) The shares of a credit union may be of one or more classes or denominations and shall be issued either as shares fully paid up or as shares to be paid for by periodical or other subscription, as may be specified by the rules.

(4) The rules of a credit union may provide—

- (a) subject to this Act, for share capital to be withdrawable or non-withdrawable;
- (b) for the payment of differential rates of dividend or interest in respect of varying classes of shares; and
- (c) for rights entitling the holder of any class of shares to receive, instead of a dividend, interest on the shares of a class which are fully paid up at such rate as is determined by the board.

(4a) The rules of a credit union shall not provide for share capital to be repaid in priority to funds of the credit union consisting of deposits made with the credit union.

(4b) The rules of a credit union may provide for the cancellation of shares, or the withdrawal of share capital, but no such rules shall be registered unless the Registrar approves of the provisions governing the cancellation of shares or the withdrawal of share capital.

(5) A share of a credit union may not be sold or transferred without the consent of the board.

(5a) Shares issued by a financial society after the commencement of the *Acts Amendment (Building Societies and Credit Unions) Act 1987* shall be of one or more of the following classes—

- (a) withdrawable shares that, subject to this Act, entitle the holder to one and only one vote at a meeting of the financial society irrespective of the number of those shares held;
- (b) withdrawable shares that do not entitle the holder to a vote at a meeting of the financial society;
- (c) non-withdrawable shares that, subject to this Act, entitle the holder to one and only one vote in respect of each share at a meeting of the financial society;
- (d) non-withdrawable shares that do not entitle the holder to a vote at a meeting of the financial society.

(5b) Shares issued by a financial society may be of one or more denominations and shall be issued either as fully paid up shares or as shares to be paid for by periodical or other subscription.

(5c) The rules of a financial society may provide for—

- (a) the payment of differential rates of dividend or interest in respect of varying classes of shares;
- (b) rights entitling the holder of fully paid up shares of any class to receive, instead of a dividend, interest on those shares at such rate as is determined by the board.

(5d) The rules of a financial society shall not provide for share capital to be repaid in priority to funds of the financial society consisting of deposits made with the financial society.

(5e) The rules of a financial society may provide for the transfer or cancellation of shares, or the withdrawal of share capital, but no such rules shall be registered unless the Registrar approves of the provisions governing the transfer or cancellation of shares, or the withdrawal of share capital.

(5f) A financial society may raise funds by the issue of shares but, in the case of shares of the class mentioned in subsection (5a) (c), only with the prior approval in writing of the Registrar.

(6) The shares of a credit union shall not be quoted for sale or purchase at any stock exchange or in any other public manner whatever except with the prior approval in writing of the Minister.

(7) A share of a credit union may be held by 2 or more persons jointly, and where a share is so held—

- (a) the joint holder who is named first in the register of shares shall be the “primary joint holder” for the purposes of this subsection;
- (b) except where the rules of the credit union otherwise provide, but without prejudice to the right under this Act of a member of a credit union to obtain from the credit union on demand a copy of the balance-sheet, any notice or other documents may be given or sent by the credit union to the joint holders by being given or sent to the primary joint holder;
- (c) for the purpose of determining—
 - (i) who is qualified to vote on a resolution at a meeting of the credit union; and
 - (ii) the number or proportion of any members required to give effect to any provisions of this Act or of the rules, the shares shall be treated as being held by the primary joint holder alone;
- (d) the register of members and shares shall indicate whether a person is a joint holder and whether or not he is the primary joint holder; and

- (e) the joint holders shall be entitled to choose the order in which they are named in the register of shares, but failing any such choice the credit union may enter the names in such order as the board thinks fit.

(8) The liability of a member to a credit union shall be limited to the amount of any charges payable to the credit union as specified by the rules and any money owing howsoever by the member to the credit union.

[Section 45 amended by No. 82 of 1984 s. 11; No. 120 of 1987 s. 54.]

Restriction on shareholding

46. (1) Unless the written approval of the Registrar thereto has been first obtained—

- (a) a credit union shall not issue shares to a person or permit a person to otherwise acquire shares or to continue to hold shares; and
- (b) a person shall not acquire shares, by transfer or otherwise, or continue to hold shares,

if, as a result, the shares held beneficially by any person, together with the shares held beneficially by any person associated with that person would exceed 20% of the subscribed capital for the time being of the credit union.

Default penalty: \$500.

(2) Where the issue of shares to a person or acquisition or holding of shares by a person contravenes subsection (1), the person by whom the shares are beneficially held also commits an offence.

Default penalty: \$500.

(3) Without affecting the liability of a credit union or any person for an offence against subsection (1) or (2), the Registrar may, by order in writing given to—

- (a) credit union shares of which are held contrary to subsection (1); and
- (b) the person holding the shares concerned and, if they are held for the benefit of another person, that other person,

direct that any shares held contrary to subsection (1) are cancelled and the amount paid up in respect of them shall thereafter be dealt with as a deposit and the order has effect according to its tenor.

(4) Unless the written approval of the Registrar thereto has been first obtained—

- (a) a financial society shall not issue shares to a person or permit a person to otherwise acquire shares or to continue to hold shares; and

(b) a person shall not acquire shares by transfer or otherwise, or continue to hold shares of a financial society, if, as a result, the shares held beneficially by any person, together with the shares held beneficially by any person associated with that person—

- (c) would exceed 20% of the subscribed capital for the time being of the financial society; or
- (d) would entitle the holder or the holders of those shares to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the financial society.

Default penalty: \$500.

(5) Where the issue of shares to a person or acquisition or holding of shares by a person contravenes subsection (4), the person by whom the shares are beneficially held also commits an offence.

Default penalty: \$500.

(6) Without affecting the liability of a financial society or any person for an offence against subsection (4) or (5), the Registrar may, by order in writing given to—

- (a) a financial society any shares of which are held contrary to subsection (4); and
- (b) the person holding the shares concerned and, if they are held for the benefit of another person, that other person,

direct that any shares held contrary to subsection (4)—

- (c) are cancelled and the amount paid up in respect of them shall thereafter be dealt with as a deposit; or
- (d) are converted into shares of a class specified in the order, being shares that do not entitle the holder to a vote at a meeting of the financial society,

and the order has effect according to its tenor.

[Section 46 inserted by No. 120 of 1987 s. 55.]

Cancellation of shares

47. A credit union shall cancel any share forfeited to the credit union in accordance with the rules or in respect of which the credit union has repaid to the member the whole amount paid up thereon.

Repayment of capital

48. (1) Subject to the provisions of section 49 a credit union may, with the consent of a member, repay the whole or any part of the amount paid up on any withdrawable share held by the member at any time.

(2) No credit union shall approve any application for a loan or continuing credit arrangement until all applications for withdrawal of the whole or any part of the amount paid up on any share have been satisfied or are, in the opinion of the board, capable of being satisfied within 30 days of the date of the approval to the loan or continuing credit arrangement.

[Section 43 amended by No. 82 of 1984 s. 13; No. 120 of 1987 s. 56.]

Charge and set off

49. (1) A credit union shall have a charge upon the share or interest in the capital, and on the credit balance, of a member or past member and upon any dividend, interest or rebate payable to a member or past member in respect of any debt due from the member or past member to the credit union and may set off any amount paid on account of that share or otherwise, or any amount credited or payable to the member or past member, in or towards payment of the debt.

(2) The charge created by this section may be enforced by the appropriation by the credit union of the capital or interest subject to the charge and any share in respect of which the whole of the capital has been so appropriated shall be cancelled.

[Section 49 amended by No. 120 of 1987 s. 57.]

Deceased members, payment prior to administration or probate

50. (1) If any member, or any other person entitled in respect of any share in, loan to or deposit with a credit union dies intestate, the board may upon such evidence as it deems sufficient and subject to subsection (4), pay the money or transfer the shares to any person who appears to the board to be entitled to obtain a grant of letters of administration of the estate of the deceased, and that person shall hold the money or shares on the same trusts as if he had obtained such a grant.

(2) If any member or other person entitled in respect of any share in, loan to or deposit with a credit union dies testate, the board may, upon such evidence as it deems sufficient and subject to subsection (4), pay the money or transfer the shares to the person appearing to the board to be entitled thereto under the will of the deceased member or other person.

(3) The provisions of this section shall, subject to subsection (4), extend to any surplus arising on the sale by a credit union as mortgagee of any property mortgaged by the deceased member to the credit union or by a credit union exercising as a transferee the powers of a mortgagee of any property mortgaged by the deceased to a credit union.

(4) The provisions of subsection (1), (2) or (3) do not authorize a payment or a transfer of any assets of a deceased member or other person, the total value of which, together with the total value of any other assets of that deceased member or other person already paid or transferred under any of those subsections, exceeds the prescribed amount.

(5) Unless some other amount is prescribed the expression "the prescribed amount" used in subsection (4) means the sum of \$3 000.

(6) Any payment or transfer made by the board in accordance with the provisions of this section shall be valid and effectual against any demand made upon the credit union by any other person.

(7) No payment or transfer pursuant to this section shall be made after evidence has been produced to the credit union that letters of administration of the estate, or probate of the will, of the deceased member or other person have or has been granted.

Division 3—Funds

Investments of surplus funds

51. (1) A credit union may, if authorized by its rules, invest any of its funds not immediately required for any of its objects, or for the purposes incidental thereto—

- (a) upon deposit with a bank;
- (b) in authorized bills of exchange;
- (c) in any manner in which a trustee is authorized under the law of the State to invest trust funds;
- (d) in the Credit Unions Savings Protection Fund;
- (e) in a loan to a corporation that is declared to be an authorized dealer in the short term money market pursuant to section 97 (7) (b) *Companies (Western Australia) Code*²;
- (f) with the consent of the Registrar, in the shares of any corporation registered under an Act or other enactment of a State or of a Territory of the Commonwealth that has agreed to render special services to the credit union, in the furtherance of its objects;
- (g) with the consent of the Registrar, in the purchase of debts from another credit union;
- (h) with the consent of the Registrar, in a loan to another credit union;
- (ha) with the consent of the Registrar, in a loan to a corporation in the shares of which the credit union has invested by virtue of paragraph (f), but a condition of such a loan shall be that no part of the loan moneys shall be on-lent to a person who is ineligible for a loan from the credit union;

- (i) in any other manner from time to time approved by the Registrar for the purposes of this subsection.

(2) Nothing in this section shall affect the validity of any investment made by a credit union before the coming into operation of this Act but any re-investment of the funds in question shall be made only in conformity with this section.

(3) A credit union shall not in any way invest any portion of its funds pursuant to subsection (1) in excess of any limitation as to amount that the Registrar, by notice in writing given to the credit union, has imposed.

(3a) The Registrar may, under subsection (3), impose such limitations as to amount as he sees fit, which limitations may vary according to the term of investment, the class or form of investment, the person or class of persons with whom the investment is to be made, or such other matters as he considers relevant.

(4) In this section and in section 60 "authorized bill of exchange" means a bill of exchange which is payable on demand or not more than 200 days from the date on which it is acquired by the credit union and which if bought for value by the credit union, would give the credit union as holder in due course a right of recourse against a bank for an amount equal to the face value of the bill.

(5) In this section, "building society" means a society within the meaning ascribed to that term by the *Building Societies Act 1976*.

[Section 51 amended by No. 10 of 1982 s. 28 No. 82 of 1984 s. 14; No. 120 of 1987 s. 58; No. 90 of 1990 s. 8.]

Distribution of surplus

52. (1) Subject to this section and section 61, a credit union may, if authorized by its rules, from the surplus arising in any financial year from the business of the credit union—

- (a) pay to a member a dividend on shares held by him;
- (b) pay to a member who has borrowed money from the credit union a rebate of the interest paid or due by the member during that financial year, such rebate being based on the business done by the member with the credit union during that financial year.

(2) Subject to the rules of the credit union, payment of a dividend or rebate may be made directly to a member or by crediting the dividend or rebate to the member's deposit account or in reduction or repayment of any amount owed to be credit union by the member.

(3) The rate of dividend or rebate to be paid, if any, shall be declared to any annual general meeting of the credit union, but shall not exceed the rate recommended by the board.

(4) The Minister may, by notice, published in the *Gazette* upon the recommendation of the Registrar, fix—

(a) a maximum rate of dividend in respect of any share;

(b) a maximum rate of rebate of interest paid or due,

and a credit union shall not pay any dividend or rebate pursuant to subsection (1) at a rate in excess of the rate (if any) fixed by the Minister in that regard under a notice for the time being in force under this subsection.

(5) No dividend or rebate shall bear interest against the credit union.

(6) Subject to section 61 where the rules of a credit union—

(a) authorize the application for any charitable purpose, or for promoting co-operation or any community advancement, of a part of the surplus arising in any financial year from the business of the credit union; and

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

the credit union may so apply a part of that surplus that does not exceed the proportion thereof so specified.

(7) In this section the term “surplus” means the surplus after making proper allowance for depreciation in the value of the property of the credit union and for contingent liability for loss.

(8) The proper allowance for contingent liability for loss referred to in subsection (7) shall be in accordance with the provision required by section 84 (1a) to be made in the accounting records.

[(9) and (9a) repealed]

(10) Nothing in this section precludes the payment of a bonus to an employee of a credit union in accordance with the terms of his employment.

[Section 52 amended by No. 82 of 1984 s. 15; No. 120 of 1987 s. 59.]

Dormant accounts

53. Regulations may be made relating to the classification of accounts of members of credit unions as dormant accounts and to the action that may be taken with respect to such accounts.

Division 4—Loans and Continuing Credit Arrangements

[*Heading to Division 4 amended by No. 82 of 1984 s. 16.*]

Loans to members

54. [(1) *repealed*]

(2) No person is eligible to borrow from a credit union unless he resides within such district, or is within such class of persons, as shall be specified in a special rule of the credit union.

(3) A member desiring a loan shall make application in writing to the credit union in the manner provided by the rules and such application shall state—

- (a) the amount required and purpose for which it is to be used;
- (b) the term for which the loan is required; and
- (c) such other particulars as the board, or the rules, of the credit union may require.

(4) Subject to this section, the board may approve an application for a loan, or approve the application in part, on such terms as it may deem proper, including the giving of security by way of mortgage or otherwise as this Act or the rules may require or where not so required as its thinks necessary.

(5) Where under this Act or the rules a loan is required to be secured or where pursuant to subsection (4) the board requires a loan to be secured, the security to be given shall be—

- (a) by way of such prescribed security as the board thinks proper in the circumstances; or
- (b) where kinds of security which shall be given by way of security have not been prescribed, by way of mortgage or otherwise as the board thinks proper in the circumstances.

(6) Where the security for a loan provides that any property covered by the security shall be insured and kept insured against an insurable risk the board shall take all reasonable steps to ensure that the provision is complied with in every respect.

(7) Where the rules of a credit union so provide, the board may, by instrument in writing, delegate any or all of its powers under subsection (4) and in respect of matters ancillary thereto to any person or body of persons of a prescribed class.

(8) The exercise of any power delegated under subsection (7) shall be subject to and in accordance with such limitations and conditions as may be specified in the instrument of delegation and such conditions as may be prescribed.

(9) Notwithstanding any delegation made under subsection (7), the board may continue to exercise or perform all or any of the powers so delegated.

(10) Any act or thing done or suffered by the delegate when acting in the exercise of any delegation under subsection (7) and within the terms of the delegation, shall be as effective as if the act or thing had been done or suffered by the board.

(11) A refusal of an application for a loan, wholly or in part, in the exercise of any delegation under subsection (7) does not preclude a reconsideration of the application by the board upon a request by the applicant that the application be referred to the board.

(12) The board may, by instrument in writing, revoke wholly or in part any delegation under subsection (7).

(13) Where a member's application for a loan is approved in an amount or upon terms and conditions otherwise than as sought by the member, the member shall be notified in writing of the decision and of the amount of the loan and the terms and conditions upon which the loan was approved and if acceptable to him he shall endorse his acceptance on the notification and execute the loan agreement, if any, containing those terms and conditions enclosed with the notification and return it, or them to the credit union.

(14) Where a loan to a member is approved pursuant to this section, the credit union shall give to the member an express statement as to the total amount of interest payable on the loan as computed at the time of the taking out of the loan.

(15) In a case to which subsection (13) applies the statement required by subsection (14) shall be incorporated in the notification given to the member in pursuance of subsection (13).

(16) Where a loan to a member is approved pursuant to this section, the credit union shall before any part of the loan is made available to the member—

- (a) obtain from the member, in a case to which subsection (13) applies, his written acceptance of the notification given to him in pursuance of that subsection;
- (b) obtain from the member, where a loan agreement was enclosed with a notification given to him in pursuance of subsection (13) or was otherwise required by the credit union, the agreement duly executed by the member;
- (c) where the loan was approved subject to giving of a specified security for the repayment of the loan, obtain the security that shall to the satisfaction of the board in the circumstances then obtaining and to the extent required be adequate to secure repayment of the loan together with interest thereon in the event of the realisation or enforcement of the security;

- (d) otherwise do all such acts and things as may be necessary to be done to ensure that, if default is made in repayment of the loan, the credit union may forthwith institute and may thereafter prosecute proceedings for recovery of the debt and may proceed to realize upon or enforce any security given.

(17) A member of a credit union who has received a loan from the credit union may, notwithstanding any terms and conditions specified in the rules of the credit union or any agreement entered into or instrument executed by him, repay the whole, or any part of, the principal and interest in respect of his indebtedness before it is due to be repaid and notwithstanding anything in the rules of the credit union, or the provisions of security given to a credit union by a borrower to the contrary, no additional fee or interest by way of penalty in the event of the early discharge of his indebtedness under the loan shall be charged or recovered by the credit union from the borrower.

(18) A member desiring a continuing credit arrangement shall make application to the credit union in the manner provided by the rules and such application shall state—

- (a) the credit limit required; and
- (b) such other particulars as the board, or the rules of the credit union may require.

(19) Subsections (4) to (12) apply, subject to any necessary modifications, to and in relation to applications for continuing credit arrangements and credit provided under such arrangements.

(20) Where a member's application for a continuing credit arrangement is approved with a credit limit or upon terms and conditions otherwise than as sought by the member, the member shall be notified in writing of the decision and of the credit limit of the arrangement and the terms and conditions upon which the arrangement was approved and if acceptable to him he shall endorse his acceptance on the notification and execute the credit agreement, if any, containing those terms and conditions enclosed with the notification and return it, or them, to the credit union.

(21) Where a continuing credit arrangement with a member is approved pursuant to this section, the credit union shall before any credit is provided to the member under the arrangement—

- (a) obtain from the member, in a case to which subsection (20) applies, his written acceptance of the notification given to him in pursuance of that subsection;
- (b) obtain from the member, where a credit agreement was enclosed with a notification given to him in pursuance of subsection (20) or was otherwise required by the credit union, the agreement duly executed by the member;

- (c) where the arrangement was approved subject to giving of a specified security for the payment of the indebtedness of the member from time to time under the arrangement, obtain the security that shall to the satisfaction of the board in the circumstances then obtaining and to the extent required be adequate to secure payment of the indebtedness together with interest thereon in the event of the realization or enforcement of the security;
 - (d) otherwise do all such acts and things as may be necessary to be done to ensure that, if default is made in payment of any amount due and payable under the arrangement, the credit union may forthwith institute and may thereafter prosecute proceedings for recovery of the debt and may proceed to realize upon or enforce any security given.
- (22) A credit union may by notice in writing to a member with whom it has made a continuing credit arrangement—
- (a) subject to sections 55 (2), 56 (3a), 167 (2) and 169 (6) increase the credit limit of the arrangement; or
 - (b) decrease the credit limit of the arrangement to an amount not less than the outstanding balance of the account under the arrangement.

[Section 54 amended by No. 82 of 1984 s. 17; No. 120 of 1987 s. 60.]

Loan limits

- 55.** (1) The Registrar may, by notice in writing served on a credit union, give directions to the credit union as to—
- (a) the maximum amount that may be lent by the credit union to any of its members by way of unsecured loan;
 - (b) the maximum amount that may be lent by a credit union to any of its members by way of secured loan;
 - (c) the maximum term for which an unsecured loan may be made by a credit union to any of its members;
 - (d) the maximum term for which a secured loan may be made by a credit union to any of its members;
 - (e) the maximum amount that may, in the aggregate, be lent by the credit union to its members during a period specified in the notice;
 - (f) the maximum credit limit that may be approved by the credit union in respect of any unsecured continuing credit arrangement;
 - (g) the maximum credit limit that may be approved by the credit union in respect of any secured continuing credit arrangement.

(2) A credit union shall give effect to any notice served under subsection (1) according to its tenor and, without limiting the generality of the foregoing, a credit union shall not—

- (a) make an unsecured loan to any of its members if the amount of that loan together with all other amounts (if any) on unsecured loan to that member exceeds in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (a);
- (b) make a secured loan to any of its members if the amount of that loan together with all other amounts (if any) on secured loan to that member exceeds, in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (b);
- (c) approve a credit limit in respect of an unsecured continuing credit arrangement if the amount of that credit limit together with the credit limits of all other unsecured continuing credit arrangements (if any) with that member exceeds in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (f);
- (d) approve a credit limit in respect of a secured continuing credit arrangement if the amount of that credit limit together with the credit limits of all other secured continuing credit arrangements (if any) with that member exceeds in the aggregate, the amount (if any) for the time being specified by notice served on the credit union under subsection (1) (g).

[Section 55 amended by No. 82 of 1984 s. 18.]

General provisions as to loans

56. (1) The terms or conditions providing for the repayment or payment of the indebtedness of a member under a loan or continuing credit arrangement shall include such terms or conditions as are required by the regulations.

(1a) Subject to any regulations referred to in subsection (1), the Registrar may, by notice in writing served on a credit union, give directions to the credit union as to the terms and conditions on which the credit union may make a loan or continuing credit arrangement, and the credit union on which the notice is served shall give effect to the notice according to its tenor.

(2) A credit union shall not make a loan to, or a continuing credit arrangement with, a member unless there are reasonable grounds for the board, or its delegate, as the case may be, believing that the member has, and will continue to have, an income or other financial resources sufficient to provide for the repayment or payment, and servicing, of the indebtedness of the member under the loan or arrangement.

(3) A credit union shall not make a loan jointly to 2 or more members if the amount of that loan would exceed an amount that would if each of those members had applied individually for a loan, be the larger or largest of the amounts of the loans that could have been made to each of those members.

(3a) A credit union shall not approve a credit limit in respect of a continuing credit arrangement made with 2 or more members jointly if the amount of that credit limit would exceed an amount that would if approval had been sought in respect of continuing credit arrangements with each of those members individually, be the larger or largest of the credit limits that could have been approved in respect of those arrangements.

[Section 56 amended by No. 82 of 1984 s. 19; No. 120 of 1987 s. 61.]

[57. Section 57 repealed by No. 120 of 1987 s. 62.]

Default by borrower

58. (1) The whole of the principal and interest, and any other amount that may lawfully be added thereto, in respect of a loan by a credit union to a member shall forthwith become due and payable in such circumstances as are specified in the rules.

(1a) The whole of the outstanding balance of the account under a continuing credit arrangement, and interest and any other amount that may lawfully be added thereto, shall forthwith become due and payable in such circumstances as are specified in the rules.

(2) Where moneys become due and payable as referred to in subsection (1) or (1a), the credit union by any person authorized by it, with such assistance as may be required, may at any reasonable time during the day enter into or upon any land or premises upon which any property subject to a lien or charge in respect of the moneys in favour of the credit union may be, and may seize, remove and sell any such property, or any part thereof, by public auction or private contract.

(3) A purchaser on a sale pursuant to this section shall not be concerned to inquire whether the sale is authorized by this section or the power is regularly and properly exercised, or to see to the application of the purchase money and the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that the power was improperly or irregularly exercised; but any loss suffered by any person by reason of an unauthorized or improper or irregular exercise of power may be recovered from the credit union exercising the power.

(4) The proceeds of a sale pursuant to this section shall be applied in the first place in paying and reimbursing the credit union all such moneys as may be due, owing, and accruing under the terms of the

loan or continuing credit arrangement, and all costs and expenses that may have been incurred by the credit union in consequence of the default, neglect, or failure of the member to pay those moneys or any of them.

(5) Any surplus that remains after the proceeds of a sale pursuant to this section have been applied in accordance with subsection (4) shall be payable to the member or other person entitled thereto.

(6) A credit union may insure against default by members in respect of loans made to them or credit provided to them under continuing credit arrangements but nothing in this Act requires the credit union so to do.

[Section 58 amended by No. 82 of 1984 s. 21.]

Liability of borrower

59. (1) A person to whom a credit union has made a loan shall be liable not only for the payment of the amount of the loan and interest thereon, but also for any proper charges and costs of collection of that amount and that interest.

(2) A person with whom a credit union has made a continuing credit arrangement shall be liable not only for the payment of the outstanding balance of his account under the arrangement and interest thereon, but also for any proper charges and costs of collection of that amount and interest.

[Section 59 amended by No. 82 of 1984 s. 22.]

Division 5—Liquidity and Reserves

Liquidity

60. (1) Subject to the provisions of this section, a credit union shall maintain not less than the prescribed proportion of its withdrawable funds as liquid funds.

(2) In this section—

(a) the expression “liquid funds” means the aggregate of—

- (i) cash at bank (after allowing for cheques and other bills of exchange drawn but not presented for payment) or in hand;
- (ii) funds held upon convertible certificate or negotiable certificate of deposit with any bank;
- (iii) the value of authorized bills of exchange;
- (iv) the value of debentures, stocks and bonds that are

either issued by the government of the Commonwealth or of a State or are issued by a public statutory authority and guaranteed by such a government;

(v) the value of any loan made by the credit union to a corporation which is declared to be an authorized dealer in the short term money market pursuant to section 97 (7) (b) of the *Companies (Western Australia) Code*²; and

(vi) the value of any investment in any security or class of security approved for the time being by the Registrar for the purposes of this section,

less the amount of any borrowings made by the credit union by way of bank overdraft and the amount necessary to satisfy any lien or charge specifically on those funds or investments;

(b) unless some other percentage is prescribed the expression "prescribed proportion" means 10%; and

(c) the expression "withdrawable funds" means the aggregate of—

(i) the amount of the withdrawable share capital of the credit union; and

(ii) the amount of the deposits held by the credit union.

(3) For the purpose of calculating the amount of liquid funds held by a credit union, investments referred to in the definition of "liquid funds" in subsection (2) shall be assessed at cost or market value, whichever is the lesser.

(4) A credit union shall not, in any month, approve, undertake or offer to make a loan of an amount, that if deducted from the amount of its liquid funds as at the last day of the next preceding month, would produce an amount that bears to the sum of—

(a) the amount of the withdrawable share capital of the credit union; and

(b) the amount held by the credit union on deposit,

as at that day, a proportion less than the prescribed proportion for that credit union.

(5) This section shall not, during the period of one year next succeeding the coming into operation of this Act, apply to or in respect of a credit union registered under this Act by virtue of section 24.

[Section 60 amended by No. 82 of 1984 s. 23; No. 120 of 1987 s. 63.]

Net worth requirement

61. (1) Subject to this section, every credit union shall—

- (a) have, at the beginning of the financial year of the credit union that commences in 1989, and at the beginning of each financial year thereafter, net worth amounting to not less than the relevant percentage for that year of the mean assets of the credit union for the last preceding financial year; and
- (b) maintain the net worth that, under paragraph (a), it is required to have at the beginning of a particular financial year until the beginning of the next succeeding financial year.

(2) Where a credit union invests moneys pursuant to section 51 (1) (f), (ha) or (i), the Registrar may by notice in writing served on the credit union direct that the minimum amount of net worth to be maintained by that credit union during the period stated in the notice shall be such greater amount than that applicable under subsection (1) as is specified in the notice and the Registrar may, by further notice or notices served on the credit union, vary or revoke a direction given under this subsection.

(3) The Registrar may, by notice in writing served on a credit union and published in the *Gazette*, direct that the minimum amount required to be maintained as net worth of the credit union during the period stated in the notice shall be such lesser amount than that applicable under subsection (1) as is specified in the notice and the Registrar may, by further notice or notices served on the credit union and published in the *Gazette*, vary or revoke a direction given under this subsection.

(4) For the purposes of this section, in relation to a credit union—

“mean assets”, with reference to a particular financial year, means the amount obtained by adding the value of the aggregate assets of the credit union as at the end of that financial year to the value of the aggregate assets of the credit union as at the end of the previous financial year and dividing the total of those values by 2;

“net worth” means—

- (a) the prime net worth of the credit union; and
- (b) an amount, not exceeding 25% of the prime net worth of the credit union, in respect of such other items or matters, if any, as are approved in writing by the Registrar;

“the relevant percentage”, for a particular financial year, means—

- (a) 5%; or
- (b) where, as at the beginning of that financial year, the net worth of the credit union expressed as a percentage of the mean assets of the credit union for the last preceding financial year was less than 5% and the

following calculation would result in a percentage less than 5%, the percentage calculated by increasing the transitional percentage by one-fifth of the difference between the transitional percentage and 5% for each complete financial year of the credit union since the beginning of 1988;

“the transitional percentage” means the net worth of the credit union as at the beginning of the financial year of the credit union that commences in 1988 expressed as a percentage of the mean assets of the credit union for the financial year last preceding that financial year.

(5) The regulations may prescribe a percentage other than 5% for the purposes of paragraph (a) of the definition of “the relevant percentage” in subsection (4) and make transitional provision in place of paragraph (b) of that definition, and that definition shall be read subject to any such regulations.

[Section 61⁴ inserted by No. 120 of 1987 s. 64.]

Certain reserve accounts

61A. Any amount maintained by a credit union in a reserve account referred to in the definition of “prime net worth” in section 4—

- (a) shall not be distributed amongst members of the credit union, other than by way of a bonus issue of non-withdrawable shares, except upon the winding up of the credit union; and
- (b) may be applied to any other purpose to which the capital of the credit union may be applied.

[Section 61A inserted by No. 120 of 1987 s. 64.]

PART VI—MANAGEMENT

Division 1—Directors and Officers

Board of directors

62. (1) Subject to this Act and the rules of the credit union, the business and operations of a credit union shall be managed and controlled by the board of directors all of whom shall be natural persons.

(2) Every director acting in the business or operations of the credit union, pursuant to this Act and the rules or to a resolution duly passed by the board shall be deemed to be the agent of the credit union for all purposes within the objects of the credit union.

(3) The powers of the board shall be subject to any restrictions imposed by a resolution of a general meeting of the credit union.

Validity of acts of directors

63. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his election, appointment or qualification.

Election or appointment of directors

64. (1) Subject to this Act, the directors shall be elected or appointed, hold or vacate office, or be removed from office, in such manner as may be specified in special rules of the credit union.

(2) A credit union shall have not less than 5 directors.

(3) A director shall not be removed from or required to vacate his office by any resolution, request or notice of the directors or any of them, notwithstanding anything to the contrary in the rules of the credit union.

(4) At a meeting of a credit union, a motion for the election or appointment of 2 or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it, but notwithstanding the passing of such a resolution, no such motion shall be made if one of the directors to whom the motion would relate is a director required to be appointed in accordance with section 67 (6).

(5) A resolution passed in pursuance of a motion made in contravention of subsection (4) shall be void, whether or not its being so moved was objected to at the time, and where such a resolution is so passed no provision for the automatic re-election of retiring directors in default of another election shall apply.

(6) For the purposes of this section, a motion for approving a person's election or for nominating a person for election shall be treated as a motion for his election.

(7) Nothing in this section shall apply to a resolution altering the rules of a credit union, or prevent the election of 2 or more directors by ballot or poll.

(8) The rules of a credit union may provide that an employee of that credit union may be elected at a meeting of the credit union as a director of that credit union.

(9) An employee shall not be elected as a director where that election would result in more than 2 employees of the credit union holding office as directors of that credit union at the one time.

(10) A director who is an employee of a credit union shall not be eligible to be elected as chairman of the board of that credit union.

(11) Notwithstanding any other provision of this Act or anything contained in the rules of a credit union—

- (a) a person shall not be elected or appointed a director of a credit union for life, for an indefinite term or for a term exceeding 5 years; and
- (b) in the case of a credit union registered under this Act by virtue of section 24 where, immediately prior to the date of the coming into operation of this Act, a person held office as a director for life, for an indefinite term or for a term not due to expire within the expiration of 5 years after that date, the term of office of that person as a director shall, unless sooner determined, determine at the expiration of 5 years immediately following that date,

but nothing in this subsection renders a person whose term of office as director expires or determines ineligible for re-appointment.

[Section 64 amended by No. 82 of 1984 s. 25.]

Qualifications of directors

65. (1) Unless the Registrar otherwise approves, no person shall be qualified to be elected or appointed as a director of a credit union unless—

(a) at the time of election or appointment—

- (i) he is a member of the credit union and, where the rules make provision in that respect, the holder of not less than the minimum number of shares specified in the rules of the credit union as the shareholding qualification requisite for holding the office of director; or
- (ii) by reason of section 40 (2) (b), he is eligible for election or appointment; and

(b) he has attained the age of 18 years.

(2) Except where leave of the Court has been granted pursuant to section 77—

(a) a person who has been convicted in this State or elsewhere—

- (i) on indictment of any offence in connection with the promotion, formation or management of a corporation;
- (ii) of any offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding 3 months;
- (iii) of any offence under section 333 (3) of the *Companies Act 1961* as enacted before the 25 November 1969, or under any of the corresponding provisions of the law of another State or Territory of the Commonwealth; or
- (iv) of any prescribed offence,

is not qualified to be elected or appointed as a director of a credit union within a period of 5 years after—

(v) his conviction; or

(vi) if he was sentenced to imprisonment, his release from prison;

(b) a person who—

(i) is an undischarged bankrupt;

(ii) has assigned his remuneration for the benefit of, or has compounded with, his creditors and is bound by the assignment or composition; or

(iii) is applying for, or taking, the benefit of any law for the relief of bankrupt or insolvent debtors,

is not qualified to be elected or appointed as a director of a credit union.

(3) A person who, if he were a director, would be required under a provision of section 66 (1) (other than paragraph (a) or (c) of that subsection) to vacate his office is not qualified to be elected or appointed as a director of a credit union.

(4) Subsection (1) does not authorize the election of an employee of a credit union as a director of that credit union unless that employee is eligible to be elected in accordance with the rules of the credit union made pursuant to section 64 (8).

[Section 65 amended by No. 10 of 1982 s. 28; No. 120 of 1987 s. 65.]

Vacation of office

66. (1) The office of a director of a credit union shall be vacated in such circumstances, if any, as may be prescribed by the rules of the credit union and, in any event, shall become vacant in any of the following circumstances, that is to say—

(a) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) if, through mental or physical infirmity or sickness, he is unable satisfactorily to carry out the duties and perform the functions of the office;

(c) if he is convicted in this State or elsewhere of any offence referred to in section 65 (2) (a);

(d) if he absents himself from 3 consecutive ordinary meetings of the board without its leave;

(e) if within 2 months after any money becomes due from him to the credit union he does not pay the same;

- (f) if, in the case of a director who was qualified for election or appointment under section 65 (1) (a) (i), he ceases to be a member of the credit union or ceases to hold the shareholding qualification (if any) requisite for holding the office of director;
- (g) if, in the case of a director who was qualified for election or appointment under section 65 (1) (a) (ii),—
 - (i) he ceases to be the appointed representative of the corporation in question; or
 - (ii) the corporation in question ceases to hold the qualifications requisite for holding the office of director;
- (h) if he resigns in writing, whereupon such vacation shall have effect upon the day of receipt by the credit union of the resignation in writing sent or given by the director or, where some date subsequent thereto is specified for that purpose in the resignation, that later date;
- (i) if he is removed from office by resolution of a general meeting of the credit union;
- (j) if he, his partner, a person in his employment or his employer acts as auditor to the credit union;
- (k) if he is, or becomes an employee of the credit union (other than an employee who is a director pursuant to rules made under section 64 (8)) or he is, or becomes, employed by a director;
- (l) if, having been elected as a director pursuant to section 64 (8), he ceases to be an employee of the credit union; or
- (m) if he dies.

(2) Subject to this Act any vacancy occurring on the board shall be filled as soon as practicable as provided for by the rules of the credit union.

[Section 66 amended by No. 82 of 1984 s. 26.]

Age limit for directors

67. (1) Subject to subsection (6), no person of or above the age of 72 years shall be elected, or appointed, a director of a credit union.

(2) The office of a director of a credit union shall become vacant at the conclusion of the annual general meeting next after he attains the age of 72 years or if he has attained the age of 72 years before the date of the coming into operation of this Act, at the conclusion of the annual general meeting next after that date.

(3) Any act done by a person as director shall be valid notwithstanding that it is afterwards discovered that his office has terminated by reason of subsection (2).

(4) Where the office of a director has become vacant by reason of subsection (2) no provision for the automatic re-appointment, or re-election, of retiring directors in default of another appointment or re-election shall apply in relation to that director.

(5) If any vacancy by reason of subsection (2) has not been filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section a person of or above the age of 72 years may be elected, or re-elected, as a director of a credit union to hold office until the next annual general meeting of the credit union, or be authorized to continue in office as a director until the next annual general meeting of the credit union if—

- (a) the election or re-election or authorization is made by not less than two-thirds of the members who lodged valid voting papers pursuant to a postal ballot; or
- (b) at a meeting of the credit union a special resolution is passed for the election or re-election of that director to hold office until the next annual general meeting or authorizing that director to remain in office until the next annual general meeting,

and in either case the members have been informed in writing by the credit union that the candidate is of or over the age of 72 years.

(7) Nothing in this section shall limit or affect the operation of any provision of the rules of a credit union preventing any person from being elected or appointed a director, or requiring any director to vacate his office, at the age of 72 years or at such lesser age as is specified in the rules.

Acting as director after office vacated

68. Any person who knowingly purports to exercise the powers of a director of a credit union after his office as director has been vacated and any director of a credit union who knowingly permits or suffers any person to exercise the powers of a director after that person's office as director has been vacated is guilty of an offence.

Penalty: \$1 000. Default penalty.

Chairman

69. The chairman of the board shall be elected in accordance with the rules of the credit union and shall hold office and retire and may be removed from office, as set out in those rules.

Meeting of the board

70. (1) Meetings of the board shall be held as often as may be necessary for properly conducting the business and operations of the credit union and shall be held at least monthly.

(2) A director shall not vote at a meeting of the board upon any question in which he, or any corporation of which he is the appointed representative, has any direct or indirect pecuniary interest other than an interest common to all members of the credit union and if he does so vote his vote shall not be counted.

Quorum

71. A quorum of a meeting of a board shall be as specified in the rules of the credit union but shall not in any case be less than half the maximum number of directors who may hold office pursuant to the rules.

Disclosure of interest by directors

72. (1) Subject to this section, a director of a credit union who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the credit union shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the board.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(2) The requirements of subsection (1) do not apply in any case where the interest of a director of a credit union consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the credit union if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a credit union shall not be taken to be interested or to have been at any time interested in any contract or proposed contract by reason only, in a case where the contract or proposed contract relates to any loan by the credit union, that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan.

(4) For the purposes of subsection (1), a general notice given by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm;

- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the board or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board after it is given.

(5) A director of a credit union who holds any office or possesses any property whereby, whether directly or indirectly, duties or interest might be created in conflict with his duties or interests as director shall, in accordance with subsection (6), declare at a meeting of the board the fact and the nature, character and extent of the conflict.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(6) A declaration required by subsection (5) in relation to the holding of an office or the possession of any property shall be made by a person—

- (a) where the person holds the office or possesses the property as mentioned in subsection (5) when he becomes a director, at the first meeting of the board held after—

- (i) he becomes a director; or

- (ii) the relevant facts as to the holding of the office or the possession of the property come to his knowledge,

whichever is later; or

- (b) where the person commences to hold the office or comes into possession of the property as mentioned in subsection (5) after he becomes a director, at the first meeting of the board held after the relevant facts as to the holding of the office or the possession of the property come to his knowledge.

(7) A secretary of a credit union shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) Except as provided in subsection (3), this section is in addition to, and not in derogation of, the operation of any rule of law restricting a director from having any interest in contracts with the credit union or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

[Section 72 inserted by No. 120 of 1987 s. 66.]

Director not to borrow from credit union, etc.

72A. (1) A director of a credit union shall not borrow from the credit union, on conditions that are more favourable than those generally extended to members, and the credit union shall not make any advance to a director on such conditions—

- (a) where the director is also a full time officer of the credit union—
 - (i) if the advance is to be on the security of a mortgage over his ordinary place of residence, except by a resolution of the board;
 - (ii) if the advance is not to be so secured, except by special resolution of the credit union;
- (b) where the director is not also a full time officer of the credit union—
 - (i) if the advance is to be on the security of a mortgage over his ordinary place of residence, except by a resolution of a meeting of the credit union; or
 - (ii) if the advance is not to be so secured, except by special resolution of the credit union,

and if any advance is made in contravention of this subsection, the directors who authorized the advance are jointly and severally liable for any loss suffered by the credit union in respect to such advance.

(2) A credit union shall not make any advance to any officer of the credit union who is not a director unless the making of the advance has been first approved at a meeting of the board of the credit union.

(3) For the purposes of this section and of section 72, any thing done by a proprietary company within the meaning of the *Companies (Western Australia) Code*² of which a director or other officer is a member shall be deemed to have been done by that director or other officer, as the case may be, unless he proves that the thing was done without his consent or connivance and that he exercised all such due diligence to prevent the doing of the thing as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

[Section 72A inserted by No. 120 of 1987 s. 66.]

Remuneration of directors

73. (1) No director of a credit union shall be paid any remuneration for his services as a director other than such fees, concessions and other benefits as may be approved at a general meeting of the credit union.

(2) The total amount payable by way of fees in accordance with subsection (1) in any one year shall not exceed such amount as may be approved by the Minister.

(3) An approval for the purposes of subsection (2) may relate to credit unions generally, to a class of credit unions or to a particular credit union.

[Section 73 amended by No. 120 of 1987 s. 67.]

Duties and liabilities of officers

74. (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or employee of a credit union shall not make use of any information acquired by virtue of his position as an officer or employee to gain directly or indirectly an improper advantage for himself or to cause detriment to the credit union.

(3) A person who commits a breach of any of the provisions of this section is—

(a) liable to the credit union for any profit made by him or for any loss or damage suffered by the credit union as a result of the breach of any of those provisions; and

(b) guilty of an offence.

Penalty: \$1 000.

(4) This section is in addition to and not in derogation of any other enactment or rule of law relating to the duty or liability of a director or officer of a credit union.

[Section 74 amended by No. 120 of 1987 s. 68.]

Provisions indemnifying officers

75. (1) Any provision, whether contained in the rules or in any contract with a credit union, or otherwise, for exempting any officer of the credit union from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty, or breach of trust of which he may be guilty in relation to the credit union is void.

(2) Notwithstanding anything in this section a credit union may pursuant to its rules or otherwise indemnify any officer against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is under this Act granted to him by the court.

Bonding of officers

76. No officer or other person shall be employed by a credit union to have the receipt or charge of money of the credit union unless security as prescribed for rendering a just and true account of all money received and paid by such officer or person for the credit union and for payment of all money due from him to the credit union has first been obtained.

Power to restrain certain persons from managing credit unions

77. (1) A person who—

- (a) is an undischarged bankrupt;
- (b) has assigned his remuneration for the benefit of, or has compounded with, his creditors and is bound by the assignment or composition; or
- (c) is applying for, or taking, the benefit of any law for the relief of bankrupt or insolvent debtors,

shall not act as a director, or directly or indirectly take part in, or be concerned in, the management of a credit union except with the leave of the Court.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(2) A person who has been convicted in this State or elsewhere of any offence referred to in section 65 (2) (a) shall not, within a period of 5 years after—

- (a) his conviction; or
- (b) if he was sentenced to imprisonment, his release from prison,

act as a director or directly or indirectly take part in, or be concerned in, the management of a credit union except with the leave of the Court.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(3) A person intending to apply for leave of the Court under this section shall give to the Registrar not less than 10 days notice of his intention so to apply.

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

Certain dealings prohibited

78. (1) An officer of a credit union, whether on his own account or in partnership with any other person or body of persons shall not, without the approval of a majority of the directors—

- (a) sell any real or personal property to, or act as agent in respect of the sale of any real or personal property to, a member of the credit union who proposes to pay for the real or personal property (in whole or in part) by borrowing from the credit union;
- (b) undertake the erection of any building for a member of a credit union who proposes to pay for the building (in whole or in part) by borrowing from the credit union;
- (c) accept as payment (in whole or in part) of any moneys due to him by a member of a credit union, any moneys borrowed from the credit union by that member.

(2) For the purposes of this section anything done by a company which is a proprietary company within the meaning of the *Companies (Western Australia) Code*² and in which the officer is a shareholder shall be deemed to have been done by the officer.

(3) Any person who contravenes a provision of this section is guilty of an offence.

Penalty: \$500.

[Section 78 amended by No. 10 of 1982, s. 28; No. 82 of 1984 s. 28.]

Division 2—Meetings and Voting

Annual and special meetings

79. (1) Not more than 4 months after the close of the credit union's financial year, every credit union shall, in addition to any other meeting held by it, hold a general meeting to be called the "annual general meeting".

(2) On written application being made to him by a credit union in accordance with a resolution of the board and signed by a director or the secretary, the Registrar may extend the period of 4 months referred to in subsection (1) on such conditions as he thinks fit.

(3) An application by a credit union for an extension of time under subsection (2) shall be made before the expiration of the period of 4 months referred to in subsection (1).

(4) A credit union is not in default in holding an annual general meeting if that meeting is held within an extension of time given under subsection (2).

(5) Meetings of the credit union, other than its annual general meeting, shall be held, or may be called, as provided for in the rules of the credit union.

(6) At any meeting of a credit union no item of business shall be transacted unless a quorum (as prescribed by the rules of the credit union) of members entitled to vote is present at the meeting during the time when the meeting is considering that item.

(7) Notwithstanding any provision of the rules of the credit union to the contrary, no person may vote by proxy at a meeting of a credit union.

(8) Every member of a credit union who holds a share is, irrespective of the number or class of shares he holds, entitled to one and only one vote at a meeting of the credit union.

(9) If a default is made in holding an annual general meeting under this section or in complying with any conditions of the Registrar under subsection (2)—

- (a) a credit union and every officer of the credit union who is in default is guilty of an offence; and
- (b) the Court may on the application of any member order a general meeting to be called.

[Section 79 amended by No. 82 of 1984 s. 29; No. 120 of 1987 s. 69.]

Special resolution

80. (1) For the purposes of this Act, a special resolution, in relation to a credit union, means a resolution—

- (a) where the voting on the resolution is by show of hands—which is passed by a majority of not less than two-thirds of the number of persons who, being entitled so to do, vote in person; or
- (b) where the voting on the resolution is by poll—which is passed by a majority of not less than two-thirds of the number of votes cast by the persons who, being entitled so to do, cast votes,

at any general meeting of the credit union of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and of the rules of the credit union.

(1a) For the purposes of this Act, a special resolution, in relation to a financial society, is a resolution passed by a majority of not less than two-thirds of the votes of those persons who, being present either personally or by proxy and entitled to vote, vote in favour of the

resolution at any general meeting of the financial society of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and of the rules of the financial society.

(2) At any meeting mentioned in this section, unless a count of votes is demanded, a declaration by the chairman that the resolution has been carried by a specified majority shall be conclusive evidence of the fact.

(3) A credit union shall, within the time prescribed and in the prescribed manner apply to the Registrar to have a special resolution registered and a special resolution shall not take effect until so registered.

(4) A certificate of registration of any special resolution or of any alteration of the rules of a credit union given by the Registrar shall, in favour of any person lending money to the credit union on the faith of such a certificate, or in favour of any guarantor of any such loan, be conclusive evidence that the resolution was duly passed or the alteration in the rules was duly made, as the case may be.

(5) In any rules made by a credit union whether before or after the coming into operation of this Act, "special resolution" means a special resolution as defined in this section.

[Section 80 amended by No. 120 of 1987 s. 70.]

Minutes of meeting

81. (1) A credit union shall cause minutes of all proceedings of every meeting of the credit union and of the board of the credit union and of every committee of the credit union provided for under the rules, to be kept and confirmed as prescribed.

(2) A credit union that fails to comply with the provisions of this section and every officer of the credit union in default is guilty of an offence.

Penalty: \$500. Default penalty.

Division 3—Accounts

Interpretation

82. (1) For the purposes of this Division and Division 4 of this Part—

"accounting records" in relation to a credit union includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the credit union are made up;

“accounts” means income and expenditure accounts and balance sheets and includes notes (other than auditors’ reports or directors’ reports) attached to, or intended to be read with, any of those income and expenditure accounts or balance sheets.

(2) For the purposes of this Division and Division 4, an incorporated body is a subsidiary of a credit union if the credit union—

- (a) controls the composition of the board of directors of that body;
- (b) controls or is in a position to control more than 50% of the voting power at a general meeting of that body; or
- (c) holds more than 50%, or such smaller percentage as may be determined from time to time by the Registrar by notice published in the *Gazette*, of the issued share capital of the body (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).

(3) Without limiting by implication the circumstances in which the composition of the board of directors of an incorporated body is to be taken to be controlled by a credit union, the composition of such a board of directors shall be taken to be controlled by a credit union if that credit union, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that credit union, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that credit union 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 his favour by that credit union of such a power;
- or
- (b) a person’s appointment as a director follows necessarily from his being a director or other officer of that credit union.

(4) For the purposes of this Division and Divisions 4 and 5, in the case of a credit union that has a subsidiary or subsidiaries, all references in those Divisions to accounts, income and expenditure accounts and balance sheets shall be taken to refer, subject to any necessary modifications, to consolidated accounts, consolidated income and expenditure accounts and consolidated balance sheets.

[Section 82 amended by No. 82 of 1984 s. 30; No. 120 of 1987 s. 71.]

Financial year

83. (1) Subject to subsection (2) the financial year of a credit union shall end on such day in each year as is provided for by the rules of the credit union being a day not earlier than 31 May or later than 31 July.

(2) The first financial year of a credit union registered between 1 January and 30 June in any year (both dates inclusive) shall extend from the date of its registration to the 30 June in the next succeeding year.

(3) The directors of a credit union shall take such action, if any, as is necessary to ensure that the financial year of each subsidiary of the credit union coincides with the financial year of the credit union.

[Section 83 amended by No. 82 of 1984 s. 31.]

Accounts to be kept, and controls

84. (1) A credit union shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the credit union;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the credit union to be prepared from time to time;
- (c) keep its accounting records in such a manner as will enable the accounts of the credit union to be conveniently and properly audited in accordance with this Act;
- (d) establish and maintain a system of control and inspection of its accounting records and a system for supervising its cash holdings and all receipts and remittances, that having regard to the extent of its operations will ensure adequate control and supervision in respect of such matters; and
- (e) establish and maintain a system to control, and ensure the safe custody, of all documents of title and securities belonging to the credit union and of all documents of title relating to property mortgaged to the credit union.

(1a) A credit union shall each month ensure that provision is made in accordance with this section for contingent liabilities for loss in its accounting records.

(1b) Subject to subsections (1c) and (1e), the provision required by subsection (1a) to be made in respect of a loan or continuing credit arrangement made by the credit union on terms requiring payments to be made to the credit union at intervals of—

(a) one month or less, is an amount equal to—

- (i) where a payment is due and unpaid for a period of more than 3 but less than 6 months, 40% of the outstanding balance;
- (ii) where a payment is due and unpaid for a period of 6 months or more but less than 9 months, 75% of the outstanding balance;
- (iii) where a payment is due and unpaid for a period of 9 months or more, the whole of the outstanding balance,

where "the outstanding balance" means the amount of the advance or credit provided and any interest in respect thereof less any amount paid to the credit union in reduction of that amount;

- (b) more than one month, is an amount equal to 2 1/2%, or such other percentage as the Registrar may direct, of the amount of the loan or credit limit approved.

(1c) Where, under a loan or continuing credit arrangement, a person is indebted to the credit union and any amount appears to the board or the auditors of the credit union to be unlikely to be recoverable, the provision required by subsection (1a) to be made in respect of that loan or continuing credit arrangement is an amount equal to the whole of the amount considered to be unrecoverable.

(1d) The provision required by subsection (1a) to be made in respect of savings accounts held with the credit union that are overdrawn for a period of more than 30 days shall be the whole of the amounts for the time being overdrawn.

(1e) Provision is required by subsection (1a) to be made in respect of any loan or continuing credit arrangement that is secured by a registered mortgage over land to the extent only that—

- (a) the amount for the time being secured, together with the aggregate of amounts, if any, already outstanding and secured by any prior mortgages over the land, exceeds 75% of the value of the land as determined by a valuer; and
- (b) the credit union has not obtained an indemnity or a guarantee from a mortgage insurer in respect of the payment or repayment of the amount of the excess referred to in paragraph (a).

(1f) In subsection (1e), "mortgage insurer" means the Housing Loans Insurance Corporation established under the *Housing Loans Insurance Act 1965* of the Commonwealth or any body corporate authorized under the *Insurance Acts 1973* of the Commonwealth to carry on insurance business.

(2) A credit union shall comply with such requirements as are prescribed as to—

- (a) the retention, location and availability for inspection of its accounting records;
- (b) the language and form in which its accounting records shall be kept and made available for inspection.

(3) The Court may, on application by a director of a credit union, authorize a registered company auditor acting for the director to inspect the accounting records of the credit union.

(4) Where a registered company auditor inspects the accounting records in pursuance of an order of the Court under subsection (3) he shall not disclose to a person other than the Registrar, the Credit

Unions Savings Protection Board Limited, an inspector appointed under this Act or the director on whose application the order was made, any information acquired by him in the course of his inspection.

Penalty: \$200.

(5) If default is made in complying with subsection (1), (1a) or (2)—

(a) the credit union;

(b) a director of the credit union who failed to take all reasonable steps to secure compliance by the credit union with the subsection; and

(c) every officer of the credit union who is in default,

is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

Default penalty: \$50.

(6) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a credit union with subsection (1), (1a) or (2), it is a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the subsection was complied with and was in a position to discharge that duty.

[Section 84 amended by No. 120 of 1987 s. 72; No. 90 of 1990 s. 9.]

Income and expenditure account, balance-sheet, and statement of source and application of funds

85. (1) The directors of a credit union shall cause to be made out and laid before the credit union at each annual general meeting an income and expenditure account for the period since the date to which the last preceding income and expenditure account so laid was made up (or, in the case of the first income and expenditure account, since the date of registration of the credit union) made up for a period ending on a date not earlier than 3 months before the date of the meeting, giving a true and fair view of the surplus or deficit of the credit union for that period.

(2) Notwithstanding the provisions of subsection (1), the Registrar may, on application made in accordance with a resolution of the directors, and signed on behalf of the credit union, by a director or secretary allow, subject to such conditions as the Registrar thinks fit, an income and expenditure account to be made up to a date earlier than 3 months before the date of the annual general meeting before which it is to be laid.

(3) The directors of a credit union shall cause to be made out and laid before the credit union at each annual general meeting a balance-sheet as at the end of its financial year last ended prior to the annual general meeting in question, giving a true and fair view of the state of affairs of the credit union as at the end of that financial year.

(3a) Where at the end of a financial year a credit union has a subsidiary or subsidiaries, the directors of the credit union shall, in addition to other obligations imposed on them by this section, cause to be made out and laid before the members of the credit union at its annual general meeting consolidated accounts dealing with—

- (a) the income and expenditure of the credit union and its subsidiaries for the same period as that for which the account required by subsection (1) is made up; and
- (b) the state of affairs of the credit union and its subsidiaries as at the end of their respective financial years last ended prior to the annual general meeting in question.

(3b) The consolidated accounts required to be made up under subsection (3a) shall give a true and fair view of the state of affairs and income and expenditure of the credit union and its subsidiaries dealt with as a whole, so far as concerns members of the credit union.

(4) The directors of a credit union shall cause to be made out and laid before the credit union at each annual general meeting a true and fair statement of the sources and application of the funds of the credit union for the period in respect of which the income and expenditure account laid, or to be laid, before the credit union, at the annual general meeting in question is made out.

(5) The directors shall (before the income and expenditure account and balance-sheet referred to in this section are made out) take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the credit union, and, if so, to cause—
 - (i) those assets to be written down to an amount that might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the credit union at an amount that, having regard to its value to the credit union as a going concern, exceeds the amount that it would have been reasonable for the credit

union to spend to acquire that asset as at the end of its financial year and (unless adequate provision for writing down that asset is made) cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(6) Not less than 14 days before each annual general meeting of a credit union, the accounts of the credit union shall be audited as required by Division 4 of this Part and the auditor's report required by section 92 shall be attached to or endorsed upon the accounts.

(7) Without affecting the generality of the preceding provisions of this section, the accounts of a credit union shall comply with such requirements (if any) relating to accounts as are prescribed and as are applicable to them but where accounts prepared in accordance with the requirements specified in this subsection would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts, the directors of the credit union shall add such information and explanations as will give a true and fair view of those matters.

(8) Without limiting the generality of the power to prescribe requirements relating to accounts of a credit union for the purposes of subsection (7), the requirements that may be so prescribed include—

- (a) requirements that the accounts, or specified accounts, be prepared on the basis of such accounting principles as are prescribed;
- (b) requirements as to the form and content of the accounts or specified accounts; and
- (c) requirements as to information and matters in relation to the accounts, or specified accounts, that are to be furnished with the accounts, or upon request, to members, or to the Registrar either periodically or upon request.

(9) There shall be attached to any accounts to be laid before a credit union at its annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors,—

- (a) the income and expenditure account is drawn up so as to give a true and fair view of the surplus or deficit of the credit union for the financial year; and
- (b) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the credit union as at the end of the financial year.

(10) The directors of a credit union shall cause to be attached to any accounts of the credit union to be laid before the credit union at its annual general meeting, before the auditor reports on the accounts under this Part, a statement signed by the secretary of the credit

union, or other person in charge of the preparation of its accounts, stating whether to the best of his knowledge and belief the accounts give a true and fair view of the matters required by this section to be dealt with in the accounts.

[Section 85 amended by No. 82 of 1985 s. 32.]

Directors' report

86. (1) The directors of a credit union shall cause to be attached to every balance-sheet made out under section 85 (3) a report made in accordance with a resolution of the directors and signed by not less than 2 of the directors with respect to the surplus or deficit of the credit union for the financial year and the state of its affairs as at the end of the financial year, stating such matters and particulars as are prescribed.

(2) Every statement, report or other document relating to the affairs of a credit union attached to or included with a report of the directors laid before the credit union at its annual general meeting or sent to the members under section 90 (not being a statement, report or document required by this Act to be laid before the credit union in general meeting) shall, for the purposes of section 129, be deemed to be part of that last-mentioned report.

(3) No copy of the balance-sheet of a credit union shall be issued, circulated or published by the credit union, or any of its directors or other officers, unless—

- (a) there is attached thereto a copy of the income and expenditure account of the credit union;
- (b) there is attached thereto a copy of the auditor's report under this Part; and
- (c) there is attached thereto a copy of the directors' report under subsection (1).

Revaluation reserve account not to be applied unless property realized

87. Where in the accounting records and statements or in any balance-sheet of a credit union any amount is or has been applied or transferred to an assets revaluation reserve account (by whatever name called) as the result of a revaluation of the assets of the credit union, or by reason of the adoption and use of any accounting principle that has the effect of creating such a reserve account, it shall not be lawful for a credit union to apply or transfer any amount from that account for any purpose unless the amount has been actually realized through the sale or disposal of those assets.

Relief from requirements as to form and content of accounts and reports

88. (1) Regulations may be made authorizing the Registrar to relieve the directors of a credit union or the directors of credit unions of a specified class from specified requirements of this Act relating to the form and content of accounts or to the form and content of the report required by section 86 (1).

(2) In subsection (1) "specified" means specified by the Registrar.

Failure to comply with Division (other than section 84)

89. (1) Subject to this section, if a director of a credit union fails to take all reasonable steps to comply with or to secure compliance with any of the preceding provisions of this Division (other than section 84) or has by his own wilful act been the cause of any default under any of those provisions, he is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(2) In any proceedings against a person for failure to take all reasonable steps to comply or to secure compliance with the preceding provisions of this Division relating to form and content of accounts of a credit union by reason of an omission from the accounts, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 85 to be dealt with in the accounts.

(3) If an offence against this section is committed with intent to deceive or defraud creditors of the credit union or creditors of any other person or for a fraudulent purpose, the offender is liable to a penalty not exceeding \$2 000 or to imprisonment not exceeding 1 year, or both the fine and the imprisonment.

(4) A person shall not be sentenced to imprisonment for an offence against this section unless in the opinion of the court the offence was committed wilfully.

Members entitled to balance-sheet, etc.

90. (1) A credit union shall, not less than 14 days before each annual general meeting, cause a copy of all accounts that are to be laid before the credit union at the meeting accompanied by copies of the statements required under section 85, a copy of the director's report required under section 86 and a copy of the auditor's report required by section 92 to be lodged with the Registrar and published in a prescribed manner or in such other manner as the Registrar, on the application of the credit union, approves.

(2) A credit union shall have at its registered office and available for inspection at all reasonable hours without fee copies of the accounts, statements and reports last published by it pursuant to subsection (1).

(3) If default is made in complying with subsection (1) or (2) the credit union and every officer of the credit union who is in default is guilty of an offence.

Penalty: \$500. Default penalty: \$50.

[Section 90 amended by No. 120 of 1987 s. 73.]

Division 4—Audit

Appointment of auditors

91. Regulations may provide for the nomination, appointment, term of office, removal, resignation and remuneration of auditors of credit unions and may prescribe circumstances in which persons shall be disqualified from consenting to be appointed, or acting, as the auditor of a credit union or preparing any report required by this Act to be prepared by the auditor of a credit union.

Duties of auditors

92. (1) An auditor of a credit union shall report to the members of the credit union on the accounts required to be laid before the credit union in general meeting and on the credit union's accounting records and other records relating to the accounts.

(2) Regulations may be made prescribing—

(a) the matters upon which an auditor of a credit union shall form an opinion when preparing his report and the matters to be stated in his report;

(b) other duties and obligations of an auditor of a credit union.

(3) An auditor has a right of access at all times to the accounting records and other records (including registers) of the credit union and is entitled to require from the directors and other officers of the credit union such information and explanations as he desires for the purposes of the audit.

(4) The auditor's report shall be attached to or endorsed upon the accounts and shall, if any member so requires, be read before the credit union in general meeting and shall be open for inspection by any member at any reasonable time.

(5) Any director or other officer of a credit union who refuses or fails without lawful excuse to allow any auditor access in accordance with this section to any accounting records and other records (including

registers) of the credit union in his custody or control or to give any information or explanation as and when required under this section or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers is guilty of an offence.

Penalty: \$500. Default penalty.

(6) Where an auditor, in the performance of his duties as auditor of a credit union becomes aware of a prescribed matter he shall, within 7 days after becoming aware of that matter, lodge with the Registrar a written report on the matter and send a copy of the report to the credit union.

(7) In subsection (6), "prescribed matter" means a matter that, in the opinion of the auditor—

- (a) has adversely affected, is adversely affecting, or may adversely affect the ability of a credit union to meet its obligations as they fall due; or
- (b) is a material breach of any provision of this Act or the rules of the credit union.

[Section 92 amended by No. 120 of 1987 s. 74.]

Provisions indemnifying auditors

93. (1) Any provision, whether contained in the rules of a credit union or in any contract with a credit union or otherwise, for exempting any auditor from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the credit union shall be void.

(2) Notwithstanding anything in this section a credit union may, pursuant to its rules or otherwise, indemnify any auditor against any liability incurred by him in defending any proceeding, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is, under this Act, granted to him by the court.

Auditors and other persons to enjoy qualified privilege in certain circumstances

94. (1) A person does not, in the absence of ill-will to the person concerned or any other improper motive on his part, incur any liability as for defamation in respect of the publication of any defamatory matter in the course of his duties as auditor of a credit union.

(2) A person does not, in the absence of ill-will to the person concerned or any other improper motive on his part, incur any liability as for defamation in respect of the publication of any defamatory matter in any document prepared by an auditor of a credit union in the

course of his duties or in connection with his office and required by or under this Act to be lodged with the Registrar or required by or under a law in force in another State or in a Territory of the Commonwealth to be lodged with a person who under that law exercises functions similar to those exercised by the Registrar under this Part, whether or not the document has been so lodged.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Division 5—Returns

Returns

95. (1) A credit union shall, in respect of each financial year of the credit union, lodge with the Registrar a copy, certified by one of the directors as a true copy, of the balance-sheet, income and expenditure account, sources and application of funds statement and other statements and reports prepared in pursuance of sections 85, 86 and 92 and laid before the annual general meeting.

(2) The documents required to be lodged with the Registrar under subsection (1) shall be accompanied by—

- (a) a declaration by the prescribed officer of the credit union in the prescribed form and containing the prescribed particulars; and
- (b) such other statements and returns as are prescribed.

(3) The documents referred to in subsections (1) and (2), in respect of each financial year of the credit union, shall be lodged within 3 months after the close of the financial year in question.

(4) On written application being made to him by a credit union in accordance with a resolution of the board and required by a director or the secretary, the Registrar may extend the period of 3 months referred to in subsection (3) on such conditions as he thinks fit.

(5) A credit union shall lodge with the Registrar such other returns, statements and documents as are prescribed.

[*Part VII. Part VII repealed by No. 120 of 1987 s. 75.*]

PART VIII—ADMINISTRATOR AND WINDING UP

Division 1—Appointment of Administrator

Appointment of an administrator

97. (1) Subject to this section, the Registrar may, with the approval of the Minister, appoint an administrator to conduct the affairs of a credit union, and may revoke any such appointment.

(2) The Registrar shall not appoint an administrator unless he certifies as to a ground or matter specified in section 101 (3) (other than paragraphs (c) and (d) thereof), that subsection being read as if—

- (a) the passage “An administrator may not be appointed under section 97 (1) unless” were substituted for the passage “In the case of a winding up upon the certificate of the Registrar, the credit union may be wound up if”; and
- (b) the words “an administrator should be appointed to conduct the affairs of the credit union”, were substituted for the words “the credit union should be wound up” occurring in paragraph (g).

(3) The Registrar shall not certify under subsection (2) unless the ground or matter to be certified has been proved to his satisfaction.

(4) Upon the appointment of an administrator of a credit union—

- (a) the directors of the credit union cease to hold office;
- (b) all contracts of employment with the credit union are terminated; and
- (c) all contracts for the provision of services for the credit union are terminated.

(5) An administrator of a credit union, has the powers, authorities, duties and functions of the board of the credit union including but without limiting the generality of this subsection the board's powers of delegation under section 39 (1) and section 54 (7) and, except as provided by subsection (8), no appointment or election of a director of the credit union may be made while the administrator is in office.

(6) An administrator shall hold office until his appointment is revoked and upon revocation of his appointment shall prepare and submit forthwith a report to the Registrar showing how the administration was conducted by him and for that purpose an administrator has access to the records and books of the credit union.

(7) Upon completion of the report referred to in subsection (6) and accounting fully in respect of his administration to the satisfaction of the Registrar, the administrator is released from any further liability to account in respect of his administration other than on account of fraud or dishonesty.

(8) Before revoking the appointment of an administrator of a credit union, the Registrar shall, except in the case of a revocation under section 100 (2)—

- (a) appoint another administrator;
- (b) ensure that directors of the credit union have been elected in accordance with the rules of the credit union, at a meeting convened by the administrator in accordance with those rules; or
- (c) appoint directors of the credit union.

(9) Directors elected under subsection (8) (b) or appointed under subsection (8) (c)—

- (a) take office upon revocation of the appointment of the administrator; and
- (b) in the case of appointed directors, subject to section 98 hold office until the annual general meeting of the credit union that next succeeds revocation of that appointment.

(10) The expenses of and incidental to the conduct of the affairs of a credit union by an administrator shall be payable from the funds of the credit union.

(11) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (10) and shall be fixed by the Registrar.

(12) Where an administrator appointed under this section is a servant of the Crown, the reimbursement of the Crown in an amount certified by the Registrar in respect of the remuneration of its servant is an expense referred to in subsection (10) and is recoverable as a debt due to the Crown.

(13) Without prejudice to his liability to account under subsection (6) an administrator of a credit union is not liable for any loss sustained by the credit union or by any other person during his term of office in respect of any act or omission by him in the management of the credit union or otherwise in relation to the credit union unless the loss was due to his wilful misconduct or gross negligence or to his wilful failure to comply with the provisions of this Act or the rules of the credit union in so far as those rules are not inconsistent with the provisions of this Division.

(14) The Registrar is not liable for any loss sustained by a credit union, or by any other person during the term of office of an administrator, in respect of any act or omission of the administrator in the management of the credit union or otherwise in relation to his conduct as administrator, whether or not the administrator is so liable.

Additional powers of Registrar when appointing directors

98. (1) This section applies notwithstanding any other provision of this Act or the rules of the credit union, in respect of which the Registrar seeks to exercise the powers and authorities conferred on him by this section.

(2) Where the Registrar appoints directors of a credit union pursuant to section 97 (8) he may, with the approval of the Minister first had and obtained, by instrument in writing—

- (a) specify a time during which this section is to apply in respect of the credit union;
- (b) specify the terms and conditions on which the directors so appointed, or any of them, shall hold office;
- (c) specify rules to be the rules of the credit union or, as the Registrar specifies, part of the rules of the credit union.

(3) For the time specified by the Registrar pursuant to subsection (2) or for that time as extended or reduced by him—

- (a) this section shall apply in respect of the credit union of which he has appointed directors;
- (b) the Registrar may remove and appoint the directors of the credit union from time to time;
- (c) the terms and conditions specified pursuant to that subsection or those terms and conditions as amended by the Registrar shall be the terms and conditions on which the directors of the credit union or any one or more of them, as specified by the Registrar, shall hold office;
- (d) the rules specified pursuant to that subsection or those rules as amended by the Registrar shall be the rules or, as specified by him, part of the rules of the credit union.

(4) The Registrar may at any time, with the approval of the Minister first had and obtained, by instrument in writing—

- (a) extend the time for which this section is to apply in respect of a credit union;
- (b) amend, by revoking, altering or adding to, the terms and conditions on which the directors of a credit union to which this section applies shall hold office or the rules of such a credit union, whether specified by him or made by the credit union.

(5) A rule specified by the Registrar pursuant to this section as a rule of a credit union—

- (a) shall not be amended or revoked save as is prescribed by subsection (4);
- (b) if it is inconsistent with any other rule of the credit union, shall prevail and the other rule shall to the extent of the inconsistency be invalid;

- (c) shall have and be given the same evidentiary value as is by this Act accorded to the rules of the credit union and to copies thereof.

Stay of proceedings

99. (1) Where pursuant to section 97 an administrator is appointed to conduct the affairs of a credit union, no action or proceedings in any court shall, except with the leave of the Court and, if the Court grants leave, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the credit union until the appointment of the administrator is revoked.

(2) A person intending to apply for the leave of the Court under subsection (1) shall give to the Registrar not less than 10 days' notice of his intention so to apply.

(3) On the hearing of an application under subsection (1) the Registrar may be represented and may oppose the granting of the application.

Advisory Committee to make certain report to Minister

100. (1) Where an administrator of a credit union, is appointed under section 97, a majority of the directors who ceased to hold office upon the appointment of the administrator may, not later than 14 days after the appointment, make representations to the Registrar with respect to the appointment and where any such representations are so made, the Registrar shall report thereon to the Minister.

(2) The Registrar shall, if the Minister so directs after considering a report under subsection (1) with respect to a credit union, revoke the appointment of an administrator of the credit union and a director who held office immediately before the appointment of the administrator resumes that office upon revocation of the appointment in pursuance of this section.

[Section 100 amended by No. 120 of 1987 s. 76.]

Division 2—Winding up

Winding up

101. (1) A credit union may be wound up—
- (a) by the Court;
 - (b) voluntarily; or
 - (c) upon the certificate of the Registrar.

(2) In the case of a winding up by the Court, the credit union may, subject to this Division, be wound up in the same manner and in the same circumstances in which a company formed and registered under the *Companies (Western Australia) Code*² may be so wound up.

(3) In the case of a winding up upon the certificate of the Registrar, the credit union may be wound up if the Registrar certifies—

- (a) that the number of members is reduced to less than 25;
- (b) that the credit union has not commenced business within 6 months of registration or has not done any business for a period of more than 6 months;
- (c) that the registration of the credit union whether under the *Co-operative and Provident Societies Act 1903* or under this Act has been obtained by mistake or fraud;
- (d) that the credit union exists for an illegal purpose;
- (da) that the credit union is contravening section 61;
- (e) that the credit union has, after notice by the Registrar of any breach of, or non-compliance with, this Act, or the rules of the credit union failed, within the time specified in the notice, to remedy the breach or has committed any further breach of a kind specified in the notice;
- (f) that there are, and have been for a period of one month immediately before the date of the certificate, insufficient directors of the credit union to constitute a quorum as provided by the rules of the credit union;
- (g) that, as disclosed by an investigation held by the Registrar under section 168 into the affairs of the credit union or the working and financial condition of the credit union, it is in the interests of members or creditors of the credit union that the credit union should be wound up;
- (h) that as disclosed in a report provided by the Credit Unions Savings Protection Board Limited to the Registrar into the affairs of the credit union or the working and financial condition of the credit union, it is in the interest of members or creditors of the credit union that the credit union should be wound up; or
- (i) that the credit union is not or has ceased to be a member of the Credit Unions Savings Protection Board Limited.

(4) The Registrar shall not certify under this section unless the truth of the ground or matter to be certified has been proved to his satisfaction and unless, in the case of a matter specified in subsection (3) (c), (d), (e) or (g), the Minister consents to the issue of the certificate.

(5) Upon the issue of a certificate by the Registrar under this section, the Registrar may appoint a person who, if the credit union were being wound up voluntarily under this Division, would be qualified for

appointment as liquidator to be the liquidator of the credit union and, in the event of a vacancy in that office, may appoint a person so qualified to fill the vacancy.

(6) A person appointed under subsection (5) shall give such security as may be prescribed, and shall be entitled to such fees as may be approved by the Registrar.

(7) A winding up of a credit union upon the certificate of the Registrar shall be deemed to commence at the time the certificate is issued and the liquidator of the credit union shall, within 14 days of his appointment give notice of the commencement of the winding up in the *Gazette* and in a newspaper published and circulating generally in the State.

[Section 101 amended by No. 10 of 1982 s. 28; No. 120 of 1987 s. 77; No. 90 of 1990 s. 10.]

Application of *Companies (Western Australia) Code*² to winding up, dissolution and defunct credit unions

102. (1) The provisions of Part XII of the *Companies (Western Australia) Code*² with respect to the winding up, and the dissolution, of a company formed and registered under that Act, (including, without limiting the generality of this subsection, the provisions of subdivision F of Division 4 of that Part) shall, subject to this Division, apply to and with respect to—

- (a) the winding up of a credit union;
- (b) the dissolution of a credit union;
- (c) a defunct or dissolved credit union.

(2) In the application of the provisions of Part XII of the *Companies (Western Australia) Code*² to, and with respect to, the winding up, or dissolution, of a credit union or a defunct or dissolved credit union—

- (a) a reference in that Part to a company shall be construed as a reference to the credit union;
- (b) a reference in that Part to a special resolution shall be construed as a reference to a special resolution as defined by section 80;
- (c) a reference in that Part to the Commission shall be construed as a reference to the Registrar under this Act;
- (d) a reference in that Part to the articles of a company shall be construed as a reference to the rules of the credit union;
- (e) the following paragraph shall be read in lieu of section 360 (1) (e) and (f) of the *Companies (Western Australia) Code*²:—

“(d) A contribution shall not be required from a member in excess of the amount of any charge payable by the member to the credit union in accordance with the rules of the credit union”;

- (f) in the case of a winding up upon the certificate of the Registrar, the winding up shall be deemed to be a voluntary winding up and, without in any way limiting the generality of any provision of this Division, sections 409, 410 and 411 of the *Companies (Western Australia) Code*² apply to and in relation to the winding up as if it were a member's voluntary winding up within the meaning of that Act; and
- (g) the provisions of that Part apply subject to such other modifications and adaptations as are prescribed.

[Section 102 amended by No. 10 of 1982 s. 28; No. 120 of 1987 s. 78.]

Liquidator

103. Where a credit union is being wound up voluntarily (otherwise than upon the certificate of the Registrar) and a vacancy occurs in the office of the liquidator which in the opinion of the Registrar is unlikely to be filled in the manner provided by Part XII of the *Companies (Western Australia) Code*² as applying to the winding up, the Registrar may appoint a person qualified under that Part for such appointment to be liquidator.

[Section 103 amended by No. 10 of 1982 s. 28.]

Cancellation

104. As soon as may be practicable after the credit union is dissolved, the Registrar shall register the dissolution and cancel the registration of the credit union.

PART VIIIA—CREDIT UNIONS SAVINGS PROTECTION FUND

[Part VIIIA inserted by No. 90 of 1990 s. 11.]

Definitions

104A. In this Part, unless the contrary intention appears—

“Fund” means the Credit Unions Savings Protection Fund established under section 104B (1);

“Protection Board” means the Credit Unions Savings Protection Board Limited referred to in section 5A (2);

“prudential matters” means any administrative or financial matter in relation to—

- (a) the maintenance by a credit union of a sound financial position;
- (b) the promotion by a credit union of stability amongst credit unions; and
- (c) the conduct by a credit union of its affairs with integrity, prudence and professional skill.

[Section 104A inserted by No. 90 of 1990 s. 11.]

Credit Unions Savings Protection Fund

104B. (1) There shall be a fund to be known as the Credit Unions Savings Protection Fund.

(2) The Fund is established to provide—

- (a) protection for members of credit unions who have acquired or invested in withdrawable shares or deposited money with credit unions which are being or have been wound up; and
- (b) financial, technical and human resource assistance for credit unions.

[Section 104B inserted by No. 90 of 1990 s. 11.]

Payments into the Fund

104C. The Fund shall consist of—

- (a) moneys paid into the Fund by credit unions under sections 104F, 104G and 104H;
- (b) moneys borrowed from any bank or other source;
- (c) interest and other income gained from the investment of moneys comprising the Fund;
- (d) any moneys recovered under section 104ZA; and
- (e) all other moneys lawfully paid into the Fund.

[Section 104C inserted by No. 90 of 1990 s. 11.]

Administration of the Fund

104D. (1) For the purposes of this Part the Fund shall vest in and be administered by the Protection Board.

(2) The moneys in the Fund shall, until invested or applied in accordance with this Part, be kept in a separate account in a bank in the State.

(3) In addition to the legal capacity and powers conferred or imposed on the Protection Board under the *Companies (Western Australia) Code*² and this Part the Protection Board shall—

- (a) advise the Minister and the Registrar on all matters relating to credit unions as requested;
- (b) provide management advice to credit unions;
- (c) encourage and promote the carrying out by credit unions of sound practices in relation to prudential matters;
- (d) assist officers of credit unions to administer the affairs of credit unions and subsidiary corporations of credit unions in a proper and businesslike manner;

- (e) collect and analyse information in respect of prudential matters in relation to credit unions; and
- (f) evaluate the effectiveness of practices in relation to prudential matters carried out by credit unions.

[Section 104D inserted by No. 90 of 1990 s. 11.]

Memorandum and articles of Protection Board

104E. (1) Subject to this Act and the *Companies (Western Australia) Code*², the memorandum and articles of association of the Protection Board shall contain such provisions as are, and be in such form as is, approved.

(2) The memorandum and articles shall not be amended in a way that is inconsistent with any provision of this Act.

(3) The memorandum and articles shall provide that—

- (a) none of the members of the Protection Board is a person other than a credit union;
- (b) no person other than a credit union may become or remain a member of the Protection Board;
- (c) the amounts to be paid into the Fund in any financial year pursuant to—

- (i) a determination under section 104F (1) subject to section 104F (6);
 - (ii) a requisition under section 104G (1); or
 - (iii) an order under section 104H (1),
- shall not be amended during that financial year unless approved.

(4) If there is any conflict or inconsistency between this Act and a provision of the memorandum or articles, this Act prevails.

(5) In this section “approved” means approved by the Minister on the recommendation of the Registrar.

[Section 104E inserted by No. 90 of 1990 s. 11.]

Contributions by credit unions

104F. (1) The Protection Board may determine from time to time the contribution to be paid to the Fund by all credit unions.

(2) A determination may specify a fixed amount of contribution or may specify a formula by which the amount of contribution may be calculated.

(3) A credit union shall pay its contribution to the Fund under this section within 30 days of it being sent written notice of its contribution.

(4) Where a credit union is in default in payment of a contribution under subsection (1)—

(a) interest shall accrue on the amount outstanding from the date of default at a rate to be determined by the Protection Board; and

(b) the Protection Board may recover any amount outstanding together with interest accrued thereon as a debt in any court of competent jurisdiction.

(5) Any amounts paid to the Fund by a credit union by way of contribution under subsection (1) shall in the accounts of the credit union, subject to section 85 (5), be treated as deferred assets of the credit union.

(6) Where on the first day of July the amount held by way of contribution for a credit union in the Fund exceeds the amount required to be kept by way of contribution under this section, the Protection Board shall, within 30 days of the receipt of an application in writing from the credit union, pay the amount of the excess to the credit union.

(7) Where a credit union informs the Protection Board in writing, within 30 days of it being sent written notice of its contribution under subsection (1), that it is unable to comply with subsection (3), the Protection Board may, at any time and on such conditions as the Protection Board thinks fit, vary the obligation of a credit union to comply with any of the provisions of this section and may at any time revoke such variation.

[Section 104F inserted by No. 90 of 1990 s. 11.]

Making of levies

104G. (1) Where in the opinion of the Protection Board the capital amount of the Fund has been or is likely to be reduced to such an extent that it is desirable that further payment be made into the Fund, the Protection Board may require each credit union, other than a credit union to which Part VIII applies to pay into the Fund a levy as determined by the Protection Board.

(2) The Protection Board may require more than one levy to be paid during any period of 12 months commencing on 1 July.

(3) A levy under subsection (1) shall be paid by a credit union on or before the day determined by the Protection Board and of which not less than 30 days notice in writing is given by the Protection Board to the credit union.

(4) Where a credit union is in default in payment of a levy under subsection (1)—

- (a) interest shall accrue on the amount outstanding from the date of default at a rate to be determined by the Protection Board; and
- (b) the Protection Board may recover any amount outstanding together with interest accrued thereon as a debt in any court of competent jurisdiction.

(5) Notwithstanding any provision of this Act or any other written law, a levy under subsection (1) shall, on payment into the Fund, become the property of the Protection Board absolutely and shall be freed and discharged from any trusts, obligations, interests or charges to which it may have been subject in the hands of a credit union immediately prior to its payment into the Fund.

(6) Any amounts paid to the Fund by a credit union by way of levy under subsection (1) shall in the accounts of the credit union be treated as an expense of the credit union.

(7) An amount paid by way of levy under subsection (1) shall not be taken into account in determining the amount a credit union is required to contribute to the Fund under section 104F or lend to the Fund under section 104H.

[Section 104G inserted by No. 90 of 1990 s. 11.]

Compulsory loans

104H. (1) The Protection Board may at any time order a credit union to pay to the Fund a specified amount by way of compulsory loan on such terms and conditions as may be determined by the Protection Board.

(2) A payment required to be made into the Fund by a credit union under this section shall be made in addition to any contribution required to be made by the credit union under section 104F or levy under section 104G.

(3) Notwithstanding anything to the contrary in this Act or in the rules of the credit union, a credit union may from time to time invest any of its funds not immediately required for the purposes of the credit union in the Fund and such investment shall be made upon and be subject to such terms and conditions as the Protection Board from time to time thinks fit.

[Section 104H inserted by No. 90 of 1990 s. 11.]

Failure to make payment an offence

104I. (1) If default is made in making any payment required to be made under section 104F, 104G or 104H, the credit union and any director or other officer of the credit union who failed to take all reasonable steps to secure compliance by the credit union with those sections shall be guilty of an offence against this Act.

Penalty: \$1 000 or imprisonment for 6 months.

(2) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a credit union with a provision of section 104F, 104G or 104H, it shall be a defence to prove that he or she had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

[Section 104I inserted by No. 90 of 1990 s. 11.]

Investment of Fund

104J. The Protection Board may invest any moneys standing to the credit of the Fund in any investment which would constitute liquid funds for the purposes of section 60 (2) (a).

[Section 104J inserted by No. 90 of 1990 s. 11.]

Payments out of the Fund

104K. (1) There shall be paid out of the Fund—

- (a) all moneys ordered to be paid out of the Fund under section 104L;
- (b) all moneys due to be paid under the terms of voluntary or compulsory loans or borrowings made under section 104H or investments made under section 104J;
- (c) all moneys refundable under section 104F (5); and
- (d) all moneys necessary to meet expenses lawfully incurred in relation to the administration of the Fund or the carrying out by the Protection Board of its functions under this Part or under its memorandum and articles of association.

(2) The Protection Board may authorize payment out of the Fund for any purpose which in the opinion of the Protection Board will promote or encourage the use by credit unions of efficient methods of accounting and office management or which will assist credit unions in any other way to operate more efficiently.

[Section 104K inserted by No. 90 of 1990 s. 11.]

Claims against the Fund

104L. (1) An application for payment out of the Fund may be made by—

- (a) a member of a credit union; or
- (b) a credit union.

(2) Where an application is made under this section the chairman shall, as soon as practicable, call a meeting of the Protection Board to consider the application.

(3) An application under subsection (1) (a) may be made within 6 months of the date of demand referred to in subsection (5) or within such longer period as the Protection Board may approve.

(4) Where a member referred to in subsection (1) (a) dies before a claim—

- (a) arises; or
- (b) is determined,

the claim may be made or pursued by the personal representatives of the member.

(5) Where an application is made by a member of a credit union and the Protection Board is satisfied that the credit union has failed or refused to satisfy a lawful demand by the member with respect to moneys paid by the member as withdrawable share capital to the credit union or deposited by the member with the credit union the Protection Board may pay the claim—

- (a) in full; or
- (b) where the Protection Board is of the opinion having regard to such matters as it considers relevant that it is unable to pay the claim in full, to the maximum extent not exceeding the amount fixed by the Protection Board from time to time on any conditions the Protection Board thinks fit.

(6) Where, under subsection (5), the Protection Board pays the whole or part of a claim, it shall be subrogated, to the extent of the payment, to all the rights and remedies of the claimant relating to the claim against the credit union in respect of which the claim is made.

(7) Where the Protection Board is subrogated under subsection (6) to the rights and remedies of a claimant—

- (a) the Protection Board shall be at liberty to exercise those rights and remedies in its own name or in the name of the claimant; and
- (b) any moneys recovered by the Protection Board in the exercise of those rights and remedies shall be paid into the Fund.

(8) The Protection Board shall indemnify a claimant against any costs awarded against the claimant in any proceedings brought by the Protection Board under subsection (7) in the name of the claimant to

enforce the rights and remedies of the claimant to which the Protection Board is subrogated.

(9) Where an application is made by a credit union and the Protection Board is satisfied that if a payment is made to the credit union out of the Fund the credit union will or will be likely to be able to trade profitably the Protection Board may order that a sum not exceeding the amount fixed by the Protection Board from time to time be paid from the Fund to the credit union on any conditions the Protection Board thinks fit.

(10) Where a credit union—

- (a) is being wound up;
- (b) becomes registered as a financial society; or
- (c) amalgamates with, or transfers its engagements to, an institution other than a credit union,

the Protection Board shall—

- (d) on demand of the liquidator; or
- (e) on production of the appropriate certificate under Part IV or Part XIIA,

pay to the liquidator or the institution which appears to the Protection Board from the certificate referred to in paragraph (e) entitled thereto—

- (f) except as provided in paragraph (g), the whole of the amount the credit union has on deposit with the Fund under section 104G; or
- (g) where the last balance sheet of the Fund discloses a loss or deficiency in the Fund, the whole of the amount referred to in paragraph (f) less an amount that bears to the amount of the loss or deficiency the same proportion as the amount referred to in paragraph (f) bears to the total amount paid by all credit unions under section 104G as shown in that balance sheet.

(11) Where the Protection Board becomes a creditor of a credit union, the Protection Board shall rank after withdrawable shareholders and depositors in order of priority on winding up in the recovery of the debt.

[Section 104L inserted by No. 90 of 1990 s. 11.]

Minimum amount of Fund

104M. (1) The Protection Board shall ensure that not later than 30 days after the coming into operation of section 11 of the *Credit Unions Amendment Act 1990*¹ there is an amount of not less than \$4 000 000 in the Fund.

(2) The Protection Board shall ensure that the amount referred to in subsection (1) is, subject to subsection (3), maintained in the Fund.

(3) The Protection Board may, with the approval in writing of the Minister, determine, by notice published in the *Gazette*, an amount (whether greater than or less than \$4 000 000) to be the minimum amount of the Fund.

[Section 104M inserted by No. 90 of 1990 s. 11.]

Credit union may become subject to direction by Protection Board

104N. (1) Subject to section 104P (1) where—

- (a) a credit union fails to comply with any of the provisions of sections 60, 61, 104F, 104G or 104H;
- (b) a credit union fails to lodge with the Registrar or Protection Board any document required to be so lodged under this Act;
- (c) a credit union is trading unprofitably or has an accumulated deficit;
- (d) a credit union requests the Protection Board to declare it to be subject to the direction of the Protection Board;
- (e) the Protection Board is of the opinion that the affairs of a credit union are being conducted in an improper or financially unsound manner; or
- (f) the Registrar recommends to the Protection Board that a credit union be made subject to the direction of the Protection Board,

the Protection Board may, by resolution, declare the credit union to be subject to its direction from the day specified in the resolution.

(2) The Protection Board shall give written notice of any resolution under subsection (1) to the credit union in respect of which the resolution is made and to the Registrar within 14 days after the making of the resolution.

[Section 104N inserted by No. 90 of 1990 s. 11.]

Period of direction

104O. (1) Subject to section 104P where a credit union is subject to the direction of the Protection Board the credit union shall remain subject to the direction of the Protection Board until—

- (a) after considering an application from the credit union the Protection Board, by resolution, declares that the credit union—
 - (i) has ceased; or
 - (ii) shall continue,to be subject to its direction; or
- (b) an administrator or liquidator of the credit union is appointed pursuant to Part VIII,

whichever first occurs.

(2) An application referred to in subsection (1) (a) shall—

- (a) be in writing; and
- (b) state the grounds on which the credit union considers that it should cease to be subject to the direction of the Protection Board.

(3) The Protection Board shall give written notice of a resolution made under subsection (1) (a) to the credit union in respect of which the resolution is made and to the Registrar within 14 days after the making of the resolution.

[Section 104O inserted by No. 90 of 1990 s. 11.]

Appeal to Minister

104P. (1) A credit union dissatisfied with a resolution under section 104N (1) may appeal to the Minister in writing within 7 days of receiving notice under section 104N (3), to review the resolution.

(2) After considering an appeal under subsection (1) the Minister may—

- (a) endorse the resolution of the Protection Board; or
- (b) substitute his or her own resolution for that of the Protection Board.

(3) Where the Minister—

- (a) endorses a resolution under subsection (2) (a); or
- (b) substitutes a resolution under subsection (2) (b),

such endorsement or substitution has effect for the purposes of this Act as if it were a resolution of the Protection Board under section 104O (1).

[Section 104P inserted by No. 90 of 1990 s. 11.]

Functions of Protection Board where credit union under direction

104Q. (1) The Protection Board may where a credit union is subject to the direction of the Protection Board—

(a) subject to section 104T—

- (i) make a direction under section 37G; or
- (ii) appoint an administrator under section 97 (1);

- (b) require the credit union to correct any practices which, in the opinion of the Protection Board, are undesirable or unsound;
- (c) prohibit or restrict any of the functions of the credit union including the raising or lending of moneys; or
- (d) establish guidelines within which the affairs of the credit union shall be conducted.

(2) Nothing in subsection (1) shall preclude the Registrar from exercising his or her functions under this Act.

(3) For the Purposes of carrying out the functions of the Protection Board—

(a) under subsection (1) (a) (i), section 37G shall apply; and

(b) under subsection (1) (a) (ii), sections 97, 98 and 99 shall apply,

and be construed as if a reference in those sections to the “Registrar” were a reference to the “Protection Board”.

[Section 104Q inserted by No. 90 of 1990 s. 11.]

Offence of failing to act under direction

104R. (1) A director or officer of a credit union which is subject to a resolution made under section 104N (1) shall in carrying out the duties of the position of director or officer act in accordance with the directions given by the Protection Board.

Penalty: \$5 000 or imprisonment for 2 years.

(2) A person who is convicted of an offence under this section shall not act as a director or officer of a credit union for the period of 3 years immediately following that conviction.

[Section 104R inserted by No. 90 of 1990 s. 11.]

Inspection of books by Protection Board

104S. (1) The Protection Board may require the production of any books, minutes, papers or documents in the possession of a person relating to—

(a) a credit union or any of its subsidiaries;

(b) a foreign credit union to which Part IX applies or any of its subsidiaries.

(2) The Protection Board may inspect, make copies of or make extracts from any books, minutes, papers or documents produced to it.

(3) The Protection Board may authorize in writing any officer employed by it or any accountant engaged by it to require the production of, inspect, make copies of or make extracts from any books, minute papers or documents to which subsection (1) applies.

(4) A person who does not comply with subsections (1), (2) or (3) is guilty of an offence.

Penalty: \$500.

(5) For the purposes of this section “books” shall have the same meaning as in section 152 (1).

[Section 104S inserted by No. 90 of 1990 s. 11.]

Protection Board may appoint auditor

104T. (1) The Protection Board may, at any time, appoint an auditor to audit the accounts of a credit union whether or not those accounts have been audited under section 85 (6).

(2) An auditor appointed under subsection (1) may require any director or other officer of a credit union to produce all or any of the books or documents of the credit union and to furnish such information as is necessary to enable the audit to be made.

(3) A director or other officer of a credit union who refuses or fails, without lawful excuse, to produce any books or documents required to be produced under subsection (2), or to furnish any information required of him or her under that subsection, shall be guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months or both.

(4) If a credit union is under the direction of the Protection Board or if the Protection Board has appointed an administrator to conduct the affairs of a credit union then the Protection Board may, notwithstanding any regulation to the contrary made under section 91, by notice in writing remove the auditor appointed by the credit union.

(5) The Protection Board may after notifying the Registrar recommend to a credit union to which subsection (4) does not apply that it remove its present auditor and appoint a new auditor.

(6) The Protection Board may require the auditor or former auditor of a credit union to produce all or any books or documents kept by the auditor in respect of the credit union and to furnish any other information which the Protection Board requires in respect of that credit union.

(7) An auditor who does not produce the books or documents or furnish the information as required under subsection (6) shall be guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months or both.

(8) The Protection Board may inspect, make copies of or make extracts from any book or document produced to it by an auditor.

[Section 104T inserted by No. 90 of 1990 s. 11.]

Returns etc., of credit unions to be submitted to Protection Board

104U. A credit union shall—

(a) within 3 months after the close of its financial year submit copies of the documents referred to in section 95 (1) and (2); and

(b) at any time when requested by the Protection Board submit such financial returns, statements and accounts,

to the Protection Board.

[Section 104U inserted by No. 90 of 1990 s. 11.]

**Returns etc., of Protection Board
to be lodged with Registrar**

104V. The Protection Board shall within 6 months after the close of the financial year lodge with the Registrar copies of the annual returns lodged under section 263 of the *Companies (Western Australia) Code*².

[Section 104V inserted by No. 90 of 1990 s. 11.]

**Registrar may provide documents etc.,
to Protection Board**

104W. (1) The Registrar may, at the request of the Protection Board and with or without conditions, supply the Protection Board with—

- (a) copies of documents; and
- (b) any information,

held by the Registrar in the exercise of any of his or her functions under this Act.

(2) The Registrar shall not comply with subsection (1) unless the Registrar considers the documentation or information will assist the Protection Board to fulfil its functions under section 104B (2).

[Section 104W inserted by No. 90 of 1990 s. 11.]

**Protection Board and its auditors shall
provide information to the Registrar**

104X. (1) The Registrar may by notice require the Protection Board or its auditors to provide the Registrar with reports and returns.

(2) A notice under subsection (1) shall—

- (a) be in writing;
- (b) specify the date up to which a report or return shall be made;
and
- (c) specify any other information required by the Registrar.

[Section 104X inserted by No. 90 of 1990 s. 11.]

Protection Board shall make rules

104Y. (1) The Protection Board shall prepare rules relating to prudential matters to be carried out by a credit union.

(2) The Protection Board shall serve each credit union with a copy of the rules.

(3) The Protection Board may amend the rules, and shall forthwith after the making of the amendment, give written notice of the amendment to each credit union.

[Section 104Y inserted by No. 90 of 1990 s. 11.]

Credit unions shall comply with rules

104Z. (1) A credit union shall comply with the rules of the Protection Board.

(2) The Protection Board shall serve notice on a credit union which, in the opinion of the Protection Board, has failed to comply with subsection (1).

(3) A notice served under subsection (2) shall state the nature of the contravention and until such time as the Protection Board is satisfied that the matter has been rectified the Protection Board may prohibit the credit union from—

- (a) accepting money for share capital or deposits; or
- (b) making loans,

without the approval of the Protection Board.

[Section 104Z inserted by No. 90 of 1990 s. 11.]

Protection Board may recover certain costs

104ZA. (1) Any costs incurred by the Protection Board in carrying out its functions under this Part may be recovered from the relevant credit union.

(2) The Protection Board may recover any costs outstanding together with interest from the date of demand for such costs at a rate to be determined by the Protection Board as a debt in any court of competent jurisdiction.

(3) The Protection Board shall pay any moneys received under this section into the Fund.

[Section 104ZA inserted by No. 90 of 1990 s. 11.]

PART IX—FOREIGN CREDIT UNIONS**Application and interpretation of this Part**

105. (1) Except where the contrary intention appears, this Part applies to a foreign credit union only if it has a place of business or is carrying on business within the State.

(2) In this Part, unless the contrary intention appears—

“agent” means the person named in a memorandum of appointment or power of attorney lodged under section 107 (1) or (8);

“carrying on business” includes—

- (a) establishing or using a share transfer or share registration office;
- (b) establishing or using an office for the receipt of share capital, deposits or loan funds;

- (c) advertising for share capital, deposits or loan funds; or
 - (d) making loans to members residing in the State,
- and "to carry on business" has a corresponding meaning.

(3) Notwithstanding subsection (2), a foreign credit union shall not be regarded as carrying on business within the State for the reason only that within the State it—

- (a) is or becomes a party to any action or suit or any arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- (e) solicits or procures any offer that becomes a binding contract only if such offer is accepted outside the State;
- (f) creates evidence of any debt or creates a charge on real or personal property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

Power of foreign credit unions to hold land

106. A foreign credit union registered under this Part has power to hold land in the State.

Documents, etc., to be lodged by foreign credit unions having place of business in the State

107. (1) Every foreign credit union shall within one month after it establishes a place of business or commences to carry on business within the State, lodge with the Registrar for registration—

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- (b) a certified copy of its rules or other instrument constituting or defining its constitution;
- (c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors of a credit union formed and registered under this Act;

- (d) where the list includes directors resident in the State who are members of the local board of directors a memorandum duly executed by or on behalf of the foreign credit union stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign credit union or executed on its behalf in such manner as to be binding on the credit union and, in either case, verified in the prescribed manner, stating the name and address of one or more persons resident in this State (not including a body corporate incorporated outside the State) authorized to accept on its behalf service of process and any notices required to be served on the credit union;
- (f) notice of the situation of its registered office in the State; and
- (g) a statutory declaration in the prescribed form made by the agent of the credit union,

and the Registrar shall register the credit union under this Part by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1) (e) is executed by a person on behalf of the credit union, a copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) applies to a foreign credit union which, immediately before the date of the coming into operation of this Act, had a place of business or was carrying on business within the State and, on that date, has a place of business or is carrying on business within the State, as if it established that place of business or commenced to carry on that business on that date.

(4) A foreign credit union shall have a registered office within the State to which all communications and notices may be addressed.

(5) An agent, until he ceases to be such in accordance with subsection (7)—

- (a) continues to be the agent of the credit union;
- (b) is answerable for the doing of all such acts, matters and things, as are required to be done by the credit union for any contravention of any of the provisions of this Act unless he satisfies the court hearing the matter that he should be not so liable.

(6) A foreign credit union or its agent may lodge with the Registrar a notice in writing stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(7) The agent in respect of whom the notice has been lodged ceases to be an agent on the expiration of a period of 21 days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (8) whichever is the earlier, but if the notice states a date on which he is to so cease and the date is later than the expiration of that period, he shall so cease on that date.

(8) Where an agent ceases to be the agent and the credit union is then without an agent in the State if the credit union continues to carry on business or has a place of business in the State it shall within 21 days after the agent ceases to be such, appoint an agent and lodge a memorandum of his appointment and a statutory declaration in accordance with subsection (1), and, if not already lodged in pursuance of subsection (2), a copy of the deed or document or power of attorney referred to in that subsection verified in accordance with that subsection.

(9) On the registration of a foreign credit union under this Part or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in section 108 (c), (d) or (f), the Registrar shall issue a certificate in the prescribed form under his hand and seal which certificate is *prima facie* evidence in all courts of the particulars mentioned in the certificate.

(10) Where a foreign credit union commits an offence under section 30 and the foreign credit union becomes registered under this Part then if the offence was committed within the period of one month immediately preceding the date of its registration under this Part, the foreign credit union shall be deemed not to have committed the offence.

Return to be filed where documents, etc., altered

108. Where any change or alteration is made in—

- (a) the rules of the foreign credit union or other instrument lodged with the Registrar;
- (b) the directors of the foreign credit union;
- (c) the agent or agents of the foreign credit union or the address of any agent;
- (d) the situation of the registered office of the foreign credit union in the State;
- (e) the address of the registered office of the foreign credit union in its place of incorporation or origin;
- (f) the name of the foreign credit union; or
- (g) the powers of any directors resident in the State who are members of the local board of directors of the foreign credit union,

the foreign credit union shall within one month after the change or alteration lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

Balance-sheets

109. (1) Subject to this section a foreign credit union shall, within the period of 4 months, or such extended period as the Registrar may allow in special circumstances, next after the end of each financial year, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year in such form and containing such particulars and including copies of such documents as the credit union is required to prepare by the law for the time being applicable to that credit union in the place of its incorporation or origin together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2) The Registrar may, if he is of the opinion that the balance-sheet and other documents referred to in subsection (1) do not sufficiently disclose the credit union's financial position, require the credit union to lodge a balance-sheet within such period, in such form and containing such particulars and including such documents as the Registrar by notice in writing to the credit union requires, but this subsection does not authorize the Registrar to require a balance-sheet to contain any particulars or include any documents that would not be required to be furnished if the credit union were a credit union formed and incorporated under this Act.

(3) A foreign credit union shall comply with the requirements set out in a notice given to it under subsection (2).

(4) When a foreign credit union is not required by the law of the place of its incorporation or origin to prepare a balance-sheet the credit union shall prepare and lodge with the Registrar a balance-sheet within such period, in such form and containing such particulars and including such documents as the credit union would have been required to prepare if the credit union were a credit union formed and incorporated under this Act.

Reports and returns to be lodged

109A. The Registrar may at any time by notice in writing, require a foreign credit union to lodge with him a special report or return, made up to a date specified in the notice, relating to any matter relevant to the affairs of the foreign credit union, and a foreign credit union shall comply with a requirement set out in a notice given to it under this section.

[Section 109A inserted by No. 120 of 1987 s. 79.]

**Obligation to state name of foreign credit union,
whether limited, State or Territory where incorporated**

110. (1) A foreign credit union shall—

- (a) conspicuously exhibit outside its registered office and every place of business established by it in the State its name and place where it is formed or incorporated;
- (b) cause its name and the place where it is formed or incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, advertisements and other official publications; and
- (c) if the liability of its members is limited (unless the last word of its name is the word “Limited” or the abbreviation “Ltd.”), cause notice of that fact—
 - (i) to be stated in legible characters in every advertisement issued by it and in all its bill-heads, letter paper, notices, and other official publications in the State; and
 - (ii) to be exhibited outside its registered office and every place of business established by it in the State.

(2) If a foreign credit union is being wound up every invoice, order for goods, or business letter issued by or on behalf of the credit union, or a liquidator of the credit union or a receiver or manager of the property of the credit union, being a document on or in which the name of the credit union appears, shall have the words “In liquidation” added after the name of the credit union where it first appears therein.

(3) If default is made in complying with subsection (2), the credit union and every officer of the credit union who is in default, shall be guilty of an offence.

Penalty: \$100.

Service of notice

111. A document required to be served on a foreign credit union shall be sufficiently served—

- (a) if addressed to the foreign credit union and left at or sent by post to its registered office in the State; or
- (b) if addressed to an agent of the credit union and left at or sent by post to his registered address.

Cesser of business in the State

112. (1) If a foreign credit union ceases to have a place of business or to carry on business in the State, it shall within 7 days after so ceasing lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of 12 months after the lodging of the notice remove the name of that foreign credit union from the register.

(2) If a foreign credit union goes into liquidation or is dissolved in its place of incorporation or origin—

- (a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and
- (b) the liquidator shall, until a liquidator for the State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

(3) A liquidator of a foreign credit union appointed for the State by the Court or a person exercising the powers and functions of such a liquidator—

- (a) shall, before any distribution of the foreign credit union's assets is made by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the foreign credit union had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign credit union within a reasonable time prior to the distribution;
- (b) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign credit union;
- (c) shall, unless otherwise ordered by the Court, only recover and realize the assets of the foreign credit union in the State and shall pay the net amount so recovered and realised to the liquidator of that foreign credit union for the place where it was formed or incorporated.

(4) Where a foreign credit union has been wound up so far as its assets in the State are concerned and there is no liquidator for the place of its incorporation or origin the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the foreign credit union has been dissolved the Registrar shall remove the name of the credit union from the register.

(6) Where the Registrar has reasonable cause to believe that a foreign credit union has ceased to carry on business or to have a place of business in the State the provisions of this Act relating to the striking off the register of the names of defunct credit unions shall with such adaptations as are necessary extend and apply accordingly.

Restriction on use of certain names

113. (1) Except with the consent of the Minister a foreign credit union shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind that, the Minister has directed the Registrar not to accept for registration.

(2) Except with the consent of the Minister, any change in the name of a foreign credit union shall not be registered if, in the opinion of the Registrar, the new name of the credit union is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section 108.

(3) No foreign credit union to which this Part applies shall use in the State any name other than that under which it is registered under this Part or under any other Act.

(4) If default is made in complying with subsection (3) the foreign credit union, every officer of the credit union who is in default and every agent of the credit union who knowingly and wilfully authorizes or permits the default shall be guilty of an offence.

Penalty: \$500. Default penalty.

Penalties

114. If default is made by any foreign credit union in complying with any provisions of this Part, other than a provision in which a penalty or punishment is expressly mentioned, the credit union and every officer of the credit union who is in default and every agent of the credit union who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence.

Penalty: \$500. Default penalty.

Winding up of foreign credit union

115. The provisions of Division 6 of Part XII of the *Companies (Western Australia) Code*² apply, *mutatis mutandis*, and subject to such modifications as are prescribed to the winding up of a foreign credit union registered under this Part and such a credit union may be wound up accordingly, a reference in those provisions to the Commission being construed as a reference to the Registrar under this Act.

[Section 115 amended by No. 10 of 1982 s. 28; No. 120 of 1987 s. 80.]

PART X—EVIDENCE AND OFFENCES

Division 1—Evidence

Certificates, etc.

116. (1) A certificate of incorporation or other document relating to a credit union signed by or bearing the seal of the Registrar or, in the case of a credit union registered under this Act by virtue of section 24, the Registrar of Friendly Societies shall be received in evidence without further proof.

(2) Any document purporting to be a copy of a certificate of incorporation of a credit union, and certified as such by the Registrar, shall be received in evidence as if it were the original certificate.

(3) Judicial notice shall be taken of the signature and seal of any person who holds, or has held, the office of Registrar, or Deputy Registrar, and of the signature of any person acting pursuant to an authorization of the Registrar under section 151 (1) if the signature or seal purports to be attached to any certificate or other official document.

(4) The provisions of this section extend to any copy of the rules of a credit union, certified by the Registrar to be a true copy of its registered rules.

(5) A copy of or extract from any document registered, filed or lodged in or at the office of the Registrar, certified to be a true copy or extract under the hand and seal of the Registrar, shall in any proceedings be admissible in evidence as of equal validity with the original document.

Certificate of incorporation conclusive

116A. A certificate of incorporation under this Act shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the credit union referred to therein is duly incorporated under this Act but this section does not derogate from or affect any provisions of this Act for the winding up or dissolution of a credit union, or the cancellation of its registration.

[Section 116A inserted by No. 120 of 1987 s. 81.]

Rules

117. A printed copy of the rules of a credit union certified by the secretary of the credit union to be a true copy of its registered rules shall be *prima facie* evidence of the rules.

Registers

118. The registers kept in pursuance of this Act shall be *prima facie* evidence of the particulars directed or authorized by or under this Act to be inserted therein and a copy of any entry in any such register shall, if certified by the secretary of the credit union to be a true copy of the entry in question, be *prima facie* evidence of the particulars to which the entry refers.

Entries in books

119. A copy of an entry in a book of a credit union regularly kept in the course of business shall, if certified by statutory declaration of the secretary to be a true copy of the entry, be received in evidence in any case where and to the same extent as the original entry itself is admissible.

Minutes—effect as evidence

120. (1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a credit union or of its board, or of a committee of its board and to be signed by the chairman of the meeting at which the business was transacted, or by the chairman of the next succeeding meeting, shall be evidence that the business as therein recorded was transacted at the meeting first mentioned in this subsection and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a credit union to the effect that a resolution was carried, or carried unanimously or was lost, shall be evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

Saving

121. The foregoing provisions of this Division are in addition to and not in substitution for any other Act or law under which such documents, matters and things are admissible as evidence, have evidentiary value or are judicially noticed.

Division 2—Offences

Allotment of shares

122. A person who, before a credit union is registered, takes any money in consideration of the allotment of any share or interest in, or grant of a loan by, the credit union is guilty of an offence.

Penalty: \$500.

Commission

123. (1) An officer or employee of a credit union who accepts any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction had, or to be had, by that person with the credit union is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(2) An officer or employee who is guilty of any offence under subsection (1) shall further, if so ordered by the court by which he was convicted, be liable to pay to the credit union such amount not exceeding double the value or amount of such commission, fee or reward as is determined by the court.

Certain acts prohibited in relation to loans

124. (1) A person—

- (a) not being an officer or employee of a credit union, who seeks, claims or receives any commission, fee or reward, whether pecuniary or otherwise, from any person as a consideration or charge for procuring or obtaining, or offering or attempting to procure or obtain, for any person a loan from or continuing credit arrangement with any credit union; or
- (b) who advertises or otherwise holds himself out as being able to arrange or obtain finance for any person through or from any credit union,

is guilty of an offence.

Penalty: \$500.

(2) Any sum received in contravention of subsection (1) or section 122 shall, upon conviction under subsection (1) or section 122, be repaid by the person who received it to the person who made such payment and may be recovered by the person who paid it from the person by whom it was received in an action as for debt in any court of competent jurisdiction.

[Section 124 amended by No. 82 of 1984 s. 33.]

False copies of rules

125. A person—

- (a) who gives to any member of a credit union, or to any person intending or applying to become a member of a credit union, a copy of any rules or any alterations of the same other than those which have been duly registered representing that the same are binding on the members of the credit union; or

- (b) who makes any alteration in any copy of the rules of the credit union, after they have been registered, and circulates the same representing that they have been duly registered, when they have not been so registered,

is guilty of an offence.

Penalty: \$500.

Failure to comply with lawful requirements

126. Except where otherwise provided by this Act, a person who being required under this Act to supply any information, produce any book, or lodge any return or other document, fails without reasonable excuse, the proof whereof shall lie upon him, to supply that information, produce that book, or lodge that return or document, as the case may be, in accordance with that requirement is guilty of an offence.

Penalty: \$500.

Obstruction

127. A person who assaults, resists, obstructs or hinders any person in the exercise of his powers or in the performance of his duties under this Act or attempts to do so is guilty of an offence.

Penalty: \$1 000.

Inducement to secure appointment

128. A person who gives or agrees or offers to give to any officer, member or creditor of a credit union or to any other person any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as a credit union's director, auditor, liquidator or administrator, or with a view to securing or preventing the exercise of any power, authority, duty or responsibility, or the doing of an act, authorized by this Act, is guilty of an offence.

Penalty: \$2 000 or imprisonment for one year, or both the fine and the imprisonment.

False and misleading statements

129. (1) A person who in any return, report, statement, certificate, account or other document required by or for the purposes of this Act wilfully makes or authorizes the making of a statement that is false or misleading in a material particular knowing it to be false or

misleading or wilfully omits or authorizes the omission of any matter or thing without which the return, report, statement, certificate, account or document is misleading in a material respect is guilty of an offence.

Penalty:

- (a) on conviction on indictment—

\$5 000 or imprisonment for 2 years, or both the fine and the imprisonment;

- (b) on summary conviction—

\$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(2) For the purposes of subsection (1), where a person at any meeting votes in favour of the making of a statement referred to in that subsection, he shall be deemed to have authorized the making of the statement.

False report

130. An officer of a credit union, who, with intent to deceive makes or furnishes, or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading return, report, statement, certificate or representations to—

- (a) any director, auditor, liquidator, administrator or member of the credit union; or

- (b) the Registrar, an inspector or a person authorized pursuant to section 151 (1) to exercise or perform a power, authority, duty or function of the Registrar,

relating to the affairs of the credit union is guilty of an offence.

Penalty:

- (a) on conviction on indictment—

\$5 000 or imprisonment for 2 years, or both the fine and the imprisonment;

- (b) on summary conviction—

\$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

[Section 130 amended by No. 120 of 1987 s. 82.]

Concealing and falsifying records, etc.

131. (1) Where a person—

- (a) conceals, destroys, mutilates or alters a book relating to the business carried on by a credit union, or required under this Act to be kept by the credit union; or

- (b) sends, attempts to send or conspires with another person to send such a book out of the State,

and as a result, a purpose of this Act is defeated or an examination, investigation or audit under this Act is prevented, delayed or obstructed, the first-mentioned person is guilty of an offence.

Penalty: \$2 000 or imprisonment for one year.

(2) In a prosecution of a person for an offence under subsection (1), it is a defence if the person proves that he did not act with intent to defeat the purposes of this Act or to prevent, delay or obstruct the carrying out of an examination, investigation or audit under this Act.

Falsification of records

132. (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Act or a record referred to in section 175 is recorded or stored by means of a mechanical device, an electronic device or any other device in an illegible form, a person who wilfully—

- (a) records or stores by means of that device matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes or falsifies matter that is recorded or stored by means of that device;

or

- (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled wholly or in part from that matter,

is guilty of an offence.

Penalty: \$1 000 or imprisonment for 6 months, or both the fine and the imprisonment.

(2) An officer of a credit union, or any person who in the event of a winding up is or may be required to contribute to the funds of the credit union, who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the credit union with intent to defraud or deceive any person is guilty of an offence.

Penalty: \$5 000 or imprisonment for 2 years.

Imposition and misapplication of moneys, etc.

133. (1) A person who, by false representation or imposition, obtains possession of any property of a credit union, or having the same in his possession, withholds or wilfully misapplies the same or applies any part thereof to purposes other than those specified or authorized by the rules of the credit union or by this Act, is guilty of an offence.

Penalty: \$500.

(2) A person who is guilty of an offence under subsection (1) shall, if so ordered by the court by which he was convicted, deliver up all such property and repay all moneys improperly applied and in default of delivery or repayment in terms of the order be liable to imprisonment for 6 months.

Frauds by officers and others

134. A person who, while an officer of a credit union—

- (a) has by false pretences or by means of any other fraud, induced any person to—
 - (i) give credit to;
 - (ii) make a loan to;
 - (iii) deposit money with or otherwise subscribe money to;
 - (iv) enter into any agreement or contractual arrangement relating to mortgage debts of; or
 - (v) enter into any agreement or contractual arrangement relating to a members' saving plan of,
- the credit union;
- (b) with intent to defraud creditors or members of or depositors with, the credit union, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, property of the credit union;
- (c) with intent to defraud creditors or members of, or depositors with, the credit union, has concealed or removed any part of the property of the credit union since or within 2 months before the date upon which the execution of any judgment or order for payment of money obtained against the credit union was returned unsatisfied in whole or in part,

is guilty of an offence.

Penalty: \$5 000 or imprisonment for 2 years.

Certain offences under the *Companies (Western Australia) Code*² to apply equally in respect of credit unions

135. (1) Subject to this section, the provisions of section 553 (3), and of sections 554 to 557 inclusive, of the *Companies (Western Australia) Code*² apply to and in respect of credit unions, and their officers and former officers, in the same way as they apply to and in respect of companies and their officers and former officers.

(2) For the purposes of subsection (1), the provisions referred to therein shall be construed as if—

- (a) a reference therein to a company were, in the application of the provisions to and in respect of a credit union, a reference to a credit union;
- (b) a reference therein to the Commission were a reference to the Registrar;
- (c) the reference in section 555 to the provisions of section 267 were a reference to the provisions of this Act relating to the keeping of accounts by a credit union;
- (d) the reference in paragraph (c) of the definition of “relevant day” in section 553 (3) to a day were a reference to “the day upon which the inspector was appointed”;
- (e) the reference to “official management” and “official manager” in the definitions of “appropriate officer” and “relevant day” in section 553 (3) were references to “the management of an administrator pursuant to Division 2 of Part VIII” and “administrator” respectively;
- (f) the reference in paragraph (f) of the definition of “relevant day” in section 553 (3) to a day were a reference to “the day upon which the copies of documents required to be lodged under section 183 (1) were last lodged”.

[Section 135 amended by No. 10 of 1982 s. 28.]

Contravention of Act

136. (1) A credit union or other person, who or which—

- (a) does that which by or under this Act it or he is forbidden to do;
or
- (b) does not do that which by or under this Act it or he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence.

(2) Except where otherwise provided in this Act, where a credit union is guilty of an offence against this Act, every officer of the credit union who is in default is also guilty of the same offence and liable to the penalty or other punishment prescribed for that offence.

(3) Where a corporation (other than a credit union) is guilty of an offence against this Act any officer of the corporation who was knowingly a party to the commission of the offence is also guilty of the same offence and liable to the penalty prescribed for that offence.

(4) Subsections (2) and (3) apply so as not to limit or affect the liability of a credit union, or of any other corporation, to be proceeded against and punished for an offence committed by it.

(5) Any offence against this Act for which a penalty or punishment upon conviction upon indictment is prescribed shall be an indictable offence, and if a penalty or punishment upon summary conviction for the offence is also prescribed, it may be prosecuted upon indictment and summarily.

(6) This Act is in addition to and not in substitution for the provisions of *The Criminal Code*.

Reciprocity in relation to offences

137. (1) If, in the State, a person does an act or omits to do an act and that person, if he had done that act or had omitted to do that act in another State or in a Territory of the Commonwealth, would have been guilty of an offence against the law of that State or Territory that corresponds to a provision of this Act, that person is guilty of an offence against that provision of this Act.

(2) Where an act or omission constitutes an offence both under this Act and under a law of another State or a Territory of the Commonwealth that corresponds to a provision of this Act and the offender has been punished under that law, he is not liable to be punished in respect of the offence against this Act.

General and default penalty provisions

138. (1) A person who is guilty of an offence under this Act for which a specific penalty is not prescribed by another provision of this Act, is liable to a penalty not exceeding \$500.

(2) Where in, or at the foot of, any section or part of a section there appears the expression "Default penalty" it shall indicate that any person who is convicted of an offence in relation to that section or part shall be guilty of a further offence if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than \$20.

(3) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (2), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

(4) For the purposes of any provision of this Act which provides that an officer of a credit union who is in default is guilty of an offence or is liable to a penalty or punishment the phrase "officer who is in default" or any like phrase means any officer of the credit union who knowingly and wilfully—

- (a) is guilty of the offence; or
- (b) authorizes or permits the commission of the offence.

Proceedings how and when taken

139. (1) Except where otherwise provided by this Act proceedings for an offence against a provision of this Act may be taken by the Registrar or, with the written consent of the Minister, by any other person.

(2) Notwithstanding anything in any other Act, proceedings for any offence against a provision of this Act which is punishable upon summary conviction may be brought within 3 years after the time at which the offence is alleged to have been committed or, with the consent of the Minister, at any later time.

Civil remedies

140. If a credit union in making or raising any loan or receiving any deposit or making or varying any continuing credit arrangement or allotting any shares contravenes any provision of this Act or any rule of the credit union, the civil rights and liabilities of the credit union or any other person in respect of the recovery of the loan or deposit or moneys outstanding under the continuing credit arrangement or the moneys payable in respect of the shares shall not be affected or prejudiced by the contravention, save that the money shall become immediately payable, and the same remedies may be had for the recovery of the loan or deposit or moneys outstanding or share capital and for the enforcement of any security therefor as if there had not been a contravention of this Act or of the rules of the credit union.

[Section 140 amended by No. 82 of 1984 s. 34.]

Certain persons to assist in prosecutions

141. (1) Where a prosecution has been instituted or the Minister or the Registrar is of the opinion that a prosecution in respect of an offence against a provision of this Act ought to be instituted against a person (in this section referred to as "the defendant") the Minister or the Registrar—

- (a) if the defendant is an individual, may require any person who is or was a partner, servant, or agent of the defendant; or
- (b) if the defendant is a corporation, may require any person who is or was an officer or a servant, or an agent, of the defendant, to assist in the prosecution, and a person who is so required shall give all assistance in connection with the prosecution that that person is reasonably able to give.

(2) The Minister or the Registrar shall not make such a requirement as is mentioned in subsection (1) of a person who, in his opinion, is or is likely to be a defendant in the proceedings or is or has been a solicitor acting for such a person.

(3) If a person to whom subsection (1) (a) or (b) relates fails to give assistance as required by that subsection he is guilty of an offence and, without affecting any penalty to which he may be liable for the offence, the Court may, on the application of the Minister or the Registrar, order that person to comply with the requirement within such time, and in such manner, as the Court may order.

(4) In this section, "agent", in relation to the defendant, includes a banker of the defendant and a person employed as an auditor by the defendant, whether that person is a servant or an officer of the defendant or not.

Certain provisions of *Companies (Western Australia) Code*² to apply equally to credit unions

142. (1) Subject to this section, the provisions of sections 541, 542 and 543 of the *Companies (Western Australia) Code*² apply to and in respect of credit unions, and their officers and former officers, in the same way as they apply to and in respect of companies and their officers and former officers.

(2) For the purposes of subsection (1), the provisions referred to therein shall be construed as if—

- (a) a reference therein to a company were, in the application of the provisions to and in respect of a credit union, a reference to a credit union; and
- (b) a reference therein to the Commission were a reference to the Registrar.

[Section 142 amended by No. 10 of 1982 s. 28.]

Power to grant relief

143. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a Judge with a jury the Judge after hearing the evidence may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge thinks proper.

(4) The persons to whom this section applies are—

- (a) officers of a credit union;
- (b) persons employed by a credit union as auditors; and
- (c) any persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a credit union and all other persons so appointed or so directed.

Irregularities in proceedings

144. (1) No proceedings under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

(2) The Court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3) Without affecting the generality of subsection (1) and subsection (2) or of any other provision of this Act, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of the credit union or of the directors of the credit union or of the creditors of the credit union or at a joint meeting of the creditors

and members of the credit union) has occurred in the management or administration of a credit union whereby any breach of any of the provisions of this Act has occurred, or whereby there has been default in the observance of the rules of the credit union, or whereby any proceedings at or in connection with any meeting of the credit union, or of the directors of the credit union, or of the creditors of the credit union or at a joint meeting of the creditors and members of the credit union, or any assemblage purporting to be such a meeting have been rendered ineffective including the failure to make or lodge any declaration of solvency pursuant to the provisions of section 395 of the *Companies (Western Australia) Code*² as applicable to a credit union, the Court—

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;
- (b) shall before making any such order satisfy itself that such an order would not do injustice to the credit union or to any member or creditor thereof;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court (whether the credit union is in process of being wound up or not) may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

[Section 144 amended by No. 10 of 1982 s. 28.]

PART XI—ADMINISTRATION

Division 1—Administrative Staff and Offices

Registrar of credit unions

145. (1) The person appointed under and subject to the *Public Service Act 1978* to the office of Registrar of Co-operative and Financial Institutions shall carry out the duties and functions vested by or under this Act in the Registrar.

(2) The Registrar shall as and when required by the Minister furnish reports with respect to the policy he is pursuing, or proposes to pursue, in the exercise or discharge of any of his powers, authorities, duties and functions under this Act.

(3) The Minister may issue directions to the Registrar on matters of policy and the Registrar shall observe and carry out the directions given.

[Section 145⁵ amended by No. 120 of 1987 s. 83.]

Deputy Registrar and other officers, etc.

146. (1) There may be appointed under and subject to the *Public Service Act 1978* such Deputy Registrars and other officers and employees as are required to assist the Registrar in the exercise or performance of his powers, authorities, duties and functions under this Act.

(2) Except as otherwise provided by this Act—

- (a) anything by this Act appointed, authorized or required to be done or signed by the Registrar may be done or signed by any Deputy Registrar and shall be as valid and effectual as if done or signed by the Registrar; and
- (b) anything done by an officer that purports to have been done pursuant to an authorization of the Registrar under section 151 shall be deemed to have been duly authorized by the Registrar.

(3) Officers and employees appointed in accordance with this Division shall be under the direction of the Registrar and shall perform such duties as may be assigned by the Registrar.

(4) During the absence from whatever cause, or a vacancy in the office, of the Registrar, a person for the time being holding or acting in the office of Deputy Registrar designated in writing by the Minister shall act in the place of the Registrar and may exercise and discharge while he so acts all the powers, authorities, duties and functions of the Registrar.

(5) No person shall be concerned to enquire whether any occasion has arisen requiring or authorizing a person holding or acting in the office of Deputy Registrar to act in the place of the Registrar and all acts or other things done or omitted by a Deputy Registrar in the course of so acting shall be as valid and effectual as if they had been done or omitted by the Registrar.

[Section 146 amended by No. 120 of 1987 s. 84.]

Office and records of Registrar

147. (1) For the purposes of registration of credit unions there shall be an office of the Registrar at Perth and at such other places as the Governor may appoint.

(2) All certificates, rules and documents required to be registered by, or to be lodged with, the Registrar, shall be kept in the office of the Registrar.

(3) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

(4) The Registrar may incorporate with registers kept by him under this Act such documents, instruments and registers kept by the Registrar of Friendly Societies in relation to the bodies mentioned in the First Schedule as he deems fit.

(5) The Registrar shall have a seal of office.

[(6) *repealed.*]

(7) Unless the contrary intention appears, documents relating to a credit union, or a foreign credit union registered in the State under Part IX, shall be lodged at the office of the Registrar at the place where the credit union or foreign credit union was registered under this Act unless the Registrar on being satisfied that special circumstances exist otherwise permits in writing.

(8) Where special circumstances exist, the Registrar may authorize the transfer of the documents relating to a credit union, or a foreign credit union registered under Part IX, from his office at the place where it was registered to his office at another place in the State and upon such transfer the credit union or foreign credit union shall be deemed to have been registered at that other place and this Act shall apply accordingly.

[Section 147 amended by No. 120 of 1987 s. 85.]

Fees

148. (1) There shall be paid to the Registrar such fees as may be prescribed in respect of matters or things to be done under or for the purposes of this Act.

(2) Where a fee is payable to the Registrar for or in respect of the lodging of a document with the Registrar and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee is paid to the Registrar.

Disposal of old records

149. (1) The Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or give to the Public Library of the State—

(a) in the case of a credit union—

- (i) any document lodged pursuant to section 95 (1) or (2) that has been lodged or filed for not less than 7 years or any document creating or evidencing a charge or the complete or partial satisfaction of a charge where a memorandum of satisfaction of the charge has been registered for not less than 7 years; or
- (ii) any other document (other than the rules or any other document affecting them) which has been lodged, filed or registered for not less than 15 years;

(b) in the case of a credit union that has been dissolved, or has ceased to be registered, for not less than 15 years, any document lodged, filed or registered; or

(c) any document a transparency of which has been incorporated with a register kept by the Registrar.

(2) Subsection (1) applies to documents lodged, filed or registered under the *Co-operative and Provident Societies Act 1903* as well as to those lodged, filed or registered under this Act.

Annual report by Registrar

150. (1) As soon as practicable after 30 June in each year, the Registrar shall furnish to the Minister a report on the administration of this Act by the Registrar in respect of the year ending on that date.

(2) The Minister shall lay a copy of every such report before Parliament.

[Section 150 amended by No. 82 of 1984 s. 35.]

Division 2—General

Performance of Registrar's functions by authorized person

151. (1) Except as otherwise expressly provided by this Act, a power, authority, duty or function conferred or imposed by this Act on the Registrar may be exercised or performed by a person authorized by the Registrar to exercise or perform that power, authority, duty or function.

(2) Without limiting the generality of subsection (1), a reference to the Registrar in section 84 (4) or in section 130 or 169 includes a reference to any person who is or has been authorized by the Registrar to perform a relevant power, authority, duty or function conferred or imposed by this Act on the Registrar.

(3) The Registrar may revoke or vary any authorization under subsection (1) and whilst the authorization remains in force the person authorized may exercise or perform the power, authority, duty or function the subject of the authorization as fully and effectively as the Registrar but the existence of the authorization does not prevent the exercise or performance by the Registrar of any power, authority, duty or function.

Inspection of books, etc. of credit unions

152. (1) For the purpose of ascertaining whether the provisions of this Act or of the rules of a credit union, or a foreign credit union registered under Part IX, have been or are being complied with, the Registrar may inspect and make copies of or take extracts from any—

- (a) books, kept by, or by a person in respect of, a credit union, or a foreign credit union registered under Part IX (whether or not the credit union or foreign credit union has been dissolved);
- (b) banker's books kept by a banker who acts, or has acted as banker to a credit union or a foreign credit union registered under Part IX in so far as they relate to the credit union or foreign credit union registered under Part IX (whether or not the credit union or foreign credit union has been dissolved);
- (c) books, kept by, or by a person in respect of, a corporation in the shares of which a credit union has invested any of its funds by virtue of section 51 (1) (f) (whether or not the corporation has been dissolved) insofar as such books record affairs relating to the credit union; and
- (d) banker's books kept by a banker who acts or has acted as banker to a corporation in the shares of which a credit union has invested any of its funds by virtue of section 51 (1) (f) in so far as the banker's books relate to the corporation (whether or not the corporation has been dissolved) and record affairs relating to the credit union.

(2) A person shall not make an inspection under this section unless he has made a declaration in the prescribed form to the effect that he will not make, except for the purposes of this Act, or in the course of criminal proceedings or proceedings under this Act, a record of, or divulge or communicate to another person any information that he acquires by reason of the making of the inspection.

(3) Where, under a provision of a declared law of another State or of a Territory of the Commonwealth corresponding to this section, a person is authorized to inspect any books or banker's books kept by, or

by a person in respect of, a credit union registered in the State or Territory in question or a corporation in the shares of which a credit union has invested any of its funds by virtue of a provision similar to section 51 (1) (f), the first-mentioned person—

- (a) shall have the same powers in Western Australia in relation to any such books or banker's books in Western Australia as he would have had if he had been authorized under subsection (1) and the books or banker's books were books or banker's books referred to in that subsection; and
- (b) shall not exercise those powers in Western Australia unless he has made a declaration under a provision of the declared law of the State or Territory in question corresponding to subsection (2).

(4) The powers that a person has under the declared law of another State or of a Territory of the Commonwealth that by reason of subsection (3) may be exercised in Western Australia may be exercised by the Registrar, or a person authorized by him, where, in the particular case, the officer of the other State or Territory whose functions correspond to those of the Registrar has authorized the Registrar or person so to do.

(5) A person who—

- (a) makes an inspection under this section before he has made a declaration referred to in subsection (2) or (3); or
- (b) being a person exercising the powers conferred under subsection (3), except for the purposes of the declared law referred to in that subsection applicable in the case, or in the course of criminal proceedings or proceedings under such declared law, after making such a declaration makes a record of or divulges or communicates to another person any information that he has acquired by reason of the making of the inspection or making use of any such information for any purpose other than the performance of his official duties,

is guilty of an offence.

Penalty: \$200.

(6) It is not an offence under subsection (5) to divulge or communicate information to the holder of a prescribed office.

(7) In this section "prescribed office" means an office held under the law of a State or of a Territory of the Commonwealth that is declared by the regulations to be a prescribed office for the purposes of this section.

(8) An officer of a credit union, or of a foreign credit union registered under Part IX, a person who keeps any books in respect of a credit union, or of a foreign credit union so registered, an officer of a corporation of the kind referred to in subsection (1) (c) or a person who

keeps any books in respect of such a corporation, or a banker, on being required by the Registrar, or a person authorized by him, shall produce any book to which the requirement relates.

Penalty: \$200.

(9) An officer of a credit union registered under a declared law of another State or of a Territory of the Commonwealth, a person who keeps any books in respect of such a credit union, or a banker, on being required in Western Australia by a person authorized under a provision of a declared law corresponding to subsection (1) or a person authorized under subsection (4), shall produce any book to which the requirement relates.

Penalty: \$200.

(10) The Registrar may require any bank with which funds have been deposited by a credit union, or by a foreign credit union registered under Part IX, to furnish him with particulars of the amount of those funds and any dealing with or disposition of those funds by the credit union or foreign credit union.

[Section 152 amended by No. 82 of 1984 s. 36.]

Secrecy

153. (1) Subject to this section, the Registrar or any other person appointed or employed for the purposes of this Act or authorized to discharge any function for or on behalf of the Registrar under this Act shall not, except to the extent necessary to perform his official duties or discharge such a function, either directly or indirectly and whether before or after he ceases to be Registrar or to be so appointed, employed or authorized, make a record of or divulge or communicate to any person any information that is gained by or conveyed to him by reason of his being Registrar or being so appointed, employed or authorized, or make use of any such information for any purpose other than the discharge of his official duties or the discharge of that function.

Penalty: \$2 000 or imprisonment for one year, or both the fine and the imprisonment.

(2) Nothing in subsection (1) precludes a person from producing a document to a court in the course of criminal proceedings or proceedings under this Act, or from divulging or communicating to a court in the course of such proceedings any matter or thing coming under his notice in the performance of his official duties or discharging a function referred to in that subsection.

Investigation of certain matters

154. Where the Registrar has reason to suspect that a person has committed an offence under a provision of this Act or has been guilty of fraud in relation to a credit union, or a foreign credit union registered under Part IX, the Registrar may make such investigation as he thinks expedient for the due administration of this Act.

Inspection of documents in Registrar's Office

155. (1) Any person may on payment of the prescribed fee—

- (a) inspect at the office of the Registrar the registration and rules of a credit union or of a foreign credit union registered under Part IX;
- (b) obtain from the Registrar a certificate of the registration of a credit union or of a foreign credit union registered under Part IX, or a certified copy of the rules of a credit union or of a foreign credit union so registered or of any part thereof;
- (c) with the permission of the Registrar, inspect at his office, and obtain from him a certified copy of, any other registered document, or of any part thereof;
- (d) inspect any document lodged pursuant to this Act by any credit union or pursuant to Part IX by a foreign credit union other than any prescribed document.

(2) If a transparency or a reproduction of a document is produced for inspection, a person is not entitled pursuant to subsection (1) to require the production of the original of that document.

(3) The reference in subsection (1) (b) or (c) to any document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated a person shall not be entitled pursuant to either of the said paragraphs to a copy of the original of that document.

Information and evidence

156. (1) On an application for registration of a credit union or of any rule or document under this Act, the Registrar may require from the applicant, such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from any credit union such information and evidence as may be reasonable in order to show that the credit union is *bona fide* carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a credit union such evidence as he thinks proper of the doing of any matter required to be done, or of the correctness of any entry in any document required to be lodged with or transmitted to him, under this Act.

(4) The preceding provisions of this section apply, with all necessary modifications to a foreign credit union registered, or applying for registration, under Part IX.

Division 3—Investigations

Interpretation

157. In this Division, unless the contrary intention appears—

“inspector” means an inspector appointed under this Division;

“prescribed person” means—

- (a) an officer of the credit union;
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the credit union;
- (c) a person who—
 - (i) has, or has at any time had, in his possession any property of the credit union;
 - (ii) is indebted to the credit union; or
 - (iii) is capable of giving information concerning the affairs of the credit union; and
- (d) where an inspector has reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c) of this definition—that person.

Appointment of inspectors

158. (1) The Minister, where it appears to him to be in the interests of members or creditors of a credit union or in the public interest to do so, by instrument in writing—

- (a) may appoint a person as an inspector to investigate the affairs of a credit union, or if he is of the opinion that an investigation ought not to be made into all those affairs, into such of the affairs as he is satisfied ought to be investigated and specifies in the instrument and to report on the investigation in such manner as the Minister directs; and
- (b) may revoke any such appointment.

(2) The Minister shall, in an instrument appointing an inspector, specify—

- (a) full particulars of the terms and conditions to which the appointment is subject; and

- (b) the matters into which an investigation is to be made being all the affairs or particular affairs, of a credit union.

(3) Where—

- (a) under a law of another State or of a Territory of the Commonwealth corresponding to this Division, a person has been appointed to investigate affairs of a credit union registered in that State or Territory; and
- (b) the Minister is satisfied that in connection with that investigation it is expedient that an investigation be made into those affairs in this State,

the Minister may, by instrument in writing appoint that person as an inspector to investigate those affairs in this State or, if the Minister is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he is satisfied ought to be investigated and specifies in the instrument.

(4) Where, under subsection (3), the Minister may appoint a person to investigate affairs of a credit union in this State, he may by instrument in writing declare that that person shall have such of the powers of an inspector appointed under subsection (1) in relation to the investigation subject to such terms and conditions as the Minister specifies in the instrument as if that person had been appointed an inspector under subsection (1) and upon that declaration that person shall have the powers so specified and subject to all necessary adaptations, for the purposes of the investigation the provisions of this Division apply to and in relation to that person as if he had been appointed as an inspector under subsection (1).

(5) Where 2 or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a credit union each of those inspectors may exercise his powers or perform his functions under this Division independently of the other inspector or inspectors.

(6) The Minister may, at any time by notice in writing given to an inspector, vary particulars or matters specified in the instrument of appointment, being particulars or matters referred to in subsection (2).

Powers of inspectors

159. (1) An inspector may, by notice in the prescribed form given in the prescribed manner, require a prescribed person—

- (a) to produce to the inspector such books relating to a matter to which his investigation relates as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath,

and may administer an oath to that person.

(2) Where books are produced to an inspector under this section the inspector may take possession of the books for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) A prescribed person shall not—

- (a) refuse or fail to comply with a requirement of an inspector under subsection (1) to the extent to which that person is able to comply with it;
- (b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
 - (i) make a statement that is false or misleading in a material particular;
 - or
 - (ii) refuse or fail to take an oath.

Penalty: \$1 000.

(4) A duly qualified legal practitioner acting for a prescribed person—

- (a) may attend an examination of the prescribed person; and
- (b) may, to the extent that the inspector permits—
 - (i) address the inspector; and
 - (ii) examine the prescribed person,in relation to matters in respect of which the inspector has questioned the prescribed person.

(5) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings or proceedings under this Act other than proceedings under subsection (3) or in relation to a charge of perjury in respect of the answer.

(6) A person who complies with a requirement of an inspector under subsection (1) does not incur a liability to any person by reason only of that compliance.

(7) A person who is required to attend for examination under this section is entitled to such allowances and expenses as are prescribed.

(8) Where an inspector is satisfied that a prescribed person has failed without lawful excuse to comply with a requirement of the inspector to the extent to which the person is able to comply with it, the inspector may certify the failure by writing under his hand to the Court.

(9) Where an inspector gives a certificate under subsection (8) the Court may inquire into the case and, if it is satisfied that the prescribed person to whom the certificate relates has failed without lawful excuse to comply with a requirement of the inspector to the extent to which he is able to comply with it—

- (a) may order the prescribed person to comply with that requirement within such period as is fixed by the Court; or
- (b) may punish the prescribed person in the same manner as if he had been guilty of contempt of the Court, and if it sees fit, also make an order under paragraph (a).

Notes of examination

160. (1) An inspector may cause notes of an examination made by him under this Division to be recorded in writing and to be read to or by the person examined, and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in legal proceedings against him.

(2) A copy of the notes signed by a prescribed person shall be furnished by the inspector, without charge, to that person on request made by that person in writing.

(3) Notes made pursuant to this section that relate to a question the answer to which a prescribed person has claimed might tend to incriminate him may not be used as evidence in criminal proceedings other than proceedings under section 159 (3) or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Minister may give a copy of notes made pursuant to this section to a duly qualified legal practitioner who satisfies the Minister that he is acting for a person who is conducting, or is, in good faith, contemplating, legal proceedings in respect of any matters into which an investigation is made by an inspector under this Division.

(6) A duly qualified legal practitioner to whom a copy of notes is given under subsection (5) shall not use the notes otherwise than in connection with the institution or preparation of, and in the course of, legal proceedings, and shall not publish or communicate for any other purpose the notes or any part of the contents of them to any other person.

Penalty: \$200.

(7) Where a report is made under this Division, notes that are recorded pursuant to this section in relation to that report shall be furnished with the report.

Delegation of powers, etc. by inspector

161. (1) An inspector may, by instrument in writing—

- (a) delegate all or any of his powers or functions under this Division (except this power of delegation, the power to administer oaths, and the power to examine on oath); and
- (b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall, at the request of a prescribed person, produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

Report of inspectors

162. (1) Subject to subsection (2), the Minister shall, unless in his opinion there is good reason for not divulging the contents of the report, give a copy of a report made to him under this Division to the credit union to which the report relates and to each person to whom, in the opinion of the Minister, the report ought to be given by reason that it relates to the affairs of that person to a material extent.

(2) Subject to subsection (3), the Minister is not bound to furnish a credit union or any other person with a copy of a report under this Division if the Minister is of opinion that there is good reason for not divulging the contents of the report.

(3) The court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Division may order that a copy of the report be given to that person.

(4) The Minister may, if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report under this Division to be printed and published.

(5) If, from a report under this Division or from the notes of an examination under this Division, it appears to the Minister that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(6) Where it appears to the Minister that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (5), require a person whom he suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Minister, is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(7) Where a person to whom a notice has been given under subsection (6) fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(8) If from a report under this Division, or from the notes of an examination under this Division, the Minister is of the opinion that proceedings ought in the public interest to be brought by a credit union affairs of which were investigated by the inspector for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the affairs of the credit union or for the recovery of property of the credit union, the Minister may cause proceedings to be brought accordingly in the name of the credit union.

Minister's powers in respect of books

163. An inspector may, when making a report to the Minister under this Division, give to the Minister books of which he has taken possession under section 159 and the Minister—

- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the investigation;
- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of legal proceedings instituted as a result of the investigation; and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

Privileged communications

164. An inspector shall not require disclosure by a duly qualified legal practitioner of a privileged communication made to such a person in that capacity except as regards the name and address of his client.

Expenses of investigation

165. (1) Subject to this section, the expenses of and incidental to an investigation by an inspector appointed under section 158 (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a credit union under section 162 (8)) shall be defrayed out of moneys provided by Parliament.

(2) An application referred to in subsection (3) may be made to a court by or on behalf of the Minister—

(a) in the course of proceedings in that court instituted by the Minister in the name of a credit union under section 162 (8); or

(b) upon, or within 28 days after, a conviction or judgment by a court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation by an inspector appointed under this Division,

and the court may make such order with respect to the application and its subject-matter as it thinks fit.

(3) The application that may be made under subsection (2) is an application for one or more of the following orders, namely—

(a) that a specified person pay the whole, or a specified part, of the expenses of and incidental to the investigation that led to the proceedings;

(b) where expenses have been paid under subsection (1), that a specified person pay the expenses or reimburse the Crown to the extent of the payment; or

(c) that a specified person pay, or reimburse the Crown in respect of, the remuneration of any servant of the Crown concerned with the investigation.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of or incidental to an investigation into affairs of a credit union under this Division (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of the credit union under section 162 (8)) should be paid by the credit union, the Minister may direct that the expenses or part thereof be so paid or, if they have been paid under subsection (1), direct the credit union to reimburse the Crown and may, in either case direct the credit union to reimburse the Crown in respect of the remuneration of any servant of the Crown concerned in the investigation.

(5) Where a credit union has failed to comply with a direction of the Minister under subsection (4), proceedings may be taken in a court of competent jurisdiction to recover the amount in question as a debt due to the Crown.

Concealing, etc. of books relating to a credit union

166. A person who—

- (a) conceals, destroys, mutilates or alters a book of or relating to a credit union affairs of which are the subject of investigation by an inspector under this Division; or
- (b) sends, attempts to send or conspires with another person to send, out of the State, such a book or any property belonging to or under the control of the credit union,

is guilty of an offence.

Penalty: \$5 000 or imprisonment for 2 years.

(2) It is a defence to a prosecution under this section to prove that the person charged did not act with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division.

Division 4—Suspension of Operations, Inquiry by Registrar, etc.

Power to suspend operations

167. (1) If, with respect to any credit union, the Registrar considers it expedient to so do in the interests of members of or of persons who are or may become members of the credit union or have deposited or may deposit money with the credit union he may, by notice in writing served on the credit union with the approval of the Minister, direct that subsection (2) shall apply to the credit union, and that subsection shall thereupon apply accordingly until the expiration of such time as may be specified in the notice or until the notice is withdrawn, whichever is earlier.

(2) Subject to this section, while this subsection applies to a credit union, the credit union shall not—

- (a) make any money available on loan to members;
- (aa) make a continuing credit arrangement with a member or increase the credit limit in respect of an existing continuing credit arrangement;
- (b) accept the deposit of any money;
- (c) borrow any money;
- (d) accept any payment on account of share capital;
- (e) repay any moneys paid on shares;
- (f) repay any moneys on deposit,

as may be specified in the notice directing the application of this subsection.

(3) The Registrar may, with the approval of the Minister and by a further notice, extend the time specified in any notice issued under subsection (1).

(4) A credit union to which subsection (2) is directed to apply may make representations to the Registrar with respect to the direction and the Registrar shall report to the Minister who may direct the Registrar to withdraw the direction or to amend the notice directing the application of subsection (2).

(5) The Registrar may, and shall on the direction of the Minister, withdraw any direction or amend any notice given in accordance with this section.

(6) If a credit union contravenes a provision of subsection (2) the credit union, a director of the credit union who failed to take all reasonable steps to secure compliance by the credit union with the provision and every officer of the credit union who is in default is guilty of an offence.

Penalty: \$2 000 or imprisonment for one year.

(7) It is not a contravention of a provision of subsection (2) to the extent that an act or matter prohibited under that subsection is done by the credit union in accordance in every respect with the written permission of the Registrar first had and obtained.

[Section 167 amended by No. 82 of 1984 s. 37; No. 120 of 1987 s. 86.]

Special meeting and investigation by Registrar

168. (1) Subject to compliance with any requirement or direction of the Registrar pursuant to this section, the Registrar shall on the application of a majority of the board or of not less than one-third of the members of a credit union and may on the application of any person or on his own volition—

- (a) call a special meeting of the credit union;
- (b) hold an investigation into the affairs, including the working and financial condition, of the credit union; or
- (c) both call such a meeting as is referred to in paragraph (a) and hold such an investigation as is referred to in paragraph (b).

(2) An application under this section shall be supported by such evidence as the Registrar requires for the purpose of showing that the applicants have good reason for requiring the meeting or investigation and that the application is made without malicious motive.

(3) Notice of an application under this section shall be given to the credit union by such persons and in such manner as the Registrar directs.

(4) Security for the expenses of a meeting or investigation pursuant to this section shall be given by such persons and in such amount and manner as the Registrar directs.

(5) The Registrar may direct at what time and place a meeting called under this section is to be held, and what matters are to be discussed and determined at the meeting and shall give such notice to members of the holding of the meeting as he deems fit notwithstanding any provision of the rules of the credit union as to the giving of notice.

(6) A meeting called under this section shall have all the powers of a meeting called in accordance with the rules of the credit union, and shall have power to appoint its own chairman, any rule of the credit union to the contrary notwithstanding.

(7) The Registrar or any person nominated by him may attend and address any meeting called under this section.

(8) If a meeting called under this section fails to appoint a chairman, the Registrar or any person nominated by him to attend the meeting may act as chairman of the meeting or may appoint a chairman to conduct the meeting or any adjournment thereof.

(9) If the chairman of a meeting called under this section is not a member of the credit union in respect of which it was so called, he may exercise a casting vote but shall not otherwise be entitled to vote.

(10) All expenses of and incidental to a meeting called, or investigation held, under this section including the expenses incurred and payable by the Minister in proceedings brought by him in the name of the credit union under section 162 (8) shall be defrayed, in such proportions as the Registrar directs, by the applicants, or out of the funds of the credit union or by any officer or member or former officer or member of the credit union and may be recovered as a debt due to the Crown in any court of competent jurisdiction.

(11) For the purposes of any investigation under this section by the Registrar, the Registrar shall have in relation to the investigation such powers of an inspector appointed under section 158 (1) as if he had been appointed as inspector under that provision to investigate affairs of the credit union and subject to all necessary adaptations the provisions of Division 3 apply to and in relation to the investigation and matters arising therefrom or consequential thereof and the Registrar so acting in all respect as if the investigation were an investigation under that Division.

(12) Without limiting the generality of subsection (11), for the purposes of that subsection the provisions referred to therein shall be construed as if—

- (a) a reference therein to an inspector were a reference to the Registrar;
- (b) a reference therein to an investigation were a reference to an investigation under this section; and

- (c) a reference therein to a report were a reference to a report of the Registrar made for the purposes of this section.

Power to control advertising

169. (1) If with respect to any credit union the Registrar considers it expedient so to do in the interests of persons who may become members of, or deposit money with, that credit union he may, with the approval of the Minister, by notice served on that credit union give a direction—

- (a) prohibiting the publication by that credit union of advertisements of all descriptions;
- (b) prohibiting the publication by that credit union of advertisements of any description specified in the direction;
- (c) prohibiting the publication by that credit union of any advertisements which are, or are substantially, repetitions of an advertisement which had been issued and which is specified in the direction; or
- (d) requiring that credit union to take all practicable steps to withdraw any advertisement, or any description of advertisement, which is specified in the direction and is displayed in any place or by any means whatsoever,

or a direction as to any 2 or more of the matters referred to in paragraphs (a), (b), (c) and (d).

(2) The Minister's approval under subsection (1) shall not, where the credit union has made representations pursuant to subsection (5) with respect to the proposal of the Registrar set out in the notice served on the credit union under subsection (4), be given until he has obtained and considered the report of the Registrar with respect to the proposal.

(3) Directions under this section may be varied or revoked at any time by a subsequent direction under this section.

(4) Not less than 7 days before giving a direction under this section (other than a direction revoking a previous direction) with respect to any credit union the Registrar shall serve on that credit union a notice in writing stating that he proposes to seek the Minister's approval to issue a direction pursuant to subsection (1).

(5) A credit union may within a period of 7 days after the date on which it is served with a notice under subsection (4) make representations to the Registrar with respect to the proposal in the notice and the Registrar shall report thereon to the Minister.

(6) A credit union shall not issue any shares, or make or receive any loan, or make or accept any deposit, or make any continuing credit arrangement, or increase the credit limit in respect of an existing continuing credit arrangement during the period after the service upon

it of a notice under subsection (4) and before the credit union is notified by the Registrar that the proposal has been dealt with by the Minister.

(7) Any credit union that fails to comply with any direction given to it under subsection (1) or that contravenes subsection (6) is guilty of an offence.

Penalty: \$500.

(8) Where an offence under subsection (7) is committed by a credit union, every officer of the credit union who is in default also is guilty of the same offence and liable to the penalty prescribed for that offence.

(9) In this section—

- (a) “publication” includes issue, circulation, dissemination and distribution and cognate expressions have a corresponding meaning;
- (b) “advertisement” includes matter that is not in writing but by reason of the form or context in which it appears conveys a message; and
- (c) a reference to publication of an advertisement is a reference to publication in the State of the advertisement by any means including the publication in a newspaper or periodical, by broadcasting or television or in a film.

[Section 169 amended by No. 82 of 1984 s. 38; No. 120 of 1987 s. 87.]

Levy

170. (1) The Minister may, by order, notice of which is given to each credit union, require each credit union to pay to the Minister a levy of an amount that is a specified percentage of the aggregate assets of the credit union as at the beginning of the financial year last ending before the making of the order.

(2) An order under subsection (1) may require the payment of the levy mentioned in the order—

- (a) once only, on a specified day; or
- (b) periodically, as specified, and, where the levy is required to be paid periodically, may specify a time after which no further requirement to pay the levy arises under the order.

(3) Where, by an order under subsection (1), credit unions are required to pay a levy periodically and—

- (a) the order did not specify a time after which no further requirement to pay the levy arises under the order; or
- (b) the order specified a time as mentioned in paragraph (a) but the time has not yet elapsed,

the Minister may, by further order, notice of which is given to each credit union, revoke the order with effect from a time specified in that further order.

(4) Where he is satisfied that it is inappropriate to require a credit union to pay a levy in accordance with an order under this section, the Minister may, in writing, exempt the credit union wholly or in part from that requirement.

(5) The Minister may, by order in writing given to a credit union exempted under subsection (4), vary or revoke the exemption.

(6) Where a credit union has been given notice of an order under subsection (1) and has failed to pay to the Minister, in accordance with the order, any amount required by the order to be paid, the amount outstanding is, subject to any exemption under subsection (4), recoverable by the Minister from the credit union as a debt due.

(7) Amounts paid to or recovered by the Minister under this section shall be credited to an account to be established and kept, as part of the Trust Fund, at the Treasury for the purposes of this section and section 92A of the *Building Societies Act 1976*.

(8) On the recommendation of the Registrar, the Minister may authorize any money credited under subsection (7) or section 92A of the *Building Societies Act 1976* to the account referred to in subsection (7) to be applied, on such terms as the Minister may specify in the authorization, towards meeting liabilities of a credit union in financial difficulty or towards recouping to the State any moneys of the State that have been applied for any such purpose.

(9) A person who—

- (a) supplies any false or misleading information for the purposes of causing an exemption to be given under subsection (4) to a credit union; or
- (b) by any wilful act, default or neglect evades or attempts to evade payment by a credit union of all or any of a levy under this section,

commits an offence and is liable to a fine of \$1 000 and, in the case mentioned in paragraph (a), any exemption given is of no effect and is deemed never to have been of any effect.

(10) The imposition on any person of a fine under subsection (9) does not affect the liability of a credit union to pay any levy under this section.

(11) In this section—

“specified”, in relation to an order under subsection (1), means specified in the order.

[Section 170 inserted by No. 120 of 1987 s. 88.]

[Division 5. Division 5 repealed by No. 120 of 1987 s. 88.]

PART XII—MISCELLANEOUS

Regulations

173. (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

- (a) prescribing forms for the purposes of this Act or authorizing the Registrar to approve of forms for those purposes;
- (b) prescribing and providing for the recovery of fees to be paid in respect of matters or things to be done under or for the purposes of this Act;
- (c) prescribing the registers to be kept by credit unions, the manner in which such registers shall be kept and the arrangements to be made by a credit union for the inspection of such registers and other documents pertaining to the credit union;
- (d) prescribing statements, returns and other documents to be lodged with the Registrar;
- (e) the furnishing to the Registrar of information in addition to, or in variation of, the information contained in statements, returns or other documents required to be lodged with him;
- (f) the manner in which, the persons by whom, and the directions in accordance with which statements, returns or other documents required to be lodged with the Registrar or any of them, shall or may be signed, prepared or completed, and the regulation generally of the signing, preparation, and completion of those documents or any of them;
- (g) the times within which information required to be furnished to the Registrar pursuant to this Act shall be so furnished;
- (h) prescribing penalties not exceeding \$1 000 for any breach of the regulations and where the breach is a continuing breach an additional penalty not exceeding \$100 per day;
- (i) requiring the verification, including verification by statutory declaration, of a statement or return or other document lodged with the Registrar;

- (j) providing for appeals against decisions made by the Registrar pursuant to the regulations and prescribing the powers of persons, courts or other bodies determining such appeals;
 - (k) generally prescribing any matters or things authorized or required to be prescribed under this Act or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Governor may make regulations amending the Second Schedule or revoking that Schedule and substituting another Schedule in place thereof.
- (3) A regulation may be made under this Act—
- (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times;
 - (b) so as to require a matter affected by it to be in accordance with a specified requirement; or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified person or body, or class of person or body, a discretionary authority;
 - (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from any provisions of the regulations either wholly or to such extent as is specified.

Rules of court

174. Where under this Act any power or jurisdiction is conferred on a court, the power to make rules of court in respect of that court includes power to make rules with respect to proceedings and the practice and procedure of the court under this Act.

Preservation and disposal of records, etc.

175. Subject to regulations made for the purposes of section 84 (2) (a), a credit union that is required by or under this Act to maintain, make or keep a register or any record in relation to the business carried on by the credit union shall preserve that register or record for a period of 5 years next after the day on which the last entry was made therein whether or not it ceases to carry on business before the expiration of that period.

PART XI^{1A}—TRANSFER TO COMPANIES (WESTERN AUSTRALIA)
CODE²

[Part XI^{1A} inserted by No. 120 of 1987 s. 89.]

Registration of credit union as a company

175A. (1) A credit union may, by special resolution, determine that the credit union shall, pursuant to this Part, apply to be registered as a company under the *Companies (Western Australia) Code*².

(2) Before any such application is made the credit union shall, by special resolution—

- (a) determine under what name the credit union shall apply to be registered as a company; and
- (b) adopt a memorandum of association for the proposed company and also articles of association where articles of association are necessary or deemed desirable.

(3) A credit union shall not be so registered under a name which includes the words “credit union” or the words “credit society” or any other words importing a similar meaning.

(4) Every such memorandum of association—

- (a) shall contain the particulars prescribed by and otherwise be in accordance with the provisions of the *Companies (Western Australia) Code*²;
- (b) shall state as the objects of the company the objects of the credit union; and
- (c) when delivered for registration shall have as signatories at least 7 persons who are members of the credit union.

(5) The provisions of the *Companies (Western Australia) Code*² shall apply with respect to—

- (a) the necessity for articles of association;
- (b) the applicability of the regulations contained in Table A of Schedule 3 to that Code; and
- (c) any articles of association adopted.

(6) The memorandum of association and articles of association (if any) as so adopted shall not impose upon the members of the company who were members of the credit union at the date of its registration as a company any greater or different liability to contribute to the assets of the company than the liability to which they were subject as members of the credit union and in no case shall such memorandum of association or articles of association as so adopted deprive any member of the company of any rights with respect to dividend or capital to which he was entitled as a member of the credit union immediately before its registration as a company.

(7) A credit union may apply to be registered as a company under the *Companies (Western Australia) Code*² in the manner following—

- (a) the credit union shall register with the Registrar a copy of the special resolutions passed by the credit union pursuant to subsections (1) and (2);
- (b) the credit union shall deliver to the National Companies and Securities Commission—
 - (i) an application by the credit union under its common seal to be registered under the *Companies (Western Australia) Code*²;
 - (ii) a copy of the special resolutions referred to in paragraph (a), verified under the hand of the Registrar;
 - (iii) the memorandum of association adopted for the company and the articles of association (if any); and
 - (iv) a list, verified by the statutory declaration of a director, showing the names, addresses and occupations of all persons who, on a day named in such list (being not more than 6 clear days before the day of such delivery) were members of the credit union, and also showing with respect to each such person the number, the nominal amount and amount credited as paid up of any shares held by such person in the credit union.

(8) The National Companies and Securities Commission shall, upon surrender to the Commission of the certificate of incorporation of the credit union, or production of such evidence of the loss thereof as the Commission may require, retain and register such memorandum of association and articles of association (if any), and shall certify that the company is incorporated, and in the case of a limited company that the company is limited and such registration, certificate and memorandum of association and articles of association (if any) shall have the same operation and effect, and the provisions of the *Companies (Western Australia) Code*² shall apply to the said company and the members, contributories and creditors thereof, as if the said company had been registered in the manner prescribed by that Code.

(9) Upon the registration of a credit union as a company—

- (a) all persons who were members of the credit union at the date of such registration shall be deemed to become members of the company and their names shall be entered upon the register of members of the company; and
- (b) every member of the credit union at the date of such registration who held shares in the credit union shall be deemed to be the holder of shares in the capital of the company equal in number and nominal value to the shares whereof he was then registered as the holder in the register of members of the credit union and entry shall be made in the register of members of the company accordingly and he shall

thereupon be liable for the amount, if any, unpaid on his shares, of which the register of the company shall be *prima facie* evidence.

(10) If no persons are named as directors of the company in the articles of association of the company when a credit union is registered as a company under this section the persons who were directors of the credit union immediately before such registration shall be the first directors of the company.

(11) A certificate of incorporation of a credit union as a company given by the Corporate Affairs Commission or by the National Companies and Securities Commission shall be conclusive evidence that all the requirements of this section and of the *Companies (Western Australia) Code*² or the *Companies Act 1961*, or any corresponding previous enactment in respect of registration under any such Code or Act, have been complied with.

[Section 175A inserted by No. 120 of 1987 s. 89.]

Transfer of registration

175B. Where a credit union is registered as a company pursuant to an application made under section 175A—

- (a) the National Companies and Securities Commission shall give notice of such registration to the Registrar who shall thereupon remove the name of the credit union from the register kept by him; and
- (b) the identity of the credit union shall not be affected and it shall continue as the same entity.

[Section 175B inserted by No. 120 of 1987 s. 89.]

Rights and liabilities

175C. Without affecting the generality of section 175B (a), upon registration pursuant to an application by a credit union referred to in that section—

- (a) all property and proprietary and other rights of the applicant credit union shall become vested in and exercisable by the company so registered;
- (b) all liabilities and obligations of the applicant credit union, whether certain or contingent and whether then existing or capable of arising at a future time, and whether contractual or other, and all rights against the applicant credit union and all penalties (including default penalties) incurred by the applicant credit union shall be enforceable and recoverable against the company so registered; and

- (c) all persons who would incur any liability for anything done or omitted by, or for any money if lent or credit if given to, or for any loss incurred by, or for any transaction it had with the applicant credit union, shall incur the same liability as would have been incurred if such thing had been done or omitted by, or money lent or credit given to, or loss incurred by, or transaction had with the company so registered.

[Section 175C inserted by No. 120 of 1987 s. 89.]

PART XIII—TRANSITIONAL

Application of Division 3 of Part VI

176. (1) The provisions of Division 3 of Part VI, other than section 83, do not apply, in relation to a credit union registered under this Act by virtue of section 24, to or in respect of a financial year of the credit union that began before the date of the coming into operation of this Act and ends after that date.

(2) To the extent to which by virtue of subsection (1) Division 3 of Part VI does not apply, in relation to a credit union, to or in respect of a financial year of the credit union that began before the date of the coming into operation of this Act and ends after that date, the provisions (if any) of the *Co-operative and Provident Societies Act 1903* relating to matters in respect of which provision is made by or under Division 3 of Part VI continue to apply as if this Act had not been enacted.

Acts of Registrar

177. All acts, matters and things of a continuing nature done or commenced before the coming into operation of this Act by, on behalf of, or in relation to the Registrar under the *Co-operative and Provident Societies Act 1903* to or in respect of a credit union registered under this Act by virtue of section 24 shall not be affected and shall, under and subject to this Act, continue to have the same status, operation and effect as they would have had if this Act had not been enacted.

Winding up

178. If a body mentioned in the First Schedule is being wound up at the time of the coming into operation of this Act the provisions of this Act with respect to winding up shall not apply to that body and it shall be wound up in the same manner and with the same incidents as if this Act had not been enacted.

SCHEDULES

FIRST SCHEDULE

SOCIETIES TO BE REGISTERED BY VIRTUE OF SECTION 24

ABC Credit Union Society Limited.
Australian Commissions and Public Service Credit Society Limited.
Alumina Refining Credit Union Society Limited.
A.P.I. Members Credit Society Limited.
Bunbury Co-operative Credit Union Society Limited.
C. of P. M. and E. Credit Union Society Limited.
Collie Miners' Co-operative Credit Union Society Limited.
C.S.A. Co-operative Credit Union Society Limited.
Fremantle Credit Union Society Limited.
Health Services Credit Union Society Limited.
Kalyna Ukrainian Credit Union Society Limited.
Kwinana Nickel Refinery Employees Credit Union Society Limited.
Netherlands Credit Union (W.A.) Society Limited.
Perth Credit Union Society Limited.
Printing Union Co-operative Credit Society Limited.
S.E.C. Credit Union Society Limited.
Southern Districts Savings and Credit Society Limited.
South Fremantle Co-operative Credit Union Society Limited.
Steelworkers Co-operative Credit Union Society Limited.
Taxation Staff (W.A.) Co-operative Credit Union Society Limited.
Telecommunications Credit Union Society Limited.
The Breweries Union Co-operative Credit Society Limited.
The Building Workers' Union Co-operative Credit Society Limited.
The Federated Clerks' Union W.A. Branch Co-operative Credit Union Society Limited.
The Independent Co-operative Credit Union Society Limited.
The Metropolitan Co-operative Credit Society Limited.
The M.T.T. Salaried Officers' Co-operative Credit Society Limited.
The University Staff Credit Union Society Limited.
The W.A. Nurses' Credit Society Limited.
The W.A. Teachers' Credit Society Limited.
The Western Australian Government Railways Institute Credit Union Society Limited.
United Credit Union Society Limited.
W.A. Fire Brigades Employees Credit Union Society Limited.
Wapet Staff Credit Society Limited.
W.A. Railway Officers' Co-operative Credit Union Society Limited
Western Australian Police Union Co-operative Credit Union Society Limited.
Western Districts Mutual Credit Union Society Limited.

SECOND SCHEDULE
MATTERS TO BE INCLUDED IN RULES

- (a) The name of the credit union and the location of its first registered office.
- (b) The objects of the credit union.
- (c) The powers of the credit union, in particular and without affecting the generality of this clause—
 - (i) the powers to borrow money;
 - (ii) the powers to raise money on deposit and the manner in which the board may regulate the withdrawal of such deposits, and any limitation on any of the powers of the credit union.
- (d) The manner in which investments may be made.
- (e) The manner in which the funds of the credit union are to be managed and in particular the mode of drawing and signing drafts, bills of exchange, cheques, promissory notes, and other negotiable instruments for and on behalf of the credit union.
- (f) The manner in which any gain or surplus which may result from the transactions of the credit union is to be distributed among members.
- (g) The number of directors, the qualification of directors and the manner of electing, appointing, remunerating and removing directors and filling a vacancy.
- (h) The powers and duties of the board, the requisite notice of meeting, and the quorum for meetings.
- (i) The intervals between general meetings of the credit union, the manner of calling general and special meetings, the requisite notices of meetings, the method of giving such notice and the quorum for meetings of the credit union.
- (j) The procedures for the conduct of meetings of the credit union and all matters relating to voting at meetings, including the voting rights of members, the right of the chairman to a casting vote, the manner of voting and the majority necessary for carrying resolutions.
- (k) The frequency at which the accounts of the credit union are to be audited.
- (l) The manner of appointing, remunerating and removing auditors, the powers and duties of auditors and in particular their powers and duties with respect to the inspection of securities belonging to the credit union.
- (m) The manner of altering or rescinding the rules and of making additional rules.
- (n) The device, custody and use of the seal of the credit union.
- (o) The manner in which the credit union may be wound up.
- (p) The bond of association of members eligible to borrow from the credit union.
- (q) The minimum shareholding in respect of membership, or as qualifying for office as a director, of the credit union.
- (r) The circumstances in which the whole of the principal and interest, and any other amount that may lawfully be added thereto, in respect of a loan by the credit union to a member shall forthwith become due and payable.
- (s) The circumstances in which the whole of the outstanding balance of the account under a continuing credit arrangement made by the credit union with a member, and interest and any other amount that may lawfully be added thereto, shall forthwith become due and payable.

[Second Schedule amended by No. 82 of 1984 s. 39.]

NOTES

¹. This reprint is a compilation as at 14 August 1991 of the *Credit Unions Act 1979* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Credit Unions Act 1979</i>	54 of 1979	12 November 1979	1 July 1980 (see <i>Gazette</i> 27 June 1980 p. 1933)	
<i>Companies (Consequential Amendments) Act 1982, Part VIII</i>	10 of 1982	14 May 1982	Part VIII: 1 July 1982 (see section 2 and <i>Gazette</i> 25 June 1982 p. 2079)	Section 21 saving
<i>Credit Unions Amendment Act 1984</i>	82 of 1984	7 December 1984	15 March 1985 (see <i>Gazette</i> 15 March 1985 p. 931)	
<i>Commercial Arbitration Act 1985, section 3 (1)</i>	109 of 1985	7 February 1986	1 April 1986 (see <i>Gazette</i> 28 February 1986 p. 605)	
<i>Acts Amendment (Building Societies and Credit Unions) Act 1987, Part III</i>	120 of 1987	24 December 1987	Part III, other than sections 59 (b) and 72; 1 January 1988; Sections 59 (b) and 72; 1 July 1988 (see <i>Gazette</i> 31 December 1987 p. 4567)	Section 64 (2) savings ² Section 83 (2) savings ³
<i>Credit Unions Amendment Act 1990</i>	90 of 1990	22 December 1990	Sections 1, 2, 3 and 5: 22 December 1990 (see section 2 (1)); balance 7 June 1991 (see <i>Gazette</i> 7 June 1991 p. 2799)	

². In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

³. In respect of matters arising after 1 January 1991, the operation of the *Companies (Application of Laws) Act 1981* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

⁴. Section 64 (2) of Act No. 120 of 1987 reads as follows:

" (2) Notwithstanding the repeal by this section of section 61 of the principal Act, that section as in force before its repeal shall continue to apply in relation to a credit union until the beginning of the financial year of the credit union that commences in 1989. "

⁵. Section 83 (2) of Act No. 120 of 1987 reads as follows:

" (2) Until a person is appointed to the office of Registrar of Co-operative and Financial Institutions as referred to in section 145 (1) of the principal Act as amended by this Act, the person holding the office of Registrar of Credit Unions immediately before the coming into operation of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to have been so appointed. "

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