

Western Australia

Housing Societies Act 1976

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Housing Societies Act 1976

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Western Australia

Housing Societies Act 1976

An Act to consolidate and amend the law with respect to the formation, regulation and control of housing societies, and for incidental and other purposes.

[Long title amended by No. 12 of 2001 s. 4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Housing Societies Act 1976*¹.
[Section 1 amended by No. 12 of 2001 s. 5(1).]

2. Commencement

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

[3. Deleted by No. 108 of 1984 s. 3.]

4. Repeal and savings

- (1) The *Building Societies Act 1920* is hereby repealed.
- (2) Unless the contrary intention appears in this Act —
 - (a) all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed;
 - (b) in particular and without affecting the generality of paragraph (a), such repeal shall not disturb the continuity of status, operation or effect of any incorporation or registration of a building society or any rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, nomination, affidavit, forfeiture, minute, assignment, register, registration, certificate, security, notice, compromise, arrangement, right, priority, liability, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred,

existing, pending or acquired by or under that Act before the commencement of this Act.

5. Interpretation

- (1) In this Act, unless inconsistent with the context or subject matter —

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

advertisement means an advertisement in or by any medium inviting business, seeking funds or making known all or any of the activities of a society or an association or body proposing to seek registration as a society, and the term **advertise** has a corresponding meaning;

banker's books means —

- (a) books of a banker, including any documents used in the ordinary course of business of a banker;
- (b) cheques, orders for the 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 or under the control of a banker whether by way of pledge or otherwise;

board, in relation to a society, means the board of directors of the society;

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;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

director means a member of the board of a society;

independent valuer means a valuer who is not an officer or employee of the society concerned;

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leasehold includes any tenure of land not being freehold held for a term of not less than 21 years, or if for a lesser term with the right to an extension for not less than 21 years, or to acquire the fee simple;

member means a member of a society;

officer, in relation to a society, means a director, secretary, treasurer or manager of the society, and any other person empowered by the rules of the society to act or give directions in respect to the business, operations or management of the society;

Registrar means the person referred to in section 6(1);

rule, in relation to a society, means a rule registered under this Act or the repealed Act;

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;

the repealed Act means the Act repealed by section 4;

valuer means —

- (a) a person —
 - (i) who is approved as a valuer for the purposes of this Act; or
 - (ii) who was appointed a valuer under the repealed Act,

and whose approval or appointment has not been cancelled or revoked; or

- (b) a person who is licensed under the *Land Valuers Licensing Act 1978* or similar legislation of a State or Territory.
- (2) A reference in this Act to a person associated with another person shall be construed in accordance with Division 2 of Part 1.2 of the Corporations Act as if the reference were in that Act.

[Section 5 amended by No. 56 of 1978 s. 11; No. 108 of 1984 s. 4; No. 120 of 1987 s. 4; No. 24 of 2000 s. 7(1); No. 10 of 2001 s. 98; No. 12 of 2001 s. 6.]

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.

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- (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.

[Section 5A inserted by No. 12 of 2001 s. 7.]

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.

[Section 5B inserted by No. 12 of 2001 s. 7.]

5C. Housing societies excluded from Corporations legislation

- (1) The following matters are declared to be excluded matters for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies, other than the provisions specified in subsection (2) —
- (a) a housing society;
 - (b) any act or omission of any person, body or other entity in relation to a housing society.
- (2) The provisions referred to in subsection (1) are —
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations legislation;
 - (b) provisions that relate to the role of a housing society in the formation of a company;

- (c) provisions that relate to substantial holdings, by or involving a housing society, in a company;
 - (d) provisions that confer or impose functions on a housing society as a member, or former member, of a corporation;
 - (e) provisions that relate to dealings by a housing society in securities of a body corporate, other than securities of the housing society itself;
 - (f) provisions that confer or impose functions on a housing society in its dealings with a corporation, not being dealings in securities of the housing society;
 - (g) provisions that relate to securities of a housing society, other than shares in, debentures of or deposits with a housing society;
 - (h) provisions relating to the futures industry;
 - (i) provisions relating to participants in the securities industry;
 - (j) provisions relating to the conduct of securities business;
 - (k) provisions relating to dealers' accounts and audit;
 - (l) provisions relating to money and scrip of dealers' clients; or
 - (m) provisions relating to registers of interests in securities.
- (3) The provisions specified in subsection (2) only apply to a housing society to the extent to which a housing society may engage in the activities covered by those provisions.

[Section 5C inserted by No. 10 of 2001 s. 99.]

Part II — Administration

[Heading amended by No. 120 of 1987 s. 5.]

6. Registrar, deputy Registrars, etc.

- (1) The chief executive officer of the department of the Public Service principally assisting the Minister administering the *Housing Act 1980* shall carry out the duties and functions vested by or under this Act in the Registrar.
- (2) There may be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such deputy or assistant Registrars and other officers as are required to assist the Registrar in carrying out the duties and functions vested by or under this Act in the Registrar.
- (3) The Registrar may in writing, with the approval of the Minister —
 - (a) delegate to any officer of the Public Service of the State all or any of his powers and functions;
 - (b) vary or revoke any delegation so made,

and while the delegation remains in force the delegate may perform any power or function so delegated to him as fully and effectively as the Registrar, but the existence of the delegation does not prevent the exercise of any power or function by the Registrar.

- (4) Anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed —
 - (a) by any deputy or assistant Registrar; or
 - (b) by any delegate of the Registrar,

and shall be as valid and effectual as if done or signed by the Registrar.

- (5) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Registrar and of any deputy or assistant Registrar.
- (6) All certificates, instruments, registers and other documents purporting to be signed or sealed or signed and sealed by the Registrar or by any deputy or assistant Registrar shall be admissible as evidence without further proof, and all courts, judges and persons acting judicially shall presume that such seal or signature or seal and signature were properly attached.

[(7) deleted]

- (8) 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 of Building Societies holding office under the repealed Act 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 the repealed Act had not been repealed.

[Section 6 amended by No. 120 of 1987 s. 6; No. 32 of 1994 s. 3(2); No. 24 of 2000 s. 7(2).]

7. Inspections and investigations

- (1) For the purposes of ascertaining whether a society or a person who is or has been an officer or employee of a society is complying or has complied with the provisions of this Act and the rules of the society, the Registrar may require the production of, inspect and make copies of —
 - (a) any books of a society;
 - (b) any books of any person insofar as those books record affairs of a society;
 - (c) any banker's books insofar as they relate to the business of a society;
 - (d) books, kept by, or by a person in respect of, a corporation in the shares of which a society has invested

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- any of its funds by virtue of section 47(1)(ca) (whether or not the corporation has been dissolved) insofar as such books record affairs relating to the society; and
- (e) banker's books kept by a banker who acts or has acted as banker to a corporation in the shares of which a society has invested any of its funds by virtue of section 47(1)(ca) insofar as the banker's books relate to the corporation (whether or not the corporation has been dissolved) and record affairs relating to the society.
- (1a) Without limiting subsection (1), the Registrar may, of his own volition, investigate the affairs of a society, including its working and financial condition, whenever the Registrar sees fit, and for the purposes of that investigation the Registrar has all of the powers given by subsection (1) to the Registrar for the purposes mentioned in that subsection.
- (2) The Registrar may require any bank in which funds have been deposited by a society to furnish him with particulars of the amount of those funds and of any dealing with or disposition of, any of those funds by the society.
- (3) A person shall not —
- (a) hinder the Registrar or any deputy or assistant Registrar or delegate of the Registrar in carrying out an inspection or investigation under this section; or
- (b) refuse or fail to comply with a requirement under this section.

Penalty: \$2 000.

[Section 7 amended by No. 108 of 1984 s. 5; No. 120 of 1987 s. 7.]

8. Secrecy

- (1) Subject to this section, the Registrar or any other person appointed or employed for the purposes of this Act or authorised 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 authorised, 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 authorised, 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.

- (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.

9. Office of Registrar, etc.

- (1) The Registrar —
 - (a) shall have a seal of office;
 - (b) shall maintain a public office in which shall be kept any document lodged under this Act or the repealed Act;
 - (c) may institute proceedings for any offence against this Act.
- (2) Except as provided in the regulations any person may inspect any document kept by the Registrar pursuant to this Act and may, on payment of the prescribed fee, obtain a copy of or extract from any such document or part thereof.

10. Valuers

The Registrar may —

- (a) approve any person who, in the opinion of the Registrar, has the necessary professional competence and

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experience for the purpose, to be a valuer for the purposes of this Act; and

- (b) may revoke any such approval or any appointment of a valuer made by the Minister under section 3D of the repealed Act.

[11, 12. Deleted by No. 120 of 1987 s. 8.]

Part III — Societies

Division 1 — Objects of societies

13. Objects

The objects of a society shall be —

- (a) to raise funds as authorised by this Act;
- (b) to apply those funds subject to this Act and the rules of the society in making advances and in such other ways as are authorised by this Act and those rules; and
- (c) to act as an agent for authorities or institutions whose objects are similar to those of the society.

[Section 13 amended by No. 12 of 2001 s. 8.]

13A. Powers of a society

- (1) Subject to this Act, a society 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, a society may —
 - (a) raise money as authorised by this Act;
 - (b) apply money raised in such ways as are authorised by this Act;
 - (c) acquire and dispose of real and personal property;
 - (d) act as an agent for other persons;
 - (e) enter into sale, purchase, leasing, hire-purchase and building contracts.
- (2) A society must not have a subsidiary.

[Section 13A inserted by No. 108 of 1984 s. 7; amended by No. 12 of 2001 s. 9 and 45.]

Division 2 — Formation and registration

14. Formation of a society

- (1) Subject to this Part, a society may be formed by not less than the prescribed number of natural persons of full age and capacity.
- (2) No society shall be formed unless there has been a meeting for the purpose of forming the society at which there are present not less than the prescribed number of natural persons of full age and capacity.
- (3) At the meeting referred to in subsection (2), the following documents must be presented to the prospective members of the society —
 - (a) a written statement showing the objects of the society and the reasons for believing that, when registered, it will be able to carry out its objects successfully; and
 - (b) a copy of the rules that are to be tendered for registration.
- (4) If, at the formation meeting, or any subsequent or adjourned meeting, not less than the prescribed number of persons of full age and capacity, after consideration of the statement and the rules, approve the rules with or without amendment, and sign an application for membership and a share in the society, they may proceed to elect the first directors of the society in accordance with the rules as so approved.
- (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.
- (6) The expenses of, and incidental to, the formation of the society may be paid out of the funds of the society.

[Section 14 amended by No. 12 of 2001 s. 10.]

15. Registration and incorporation, etc.

- (1) A society formed in accordance with this Part may apply to the Registrar in the prescribed manner to be registered under this Act.
- (2) An application for registration —
 - (a) must be made within 2 months after the formation meeting at which the first directors of the society were elected; and
 - (b) must be accompanied by —
 - (i) a statutory declaration by the chairman and the secretary of that formation meeting that the requirements of this Part as to formation have been complied with;
 - (ii) a copy of the statement presented to the meeting, signed by the chairman and the secretary;
 - (iii) 2 copies of the proposed rules of the society, certified by the chairman and the secretary to be the rules as approved at the meeting;
 - (iv) a list containing the full name, address and occupation of each director;
 - (v) a list containing the full name, address and occupation of each of the persons of full age and capacity who attended the meeting and applied for membership and shares;
 - [(vi) deleted]*
 - (vii) a feasibility study of the commercial viability of the proposed society prepared in accordance with such requirements as are prescribed and signed by the chairman and the secretary; and
 - (viii) such other relevant information or evidence as the Registrar may require.

[(3) deleted]

- (4) If the Registrar, after considering an application for registration, is satisfied —
- (a) that the society has complied with the provisions of this Part;
 - (b) that the proposed rules of the society are not contrary to this Act and are adequate for the proper conduct and operation of the business of the society;
 - (c) that there are reasonable grounds for believing that the society, if registered, will be commercially viable and able to carry out its objects successfully; and
 - (d) that there is no good reason why the society or the proposed rules should not be registered,
- the Registrar shall register the society and its rules and shall issue a certificate in the prescribed form that the society is incorporated under this Act.
- (5) Every society registered under the repealed Act and in existence immediately prior to the coming into operation of this Act and every society for which a certificate of incorporation is issued under this Act —
- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall in its corporate name be capable of suing and being sued;
 - (c) shall, subject to this Act and the rules of the society, be capable of holding, acquiring, dealing with and disposing of real and personal property; and
 - (d) shall have the powers, rights, duties and functions conferred, imposed or prescribed by or under this Act and the rules of the society.
- (6) Contracts on behalf of any society may be made, varied, or discharged as follows —
- (a) any contract which, if made between private persons, would be by law required to be in writing under seal,

may be made, varied, or discharged in the name and on behalf of the society in writing under the common seal of the society;

- (b) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged in the name and on behalf of the society in writing signed by any person acting under the express or implied authority of the society;
 - (c) any contract which, if made between private persons, would by law be valid although made by parol, may be made, varied, or discharged without writing, in the name and on behalf of the society by any person acting under the express or implied authority of the society.
- (7) All contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the society and all other parties thereto.

[Section 15 amended by No. 108 of 1984 s. 8; No. 120 of 1987 s. 9; No. 12 of 2001 s. 11 and 44.]

16. Receipt to operate as re-conveyance

- (1) When all money intended to be secured by any mortgage or further charge given to a society has been fully paid or discharged, the society may indorse upon or annex to the mortgage or further charge a receipt under the seal of the society in the prescribed form and the receipt shall vacate the mortgage or further charge and debt, and also all further charges relating to the same land dated subsequently to the mortgage or further charge on or to which the receipt is indorsed or annexed and prior to the date of the receipt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any re-conveyance or re-assignment whatever, and so that the person for the time being entitled to the equity of redemption, in cases where he was the original mortgagor of the property, shall hold the

property to the same uses and upon the same trusts so far as they have not been varied or altered as he held the property to or upon before mortgaging, and in cases where the person for the time being entitled to the equity of redemption is not the original mortgagor of the property, such person shall hold the property to the same uses and upon the same trusts as those to or upon which he held the equitable estate.

- (2) A society may partially discharge any mortgage or discharge or partially discharge any further charge or collateral security, notwithstanding that all money intended to be secured by the mortgage has not been fully paid or discharged, if the society is satisfied with the remaining security.

[Section 16 amended by No. 12 of 2001 s. 45.]

Division 3 — Rules

17. Contents of rules

The Registrar shall not register any rules of a proposed society unless —

- (a) the rules contain the prescribed provisions and otherwise conform with the requirements of the regulations; and
- (b) the rules contain, in the opinion of the Registrar, adequate provisions requiring the society to insure against wrongful acts and defaults of its officers and employees and against other insurable risks assumed by a society in the conduct of its business.

18. Effect of rules

The rules of a society shall bind the society and all members thereof and all persons claiming under them.

19. Copies of rules

A society shall furnish any person with a copy of its rules upon application and payment of the prescribed fee.

20. Alteration of rules

- (1) A society may, by special resolution, alter its rules, but any such alteration shall not take effect until it has been registered in accordance with this section.
- (2) A society shall, within one month of the date of the meeting at which the special resolution approving an alteration was passed, apply to the Registrar to have the alteration registered.
- (3) The Registrar shall, if he is satisfied that the proposed alteration to the rules of the society is not contrary to this Act, and that there is no good reason why it should not be registered, register the alteration.

21. Power of Registrar to require modification of certain rules

- (1) Where in the opinion of the Registrar the rules of a society that was registered under the repealed Act should be amended to achieve conformity with any requirement of this Act he may, by instrument in writing served on the society, require it, within a period specified in the instrument, to amend the rules in a manner specified in the instrument or otherwise in a manner approved by the Registrar.
- (2) If within the period specified in the instrument the society fails to amend the rules as required by the instrument, the Registrar may himself, by notation upon the registered copy of the rules, amend the rules of the society.
- (3) The Registrar shall give a society notice in writing of any amendment effected by him under this section.

[22. Deleted by No. 120 of 1987 s. 10.]

Division 4 — Name and office

23. Name

- (1) A society shall not be registered by a name, or change its name to a name, that is, in the opinion of the Registrar, undesirable.

- (1a) A society shall include in its name the words “housing society” in consecutive form.
- (2) Subject to the provisions of this section, a society may, by special resolution altering its rules in the manner provided for in this Act, change its name.
- (3) Upon registration of an alteration of the rules of a society pursuant to subsection (2), the Registrar may issue a new certificate of incorporation in the new name in lieu of a previous certificate of incorporation.
- (4) A change of name of a society shall be published, at the expense of the society, in the manner prescribed.

[Section 23 amended by No. 108 of 1984 s. 9; No. 12 of 2001 s. 12(1).]

24. Office and service

- (1) Every society shall have a registered office.
- (2) The first registered office of a society shall be that appearing in the rules of the society at the time of registration.
- (3) Notice of any change of address of its registered office shall be transmitted to the Registrar before the expiration of 14 days from the date of the change and the Registrar shall thereupon register the new address as the address of the registered office of the society.
- (4) A document may be served on a society or an officer of the society by leaving it at or sending it by post to the registered office of the society.

25. Publication of name

- (1) A society shall cause its name to appear in legible characters on its seal and in legible characters on all business letters, notices, advertisements and other official publications of the society and on all bills of exchange, cheques, promissory notes,

endorsements, orders for money or goods, invoices, receipts and other documents required in the business of the society.

- (2) A society shall not use any name or title other than its registered name or an abbreviation of that name approved by the Registrar.
- (3) Every society shall paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on, in a conspicuous position in letters easily legible its name or an approved abbreviation of its name and also, in the case of the registered office, the words “Registered Office”.
- (4) Any society that contravenes the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding \$100.

Default penalty: \$50.

**Part IV — Amalgamation, transfer of engagements,
and take-overs**

[Heading inserted by No. 120 of 1987 s. 11.]

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.

[Section 26 inserted by No. 12 of 2001 s. 13.]

27. Amalgamation of societies

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

[Section 27 inserted by No. 12 of 2001 s. 13.]

28. Application for amalgamation

- (1) Two or more societies may apply to the Registrar for approval to amalgamate in accordance with section 27.
- (2) The application shall be in the prescribed form and shall be accompanied by —
 - (a) 2 copies of the proposed rules of the amalgamated society; and
 - (b) such other particulars as may 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 societies at the Registrar's request, the Registrar shall —

- (a) grant provisional approval of the proposed amalgamation and direct that section 29 is to apply to the application;
- (b) grant provisional approval to the proposed amalgamation and direct that section 29A is to apply to the application; or
- (c) reject the application.

[Section 28 inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 43(2).]

29. Amalgamation with approval of members and Registrar

- (1) If the Registrar directs that this section is to apply to an application under section 28(1) —
 - (a) each amalgamating society 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 societies;
 - (ii) any interest that the officers of any amalgamating society may have in the amalgamation;
 - (iii) any compensation or other consideration proposed to be paid to the officers of any amalgamating society;
 - (iv) any payments to be made to members of any amalgamating society in consideration of the amalgamation; and
 - (v) such other matters as the Registrar may direct;
 - (b) each amalgamating society shall send a notice to each person who is entitled to vote at a general meeting of the society 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;

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- (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 societies and the Registrar is satisfied that the proposed rules of the amalgamated society are not contrary to this Act or the regulations;
 - (d) the Registrar shall reject the application if, within 14 days after the sending of the notices under paragraph (b) by a society, 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 society.
- (2) A statement sent by a society 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 society 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 persons who are entitled to vote at a general meeting of the society shall include or be accompanied by the notices required under subsection (1)(b).

[Section 29 inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 14 and 43.]

29A. Amalgamation without approval of members

If the Registrar directs that this section is to apply to an application under section 28(1) —

- (a) the amalgamating societies 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 societies and any other person whom the Registrar may consider entitled to be heard.

[Section 29A inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 43(2).]

29B. Registration of amalgamated society and effect of amalgamation

- (1) If the Registrar approves of a proposed amalgamation under section 29 or 29A, the Registrar shall, upon the surrender to him of the certificate of incorporation of each amalgamating society or production of such evidence as to the loss of that certificate as the Registrar may require, register the amalgamated society and its rules, and issue a certificate of incorporation in respect of the amalgamated society.
- (2) The Registrar may, following the issue of the certificate of incorporation of the amalgamated society, remove from the register the name of any society that was an amalgamating society.
- (3) The amalgamation shall not prejudice any right of a creditor of any amalgamating society.
- (4) Upon the issue of the certificate of incorporation of the amalgamated society the property of each amalgamating society shall, by virtue of this section without any conveyance, transfer or assignment, vest in the amalgamated society.
- (5) For the purposes of this section the property of an amalgamating society 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 certificates of title, or shall

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issue such new certificates of title as are necessary to evidence the vesting of any estate or interest in land in the amalgamated society pursuant to this section.

- (7) Any property that is vested in or transferred to the amalgamated society 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 society 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 society 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 society.

[Section 29B inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 15 and 43(1).]

29C. Voluntary transfer of engagements of societies

- (1) Subject to this Part —
 - [(a), (b) deleted]*
 - (c) a society may transfer all its engagements to another society that undertakes to fulfil those engagements;
 - (d) a society may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (c).
- (2) Two societies 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 28(2) (other than paragraph (a)), 28(3), 29, 29A and 29B(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 society in section 28(3), 29 or 29A shall be construed as a reference to the society transferring its engagements or the society to which the engagements are being transferred;
 - (c) a reference to an amalgamating society in section 29B(3) to (8) shall be construed as a reference to the society transferring its engagements;
 - (d) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred; and
 - (e) a reference to the issue of the certificate of incorporation of the amalgamated society shall be construed as a reference to the approval of the transfer of engagements by the Registrar under section 29 or 29A as applied by this subsection.
- (4) Where the engagements of a society are transferred under this section the society 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 society from the register.

[Section 29C inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 16, 43(1) and (2).]

29D. Transfer of engagements of societies by direction of Registrar

- (1) Notwithstanding anything to the contrary contained in the rules of a society, the Registrar may, with the approval of the Minister and agreement of the transferee society —
- (a) direct the transfer of all the engagements of a society to another society; and
 - (b) give a society such directions as the Registrar considers necessary to give effect to the transfer of engagements directed under paragraph (a).

[(2) deleted]

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- (3) Before submitting a proposed direction for the approval of the Minister under subsection (1)(a) the Registrar shall give to the proposed transferor and transferee societies, 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) Subsections (3) to (8) of section 29B 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 society shall be construed as a reference to the society that has its engagements transferred;
 - (c) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred; and
 - (d) a reference to the issue of the certificate of incorporation of the amalgamated society shall be construed as a reference to the date specified pursuant to subsection (7).
- (6) Section 29C(4) shall apply to a society that has its engagements transferred under this section.
- (7) A transfer of engagements under this section takes effect upon a day specified by the Registrar by notice published in the *Gazette*.

- (8) A society 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.
- (9) An officer of a society who —
- (a) fails to take all reasonable steps to secure compliance by the society with a direction given under subsection (1); or
 - (b) by a wilful act or omission is the cause of a failure by a society to comply with such a direction,

is guilty of an offence.

Penalty: \$1 000.

[Section 29D inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 43(1) and 44; No. 50 of 2003 s. 72(2).]

29E. Power to undertake to fulfil engagements transferred by direction

- (1) A society may fulfil the engagements of another society pursuant to a transfer of engagements under section 29D.

[(2) deleted]

[Section 29E inserted by No. 120 of 1987 s. 11; amended by No. 12 of 2001 s. 44.]

[29F, 29G. Deleted by No. 12 of 2001 s. 44.]

Part V — Monetary policies of societies

Division 1 — General

30. General regulation of loans, etc. by societies

- (1) Subject to subsection (4), a society shall not advance, invest, use, apply, pledge, encumber or otherwise deal with any of its money or other property real or personal except as authorised by this Act or its rules.
- (2) Nothing in subsection (1) shall be construed —
 - (a) as authorising a society to do any act or thing contrary to its rules except where the contrary is expressly provided by this Act; or
 - (b) as authorising a society to do any act or thing which is authorised by its rules but which is prohibited by or under this Act.
- (3) Where a society advances, invests, uses, applies, pledges, encumbers or otherwise deals with any of its money or other property real or personal in contravention of this Act or in contravention of its rules, every officer of the society who authorised or permitted the advance, investment, use, application, pledging, encumbering or dealing, as the case requires, shall be jointly and severally liable for any loss thereby occasioned to the society.
- (4) Nothing in this section shall apply to any act or thing done by a society under the express authority of another law of the State by which it is provided that such act or thing shall be lawful if done by a society.

[Section 30 amended by No. 12 of 2001 s. 45.]

Division 2 — Loans

31. Loans

- (1) Subject to this Part, a society may —
 - (a) advance money on the security of a mortgage over freehold or leasehold land situated within Australia;
 - [(b) deleted]*
 - (c) advance money on the security of a guarantee given by the Government of a State, Territory or the Commonwealth or a guarantee given by an agency or instrumentality of a State, Territory or the Commonwealth that is approved for the purpose by the Minister.
- (2) Nothing in this section shall be construed as precluding a society from accepting collateral security for an advance of money.
- (3) Where the rules of a society so provide, the Board may, by instrument in writing, delegate any or all of its powers under subsection (1), and in respect of matters ancillary thereto, to any person or body of persons of a prescribed class.
- (4) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984*, a delegation under subsection (3) is subject, in addition to such conditions, qualifications, limitations or exceptions, if any, as may be specified in accordance with section 59(1)(b) of that Act, to such conditions, if any, as may be prescribed.
- (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.

[Section 31 amended by No. 108 of 1984 s. 11; No. 120 of 1987 s. 12; No. 14 of 1996 s. 4; No. 12 of 2001 s. 17 and 45.]

32. Registrar's directions

- (1) The Registrar may, in writing, give to a society such directions as he sees fit as to the circumstances in which, and the conditions on which, the society may advance money under section 31(1), and as to the extent of the advance but a direction under this subsection shall not relate to the rate of interest to be payable.
- (2) The Registrar may, by writing given to the society to which a direction has been given under subsection (1), vary or revoke the direction.
- (3) The power of a society to advance money under section 31(1) is subject to any direction as for the time being in force under this section.

[Section 32 inserted by No. 120 of 1987 s. 13; amended by No. 12 of 2001 s. 18.]

33. Society to advise borrower of certain matters

- (1) Where a society approves an application made to it by a person wishing to be advanced money under section 31(1)(a), it shall, within 7 days of approving the application and, in any event, before requiring the execution of any document for the purpose of obtaining the security, if any, on which the money is to be advanced, cause a notice in accordance with subsection (2) to be given personally to that person or to be sent, by prepaid post, to that person at his last known place of residence or business as disclosed in the application.

- (2) The notice required by subsection (1) shall be in the prescribed form and shall set out the amount of any fees, charges and other expenses paid or to be paid by the person and —
- (a) the prescribed particulars as to the rate of interest to be payable when the money is to be advanced;
 - (b) whether or not any variation of the rate of interest may be made during the period for which money is to be advanced;
 - (c) the date on which interest commences to accrue; and
 - (d) the date on which repayments or payments are to commence.

[Section 33 inserted by No. 120 of 1987 s. 13; amended by No. 12 of 2001 s. 19.]

[34. Deleted by No. 12 of 2001 s. 44.]

[35, 36. Deleted No. 108 of 1984 s. 14.]

[37. Deleted by No. 12 of 2001 s. 44.]

38. Valuations

- (1) A society shall not make an advance upon the security of a mortgage over land unless a valuation has been obtained, by a valuer, of the land that is to be subject to the mortgage and a valuation of any buildings erected, or to be erected, thereupon.

[(2) deleted]

[Section 38 amended by No. 108 of 1984 s. 16; No. 120 of 1987 s. 14; No. 12 of 2001 s. 20.]

39. Prohibition of balloting for loans

A society shall not cause or permit applicants for advances to ballot for precedence, or in any way make the granting of an advance dependent upon any chance or lot.

[Section 39 amended by No. 12 of 2001 s. 21.]

[40. Deleted by No. 12 of 2001 s. 44.]

41. Returns and reports to be furnished

- (1) Each society shall cause to be prepared in writing and furnished to the Registrar returns setting out the amounts of and such particulars as the Registrar requires of —
- (a) liquid funds held by the society;
 - (b) any other investments authorised by section 47(1); and
 - (c) the total of member's paid up share capital,

on the last day of each calendar month (or such longer period as the Registrar allows), and shall also include in those returns such further information as may be required by the Registrar.

- (2) Every return prepared pursuant to subsection (1) shall be furnished to the Registrar not later than 14 days after the date to which the return relates.
- (3) The Registrar may at any time by notice in writing require a society or its auditor to furnish to the Registrar a special report or reports or a special return or returns, made up to a date specified in the notice, relating to all or any of the matters referred to in subsection (1) or to any other matter concerning the financial affairs of the society.
- (4) Section 83(2) applies in respect of a report or return that an auditor has been required under subsection (3) to furnish to the Registrar, as if the reference therein to "a society" were a reference to "an auditor".

[Section 41 amended by No. 120 of 1987 s. 16; No. 12 of 2001 s. 22.]

[42. Deleted by No. 12 of 2001 s. 44.]

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.

[Section 43 inserted by No. 12 of 2001 s. 23.]

[44. Deleted by No. 108 of 1984 s. 19.]

45. Power to prohibit raising of funds

- (1) If, with respect to any society, the Registrar considers it expedient to do so in the interests of persons who are or may become members of the society, he may, with the approval of the Minister, by notice in writing served on the society, direct that subsection (2) shall apply to the society and that subsection shall thereupon apply accordingly.
- (2) Subject to this section, while this subsection applies to a society, the society must not —
 - (a) borrow any money; or
 - (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.
- (4) Where the Registrar gives a direction pursuant to subsection (1), the society may make representations to the Registrar with respect to the direction and the Registrar shall report thereon to the Minister.

- (5) The Minister may, at any time, direct that subsection (2) shall cease to apply to the society and that subsection shall cease to apply accordingly.
- (6) If a society contravenes the provisions of this section it shall be guilty of an offence and be liable to a penalty not exceeding \$2 000; and every officer of the society who knowingly authorises or permits a contravention of subsection (2) shall be liable to a penalty of \$1 000 or imprisonment for one year.

[Section 45 amended by No. 20 of 1977 s. 4; No. 108 of 1984 s. 20; No. 12 of 2001 s. 24 and 44.]

[46. Deleted by No. 108 of 1984 s. 21.]

47. Investments

- (1) Subject to subsection (2), a society may from time to time invest its funds —
- (a) in any manner in which a trustee is authorised under the law of the State to invest trust funds;
 - (b) upon deposit with any bank;
 - (c) in authorised bills of exchange;
 - (ca) with the approval 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 society in the furtherance of its objects;
 - (cb) with the approval of the Registrar, in a loan to a corporation in the shares of which the society has invested by virtue of paragraph (ca);
 - (cc) in the purchase of mortgages and mortgage backed securities pursuant to section 32;
 - (d) in any other securities approved from time to time by the Registrar for the purposes of this section.

- (2) A society 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 society, has imposed.
- (3) The Registrar may, under subsection (2), impose such limitations as to amount as he sees fit, which limitations may vary according to the term of the 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.

[Section 47 amended by No. 108 of 1984 s. 22; No. 120 of 1987 s. 19.]

48. Borrowing powers, etc.

- (1) A society may receive loans (other than from its members) to be applied to the purposes of the society.
- [(2) deleted]*
- (3) A person lending money to a society shall not be bound to see to the application thereof, or that the society has not exceeded its borrowing limit.
- (4) Any deposits with or loans to a society made before the commencement of this Act in accordance with its rules are hereby declared to be valid and binding on the society.
- (5) No member of any society, nor any purchaser of any land from a society, shall be obliged to inquire into the application of the consideration money mentioned in any conveyance or re-conveyance, transfer, receipt or statutory release, or be answerable or accountable for the misapplication, non-application, or loss thereof.

[Section 48 amended by No. 20 of 1977 s. 5; No. 71 of 1982 s. 2; No. 108 of 1984 s. 23; No. 120 of 1987 s. 20; No. 12 of 2001 s. 25.]

49. Disposal of certain property

Any property to which a society may become absolutely entitled by foreclosure, surrender, or extinguishment of a right of redemption, shall as soon as practicable be sold and converted into money.

Part VI — Membership and share capital of societies

Division 1 — Membership

50. Membership

- (1) The members of a society shall be the persons who signed an application for membership on the formation of the society, and any other persons who are admitted to membership in accordance with the rules of the society.
 - (1a) Only a natural person can be a member of a society.
- (2) Where a society is formed by the amalgamation of 2 or more societies, the members of the society formed by the amalgamation shall be the members of the amalgamating societies and any other persons who are admitted to membership in accordance with the rules of the society formed by the amalgamation.
 - (2a) The members of a society to which engagements are transferred pursuant to section 29C or 29D shall be the persons who, immediately before the transfer of engagements, were members of the societies that were parties to the transfer and any other persons who are admitted to membership of the society to which the engagements were transferred.
- (3) No rights of membership shall be exercised by any person until he has made such payments in respect of membership, or acquired a share or other interest, as provided in the rules.

[Section 50 amended by No. 108 of 1984 s. 24; No. 120 of 1987 s. 21; No. 12 of 2001 s. 26, 43(2) and 44.]

51. Minors

- (1) Subject to any contrary provision in the rules of a society, a person under the age of 18 years may be a member of a society and may execute all instruments and give all necessary acquittances.

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- (2) A person under the age of 18 years shall not —
- (a) be entitled to exercise any vote at any meeting of the society; or
 - (b) without leave of the court be entitled to borrow money from the society.

[Section 51 amended by No. 12 of 2001 s. 27 and 45.]

[52. Deleted by No. 12 of 2001 s. 44.]

Division 2 — Share capital and funds

53. Share capital

- (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).
- [(4) deleted]*
- (5) The rules of a 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.
- [(6) deleted]*
- (7) The liability of a member of a society in respect of a share on which no loan has been made shall be limited to the amount (if any) in arrears in respect of that share.
- (8) The liability of a member of a society in respect of a share on which a loan has been made shall be limited to the amount

payable under any mortgage or other security by which that loan is secured.

[(9)-(11) deleted]

(12) A share may be held by 2 or more persons jointly.

[Section 53 amended by No. 108 of 1984 s. 25; No. 120 of 1987 s. 22; No. 12 of 2001 s. 28 and 44.]

[53A. Deleted by No. 12 of 2001 s. 44.]

54. Case where shares are held jointly

(1) Subject to the rules of a society, where a share in a society is held jointly, any notice or other document may be given or sent by the society to the joint holders by being given or sent to the primary joint holder.

(2) For the purposes —

(a) of determining who is qualified to vote on a resolution at a meeting of a society; and

[(b) deleted]

(c) of determining the number or proportion of any members required to give effect to any provision of this Act or the rules of a society,

a share shall be treated as being held by the primary joint holder alone.

(3) For the purpose of this section, the primary joint holder of a share in a society is the member whose name appears first in the register of members of the society.

(4) The joint holders of a share in a society shall be entitled to choose the order in which they are named in the register of shares but failing any such choice, the society may enter their names in such order as it thinks fit.

[Section 54 amended by No. 12 of 2001 s. 29.]

55. Charge and set off

A society shall, in respect of any debt due from the member or past member of the society, have a charge upon the share of any member of the society, and on the credit balance of any member, or any past member, and upon any dividend, interest, bonus or rebate payable to a member or past member of the society and may set off any such sum payable to a member or past member against the debt.

[Section 55 amended by No. 12 of 2001 s. 30.]

56. Enforcement of charge

- (1) The charge created by section 55 may be enforced by the appropriation by the society of the share capital or other money subject to the charge.
- (2) Any share in respect of which the whole of the capital has been so appropriated shall be cancelled by the society.

[Section 56 amended by No. 12 of 2001 s. 45.]

Part VII — Management

Division 1 — Directors and officers

57. Board of directors

- (1) The business of a society shall be managed and controlled by a board of directors to be appointed and hold office, subject to this Act, in accordance with the rules of the society, and for that purpose the board, subject to this section, shall have and may exercise the powers of the society.
- (2) The powers of the board shall be subject to any restrictions imposed upon it by this Act, by the rules of the society, or by a resolution of a general meeting of the society.
- (3) The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.
- (4) A director of a society shall at all times act honestly and diligently in the discharge of the duties of his office.
- (5) A meeting of the board of directors of a society shall be held as often as may be necessary for properly conducting the business of the society and not more than 3 months after the last preceding meeting of the board.
- (6) A quorum at a meeting of the directors of a society shall be as prescribed by the rules of the society but shall not in any case be less than half the number of the directors.
- (7) A director shall not be removed from, or be required to vacate, his office by reason of any resolution, request or notice of the directors, or any of them, notwithstanding anything in the rules of the society.
- (8) A director may, if authorised to do so by the rules of the society, appoint a deputy to act in his place and a deputy, while so acting, shall be deemed to be a director of the society.

- (9) Every director of a society acting in the business or operations of the society in accordance with this Act and the rules of the society or a resolution duly passed by the board of the society shall be the agent of the society for all purposes that are within the objects of the society.

[Section 57 amended by No. 12 of 2001 s. 31.]

58. Age limit for directors

- (1) A person who is under 21 years of age is not to be appointed as a director of a society.

[(2)-(6) deleted]

- (7) Notwithstanding any other provision of this Act or anything contained in the rules of a society, a person shall not be appointed a director of a society for life, for an indefinite term or for a term exceeding 5 years, but nothing in this subsection renders a person whose term of office as director expires or determines, ineligible for re-appointment.
- (8) The rules of a society must not specify an age at which a person becomes —
- (a) ineligible for appointment as a director; or
 - (b) disqualified from holding office as a director,
- by reason of the person having reached a maximum specified age.

[Section 58 amended by No. 108 of 1984 s. 26; No. 42 of 1997 s. 8.]

59. Appointment of directors

- (1) Subject to subsection (2), a society shall not have less than 5 directors.
- (2) A society may, with the approval of the Registrar, have less than 5 but shall not have less than 3 directors.

- (3) No person shall be eligible to be appointed a director if that person has been convicted —
- (a) upon indictment of any offence in connection with the promotion, formation or management of a body corporate;
 - (b) of any offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding 3 months;
 - (c) of any offence under —
 - (i) section 108, 229, 555 or 556 of the *Companies (Western Australia) Code*, section 44 of the *Companies (Acquisition of Shares) (Western Australia) Code* or section 129 of the *Securities Industry (Western Australia) Code*;
 - (ii) any provision of an equivalent law of another State or of a Territory of the Commonwealth that corresponds with any of the provisions in subparagraph (i);
 - (iii) any provision of a law of the State, of another State or of a Territory of the Commonwealth that was in effect before the provisions in subparagraph (i) and that corresponds with any of the provisions in subparagraph (i);
 - (iv) any provision of the Corporations Law that corresponds with any of the provisions in subparagraph (i); or
 - (v) any provision of the Corporations Act that corresponds with any of the provisions in subparagraph (i);
 - (ca) of any offence under section 333(3) of the *Companies Act 1961* as enacted before 25 November 1969, or under any of the corresponding provisions of the equivalent law of another State or Territory of the Commonwealth;
or

(d) of any prescribed offence,

or if he is a bankrupt or insolvent debtor, is bound by a composition in favour of his creditors, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors.

(4) The office of a director shall become vacant in such circumstances, if any, as may be prescribed by the rules of the society, and in any event shall become vacant where the director —

- (a) absents himself from 3 consecutive ordinary meetings of the board without having obtained leave of absence from that board;
- (b) becomes a bankrupt or insolvent debtor, or bound by a composition in favour of his creditors or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (c) is convicted of any offence referred to in subsection (3);
- (d) through mental or physical infirmity or sickness, is unable satisfactorily to carry out the duties and perform the functions of the office;
- (e) tenders to the board resignation from the office by notice in writing signed by him;
- (f) fails to pay any money due by him to the society within 2 months after the same becomes so due;
- (g) ceases to be a member of the society; or
- (h) dies,

and any vacancy so occurring shall be filled within 60 days and otherwise as prescribed by the rules of the society.

(4a) Where a society has less than 5 directors, or less than the number of directors that the Registrar has approved under subsection (2), the Registrar may appoint as a director such person or persons as he thinks fit.

- (4b) The duty to fill a vacancy in the office of a director within 60 days under subsection (4) ceases once the Registrar has made an appointment under subsection (4a).
- (5) The board of directors of a society shall, in accordance with the rules of the society, elect one of the directors to be the chairman of the board, and any chairman so appointed shall hold office, retire and be liable to be removed in accordance with those rules.
- (6) A majority of the directors of a society must reside permanently in the State.
- (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.
- (8) Where a change occurs in the composition of the board of a society, the society shall cause full particulars thereof to be given in writing to the Registrar within 14 days of the change.
- (9) Any provision, whether contained in the rules of a society or in any contract with a society or otherwise, for exempting any officer or auditor of the society from, or indemnifying him against, any liability that 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 society, is void.

[Section 59 amended by No. 10 of 1982 s. 28; No. 108 of 1984 s. 27; No. 10 of 2001 s. 100; No. 12 of 2001 s. 32; No. 17 of 2005 s. 16.]

60. Disclosure of interest by directors

- (1) Subject to this section, a director of a society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society 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.

- (2) The requirements of subsection (1) do not apply in any case where the interest of a director of a society consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the society if the interest of the director may properly be regarded as not being a material interest.
- (3) A director of a society 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 society, 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 society who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests 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.

- (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 society 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 society or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.
- (9) A director shall not vote on any question in which he has a direct or indirect pecuniary interest otherwise than in common with the other members of the society, and, in the event of his so voting, his vote shall not be valid or counted.

[Section 60 amended by No. 108 of 1984 s. 28; No. 78 of 1995 s. 147.]

61. Advances of money to officers and fees of directors

- (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.

- (3) A director is entitled to be paid such fees as are fixed by a general meeting of the society but not exceeding such maximum amounts as may be prescribed by the regulations.
- (4) For the purposes of this section and of sections 60 and 62, anything done by a proprietary company within the meaning of the Corporations Act 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 61 amended by No. 10 of 1982 s. 28; No. 108 of 1984 s. 29; No. 120 of 1987 s. 25; No. 10 of 2001 s. 101; No. 12 of 2001 s. 33.]

62. Director not to sell land to member, etc.

Except where specifically authorised by a resolution of the board, no director, or other officer of the society, shall —

- (a) sell any land (not being land on which his ordinary place of residence is erected), or act as agent for the sale of any land, to a member of the society who proposes to pay for that land, either in whole or in part, out of an advance made by the society;
- (b) undertake the erection, or act as agent in respect of the erection, of any dwelling-house for a member of the society who proposes to pay for such erection, either in whole or in part, out of an advance made by the society; or
- (c) accept as payment in whole or in part of any money due to him by a member of the society all or part of any advance made to that member by the society.

[Section 62 amended by No. 108 of 1984 s. 30; No. 12 of 2001 s. 45.]

Division 2 — Meetings of members of a society

63. Meetings

- (1) The annual general meeting of a society shall be held within 3 months after the close of the society's financial year, or within such further time as may be allowed by the Registrar.
- (2) Any other meetings of a society shall be held, or may be called, as prescribed by the rules of a society.
- (3) At any meeting of a society, no business shall be transacted unless a quorum of members, as prescribed by the rules of the society, is present at the time the meeting is considering that business.
- (4) The rules of a society shall prescribe —
 - (a) the method of giving notice of any meeting of the society;
 - (b) all matters relating to voting at any meeting of the society, including the voting rights of members, the entitlement to vote by proxy and the right of the chairman to exercise a casting vote.
- (5) All meetings of a society shall, unless the Registrar otherwise approves, be held in the registered office of the society.
- (6) Subject to subsection (7), not less than 7 days notice shall be given of every meeting of a society.
- (7) Not less than 14 days' notice shall be given of a meeting of a society called for the purpose of passing a special resolution.
- (8) Notice of a meeting of a society may be given by advertisement in the form and manner prescribed.

[Section 63 amended by No. 108 of 1984 s. 31.]

64. Special resolution

- (1) For the purposes of this Act, a special resolution 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.
- (2) Unless a count of votes is demanded, a declaration by the chairman of the meeting that a resolution has been carried by a specified majority shall be conclusive evidence of the fact.
- (3) A society shall, within 28 days of a meeting at which a special resolution has been passed, submit the resolution to the Registrar for registration.
- (4) A special resolution shall not have any effect unless and until registered.

[Section 64 amended by No. 120 of 1987 s. 26.]

Division 3 — Records, accounts and audit

[64A, 64B. Deleted by No. 12 of 2001 s. 44.]

65. Accounts, returns, audit, etc.

- (1) Every society shall —
 - (a) cause to be kept such books of account with respect to its transactions and its assets and liabilities as are necessary to give a true and fair view of the state of the affairs of the society and to explain its transactions;
 - (b) establish and maintain a system of control and inspection of its books of account and a system for supervising its cash holdings and all receipts and remittances; and
 - (c) establish and maintain a system to ensure the safe custody of all documents of title and securities belonging to the society, and of the documents of title and deeds relating to property mortgaged to the society.

- (1a) A society shall each month ensure that provision is made in accordance with subsections (1b) and (1c) for contingent liabilities for loss in its books of account.
- (1b) Subject to subsections (1c) and (1e), the provision required by subsection (1a) to be made in respect of money advanced by the society on terms requiring payments to be made to the society 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 3 months or more 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 money advanced and any interest in respect thereof less any amount paid to the society in reduction of that amount;
 - (b) more than one month, is an amount equal to 2½%, or such other percentage as the Registrar may direct, of the amount of the advances of money approved.
- (1c) Where money has been advanced by the society and any amount appears to the board or the auditors of the society to be unlikely to be recoverable, the provisions required by subsection (1a) to be made in respect of that advance is an amount equal to the whole of the amount considered to be unrecoverable.

[(1d) deleted]

- (1e) Provision is required by subsection (1a) to be made in respect of any advance of money 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 society 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*² of the Commonwealth or any body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.
- (2) The directors of every society shall lay before the society at the annual general meeting —
- (a) a revenue and appropriation account for the last financial year ending before the date of the annual general meeting; and
 - (b) a balance sheet as at the end of that financial year.
- (3) Every balance sheet of a society shall give a true and fair view of the state of the affairs of the society as at the end of its financial year, and every revenue and appropriation account of a society shall give a true and fair view of the income and expenditure of the society for the financial year.
- (4) Without limiting the operation of any other provision of this Act —
- (a) every balance sheet and every revenue and appropriation account of a society shall be in the prescribed form;
 - (b) there shall be included in every balance sheet and every revenue and appropriation account of a society such particulars as are prescribed; and

- (c) a valuation of real property shown on a balance sheet of a society at other than cost to that society shall be certified as correct by an independent valuer.
- (5) Every balance sheet of a society shall be signed on behalf of the board of directors of the society by 2 of the directors and by the manager or secretary of the society, and, unless a balance sheet has been signed as required by this subsection, neither it nor any copy thereof or extract therefrom shall be issued, circulated or published.
- (6) The revenue and appropriation account shall be annexed to the balance sheet, and the auditors' report shall be attached to that balance sheet, and the revenue and appropriation account so annexed shall be approved by the board of directors of the society before the balance sheet is signed on their behalf.
- (7) No copy of a balance sheet of a society shall be issued, circulated or published unless —
 - (a) there is annexed thereto a copy of the revenue and appropriation account; and
 - (b) there is attached thereto a copy of the auditors' report.
- (8) The directors of a society shall prepare for submission at each annual general meeting of the society a report on the state of the affairs of the society.
- (9) Every report prepared pursuant to subsection (8) shall include a statement setting out, for the financial year last ending before the annual general meeting at which the directors' report is submitted —
 - (a) the total amount advanced during the financial year by the society on the security of freehold or leasehold property, and the total number of mortgages executed in favour of the society during that year;
 - (b) the total amount of money received during the financial year by way of investments in, or loans to, the society, and the total amount of money paid out by the society

by way of repayment of the principal value of shares in the society, or by way of repayment of sums lent to the society;

- (c) the number of cases in which, at the end of the financial year, a mortgagor was in arrears with payments due to the society under his mortgage on account of principal and interest to an amount which exceeded the amount which fell due under the mortgage on account of principal and interest in that financial year; and
 - (d) the total of the amounts of the arrears at the end of the financial year in all cases referred to in paragraph (c).
- (10) The directors' report shall be attached to the balance sheet and no copy of a balance sheet shall be issued unless there is attached thereto a copy of the directors' report.
- (11) A copy of every balance sheet, including every document required to be annexed to it, which is to be laid before a society at the annual general meeting, together with a copy of the auditors' report and of the directors' report, shall, not less than 14 days before the date of the meeting, be sent to the Registrar, and be published in the prescribed manner.
- (12) Every society shall have at its office and open at all reasonable hours to inspection without fee a copy of the last balance sheet and revenue and appropriation account, together with the reports of the directors and the auditors.
- (13) The auditors of a society shall make a report to the members on the accounts examined by them, and on every balance sheet and every revenue and appropriation account laid before the society at the annual general meeting during their tenure of office.
- (14) The auditors' report shall state whether the balance sheet and revenue and appropriation account are properly drawn up in accordance with the requirements of this Act, and whether, in the opinion of the auditors, they give a true and fair view —

- (a) in the case of the balance sheet, of the state of the society's affairs as at the end of its financial year; and
- (b) in the case of the revenue and appropriation account, of the income and expenditure of the society for its financial year,

and shall also state whether the statement required to be prepared pursuant to subsection (9) gives a true and fair view of the matters required to be included therein.

- (15) It is the duty of the auditors of a society, in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters —
- (a) whether the society has kept proper books of account;
 - (b) whether the society has maintained a satisfactory system of control over its transactions and records, and, in particular, whether the requirements of subsection (1)(b) and (c) have been complied with; and
 - (c) whether the balance sheet and revenue and appropriation account are in agreement with the books of account and records of the society,

and if the auditors are of the opinion that the society has failed to keep proper books of account or to maintain a satisfactory system of control over its transactions and records, or if the balance sheet and revenue and appropriation account are not in agreement with the books of account and records of the society, the auditors shall state that fact in their report.

- (16) Where an auditor, in the performance of his duties as auditor of a society, 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 society.
- (17) In subsection (16), **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 society 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 society.
- (18) Every auditor of a society —
 - (a) shall have a right of access at all times to the books, accounts, records and vouchers of the society, and to all other documents relating to its affairs, including the documents of title and deeds relating to property mortgaged to the society; and
 - (b) shall be entitled to require from the officers of the society such information and explanations as he thinks necessary for the performance of the duties of the auditors.
- (19) If the auditors fail to obtain all the information and explanations which to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (20) The auditors of a society are entitled —
 - (a) to attend any general meeting of the society, and to receive all notices of and other communications relating to any general meeting which any member of the society is entitled to receive; and
 - (b) to be heard at any meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (21) Every society shall prepare an annual return relating to the affairs of the society for the previous financial year, in such form and containing such information as are prescribed, and each annual return shall be signed by 2 of the directors and by the manager or secretary of the society.

- (22) A copy of every annual return shall be lodged with the Registrar within 3 months after the close of the financial year to which it relates or within such further time as the Registrar allows.
- (23) The financial year of a society shall end on 30 April, but this subsection does not apply to any society carrying on business at the date of the coming into operation of this Act, the financial year of which ends on a date other than that specified in this subsection.
- (24) Where the Registrar is satisfied that it is inappropriate to require a society to comply with a provision of this section, he may, by notice in writing, and with the approval of the Minister, exempt the society from compliance with that provision but may grant the exemption upon such conditions as the Minister approves.
- (25) Any exemption granted under subsection (24) —
- (a) may be granted to a particular society or to all societies; and
 - (b) may be revoked at any time by the Registrar with the consent of the Minister.

[Section 65 amended by No. 108 of 1984 s. 33; No. 120 of 1987 s. 28; No. 12 of 2001 s. 34 and 44.]

66. Auditors of societies

- (1) The provisions of this section apply to a society despite anything to the contrary in the rules of the society.
- (2) Every society shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- (3) Notwithstanding the provisions of subsection (2), the directors of a society shall within 30 days from the date of registration of the society or from the date of any casual vacancy in the office of auditor, appoint one or more auditors who shall retire at the conclusion of the society's first annual general meeting following his or their appointment.

- (4) The auditor of the society shall be a registered company auditor under the provisions of the Corporations Act.
- (5) A person who is —
- (a) indebted in any amount to a society; or
 - (b) a director of, an employee of, or a partner of an employee of, a society,

is not capable of being an auditor of the society for the purposes of this Act.

[Section 66 amended by No. 10 of 1982 s. 28; No. 108 of 1984 s. 34; No. 10 of 2001 s. 102; No. 12 of 2001 s. 35.]

[67, 68. Deleted by No. 12 of 2001 s. 44.]

69. Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a society are payable by the society.

Part VIII — External administration and winding up

[Heading amended by No. 10 of 2001 s. 103.]

70. Receivers etc.

- (1) A housing society is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.2 (Receivers, and other controllers, of property of corporations) of the Corporations Act.
- (2) The following modifications to the text of Part 5.2 of the Corporations Act apply for the purposes of subsection (1) —
 - (a) a reference to a company is to be read as a reference to a housing society;
 - (b) a reference to ASIC is to be read as a reference to the Registrar;
 - (c) a reference to the Court is to be read as a reference to the Supreme Court.

[Section 70 inserted by No. 10 of 2001 s. 104.]

70A. Appointment of administrator of society

- (1) Subject to this section, the Registrar may with the approval of the Minister, appoint an administrator to conduct the affairs of a society and may revoke any such appointment.
- (2) The Registrar shall not appoint an administrator unless he certifies as would be provided by section 71(3) and (4) if section 71 were amended —
 - (a) by omitting from subsection (3) “In the case of a winding up upon a certificate of the Registrar, the society may be wound up if” and by inserting instead “An administrator may not be appointed under section 70A(1) unless”; and
 - (b) by omitting from subsection (3)(g) “the society should be wound up” and by inserting instead “an administrator

should be appointed to conduct the affairs of the society”.

- (3) Upon the appointment of an administrator of a society —
 - (a) the directors of the society cease to hold office;
 - (b) all contracts of employment with the society are terminated; and
 - (c) all contracts for the provision of secretarial or administrative services for the society are terminated.
- (4) An administrator of a society has the powers, authorities, duties and functions of the board of the society and, except as provided by subsection (5), no appointment of a director of the society may be made while the administrator is in office.
- (5) Before revoking the appointment of an administrator of a society, the Registrar shall, except in the case of a revocation under section 70B(2) —
 - (a) ensure that directors of the society have been elected in accordance with the rules of the society at a meeting convened by the administrator in accordance with those rules; or
 - (b) appoint directors of the society.
- (6) Directors elected under subsection (5)(a) or appointed under subsection (5)(b) —
 - (a) take office upon revocation of the appointment of the administrator; and
 - (b) in the case of appointed directors, hold office until the annual general meeting of the society that next succeeds revocation of that appointment.
- (7) The expenses of and incidental to the conduct of the affairs of a society by an administrator are payable from the funds of the society.

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- (8) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (7) and shall be fixed by the Registrar.
- (9) 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 (7) and is recoverable as a debt due to the Crown.
- (10) An administrator of a society is not liable for any loss sustained by the society during his term of office 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 regulations or the rules of the society.
- (11) The Registrar is not liable for any loss sustained by a society during the term of office of an administrator, whether or not the administrator is so liable.

[Section 70A inserted by No. 108 of 1984 s. 36.]

70B. Advisory Committee may make certain report to Minister

- (1) Where an administrator of a society is appointed, 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 Minister with respect to the appointment.
- (2) The Registrar shall, if the Minister so directs after considering representations under subsection (1) with respect to a society, revoke the appointment of an administrator of the society, and a director who held office immediately before appointment of the administrator resumes that office upon revocation of the appointment.

[Section 70B inserted by No. 108 of 1984 s. 36; amended by No. 120 of 1987 s. 29.]

71. Winding up of societies

- (1) A society may be wound up voluntarily or by the court or upon a certificate of the Registrar.
- (2) The winding up of a housing society, either voluntarily or by the court, is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.4 to 5.6, 5.7B and 5.8 (winding up) of the Corporations Act.
- (2a) The following modifications to the text of Parts 5.4 to 5.6, 5.7B and 5.8 of the Corporations Act apply for the purposes of subsection (2) —
 - (a) a reference to a company is to be read as a reference to a housing society;
 - (b) a reference to ASIC is to be read as a reference to the Registrar;
 - (c) a reference to the Court is to be read as a reference to the Supreme Court;
 - (d) a reference to a liquidator includes a reference to the person appointed to be the liquidator under section 72.
- (3) In the case of a winding up upon a certificate of the Registrar, the society may be wound up if the Registrar certifies —
 - (a) that the number of members of the society is reduced to less than 20 or the prescribed number;
 - (b) that the society has not commenced business within a period of 6 months of its registration or has suspended business for a period of more than 6 months;
 - (c) that the registration of the society has been obtained by mistake or fraud;
 - [(d) deleted]*
 - (e) that the society has, after notice by the Registrar of any breach or non-compliance with this Act or the rules of the society, failed, within the time referred to in the

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notice, to remedy the breach or has committed any further breach specified in the notice; or

[(f) deleted]

(g) following an investigation under section 7(1)(a) or an inquiry under section 92(1)(b) into the affairs of a society or the working and financial condition of a society, that in the interest of members or creditors of the society, the society should be wound up.

- (4) The Registrar shall not grant a certificate under subsection (3)(c), (e) or (g) unless the Minister consents to the issue of the certificate.
- (5) Where the Registrar grants a certificate under this section he may appoint a person to be the liquidator of the society, and the liquidator shall give such security as may be prescribed and be entitled to receive such fees as shall be fixed by the Registrar upon the advice of the Auditor General.
- (6) The Registrar shall, within 10 days after appointing a liquidator of a society, give notice of that appointment by notice published in the *Gazette*.
- (7) A winding up on the certificate of the Registrar —
- (a) shall be deemed to commence on the day that the certificate is given; and
 - (b) shall be carried out in the prescribed manner.

[Section 71 amended by No. 10 of 1982 s. 28; No. 108 of 1984 s. 37; No. 120 of 1987 s. 30; No. 10 of 2001 s. 105; No. 12 of 2001 s. 36 and 44; No. 20 of 2003 s. 31.]

72. Liquidator

Where a society is being wound up voluntarily and a vacancy occurs in the office of liquidator that, in the opinion of the Registrar, is unlikely to be filled as provided for in Part 5.5 of the Corporations Act (applying for the purposes of section 71(2)) the Registrar may appoint a person to be liquidator.

[Section 72 amended by No. 10 of 1982 s. 28; No. 10 of 2001 s. 106.]

73. Remuneration of liquidator

The remuneration paid to the liquidator of a society wound up voluntarily shall not exceed the amount fixed by the Registrar upon the advice of the Auditor General.

74. Cancellation

As soon as may be practicable after a society is dissolved, the Registrar shall cancel the registration of the society.

Part IX — Evidence and offences

Division 1 — Evidence

75. Evidentiary provisions

- (1) A document purporting to be a certificate of incorporation of a society granted by the Registrar under this Act or the repealed Act shall be accepted in any legal proceedings as proof of the incorporation and registration of the society in the absence of proof to the contrary.
- (2) A document purporting to be a copy of the rules of a society and to be certified by the Registrar as a true copy of the rules of that society shall be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of those rules.
- (3) A document purporting to be a copy of, or extract from, a record of a society, and to be certified to be a true copy of, or extract from, such a record by the secretary of the society shall be accepted in any legal proceedings to be a true copy of, or extract from, that record in the absence of proof to the contrary.
- (4) A document purporting to bear the common seal of a society shall be accepted in any legal proceedings as a document that bears the common seal, duly affixed, of that society.
- (5) For the purposes of this section, and a legal proceeding in relation to —
 - (a) a right or liability acquired, accrued or incurred; or
 - (b) a thing done,

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

[Section 75 amended by No. 12 of 2001 s. 37.]

Division 2 — Offences

76. Trading etc. as a society

- (1) Subject to this section, no person or body of persons, whether incorporated or unincorporated, other than a society registered under this Act shall —
- (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;
 - (b) trade or carry on business as a housing society; or
 - (c) in any manner hold out that its trade or business is that of a housing society.

Penalty: \$1 000.

Default penalty: \$200.

- (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.
- (3) No body corporate, society, association, partnership or body which consists of 10 or more persons and is capable of registration or incorporation under this Act, or is intended to trade or carry on business as a housing society shall after the coming into operation of this Act be formed or operate or carry on business in this State, unless it is registered and continues to be registered as a society and authorised to operate as such under and by virtue of this Act.
- (4) A body corporate, society, association, partnership or body of persons formed, or intended to be formed or incorporated, for the purposes of trading or carrying on business as a housing

society shall not be registered under the provisions of any Act other than this Act.

- (5) Subsection (1)(a) shall not apply to Australian Building Societies Share and Deposit Insurance Corporation Limited.

[Section 76 amended by No. 108 of 1984 s. 38; No. 12 of 2001 s. 38.]

[77. Deleted by No. 12 of 2001 s. 44.]

78. Certain acts prohibited in relation to loans

- (1) Subject to subsection (3), if any person 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 an advance of money from any society he shall, unless he is an officer or employee of the society, be guilty of an offence and shall be liable to a penalty not exceeding \$500.
- (2) Any sum received in contravention of this section may be recovered by the person who paid it from the person by whom it was received in an action for debt in any court of competent jurisdiction.
- (3) Notwithstanding subsection (1), a person who is a licensed finance broker under the *Finance Brokers Control Act 1975* may receive a commission, fee or reward as a consideration or charge for procuring or obtaining an advance from a society upon security of a mortgage over land on which is erected a dwelling-house where the advance is for a purpose other than the financing of the purchase of the ordinary place of residence of the person to whom the advance is to be provided.

[Section 78 amended by No. 108 of 1984 s. 40; No. 120 of 1987 s. 32; No. 12 of 2001 s. 39.]

79. Seeking of commissions by officers of societies

Notwithstanding the provisions of section 78 —

- (a) if any officer or employee of a society accepts any commission, fee or reward (whether pecuniary or otherwise) from any person for or in connection with a transaction with the society, he shall be guilty of an offence and liable to a penalty not exceeding \$1 000; and
- (b) every officer or employee who accepts any commission, fee or reward contrary to this section shall further be liable to make good to the society the value or amount of the commission, fee or reward and the sum of that value or amount may be recovered by the society from him as a debt due to it in any court of competent jurisdiction.

[Section 79 amended by No. 50 of 2003 s. 72(3).]

80. Fidelity guarantee

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

81. Officers to account and deliver up books, etc., on demand

- (1) Every person who is or has been an officer or employee of a society, his executors or administrators, shall upon demand made or notice in writing given or left at his last or usual place of residence give to the board of the society an account of all money received by him from or on account of the society, to be examined and allowed or disallowed by the board, and shall, on the like demand or notice, pay over all the money remaining in his or their hands, and deliver all securities and effects, books, papers, and property of the society in his or their hands or custody, to such person as the board shall appoint.

- (2) In case of any neglect or refusal to deliver such account, or to pay over such money, or to deliver such securities and effects, books, papers, and property as required by subsection (1), the society may sue upon the security given by or in respect of the officer or person concerned, or may apply to the court by motion either upon notice or *ex parte* as the court may think fit, and the court may proceed thereupon in a summary way, and make such order thereon, and as to the costs of such application, as to the court in its discretion seems just, which order shall be final and conclusive.

[Section 81 amended by No. 12 of 2001 s. 45.]

82. False statements

Any society which or person who makes or causes to be made any false entry or statement in a document which —

- (a) is required by or under this Act to be made or kept, or to be sent to the Registrar; or
- (b) is required to be made or kept pursuant to the rules of the society,

commits an offence.

Penalty: \$1 000.

83. Default by society

- (1) If a society contravenes or fails to comply with —
- (a) any provision of this Act that does not provide a penalty for such contravention or failure to comply; or
 - (b) any rule of the society,
- it shall be guilty of an offence and liable to a penalty not exceeding \$500.
- (2) If a society refuses or neglects to furnish any return or information lawfully required by the Registrar or by any other person it shall be guilty of an offence and liable to a penalty not exceeding \$1 000.

84. Default by society extended to directors and officers

- (1) Where a society is guilty of an offence against this Act, every officer of that society shall be guilty of the same offence unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.
- (2) Where a society is guilty of an offence against this Act and, irrespective of whether the offence was committed with or without the knowledge of a particular officer of the society, it is proved that that officer ought to have had such knowledge having regard to the nature of his functions as such officer and to all the circumstances of the case, that officer is also guilty of an offence and liable to the same penalty as applied in respect of the offence of which the society is guilty.

[Section 84 amended by No. 120 of 1987 s. 33.]

85. Proceedings

Proceedings for an offence against this Act shall be disposed of summarily.

86. Saving provision

If a society contravenes or fails to comply with any provision of this Act or the rules of the society, the rights and liabilities of the society, or any other person, under this Act or any other Act or law, shall not be, except where the contrary is expressly provided by this Act or those rules, affected or prejudiced thereby.

87. Appeals and reviews of decisions of Registrar

- (1) Any society or person aggrieved by a decision made by the Registrar under this Act may request the Registrar to review his decision and the Registrar shall afford the society or person an opportunity to appear before him and make submissions and give evidence to the Registrar in relation to the matter.

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- (2) Subject to this Act, the Registrar may confirm, reverse or vary his decision and where the society or person concerned is still aggrieved it or he may apply to the State Administrative Tribunal for a review of the decision of the Registrar.
- (3) Where by this Act any act or decision of the Registrar is required to be made or given with the approval of the Minister the Registrar shall not pursuant to subsection (2) reverse or vary such a decision unless the Minister also approves of that reversal of variation.
- (4) In this section a reference to any act or decision of the Registrar shall be construed as extending to any act or decision of an assistant or deputy Registrar or delegate of the Registrar exercising a power or function of the Registrar under this Act on behalf of the Registrar.

[Section 87 amended by No. 108 of 1984 s. 41; No. 12 of 2001 s. 40; No. 55 of 2004 s. 520.]

Part X — Miscellaneous

88. Advertisement by societies

- (1) No person shall, by advertisement in any form, seek members or capital in or for a proposed society unless the contents of the advertisement have first been approved in writing by the Registrar.
- (2) A society registered after the coming into operation of this Act shall not commence to advertise until it has first obtained the written approval of the Registrar.
- (3) A society shall, upon receiving a direction in writing to that effect by the Registrar, discontinue the publication or issue of any advertisement which in the opinion of the Registrar —
 - (a) is not a correct statement of fact; or
 - (b) is not in the public interest.

[Section 88 amended by No. 12 of 2001 s. 41.]

89. Certain insurance policies to be forwarded to members

Where, pursuant to an agreement with a member, a society procures the issue of a policy of insurance over any property that provides security for a loan to that member, the society shall, within one month after the date of issue of the policy, forward to the member —

- (a) the policy, or a copy thereof; or
- (b) a statement of the risks covered by the policy.

90. Associated charges

- (1) The Registrar may, from time to time with the approval of the Minister, by notice published in the *Gazette* —
 - (a) fix the maximum charges of any kind which may be imposed or demanded by societies directly or indirectly in connection with or incidentally to advancing money;

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- (b) prohibit the imposing or demanding by societies of any charge of a kind referred to in paragraph (a); and
 - (c) vary or revoke any notice published under this subsection.
- (2) A society shall not impose or demand directly or indirectly any charge in contravention of a notice for the time being in force under this section.
- (3) In this section *charge of any kind* includes additional interest expressed to be payable upon the early discharge of an advance, but does not otherwise include interest.

[Section 90 amended by No. 120 of 1987 s. 34; No. 12 of 2001 s. 42.]

91. Management contracts

- (1) In this section *management contract* means a contract or other arrangement to which a society 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 societies is performed for the society by a person or persons —
- (a) who are not the members of the management or staff of the society; or
 - (b) who are members of the management or staff of the society but are not performing the duties or work in that capacity.
- (2) A society 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.

92. Special meeting and inquiry

- (1) The Registrar shall, on the application of a majority of the board or of not less than one-third of the members, or may, of his own volition but with the approval of the Minister —
- (a) call a special meeting of a society; or

- (b) hold an inquiry into the affairs including the working and financial condition of a society.
- (2) An application under subsection (1) shall be supported by such evidence as the Registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made in good faith.
- (3) Such notice of the application shall be given to the society as the Registrar directs.
- (4) The applicants shall give such security for the expenses of the meeting or inquiry as the Registrar directs.
- (5) The Registrar may direct at what time and place the meeting or inquiry is to be held and what matters are to be discussed and determined and shall give such notice to members of the holding of the meeting or inquiry as he deems fit, notwithstanding any provision in the rules of the society as to the giving of such notice.
- (6) A meeting held under this section shall have all the powers of a meeting called in accordance with the rules of a society and shall have power to appoint its own chairman, notwithstanding any rule of the society to the contrary.
- (7) The Registrar or any person nominated by him may attend and address a meeting held under this section.
- (8) All expenses of and incidental to the meeting or inquiry shall be defrayed by the applicants or out of the funds of the society or by any officer or member, or former officer or member, in such proportion as the Registrar directs and may be recovered as a debt in any court of competent jurisdiction.

[Section 92 amended by No. 120 of 1987 s. 35.]

[92A. Deleted by No. 12 of 2001 s. 44.]

93. Default penalties

- (1) Where in, or at the foot of, any section or part of a section there appears the expression “Default penalty”, it signifies that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act 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.
- (2) Where any offence is committed by a person by reason of his failure to comply with any provisions 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 (1) shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

94. Report of Registrar

The Registrar shall as soon as practicable after 30 June in each year make to the Minister a report of his proceedings and the principal matters transacted by him under this Act during the year ending that date and the operation of the Act generally, and the Minister shall lay the report on the table of each House of Parliament within 7 sitting days of such House next following his receipt of the report.

95. Regulations

- (1) The Governor may make all such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) those regulations may —
 - (a) prescribe any form for the purposes of this Act;

- (b) prescribe, and provide for the recovery of, fees in respect of any application under this Act;
 - (c) require societies, or societies of a prescribed class, to keep their offices open to the public throughout prescribed periods;
 - (d) prescribe penalties not exceeding \$200 in any case for breach of, or non-compliance with, any regulation.
- (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 provision of the regulations either wholly or to such extent as is specified.

[Part XI deleted by No. 12 of 2001 s. 44.]

Notes

¹ This is a compilation of the *Housing Societies Act 1976* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Building Societies Act 1976</i> ³	47 of 1976	10 Sep 1976	4 Mar 1977 (see s. 2 and <i>Gazette</i> 4 Mar 1977 p. 651)
<i>Building Societies Act Amendment Act 1977</i>	20 of 1977	27 Oct 1977	Act other than s. 3(b) and (d): 27 Oct 1977 (see s. 2(1)); s. 3(b) and (d): 25 Nov 1977 (see s. 2(2) and <i>Gazette</i> 25 Nov 1977 p. 4347)
<i>Acts Amendment (Land Valuers) Act 1978 Pt. III</i>	56 of 1978	6 Sep 1978	1 Jul 1979 (see s. 2 and <i>Gazette</i> 22 Jun 1979 p. 1677)
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Building Societies Amendment Act 1982</i>	71 of 1982	29 Oct 1982	29 Oct 1982
<i>Building Societies Amendment Act 1984</i>	108 of 1984	19 Dec 1984	15 Mar 1985 (see s. 2 and <i>Gazette</i> 15 Mar 1985 p. 931)
<i>Acts Amendment (Consumer Affairs) Act 1985 Pt. III</i>	1 of 1985	8 Mar 1985	Deemed operative 6 Apr 1983 (see s. 2(1))
Reprint of the <i>Building Societies Act 1976</i> approved 14 Apr 1986 (includes amendments listed above)			
<i>Acts Amendment (Building Societies and Credit Unions) Act 1987 Pt. II</i>	120 of 1987	24 Dec 1987	s. 28(a): 1 Jul 1988 (see s. 2 and <i>Gazette</i> 31 Dec 1987 p. 4567); balance of Pt II: 1 Jan 1988 (see s. 2 and <i>Gazette</i> 31 Dec 1987 p. 4567)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)

Short title	Number and year	Assent	Commencement
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 62	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 7 ⁴	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 31 ⁵	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2(6) and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001</i> Pt. 1 and 2 ⁶	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
Reprint of the <i>Housing Societies Act 1976</i> as at 9 Nov 2001 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 11	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 72	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 64 ⁷	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Housing Societies Repeal</i>	17 of 2005	5 Oct 2005	5 Oct 2005 (see s. 2(1))

Short title	Number and year	Assent	Commencement
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Act 2005 s. 16

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Housing Societies Repeal Act 2005 s. 18</i> ⁸	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

² Repealed by the *Housing Loans Insurance Corporation (Sale of Assets and Abolition) Act 1990 s. 22* (Cwlth. Act No. 16 of 1991).

³ Now known as the *Housing Societies Act 1976*; short title changed (see note under s. 1).

⁴ The *Statutes (Repeals and Minor Amendments) Act 2000 s. 7(3) and (4)* read as follows:

“

(3) Anything of a continuing nature done or begun under the Act before the commencement of this section by, on behalf of or in relation to the Registrar of Co-operative and Financial Institutions continues to have the same status, operation and effect as if this section had not been enacted.

(4) In subsection (3) —
Registrar of Co-operative and Financial Institutions means the person holding or acting in the office of that name referred to in section 6(1) of the Act, as in force before the commencement of this section.

”

⁵ Part 11 of the *Corporations (Consequential Amendments) Act 2001* did not come into operation because the *Corporations Act 2001* of the Commonwealth came into operation after the *Building Societies Amendment Act 2001* came into operation (see s. 2(6)).

⁶ The *Building Societies Amendment Act 2001 s. 5(2)* reads as follows:

“

- (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*”.

”.

The *Building Societies Amendment Act 2001* s. 12(2) reads as follows:

“

- (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.

”.

⁷ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁸ On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 18 had not come into operation. It reads as follows:

“

18. *Housing Societies Act 1976* repealed

The *Housing Societies Act 1976* is repealed.

”.