

Western Australia

## **Building Societies Amendment Act 2001**

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As at 13 Jul 2001

No. 12 of 2001

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# Building Societies Amendment Act 2001

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Western Australia

## **Building Societies Amendment Act 2001**

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**No. 12 of 2001**

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**An Act to amend the *Building Societies Act 1976* and, in consequence, various other Acts, and for related purposes.**

*[Assented to 13 July 2001]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Building Societies Amendment Act 2001*.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

## **Part 2 — Amendments to the *Building Societies Act 1976***

### **3. The Act amended by this Part**

The amendments in this Part are to the *Building Societies Act 1976*\*.

[\* *Reprinted as approved 14 April 1986.*  
*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 45-6.*]

### **4. Long title amended**

The long title is amended by deleting “building” and inserting instead —

“ **housing** ”.

### **5. Section 1 amended and transitional**

- (1) Section 1 is amended by deleting “Building” and inserting instead —

“ *Housing* ”.

- (2) Unless the contrary intention appears, a reference in subsidiary legislation or any other document to the “*Building Societies Act 1976*” is taken to be a reference to the “*Housing Societies Act 1976*”.

### **6. Section 5 amended**

- (1) Section 5(1) is amended by deleting the definitions of “continuing credit arrangement”, “non-withdrawable”, “permanent society”, “prime net worth”, “provide financial accommodation”, “society”, “Starr Bowkett society”, “subordinated loan”, “terminating society” and “withdrawable”.

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- (2) Section 5(1) is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“**ADI**” (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959* of the Commonwealth;

“**society**” means —

- (a) a society formed and registered under this Act and that by its rules is to terminate at a fixed date, or when a certain event or result specified in its rules is arrived at; and
- (b) a society of that type which was registered under the repealed Act and which is still in existence;

“**subsidiary**”, in relation to a society, has the meaning given by section 5A;

”.

**7. Section 5A replaced by sections 5A and 5B**

Section 5A is repealed and the following sections are inserted instead —

“

**5A. Meaning of subsidiary**

- (1) In this Act, an incorporated body is a subsidiary of a society if the society —
- (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).

- (2) Without limiting by implication the circumstances in which the composition of the board of directors of an incorporated body is taken to be controlled by a society, the composition of such a board of directors is taken to be controlled by a society if that society by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that society, can appoint or remove all or a majority of the directors.
- (3) For the purposes of this section, the society is taken to have power to make such an appointment if —
  - (a) a person cannot be appointed as a director without the exercise of such a power by that society in the person's favour; or
  - (b) a person's appointment as a director follows necessarily from the person being a director or other officer of the society.

**5B. Application of Act**

Sections 4(2) and 6(8) (and any other provision where the context would enable this section to apply) have effect only in relation to a society as defined (from time to time) on and from the commencement of this section.

”.

**8. Section 13 amended**

Section 13 is amended as follows:

- (a) in paragraph (a) by deleting “by subscription, or otherwise,”;
- (b) after paragraph (a) by deleting “and”;
- (c) after paragraph (b) by deleting the full stop and inserting —

“

; and

- (c) to act as an agent for authorities or institutions whose objects are similar to those of the society.

”.

**9. Section 13A amended**

(1) Section 13A is amended as follows:

- (a) by inserting before “Subject to this Act” the subsection designation “(1)”;
- (b) by deleting “building society” and inserting instead —  
“ society ”.

(2) At the end of section 13A the following subsection is inserted —

“ (2) A society must not have a subsidiary. ”.

**10. Section 14 amended**

(1) Section 14(1) is amended by deleting “and may be formed as a permanent society or a terminating society”.

(2) Section 14(4) is amended by deleting “application for membership and shares” and inserting instead —

“ application for membership and a share in the society ”.

- (3) Section 14(5) is repealed and the following subsection inserted instead —

“

- (5) No application for a share in a proposed society, made prior to the registration of that society, may be withdrawn, and every person who makes such an application is, upon the registration of the society, liable to pay to the society the value of the share.

”.

**11. Section 15 amended**

- (1) Section 15(2)(b)(v) is amended by deleting “, and stating the number of shares for which each of those persons applied”.
- (2) Section 15(2)(b)(vi) is deleted.

**12. Section 23 amended and transitional**

- (1) Section 23(1a) is amended by deleting “building society” and inserting instead —
- “ housing society ”.
- (2) During the period of 12 months after the day on which this Act commences, a society (within the meaning of the *Housing Societies Act 1976*) does not breach section 23(1a) of that Act, even though it does not comply with that provision, if it would not have been in breach of that provision had subsection (1) not been enacted.

**13. Sections 26 and 27 replaced**

Sections 26 and 27 are repealed and the following sections are inserted instead —

“

**26. Interpretation of this Part**

In this Part —

“**amalgamated society**” means the society that is proposed to be formed, or has been formed, by the

amalgamation of 2 or more societies under this Part;

“**amalgamating society**” means a society that has applied under section 28(1) for approval to amalgamate with one or more other societies.

**27. Amalgamation of societies**

Subject to this Part, 2 or more societies may amalgamate to form a society.

”.

**14. Section 29 amended**

Section 29(1)(d) and (2) are amended by deleting “an institution” and inserting instead —

“ a society ”.

**15. Section 29B amended**

- (1) Section 29B(1) is amended by deleting “the society, or each society, that is an amalgamating institution” and inserting instead —

“ each amalgamating society ”.

- (2) Section 29B(2) is amended by deleting “amalgamated institution” and inserting instead —

“ amalgamating society ”.

**16. Section 29C amended**

- (1) Section 29C(1)(a), (b), (e) and (f) are deleted.
- (2) Section 29C(1)(c) and (d) are amended by deleting “terminating” in each place where it occurs.

**17. Section 31 amended**

- (1) Section 31(1) is amended as follows:
  - (a) in paragraph (a) by deleting “provide financial accommodation” and inserting instead —  
“ advance money ”;
  - (b) by deleting paragraph (b);
  - (c) after paragraph (c) by deleting the semicolon and inserting a full stop;
  - (d) by deleting paragraph (d) and the full stop.
- (2) Section 31(2) is amended by deleting “the provision of financial accommodation” and inserting instead —  
“ an advance of money ”.
- (3) Section 31(5) is repealed and the following subsection is inserted instead —  
“
  - (5) A society must not advance money unless there are reasonable grounds for believing, before the application for the advance is approved —
    - (a) that the person to whom the money is to be advanced has, and will continue to have, an income or other financial resources sufficient to provide for the fulfilment of his or her obligations in respect of that advance, or to which the advance relates; or
    - (b) where the money is to be advanced with security, that the security is adequate.”.

**18. Section 32 amended**

- (1) Section 32(1) is amended by deleting “financial accommodation that may be provided” and inserting instead —  
“ advance ”.

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- (2) Section 32(1) and (3) are amended by deleting “provide financial accommodation” and inserting instead —  
“ advance money ”.

**19. Section 33 amended**

- (1) Section 33(1) is amended as follows:
- (a) by deleting “provided with financial accommodation under section 31(1)(a) or (d)” and inserting instead —  
“ advanced money under section 31(1)(a) ”;
  - (b) by deleting “financial accommodation is to be provided” and inserting instead —  
“ money is to be advanced ”.
- (2) Section 33(2) is amended as follows:
- (a) by deleting “, except where the financial accommodation to be provided is a guarantee”;
  - (b) in paragraphs (a) and (b) by deleting “financial accommodation is to be provided” and inserting instead —  
“ money is to be advanced ”.

**20. Section 38 amended**

Section 38(1) is amended by deleting “(other than a permanent society)”.

**21. Section 39 amended**

Section 39 is amended by deleting “(other than a Starr Bowkett society)”.

**22. Section 41 amended**

- Section 41(1) is amended as follows:
- (a) by deleting “Every permanent” and inserting instead —  
“ Each ”;

- (b) by deleting paragraph (c) and inserting the following paragraph instead —

“

- (c) the total of member’s paid up share capital,

”;

- (c) after “calendar month” by inserting —

“ (or such longer period as the Registrar allows) ”.

**23. Section 43 replaced**

Section 43 is repealed and the following section is inserted instead —

“

**43. Distribution of reserves**

An amount maintained by a society in a reserve account —

- (a) may be distributed to members in accordance with the society’s rules;
- (b) may be distributed to members on the winding up of the society; or
- (c) may be applied to any other purpose to which the capital of the society may be applied.

”.

**24. Section 45 amended**

- (1) Section 45(1) is amended by deleting “or have invested or may invest in the society or have deposited or may deposit money with the society”.
- (2) Section 45(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) Subject to this section, while this subsection applies to a society, the society must not —
  - (a) borrow any money; or

**s. 25**

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- (b) make repayments of any loan, or otherwise dispose of or deal with any property or assets of the society without the consent of the Registrar.
- (3) This section does not make it unlawful for a society to borrow money from another society in accordance with section 47(2) or, with the consent in writing of the Registrar, to borrow money from an ADI.

”.

**25. Section 48 amended**

- (1) Section 48(1), (1a), (1b), (2) and (2a) are repealed and the following subsection is inserted instead —

“

- (1) A society may receive loans (other than from its members) to be applied to the purposes of the society.

”.

- (2) Section 48(3) is amended by deleting “Any member or other person depositing or lending money with or to any society,” and inserting instead —

“ A person lending money to a society ”.

**26. Section 50 amended**

- (1) After section 50(1) the following subsection is inserted —

“

- (1a) Only a natural person can be a member of a society.

”.

- (2) Section 50(2a) is amended by deleting “, or section 37G of the *Credit Unions Act 1979*,”.

- (3) Section 50(3) is amended by deleting “or acquired such shares or interests, as are provided” and inserting instead —

“ or acquired a share or other interest, as provided ”.



**27. Section 51 amended**

Section 51(1) is amended by deleting “or a depositor”.

**28. Section 53 amended**

- (1) Section 53(1), (2), (3) and (4) are repealed and the following subsections are inserted instead —

“

- (1) Shares issued by a society may be divided into classes and the classes may have different rights attached to them.
- (2) Shares issued by a society must be of one denomination, of a nominal amount and fully paid up.
- (3) A member of a society may have only one share in the society (whether held jointly or not).

”.

- (2) Section 53(8) is amended by deleting “together with the amount (if any) in arrears in respect of the share”.

**29. Section 54 amended**

- (1) Section 54(1) is amended by deleting “shares in a society are” and inserting instead —

“ a share in a society is ”.

- (2) Section 54(2) is amended as follows:

- (a) after paragraph (a) by inserting —  
“ and ”;
- (b) by deleting paragraph (b) and “and” after it;
- (c) by deleting “the shares” and inserting instead —  
“ a share ”.

- (3) Section 54(3) is amended by deleting “shares” and inserting instead —

“ a share ”.

**s. 30**

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- (4) Section 54(4) is amended by deleting “any shares” and inserting instead —

“ a share ”.

**30. Section 55 amended**

Section 55 is amended by deleting “shares” and inserting instead —

“ share ”.

**31. Section 57 amended**

Section 57(5) is amended by deleting all of the subsection from and including “not more than 2 months” and inserting instead —

“

not more than 3 months after the last preceding meeting of the board.

”.

**32. Section 59 amended**

- (1) Section 59(2) is amended by deleting “which is not a permanent society”.
- (2) Section 59(4a)(b) is deleted and the following paragraph is inserted instead —

“

- (b) by reason of that vacancy, the society has less than 5 directors, or less than the number of directors that the Registrar has approved under subsection (2),

”.

- (3) Section 59(7) is repealed and the following subsection is inserted instead —

“

- (7) Subject to the rules of a society, not more than 2, or one half, of the directors (whichever is the lesser number) may be appointed from employees of the society.

”.

**33. Section 61 amended**

- (1) Section 61(1) and (2) are repealed and the following subsections are inserted instead —

“

- (1) A director of a society must not obtain an advance of money from the society on conditions that are more favourable than those generally extended to members, and the society must not so advance money to a director —
- (a) if the director is also a full-time officer of the society —
    - (i) if the advance is to be provided on the security of a mortgage over his or her ordinary place of residence — except by a resolution of the board; or
    - (ii) if the advance is to be provided other than on such security — except by special resolution of the society;
  - (b) if the director is not also a full-time officer of the society —
    - (i) if the advance is to be provided on the security of a mortgage over his or her ordinary place of residence — except by a resolution of a meeting of the society; or

- (ii) if the advance is to be provided other than on such security — except by special resolution of the society.
- (2) If an advance is provided in contravention of subsection (1), the directors who authorised the advance are jointly and severally liable for any loss suffered by the society in respect of the advance.
- (2a) A society must not advance money to an officer of the society who is not a director unless the advance has been first approved at a meeting of the board of the society.

”.

**34. Section 65 amended**

- (1) Section 65(1a) is amended by deleting “(1b), (1c) and (1d)” and inserting instead —  
“ (1b) and (1c) ”.
- (2) Section 65(1b) is amended as follows:
  - (a) by deleting “financial accommodation provided” and inserting instead —  
“ money advanced ”;
  - (b) in paragraph (a) by deleting “advance or credit provided” and inserting instead —  
“ money advanced ”;
  - (c) in paragraph (b) by deleting “financial accommodation approved” and inserting instead —  
“ advances of money approved ”.
- (3) Section 65(1c) is amended as follows:
  - (a) by deleting “financial accommodation has been provided” and inserting instead —  
“ money has been advanced ”;

- (b) by deleting “that financial accommodation” and inserting instead —  
“ that advance ”.
- (4) Section 65(1e) is amended by deleting “financial accommodation” and inserting instead —  
“ advance of money ”.
- (5) Section 65(9)(b) is amended by deleting “from members and depositors” and “by depositors”.
- (6) Section 65(24) is amended by deleting “terminating or Starr Bowkett”.
- (7) Section 65(25)(a) is amended by deleting “referred to in that subsection”.

**35. Section 66 amended**

- (1) Section 66(1) is repealed and the following subsection is inserted instead —  
“
  - (1) The provisions of this section apply to a society despite anything to the contrary in the rules of the society.”.
- (2) Section 66(5)(a) is amended by deleting “other than indebtedness of the kind referred to in section 68(5)(e)”.

**36. Section 71 amended**

Section 71(3)(d) is deleted.

**37. Section 75 amended**

After section 75(4) the following subsection is inserted —

- “
  - (5) For the purposes of this section, and a legal proceeding in relation to —
    - (a) a right or liability acquired, accrued or incurred; or”

**s. 38**

---

(b) a thing done,

before the commencement of this subsection, “**society**” has the meaning that it had immediately before that commencement.

”.

**38. Section 76 amended**

(1) Section 76(1) is amended by deleting paragraph (a) and inserting instead —

“

(a) trade, carry on business, or advertise for loan funds under any name or title of which the words “housing society” or “housing societies” form a part;

”.

(2) Section 76(1)(b) and (c) are amended by deleting “building” and inserting instead —

“ housing ”.

(3) Section 76(2) is repealed and the following subsection inserted instead —

“

(2) For the purposes of this section, a person or body of persons, whether incorporated or unincorporated, is taken to be trading or carrying on business as a housing society if that person or body of persons administers a fund or scheme the money of which is to be applied solely or principally in loans to members of a group, secured by mortgage over land, for the purpose of purchasing or building dwelling-houses in which one or more of those members reside or propose to reside.

”.

- (4) Section 76(3) and (4) are amended by deleting “building” and inserting instead —

“ housing ”.

**39. Section 78 amended**

- (1) Section 78(1) is amended by deleting “the provision of financial accommodation” and inserting instead —

“ an advance of money ”.

- (2) Section 78(3) is amended as follows:

- (a) by deleting “the provision of financial accommodation” in the first place where it occurs and inserting instead —

“ an advance ”;

- (b) by deleting “the provision of financial accommodation” in the second place where it occurs and inserting instead —

“ the advance ”;

- (c) by deleting “financial accommodation” in the third place where it occurs and inserting instead —

“ advance ”.

**40. Section 87 amended**

Section 87(1) is amended by deleting “(not being a decision to consent to or refuse the resignation of an auditor of a permanent society)”.

**41. Section 88 amended**

Section 88(1) is amended by deleting “, capital or deposits” and inserting instead —

“ or capital ”.

**42. Section 90 amended**

Section 90(1)(a) is amended by deleting “the provision of financial accommodation” and inserting instead —

“ advancing money ”.

**43. Various references to institution changed to society**

- (1) Each provision listed in the Table to this subsection is amended by deleting “institution” in each place that it occurs and inserting instead —

“ society ”.

**Table**

s. 29(1)(a) and (b)	s. 29B(3), (4), (5) and (8)
s. 29(1)(d) (in the second place)	s. 29C(3)(b) and (c)
s. 29(2) (in the second place) and (3)	s. 29D(5)(b)

- (2) Each provision listed in the Table to this subsection is amended by deleting “institutions” in each place that it occurs and inserting instead —

“ societies ”.

**Table**

s. 28(1) and (3)	s. 29C(2)
s. 29(1)(a)(i) and (c)	s. 50(2) and (2a)
s. 29A(a) and (c)	



**44. Various provisions repealed**

Each provision listed in the Table to this section is repealed.

**Table**

s. 15(3)	s. 53(6), (9), (10), (10a),
s. 29D(2)	(10b) and (11)
s. 29E(2)	s. 53A
s. 29F	s. 64A
s. 29G	s. 64B
s. 34	s. 65(1d), (2a) and (2b)
s. 37	s. 67
s. 40	s. 68
s. 42	s. 71(8)
s. 45(7)	s. 77
s. 50(2b)	s. 92A
s. 52	Part XI

**45. Various references to “moneys” amended**

Each provision listed in the Table to this section is amended by deleting “moneys” in each place that it occurs and inserting instead —

“ money ”.

**Table**

s. 13A(b)	s. 51(2)(b)
s. 16(1) and (2)	s. 56(1)
s. 30(1) and (3)	s. 62(c)
s. 31(1)(c)	s. 81(1) and (2)

### **Part 3 — Amendments to other Acts**

**46. Companies (Co-operative) Act 1943 amended**

- (1) The amendments in this section are to the *Companies (Co-operative) Act 1943*\*.

[\* Reprinted as at 14 January 2000.]

- (2) Section 28(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) contains the words “building society” or “housing society”;

”.

- (3) Section 176A(1)(c) is deleted and the following paragraph is inserted instead —

“

- (c) a society under the *Housing Societies Act 1976*;

”.

**47. Constitution Acts Amendment Act 1899 amended**

Schedule V Part 3 of the *Constitution Acts Amendment Act 1899*\* is amended by deleting the item relating to the Building Societies Advisory Committee.

[\* Reprinted as at 19 May 2000.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 86-7 and No. 43 of 2000.]*

**48. Equal Opportunity Act 1984 amended**

- (1) The amendments in this section are to the *Equal Opportunity Act 1984*\*.

[\* Reprinted as at 21 July 2000.

*For subsequent amendments see Acts Nos. 36 and 58 of 1999.]*

- (2) Section 35N(1)(d) is deleted and the following paragraph is inserted instead —

“

- (d) the rules of a society registered under the *Housing Societies Act 1976*.

”.

- (3) Sections 66ZS(1)(a)(iv) and 69(1)(b)(iv) are deleted and the following subparagraph is inserted instead —

“

- (iv) the rules of a society registered under the *Housing Societies Act 1976*;

”.

**49. *Housing Act 1980* amended**

Section 55(5) of the *Housing Act 1980*\* is amended by deleting “in the case of a building society other than a permanent building society” and inserting instead —

“ in the case of a housing society ”.

[\* *Reprinted as at 27 May 1999.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 205.]*

**50. *Real Estate and Business Agents Act 1978* amended**

Section 131O(1)(e) of the *Real Estate and Business Agents Act 1978*\* is amended by deleting “Building Societies” and inserting instead —

“ Housing Societies ”.

[\* *Reprinted as at 9 March 2001.*]

**51. Amendments consequential on changing the name of the Act**

Each provision listed in the Table to this section is amended by deleting “Building Societies Act 1976” and inserting instead —

“ *Housing Societies Act 1976* ”.

**Table**

<i>Companies (Co-operative) Act 1943</i>	Sections 46(3a)(a), 172(1)(a) and 366 (the definition of “Company”)
<i>Country Housing Act 1998</i>	Section 43(1)
<i>Credit Act 1984</i>	Section 18(1)
<i>Credit (Administration) Act 1984</i>	Section 7(1)(h)
<i>Criminal Property Confiscation Act 2000</i>	Glossary (paragraph (d) of the definition of “financial institution”)
<i>Finance Brokers Control Act 1975</i>	Section 5(1)(c)
<i>Housing Act 1980</i>	Section 52(1) (paragraph (a) of the definition of “lending institution”)
<i>Housing Loan Guarantee Act 1957</i>	Sections 5(1)(a) and 10
<i>Real Estate and Business Agents Act 1978</i>	Section 131A (paragraph (c) of the definition of “lending institution”)
<i>Stamp Act 1921</i>	Third Schedule Items 3(2), 7(7) and 7(11)
<i>Western Australian Treasury Corporation Act 1986</i>	Schedule 1 Item 4

