

WESTERN AUSTRALIA

BUILDING SOCIETIES ACT 1976

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WESTERN AUSTRALIA

BUILDING SOCIETIES ACT 1976

AN ACT to consolidate and amend the law with respect to the formation, regulation and control of building societies, and for incidental and other purposes.

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Building Societies Act 1976*.¹

Commencement

2. This Act shall come into operation on a date to be fixed by proclamation.¹

[Section 3 repealed by No. 108 of 1984 s. 3.]

Repeal and savings

4. (1) The *Building Societies Act 1920-1970* is hereby repealed.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 - (a) all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed;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.

Interpretation

5. In this Act, unless inconsistent with the context or subject matter—

“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;

“Advisory Committee” means the Building Societies Advisory Committee constituted pursuant to the provisions of this Act;

“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;

“continuing credit arrangement” means an agreement whereby a permanent building society agrees with a member to provide credit to that member in respect of payment by the member to the permanent building society of amounts owing from time to time to the permanent building society in respect of—

- (a) cash (including cheques) supplied by the permanent building society to that member from time to time;

or

- (b) the satisfaction by the permanent building society of liabilities of the member to other persons in respect of payment for goods, services or cash (including cheques) supplied by those other persons to the member from time to time,

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

“director” means a member of the board of a society;

“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;

“permanent society” means a society which has not by its rules any fixed date, or certain event or result, when it shall terminate;

“Registrar” means the person holding the office of Registrar of Building Societies pursuant to the provisions of this Act, and includes the person appointed to act as Registrar during a vacancy in that office;

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

“section” means section of this Act;

“society” means—

- (a) a society formed and registered under this Act; and
- (b) a society which was registered under the repealed Act and which was in existence immediately prior to the coming into operation of this Act;

“Starr Bowkett society” means a society the rules of which provide—

- (a) for the determination of the society on the happening of a certain event or result specified in the rules of the society; and
- (b) for ascertaining, either solely or partly by ballot or the drawing of lots, the order in which advances are made to its members;

“subordinated loan” means a loan—

- (a) which is not secured by any charge or other security over the assets of a society;

(b) which ranks in priority of repayment after all other debts due to creditors of the society; and

(c) which is lodged with the society for a term of not less than 3 years;

“subsection” means a subsection of the section wherein the term is used;

“terminating society” means a society which by its rules is to terminate at a fixed date, or when a certain event or result specified in its rules is arrived at but does not include a Starr Bowkett society;

“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.

[Section 5 amended by No. 56 of 1978 s. 11; No. 108 of 1984 s. 4.]

PART II—ADMINISTRATION AND INSPECTIONS

Registrar, deputy registrars, etc.

6. (1) Subject to subsection (7), there may be appointed under and subject to the *Public Service Act 1978*², a Registrar of Building Societies to carry out the duties and functions vested by or under this Act in the Registrar.

(2) There may be appointed under and subject to the *Public Service Act 1978*², such deputy or assistant Registrars of Building Societies 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 authorized 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) The person holding the office of Registrar of Building Societies under the repealed Act immediately before the coming into operation of this Act shall, on the coming into operation of this Act, hold the office of Registrar.

(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.

Inspections

7. (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 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.

(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 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.]

Secrecy

8. (1) Subject to this section, the Registrar or any other person appointed or employed for the purposes of this Act or authorized to discharge any function for or on behalf of the Registrar under this Act shall not, except to the extent necessary to perform his official duties or discharge such a function, either directly or indirectly and whether before or after he ceases to be Registrar or to be so appointed, employed or authorized, make a record of or divulge or communicate to any person any information that is gained by or conveyed to him by reason of his being Registrar or being so appointed, employed or authorized, or make use of any such information for any purpose other than the discharge of his official duties or the discharge of that function.

Penalty: \$2 000 or imprisonment for one year, or both.

(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.

Office of Registrar, etc.

9. (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.

Valuers

10. The Registrar may—

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

Building Societies Advisory Committee

11. (1) For the purposes of this Act there shall be a committee to be known as the Building Societies Advisory Committee.

(2) The Advisory Committee shall consist of the Registrar, who shall also be Chairman of the Advisory Committee, and of 5 other members appointed by the Minister in writing, of whom—

- (a) 3 shall be persons each having experience in the conduct and management of a society or societies;
- (b) one shall be a person who has extensive financial knowledge or experience but is not a person who, or an employee of a person who, is carrying on a business which consists of or includes the making of loans for housing purposes; and
- (c) one shall be the Commissioner for Consumer Affairs within the meaning of the Consumer Affairs Act 1971 or an officer of the Public Service employed in the Department within the meaning of that Act nominated for appointment by the Commissioner.

(3) Any member appointed under subsection (2) (a), (b) or (c) shall, unless sooner removed from office for good cause by the Minister, hold office for such period not exceeding 3 years as is specified in the instrument of his appointment, but is eligible for re-appointment.

(4) The Minister may appoint a person to be the deputy of a member of the Advisory Committee, and any deputy has, at any meeting of the Advisory Committee at which he, but not the member for whom he is the deputy, is present, all the powers and functions of that member.

(5) The members of the Advisory Committee, including the deputies (other than any member or deputy who is an officer of the Public Service of the State) shall be paid such fees and allowances as are from time to time determined by the Governor.

(6) The Chairman may at any time convene a meeting of the Advisory Committee and at any meeting of the Advisory Committee—

- (a) 4 members constitute a quorum; and

- (b) subject to the regulations, the procedure to be followed shall be that from time to time determined by the Advisory Committee.

[Section 11 amended by No. 1 of 1985 s. 17.]

Functions of the Advisory Committee

12. The functions of the Advisory Committee are—

- (a) to submit recommendations to the Minister for the more effective operation of societies;
- (b) to make recommendations and submit proposals to the Minister from time to time with respect to the administration of this Act and the regulations and model rules under this Act;
- (c) to investigate and report to the Minister on such other matters relating to societies and the provision of funds for home finance as may be referred to it by the Minister;
- (ca) to make recommendations to the Minister with respect to the functions and powers of societies;
- (d) to advise the Registrar on any matters referred to it by him; and
- (e) to perform such other functions as may be prescribed.

[Section 12 amended by No. 108 of 1984 s. 6.]

PART III—SOCIETIES

Division 1—Objects of Societies

Objects

13. The objects of a society shall be—

- (a) to raise funds by subscription, or otherwise, as authorized by this Act; and
- (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 authorized by this Act and those rules.

Powers of a building society

13A. Subject to this Act, a building 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 authorized by this Act;
- (b) apply moneys raised in such ways as are authorized 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.

[Section 13A inserted by No. 108 of 1984 s. 7.]

Division 2—Formation and Registration

Formation of a society

14. (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 and may be formed as a permanent society or a terminating society.

(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 shares, they may proceed to elect the first directors of the society in accordance with the rules as so approved.

(5) No application for shares in a proposed society, made prior to the registration of that society, may be withdrawn, and every person who makes such an application shall, upon the registration of the society, be liable to pay to the society—

- (a) the value of the shares for which he applied; or
- (b) the value of the minimum number of shares for which a member of the society is entitled to subscribe,

whichever is the greater.

(6) The expenses of, and incidental to, the formation of the society may be paid out of the funds of the society.

Registration and incorporation, etc.

15. (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) two 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, and stating the number of shares for which each of those persons applied;
- (vi) in the case of an application for the registration of a permanent society, such evidence as the Registrar may require that the society will, upon registration, have available to it the funds referred to in subsection (3);
- (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) A permanent society shall not be registered under this Act unless it has a share capital of not less than \$2 000 000 which is subscribed on terms that do not permit repayment thereof before the expiration of 10 years after the day on which it is received by the society, without the consent of the Registrar.

(4) The Registrar shall refer each application for registration to the Advisory Committee and if the Registrar, after considering the application and any advice given in relation thereto by the Advisory Committee, 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.]

Receipt to operate as re-conveyance

16. (1) When all moneys intended to be secured by any mortgage or further charge given to a society have 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 moneys intended to be secured by the mortgage have not been fully paid or discharged, if the society is satisfied with the remaining security.

Division 3—Rules

Contents of rules

17. 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.

Effect of rules

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

Copies of rules

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

Alteration of rules

20. (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.

Power of Registrar to require modification of certain rules

21. (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.

Model rules

22. (1) The Governor may cause to be prepared and published in the *Gazette* model rules for societies registered or to be registered under this Act, and any society may by resolution adopt as its rules the whole or any portion of those model rules, with or without modification.

(2) Where a society is registered under this Act, then in so far as the rules lodged with the Registrar pursuant to the provisions of section 15 are not inconsistent with or do not exclude or modify the model rules in force at that time, the model rules shall so far as applicable be the rules of the society in the same manner and to the same extent as though contained in the rules so lodged.

(3) No amendment to the model rules shall apply to any society established prior to the coming into operation of the amendment, unless the society adopts by special resolution the amendment in its rules.

Division 4—Name and Office

Name

23. (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 "building 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.]

Office and service

24. (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.

Publication of name

25. (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—AMALGAMATIONS AND TRANSFERS OF ENGAGEMENTS

Societies may amalgamate

26. (1) Any—

- (a) 2 or more permanent societies;
- (b) 2 or more Starr Bowkett societies; or
- (c) 2 or more terminating societies,

may apply to be registered as an amalgamated society.

(2) No application shall be made under subsection (1)—

(a) unless—

- (i) the terms of amalgamation are approved by a special resolution of each of the societies; and
- (ii) the amalgamation is approved in writing by the holders of not less than two-thirds of the whole number of shares in each society; or

(b) unless the registrar has exercised his power under this Part to approve the amalgamation notwithstanding that an approval referred to in paragraph (a) has not been obtained.

(3) 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.

(4) If the Registrar is satisfied that the societies have complied with the provisions of this Act and of the regulations and that the proposed rules of the amalgamated society are not contrary to this Act or the regulations, the Registrar shall, upon the surrender to him of the certificates of incorporation of the amalgamating societies or production of such evidence as to the loss of any of them as the Registrar may require, register the amalgamated society and its rules, and issue a certificate of incorporation in respect of the society.

(5) The Registrar may, following the issue of such certificate, remove from the register the name of any of the societies that was a party to the amalgamation.

(6) The amalgamation shall not prejudice any right of a creditor of any society that is a party to the amalgamation.

(7) Upon the issue of the certificate of incorporation the property of each society that is a party to the amalgamation shall on and from the date thereof and by virtue of this Act without any conveyance, transfer or assignment, vest in the society formed by the amalgamation.

(8) For the purposes of this section the property of the societies that are parties to the amalgamation shall include all estates and interests in property, whether real or personal, vested or contingent.

(9) 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 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.

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

(11) All debts and liabilities, whether certain or contingent, and whether then existing or capable of arising at a future time, to or with which any society that is a party to the amalgamation is, at the date of the certificate of incorporation of the amalgamated society, liable or charged, shall by virtue of this Act become and be the debts and liabilities of the society formed by the amalgamation.

Supplementary provisions as to amalgamation

27. (1) A society desiring to amalgamate with one or more other societies 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—

- (a) the financial position of the society and any other society or societies with which it proposes to amalgamate;
- (b) any interest that the officers of the society or of any other society concerned in the amalgamation may have in the amalgamation;
- (c) any compensation or other consideration proposed to be paid to the officers of the society and of the other society or societies concerned;
- (d) the payments to be made to members of the society and of the other society or societies concerned in consideration of the amalgamation; and
- (e) such other matters as the Registrar may direct.

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

Approval notwithstanding absence of approval of shareholders

28. (1) A society may apply to the Registrar for his approval of a proposed amalgamation of the society with another society, or other societies, notwithstanding that the approval of shareholders has not been obtained in accordance with this Part.

(2) Where any such application is made the society shall give notice of the application in such manner and at such times as the Registrar may direct.

(3) The Registrar may, after hearing the society and any other person whom he may consider entitled to be heard, grant his approval of the proposed amalgamation.

Transfer of engagements

29. (1) Subject to this section a society may by special resolution transfer its engagements to another society which undertakes to fulfil those engagements, and a society may—

- (a) by special resolution; or
- (b) with the consent of the Registrar, by resolution of a general meeting or of the board of directors,

undertake to fulfil the engagements of another society.

(2) For the purposes of subsection (1)—

- (a) a permanent society is capable of transferring its engagements only to another permanent society;
- (b) a terminating society is capable of transferring its engagements only to another terminating society; and
- (c) a Starr Bowkett society is capable of transferring its engagements only to another Starr Bowkett society.

(3) A transfer of engagements between societies under this section shall not have effect unless—

- (a) the holders of not less than two-thirds of the whole number of shares of each of the societies have consented in writing to the transfer, or the transfer has been approved under section 28 (3); and
- (b) the special resolution of the transferor society has been registered.

(4) The Registrar, before registering the special resolution referred to in subsection (3) (b), may require such evidence as he deems necessary to ensure—

- (a) that the transferee society has by means authorized in this section undertaken to fulfil the engagements of the transferor society;
- (b) that the statements referred to in section 27 have been issued, unless exemption has been granted by the Registrar pursuant to subsection (1) of that section; and
- (c) that the necessary consent to the transfer has been given under subsection (3), unless the Registrar has, pursuant to the provisions of section 28 (3), approved the transfer.

(5) Within one month of the passing of a resolution under subsection (1) (b), the society shall notify the Registrar that the resolution has been passed and if the society fails so to notify the Registrar, the society and every officer of the society who is in default, shall be guilty of an offence and be liable to a penalty not exceeding \$200.

(6) The provisions of subsections (6) to (11), both inclusive, of section 26, and of sections 27 and 28 shall apply, *mutatis mutandis*, to a transfer of engagements where a society transfers the whole of its engagements to another society, and for the purpose of that application—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred;
- (c) a reference to a society that is a party to the amalgamation shall be construed as a reference to the society transferring its engagements; and
- (d) a reference to the issue of the certificate of incorporation shall be construed as a reference to the registration of the special resolution of the transferor society referred to in subsection (1).

Transfer of engagements by direction of Registrar

29A. (1) Notwithstanding anything to the contrary contained in the rules of a society, the Registrar may, with the approval of the Minister, direct a society—

- (a) to transfer its engagements to another society with the consent of the transferee society; and
- (b) within a period specified by the Registrar when giving the direction, to enter into an agreement, approved by the Registrar, to give effect to the transfer of engagements directed.

(2) The Registrar shall not give a direction under subsection (1) 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 “The Registrar may not direct a transfer of engagements under section 29A (1) unless”; and
- (b) by omitting from subsection (3) (g) “the society should be wound up” and by inserting instead “the society should transfer its engagements”.

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

- (a) by a permanent society only to another permanent society;
- (b) by a terminating society only to another terminating society;

(c) by a Starr Bowkett society only to another Starr Bowkett society.

(4) Section 29 does not apply to a transfer of engagements under this section.

(5) Subsections (6) to (11) of section 26 shall apply, subject to necessary modifications, to a transfer of engagements between societies under this section, and for the purpose of that application—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred;
- (c) a reference to a society that is a party to the amalgamation shall be construed as a reference to the society transferring its engagements; and
- (d) a reference to the issue of the certificate of incorporation shall be construed as a reference to the date specified pursuant to subsection (6).

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

(7) 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 Advisory committee and the Registrar may revoke the direction and shall do so if the Minister, after considering a report on the matter by the Advisory Committee, so directs.

(8) 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 or imprisonment for 6 months.

[Section 29A inserted by No. 108 of 1984 s. 10.]

PART V—MONETARY POLICIES OF SOCIETIES

Division 1—General

General regulation of loans, etc. by societies

30. (1) Subject to subsection (4), a society shall not advance, invest, use, apply, pledge, encumber or otherwise deal with any of its moneys or other property real or personal except as authorized by this Act or its rules.

(2) Nothing in subsection (1) shall be construed—

- (a) as authorizing 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 authorizing a society to do any act or thing which is authorized 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 moneys or other property real or personal in contravention of this Act or in contravention of its rules, every officer of the society who authorized 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.

Division 2—Loans

Loans

31. (1) Subject to this Part, a society may—

- (a) advance moneys on the security of a mortgage over freehold or leasehold land situated within Australia;
- (b) make advances to a local authority secured by debentures issued by that local authority under and in accordance with the Local Government Act 1960 or the Town Planning and Development Act 1928, or secured in any other manner approved by the Minister;
- (c) advance moneys 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;
- (d) provide financial accommodation to members by way of continuing credit arrangement with or without security on such conditions as may be approved by the Registrar.

(2) Nothing in this section shall be construed as precluding a society from accepting collateral security for the repayment of an advance.

[Section 31 amended by No. 108 of 1984 s. 11.]

Limitation on amount of loan

32. (1) Subject to the succeeding provisions of this section, a society shall not advance money on the security of a mortgage over land, except for the purpose of obtaining security in relation to a continuing credit arrangement, where the amount of the advance 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 in the valuation that the society is required to obtain in respect of the land under this Part.

(2) Subsection (1) does not apply in respect of an advance where—

- (a) the society has obtained an indemnity or a guarantee from a mortgage insurer in respect of the repayment of not less than so much of the advance as exceeds the limits prescribed by subsection (1); or
- (b) the due repayment of the advance is totally guaranteed by the State, the Treasurer, or an agency or instrumentality of the Crown in right of the State under any law of the State or by the Government of a State, Territory or the Commonwealth.

(3) The regulations may provide that, in respect of any advance on the security of a mortgage over land (not being land on which there is or is to be erected a dwelling for the person to whom the advance is to be made), in lieu of the percentage specified in subsection (1) the relevant percentage shall be such lesser percentage as is specified in the regulations and the provisions of subsections (1) and (2) shall apply in relation to such an advance as if the prescribed percentage were the percentage specified in subsection (1).

(4) In this section, “mortgage insurer” means the Housing Loans Insurance Corporation established under the Housing Loans Insurance Act 1965 of the Commonwealth or any body corporate authorized under the Insurance Acts 1973 of the Commonwealth to carry on insurance business.

[Section 32 amended by No. 108 of 1984 s. 12.]

Society to advise borrower of interest, charges, etc.

33. Where a society approves an application made to it by a person wishing to obtain an advance from it on the security of a mortgage over land or a continuing credit arrangement, it shall—

- (a) within 7 days of approving the application; or
- (b) before requiring the person obtaining the advance to execute such documents as are necessary to obtain the security on which the advance is to be made,

which ever is the earlier, cause to be sent by prepaid post to that person at his last known place of residence or business as disclosed in his application, a notice in the prescribed form setting out such particulars as

are prescribed concerning the rate of interest that is payable under the proposed advance at the time that the advance is proposed to be made, whether or not the rate of interest may vary during the term of the advance, the date on which interest commences to accrue, the date on which repayments of principal and interest are to commence, and the amount of any other fees, charges or other expenses paid or to be paid by the person.

[Section 33 amended by No. 108 of 1984 s. 13.]

Limit on advances to person

34. (1) A permanent society shall not approve, undertake or offer to—

- (a) make an advance to or investment with any person; or
- (b) accept a guarantee from any person,

without the prior written approval of the Minister to that advance, investment or guarantee where the aggregate indebtedness or contingent indebtedness to the society of the person to or with whom the advance or investment is to be made or from whom the guarantee is to be accepted equals or exceeds 2½% of the aggregate assets of that society as at the beginning of the last preceding financial year.

(2) In subsection (1) “investment” excludes investments in securities of a State, Territory or the Commonwealth, in securities of subsidiaries of the society and in such other securities as may be prescribed for the purposes of this definition.

[Section 34: Ss. 34, 35 and 36 repealed and section 34 substituted by No. 108 of 1984 s. 14.]

[Sections 35 and 36: Ss. 34, 35, 36 repealed and section 34 substituted by No. 108 of 1984 s. 14.]

Restrictions on lending on vacant land

37. (1) A society shall not make an advance of a sum exceeding \$100 000, or where some other sum is prescribed, the prescribed sum, secured by mortgage over vacant land, other than land used wholly or principally for farming or agricultural purposes, unless the approval of the Minister in writing to the making of the advance has been first obtained.

(2) The Minister shall not approve of an advance referred to in subsection (1) unless, having received the advice of the Registrar, he is satisfied that—

- (a) the vacant land to be the subject of the mortgage has been or is in the course of being subdivided into lots to be used as sites for dwellinghouses;

- (b) the total or a substantial proportion of the moneys to be advanced will be expended within a period of 12 months of the making of the advance in all or any of the following ways, namely, levelling or clearing the land, and in the provision of roads, drainage, water, sewerage or like facilities on the land; and
- (c) the whole of the advance will be repaid within 3 years.

[Section 37 amended by No. 108 of 1984 s. 15.]

Valuations

38. (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) A society shall not make a continuing credit arrangement upon the security of a mortgage over land unless the directors satisfy themselves of the adequacy of the security before the application for the continuing credit arrangement is approved.

[Section 38 amended by No. 108 of 1984 s. 16.]

Prohibition of balloting for loans

39. A society (other than a Starr Bowkett 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.

Liquidity

40. (1) A permanent society shall not approve, undertake or offer to make an advance unless, at the time the approval, undertaking or offer is given or made, the society holds liquid funds equal to not less than 12½% or such other percentage as is prescribed of the total of the aggregate of—

- (a) members' paid up share capital;
- (b) deposits held with the society;
- (c) loans to the society;
- (d) bills of exchange drawn or accepted by the society;
- and
- (e) promissory notes issued by the society,

but in calculating such aggregate, an amount that has been taken into account as a deposit or loan shall not be taken into account again by reason of any bill of exchange or promissory note.

(2) For the purposes of this section—

- (a) members' share capital, deposits held with and loans to the society do not include any such capital, deposits or loans that are not due for repayment within the next ensuing period of 5 years;
- (b) liquid funds means the aggregate of the following—
 - (i) cash at bank (but not including cheques or other bills of exchange (not being authorized bills of exchange) drawn but not presented for payment) or in hand;
 - (ii) funds upon deposit for a term to expire within 2 years with any bank;
 - (iii) the value of authorized bills of exchange;
 - (iv) the value of debentures, stocks and bonds that are either issued by the government of the Commonwealth or of a State or are issued by a public statutory authority and guaranteed by such a government;
 - (v) the value of any loan made by the society to a corporation which is declared to be an authorized dealer in the short term money market pursuant to section 97 (7) (b) of the *Companies (Western Australia) Code*; and
 - (vi) the value of any investment in any security or class of security approved for the time being by the Registrar for the purposes of this section,

less the amount of any borrowings made by the society by way of bank overdraft.

(3) In subsection (2) and in section 47—

“authorized bill of exchange” means a bill of exchange which is payable on demand or not more than 2 years from the day on which it is acquired by the society and which, if bought for value by the society, would give the society as a holder in due course a right of recourse against a bank for an amount equal to the face value of the bill;

“bank” means—

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

(4) In calculating the value of any liquid funds for the purposes of this section—

- (a) the value of any investment or security shall be taken to be its market value, and

- (b) the value of any funds shall not be taken into account if the funds are encumbered in any way other than by a floating charge over all the assets and undertakings of the society.

[Section 40 amended by No. 20 of 1977 s. 3; No. 10 of 1982 s. 28; No. 108 of 1984 s. 17.]

Returns to be furnished of liquid funds and other investments

41. (1) Every permanent 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 authorized by section 47 (1); and
- (c) the totals of members' paid up share capital, deposits held with and loans to the society,

on the last day of each calendar month, 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 to furnish 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.

Net worth requirement

42. (1) Subject to this section, every permanent society shall, not later than 1 year after the commencement of the Building Societies Amendment Act 1984, have and maintain during the succeeding year net worth amounting to not less than 1.3%, or such other percentage as may be prescribed, of the aggregate assets of the society as at the beginning of the last preceding financial year.

(2) Subject to this section, every permanent society shall, not later than 2 years after the commencement of the Building Societies Amendment Act 1984, have and maintain during the succeeding year net worth amounting to not less than 1.6%, or such other percentage as may be prescribed, of the aggregate assets of the society as at the beginning of the last preceding financial year.

(3) Subject to this section, every permanent society shall, not later than 3 years after the commencement of the Building Societies Amendment Act 1984, have and maintain at all times thereafter net worth amounting to not less than 2%, or such other percentage as may be prescribed, of the aggregate assets of the society as at the beginning of the last preceding financial year.

(4) Where a permanent society invests moneys pursuant to section 47 (1) (ca), 47 (1) (cb) or 47 (1) (d), the Registrar may by notice in writing served on the society direct that the minimum amount of net worth to be maintained by that society during the period stated in the notice shall be

such greater amount than that applicable under subsection (1), (2) or (3) as is specified in the notice and the Registrar may, by further notice or notices served on the society, vary or revoke a direction given under this subsection.

(5) The Registrar may, by notice in writing served on a permanent society and published in the *Gazette*, direct that the minimum amount required to be maintained as net worth of the society during the period stated in the notice shall be such lesser amount than that applicable under subsection (1), (2) or (3) as is specified in the notice and the Registrar may, by further notice or notices served on the society and published in the *Gazette* vary or revoke a direction given under this subsection.

(6) For the purposes of this section, “net worth” means—

- (a) share capital which is subscribed on terms which do not permit repayment of the capital or terms which do not at the time of calculation of the net worth permit repayment of the capital within 3 years;
- (b) the amount of undistributed profits and realized reserves (being the accumulated realized surplus arising from the business of the society less the amount of any losses carried forward in the accounts of the society) that comprises the reserve account of the society;
- (c) reserves established by the revaluation of real property held by the society and certified in accordance with section 65 (4) (c);
- (d) subordinated loans to the society which at the time of calculation of the net worth are not repayable by the society within 3 years; and
- (e) such other items or matters as may be prescribed.

(7) Any amount maintained in a reserve account under this section—

- (a) shall not be distributed amongst members of the society except upon the winding up of the society; and
- (b) may be applied to any other purpose to which the capital of the society may be applied.

[Section 42 substituted by No. 108 of 1984 s. 18.]

[Sections 43 and 44 repealed by No. 108 of 1984 s. 19.]

Power to prohibit raising of funds

45. (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 or have invested or may invest in the society or have deposited or may deposit money with 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 the provisions of this section, while this subsection applies to a society, the society shall not—

- (a) accept the deposit of, or otherwise borrow any money or indorse, discount or otherwise negotiate a bill of exchange drawn by the society under section 48 (1a) or issue promissory notes;
- (b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the society, other than a payment which fell due before the giving of the direction applying this subsection to the society; or
- (c) make repayment of any deposit or loan or shareholders funds, or otherwise dispose of or deal with any property or assets of the society without the consent of the Registrar.

(3) This section shall 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—

- (a) borrow money from a banking or finance corporation, or from a director or other officer of the society;
- (b) issue promissory notes or indorse, discount or otherwise negotiate a bill of exchange drawn by the society on a banking or finance corporation under section 48 (1a); or
- (c) accept share capital which is subscribed on terms which do not permit repayment thereof and share capital which is subscribed on terms which do not permit repayment thereof before the expiration of 10 years after the day on which it is received by the society.

(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 authorizes or permits a contravention of subsection (2) shall be liable to a penalty of \$1 000 or imprisonment for one year.

(7) A reference in this section to the amount due by way of subscription for a share in a society does not include any amount due in respect of a share which represents interest on, or the repayment of an advance made to the holder of the share.

[Section 45 amended by No. 20 of 1977 s. 4; No. 108 of 1984 s. 20.]

[Section 46 repealed by No. 108 of 1984 s. 21.]

Investments

47. (1) Subject to subsection (2), a society may from time to time invest its funds—

- (a) in any manner in which a trustee is authorized under the law of the State to invest trust funds;
- (b) upon deposit with any bank;
- (c) in authorized 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 any other society (whether formed within or outside the State) unless and until the society has first obtained the approval in writing of the Registrar to such investment.

[Section 47 amended by No. 108 of 1984 s. 22.]

Borrowing powers, etc.

48. (1) Any society may receive deposits or loans from its members or other persons to be applied to the purposes of the society.

(1a) In addition to its other powers a society may—

- (a) issue promissory notes; and
- (b) draw, indorse, discount or otherwise negotiate bills of exchange.

(1b) In consideration of the acceptance or payment, by the drawee, of a bill of exchange drawn by a society under subsection (1a) the society may execute a legal or equitable charge in favour of the drawee upon the undertaking of the society or upon all or part of the property and rights (present and future) of the society including its uncalled or unpaid share capital, subscriptions, loan repayments and other moneys.

(1c) Notwithstanding subsection (1) or (1a) a permanent society or a Starr Bowkett society shall not—

- (a) receive a deposit or loan;
- (b) issue a promissory note; or

- (c) draw, indorse, discount or otherwise negotiate a bill of exchange, if the total of—
- (d) the aggregate amount of deposits and loans received by the society; and
- (e) the aggregate amount for which the society is or may become liable under or in respect of—
 - (i) promissory notes issued by it; and
 - (ii) bills of exchange that it has drawn or accepted (but in calculating such an aggregate amount, an amount that has been taken into account as a deposit or loan shall not be taken into account again by reason of any bill of exchange or promissory note),

would thereby be an amount exceeding the fixed limit unless the Registrar, upon the recommendation of the Advisory Committee, gives notice in writing to the society that that total may be a greater amount.

(1d) In this section “the fixed limit” means the total of—

- (a) 40 times—
 - (i) the fully paid share capital of the society which is subscribed on terms which do not permit repayment thereof;
 - (ii) the fully paid share capital of the society which at the time of calculation of the fixed limit is not repayable within 3 years;
 - (iii) the subordinated loans to the society which at the time of calculation of the fixed limit are not repayable by the society within 3 years; and
 - (iv) the amount of the reserve account referred to in section 42 (6);
- (b) 4 times the paid up amount of the share capital of the society, other than such capital referred to in subparagraphs (i) and (ii) of paragraph (a); and
- (c) 20 times the amount of reserves established by the revaluation of real property in accordance with section 42 (6) (c),

but for the purposes of calculating a fixed limit under this subsection, the aggregate amount calculated in accordance with paragraph (a)(i), (ii), (iii) and (iv) shall be reduced by the amount invested by the society under section 47 (ca).

(2) Except with the prior approval of the Treasurer given pursuant to subsection (2a), a society shall not borrow moneys otherwise than in Australian currency or undertake to repay moneys borrowed otherwise than in Australian currency.

(2a) The Treasurer may approve of a society borrowing moneys otherwise than in Australian currency or undertaking to repay moneys borrowed otherwise than in Australian currency and an approval given for the purposes of this subsection—

(a) may be given—

(i) subject to such terms and conditions;

(ii) for such period (expressed by reference to time or the happening of any event);

(iii) generally or only in relation to such circumstances, as the Treasurer specifies in writing; and

(b) may be varied or revoked by the Treasurer at any time.

(3) Any member or other person depositing or lending money with or to any 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 reconveyance, 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.]

Disposal of certain property

49. 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

Membership

50. (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.

(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 29 or 29A 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 such shares or interests, as are provided in the rules.

(4) Subject to subsection (5), every member of a society shall be entitled to exercise a vote at any meeting of the society.

(5) The rules of a society may provide that a member shall—

(a) hold a prescribed number of shares or a class of shares in the society; or

(b) be a member of the society for a prescribed period of time, before being entitled to exercise a vote at any meeting of the society.

(6) Subsection (4) does not operate to prevent the rules of a society making provision for the exercise by a member of more than one vote at any meeting of the society.

[Section 50 amended by No. 108 of 1984 s. 24.]

Minors

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

(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 moneys from the society.

Representatives of corporate members

52. (1) Where a body corporate is a member of a society it may from time to time by notice in writing served on the society appoint a person to represent it at any meeting of members of the society, and may by notice so served revoke any such appointment.

- (2) Any person appointed under subsection (1)—
- (a) shall be entitled to receive notice of all meetings in the same manner as other members of the society, and shall be entitled to exercise the same rights of voting (either in person or by proxy) as a natural person who is a member of the society; and
 - (b) shall be eligible to be elected to the board of directors of the society.

Division 2—Share Capital and Funds

Share capital

53. (1) A society may from time to time raise funds by the issue of shares.

(2) The shares may be of one or more classes or denominations and shall be issued either as shares fully paid up, or as shares to be paid for by periodical or other subscription.

(3) The rules of a society may provide—

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

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

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

(6) The share capital of a permanent society, other than a society that was, before the commencement of this Act, registered under the repealed Act, must at no time be less than \$2 000 000.

(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 together with the amount (if any) in arrears in respect of the share.

(9) Any balance unpaid upon a share shall be paid by periodic subscription, or in such other manner, as may be specified by the rules.

(10) A society shall not, without the prior approval of the Registrar, issue any shares to, or to the nominee of, a person if the issue would result in the shares held beneficially by any person being in excess of 20% of the subscribed capital for the time being of the society.

(11) Subject to the provisions of subsection (10), a society may with the approval of the Registrar, hold shares in another society or other societies.

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

[Section 53 amended by No. 108 of 1984 s. 25.]

Case where shares are held jointly

54. (1) Subject to the rules of a society, where shares in a society are 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;
- (b) of determining (where relevant) the number of votes any person may give at a meeting of a society; and
- (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,

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

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

(4) The joint holders of any shares 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.

Charge and set off

55. A society shall, in respect of any debt due from the member or past member of the society, have a charge upon the shares 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.

Enforcement of charge

56. (1) The charge created by section 55 may be enforced by the appropriation by the society of the share capital or other moneys 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.

PART VII—MANAGEMENT*Division 1—Directors and Officers***Board of Directors**

57. (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 2 months after the last meeting of the board in the case of a permanent society and not more than 3 months after the last preceding meeting of the board in the case of any other society.

(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 authorized 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.

Age limit for directors

58. (1) No person of or above the age of 72 years or under the age of 21 years may be appointed as a director of a society.

(2) The office of a director of a society shall become vacant at the conclusion of the annual general meeting next following the day on which he attains the age of 72 years.

(3) Any act done by a person as director shall be valid notwithstanding that it is subsequently discovered that his office has become vacant by virtue of subsection (2).

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

(5) If any such vacancy has not been filled at the meeting at which the office became vacant the office may be filled as a casual vacancy.

(6) Notwithstanding the foregoing provisions of this section, a person of or above the age of 72 years may by special resolution be appointed or re-appointed as a director of a society to hold office until the conclusion of the next annual general meeting of the society.

(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) This section does not affect any provision of the rules of a society providing that a director is to be disqualified from holding office upon attaining an age of 72 years or such lesser age specified in the rules.

[Section 58 amended by No. 108 of 1984 s. 26.]

Appointment of directors

59. (1) Subject to subsection (2), a society shall not have less than 5 directors.

(2) A society which is not a permanent 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—

- (i) under section 108, 229, 555 or 556 of the *Companies (Western Australia) Code*, section 44 of the *Companies (Acquisition of Shares) (Western Australia) Code*, section 129 of the *Securities Industry (Western Australia) Code*, any provision of a law of another State or of a Territory of the Commonwealth that corresponds with any of those provisions, or any offence under a provision of a previous law of the State, of another State or of a Territory of the Commonwealth with which any of those provisions corresponds; or
- (ii) under subsection (3) of section 333 of the *Companies Act 1961* as enacted before 25 November 1969, or under any of the corresponding provisions of the 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) a vacancy in the office of a director of a society is not filled within 60 days; and
- (b) by reason of that vacancy, that society has—
 - (i) in the case of a permanent society, less than 5 directors;
 - or

- (ii) in the case of a society which is not a permanent society, less than 5 directors or less than such number of directors as the Registrar has approved pursuant to subsection (2),

the Registrar may appoint as a director of the society such person as he thinks fit.

(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—

- (a) not more than 2 employees of the society may be appointed directors of the society if it is a permanent society; and
- (b) not more than 2 or one half of the directors, whichever is the lesser number, of any other kind of society 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.]

Disclosure of interest by directors

60. (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 or imprisonment for 3 months, or both.

(2) The requirements of subsection (1) do not apply in any case where the interest of a director of a 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 or imprisonment for 3 months, or both.

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

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

(7) A secretary of a 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.]

Director not to borrow from society, etc.

61. (1) A director of a society shall not borrow from the society, and the society shall not make any advance to a director—

(a) where the director is also a full time officer of the society—

(i) if the advance is to be on the security of a mortgage over his ordinary place of residence, except by a resolution of the board;

(ii) if the advance is not to be so secured, except by special resolution of the society;

(b) where the director is not also a full time officer of the society—

(i) if the advance is to be on the security of a mortgage over his ordinary place of residence, except by a resolution of a meeting of the society; or

(ii) if the advance is not to be so secured, except by special resolution of the society,

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

(2) A society shall not make any advance to any officer of the society who is not a director unless the making of 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, any thing done by a proprietary company within the meaning of the *Companies (Western Australia) Code* 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.]

Director not to sell land to member, etc.

62. Except where specifically authorized 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 moneys 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.]

Division 2—Meetings of Members of a Society

Meetings

63. (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.]

Special resolution

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

(2) Unless a poll 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.

Division 3—Records, Accounts and Audit

Interpretation

64A. (1) For the purposes of this Division, 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 not less than 50% of the voting power at a general meeting of that body; or
- (c) holds not less 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 to be taken to be controlled by a society, the composition of such a board of directors shall be 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, and, for the purposes of this provision, that society shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that society of such a power; or

- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that society.

(3) For the purposes of this Division, in the case of a society that has a subsidiary or subsidiaries, all references in this Division to books of account, revenue and appropriation accounts and balance sheets shall be taken to refer, subject to any necessary modifications, to consolidated books of account, consolidated revenue and appropriation accounts and consolidated balance sheets.

[Section 64A inserted by No. 108 of 1984 s. 32.]

Financial year of subsidiaries

64B. The directors of a society shall take such action, if any, as is necessary to ensure that the financial year of each subsidiary of the society coincides with the financial year of the society.

[Section 64B inserted by No. 108 of 1984 s. 32.]

Accounts, returns, audit, etc.

65. (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.

(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.

(2a) Where at the end of its financial year a society has a subsidiary or subsidiaries, the directors of the society shall, in addition to other obligations imposed on them by this section, cause to be made out and laid before the members of the society at its annual general meeting consolidated accounts dealing with—

- (a) the revenue and appropriation of the society and its subsidiaries for the same period as that for which the account required by subsection (2) is made up; and

- (b) the state of affairs of the society and its subsidiaries as at the end of their respective financial years last ended prior to the annual general meeting in question.

(2b) The consolidated accounts required to be made up under subsection (2a) shall give a true and fair view of the state of affairs and revenue and appropriation of the society and its subsidiaries dealt with as a whole, so far as concerns members of the society.

(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 a valuer who is not an officer or employee of the society.

(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 from members and depositors, 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 by depositors;
- (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 terminating or Starr Bowkett 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 referred to in that subsection; 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.]

Auditors of societies other than permanent societies

66. (1) The provisions of this section do not apply to a permanent society, but apply to any other society notwithstanding 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 *Companies (Western Australia) Code*.

(5) A person who is—

- (a) indebted in any amount to a society other than indebtedness of the kind referred to in section 68 (5) (e); 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.]

Auditors of permanent societies

67. The Registrar may from time to time approve persons who are registered company auditors under the provisions of the *Companies (Western Australia) Code* to be permanent society auditors for the purposes of this Act.

[Section 67 amended by No. 10 of 1982 s. 28.]

Appointment, etc. of auditor of permanent society

68. (1) The provisions of this section apply to every permanent society but to no other society.

(2) The appointment of a person as an auditor of a society which was registered under the repealed Act shall expire at the conclusion of the first annual general meeting of the society held after the coming into operation of this Act.

(3) Every society which was registered under the repealed Act shall at the first annual general meeting of the society held after the coming into operation of this Act appoint a person or persons or a firm or firms or any combination thereof as auditor or auditors of the society.

(4) Within one month after a society is registered under this Act, the directors shall appoint (unless the society has at a meeting appointed) a person or persons or a firm or firms or any combination thereof, as auditor or auditors of the society.

(5) A person shall not—

- (a) consent to be appointed as auditor of a society;
- (b) act as auditor of a society; or
- (c) prepare a report required by this Act to be prepared by an auditor of a society,

unless the person—

- (d) is approved as a permanent society auditor under section 67;

- (e) is not indebted in any amount to the society other than indebtedness arising from an advance made by the society to the person for the purpose of assisting the person in the purchase or erection of a place of residence for himself or his dependants, the terms and conditions of which advance are not significantly different from other advances made to other persons by the society for the same purpose; and
- (f) is neither a director of, an employee of, nor a partner of an employee of, the society.

(6) A firm shall not—

- (a) consent to be appointed as auditor of a society;
- (b) act as auditor of a society; or
- (c) prepare a report required by this Act to be prepared by an auditor of a society,

unless—

- (d) at least one member of the firm is ordinarily resident in the State;
- (e) all the members of the firm ordinarily so resident are approved as permanent society auditors under section 67;
- (f) no member of the firm is indebted in any amount to the society other than indebtedness arising from an advance made by the society to the member for the purpose of assisting the member in the purchase or erection of a place of residence for himself or his dependants, the terms and conditions of which advance are not significantly different from other advances made to other persons by the society for the same purpose; and
- (g) no member of the firm is a director of, an employee of, or the partner of an employee of, the society.

(7) The appointment of a firm as auditor of a society shall be taken to be the appointment of all persons who are members of the firm, whether resident in the State or not, at the date of the appointment.

(8) Where a firm has been appointed as auditor of a society and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the society by virtue of subsection (6), be deemed to be appointed under subsection (3) or (4), as the case requires, as auditor of the society and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

(9) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a society or prepares a report required by this Act to be prepared by an auditor of a society, each member of the firm is guilty of an offence.

(10) A person shall not—

- (a) if he has been appointed auditor of a society—wilfully disqualify himself while the appointment continues from acting as auditor of the society; or
- (b) if he is a member of a firm that has been appointed auditor of a society—wilfully disqualify the firm while the appointment continues from acting as auditor of the society.

(11) An auditor of a society shall hold office until death, until removal or resignation from office in accordance with this section or until ceasing to be capable of acting as auditor by reason of subsection (5) or (6).

(12) Within 14 days after a vacancy occurs in the office of an auditor of a society, if there is no surviving or continuing auditor of the society, the society shall appoint a person or persons or a firm or firms or any combination thereof to fill the vacancy.

(13) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(14) A society shall not appoint a person or firm as auditor of the society unless that person or firm has, before the appointment, consented by notice in writing given to the society to act as auditor and has not withdrawn his or its consent by notice in writing given to the society.

(15) A report or notice made or given by a firm appointed as auditor of a society for the purposes of this Act shall be signed in the firm name and in his own name by a member of the firm who is approved as a permanent society auditor under section 67.

(16) Where a person or firm is appointed as an auditor under subsection (3) or (4) (not being an appointment that is deemed to be made by virtue of subsection (8)) the society shall within 14 days after the appointment lodge with the Registrar a notice in writing stating that it has made the appointment and specifying the name of the person or firm.

(17) An auditor of a society may be removed from office by the society at a general meeting by special resolution of which notice has been given, but not otherwise.

(17a) Where notice of a special resolution to remove an auditor is given by a society it shall forthwith send a copy of the notice to the auditor and to the Registrar.

(17b) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing to the society (not exceeding a reasonable length) and request that, before the meeting at which the special resolution is to be considered, a copy of the representations be sent by the society at its expense to every member of the society to whom notice of the meeting is sent.

(17c) Unless the Registrar on the application of the society otherwise orders, the society shall send a copy of the representations in accordance with the auditor's request, and the auditor may (without prejudice to his

right to be heard orally or when a firm is the auditor to have a member of the firm heard orally on its behalf) require that the representations be read out at the meeting.

(18) An auditor of a society may, by notice in writing given to the society, resign as auditor of the society if—

- (a) he has, by notice in writing given to the Registrar, applied for consent to his resignation and, at or about the same time as he gave notice to the Registrar, notified the society in writing of his application to the Registrar; and
- (b) he has received the consent of the Registrar.

(19) The Registrar shall, as soon as practicable after receiving a notice from an auditor under subsection (18), notify the auditor and the society whether he consents to the resignation of the auditor.

(20) A statement made by an auditor in an application to the Registrar under subsection (18) or in answer to an inquiry by the Registrar relating to the reason for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 82; and
- (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 82) action or suit against the auditor,

and a certificate signed by the Registrar that the statement was made in the application or in answer to an inquiry by the Registrar is conclusive evidence that the statement was so made.

(21) Subject to subsection (22) and to any order of The District Court of Western Australia under subsection (24), the resignation of an auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation;
- (b) on the date on which the Registrar gives his consent to the resignation; or
- (c) on the date (if any) fixed by the Registrar for the purpose,

whichever last occurs.

(22) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of subsection (6) (d), of acting as auditor of a society, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the society, be deemed to be the auditor of the society until he obtains the consent of the Registrar to his retirement or withdrawal.

(23) Within 14 days after the receipt of a notice of resignation from an auditor of a society or, where an auditor of a society is removed from office, within 14 days after the removal, the society shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Registrar.

(24) A person aggrieved by the refusal of consent by the Registrar to the resignation of an auditor of a society may, within one month after the date of refusal, appeal to The District Court of Western Australia from the refusal and thereupon that Court may confirm or reverse the refusal and may make such further order in the matter as to it seems proper.

[Section 68 amended by No. 108 of 1984 s. 35.]

Fees and expenses of auditors

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

PART VIII—OFFICIAL MANAGEMENT AND WINDING UP

Receivers and Managers, and Official Management

70. (1) The provisions of Part X and Part XI of the *Companies (Western Australia) Code*, subject to section 581B of that *Code*, shall, *mutatis mutandis*, and with such modifications (if any) as may be prescribed, apply, subject to subsection (2), to a society.

(2) For the purposes of the application of the provisions of the *Companies (Western Australia) Code* pursuant to subsection (1), a reference in any of those provisions to the Commission shall be construed as a reference to the Registrar of Building Societies.

[Section 70 amended by No. 10 of 1982 s. 28.]

Appointment of administrator of society

70A. (1) Subject 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.

(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.]

Advisory Committee may make certain report to Minister

70B. (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 Advisory Committee with respect to the appointment and, where any such representations are so made, the Advisory Committee shall report thereon to the Minister.

(2) The Registrar shall, if the Minister so directs after considering a report under subsection (1) with respect to a 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.]

Winding up of societies

71. (1) A society may be wound up voluntarily or by the court or upon a certificate of the Registrar.

(2) In the case of a winding up voluntarily, or by the court, the society may, subject to the provisions of this Part, be wound up in the same manner and in the same circumstances in which a company formed and registered under the *Companies (Western Australia) Code* may be so wound up.

(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) that the society (being a permanent society) has ceased to hold paid-up share capital of at least \$2 000 000 (but this paragraph does not apply to a society registered under the repealed Act);

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

[Paragraph (f) deleted.]

- (g) following an inquiry pursuant to the provisions of this Act into the affairs of a society or the working and financial condition of a society, that in the interests 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 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.

(8) A Starr Bowkett society shall be wound up when the business that it was formed to transact has been completed.

[Section 71 amended by No. 10 of 1982 s. 28; No. 108 of 1984 s. 37.]

Liquidator

72. 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 in the manner provided by the *Companies (Western Australia) Code* the Registrar may appoint a person to be liquidator.

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

Remuneration of liquidator

73. 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.

Cancellation

74. 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

Evidentiary provisions

75. (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.

Division 2—Offences

Use of words “building society” etc.

76. (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 share capital, deposits or loan funds under any name or title of which the words “building society” or “building societies” form a part;
- (b) trade or carry on business as a building society; or
- (c) in any manner hold out that its trade or business is that of a building society.

Penalty: \$1 000.

Default penalty: \$200.

(2) For the purpose of this section where a person or body of persons, whether incorporated or unincorporated, administers a fund or scheme into or by which members of a group contribute moneys to be applied

solely or principally in loans to those members, secured by mortgage over land, for the purpose of purchasing or building dwelling-houses in which the members propose to reside, that person or body of persons shall be deemed to be trading or carrying on business as a building society.

(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 building 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 authorized 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 building 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.]

Too few members, etc.

77. (1) If a permanent society continues for a period of one month to carry on business—

- (a) after the number of its members is reduced below 20; or
- (b) after it ceases to have a paid-up share capital of at least \$2 000 000,

the society shall be guilty of an offence and liable to a penalty not exceeding \$500.

Default penalty: \$200.

(2) Subsection (1) shall not apply in respect of a society registered under the repealed Act.

[Section 77 amended by No. 108 of 1984 s. 39.]

Certain acts prohibited in relation to loans

78. (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 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 made.

[Section 78 amended by No. 108 of 1984 s. 40.]

Seeking of commissions by officers of societies

79. 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 or imprisonment for 6 months; 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.

Fidelity guarantee

80. No officer or other person shall be authorized 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.

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

81. (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 moneys 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 moneys 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 moneys, 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.

False statements

82. 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.

Default by society

83. (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.

Default by society extended to directors and officers

84. 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.

Proceedings

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

Saving provision

86. 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.

Appeals and reviews of decisions of Registrar

87. (1) Any society or person aggrieved by a decision made by the Registrar under this Act (not being a decision to consent to or refuse the resignation of an auditor of a permanent society) 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.

(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 appeal to The District Court of Western Australia which may confirm, reverse or vary the decision of the Registrar or give such other directions in the matter as seem proper.

(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 or 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.]

PART X—MISCELLANEOUS

Advertisement by societies

88. (1) No person shall, by advertisement in any form, seek members, capital or deposits 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.

Certain insurance policies to be forwarded to members

89. 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.

Associated charges

90. (1) The Registrar, having first sought the advice of the Advisory Committee, 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 the making of advances;
- (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.

Management contracts

91. (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.

Special meeting and inquiry

92. (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 conditions 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.

Default penalties

93. (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.

Report of Registrar

94. 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.

Regulations

95. (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—TRANSFER TO COMPANIES (WESTERN AUSTRALIA)
CODE

[Part XI inserted by No. 108 of 1984 s. 42.]

Registration of permanent society as a company

96. (1) A permanent society may, by special resolution, determine that the society shall, pursuant to this Division, apply to be registered as a company under the *Companies (Western Australia) Code*.

(2) Before any such application is made the society shall, by special resolution—

- (a) determine under what name the society shall apply to be registered as a company and may determine that such name shall be different from the name of the society; and
- (b) adopt a memorandum of association for the proposed company and also articles of association where articles of association are necessary or deemed desirable.

(3) A society shall not be so registered under a name which includes the words “building society”, “building societies”, “permanent building society” or “permanent building societies” in consecutive form or otherwise or any other words importing a similar meaning.

(4) Every such memorandum of association—

- (a) shall contain the particulars prescribed by and otherwise be in accordance with the provisions of the *Companies (Western Australia) Code*;
- (b) shall state as the objects of the company the objects of the society; and
- (c) when delivered for registration shall have as signatories at least 7 persons who are members of the society.

(5) The provisions of the *Companies (Western Australia) Code* shall apply with respect to—

- (a) the necessity for articles of association;
- (b) the applicability of the regulations contained in Table A of Schedule 3 to that Code; and
- (c) any articles of association adopted.

(6) The memorandum of association and articles of association (if any) as so adopted shall not impose upon the members of the company who were members of the society at the date of its registration as a company any greater or different liability to contribute to the assets of the company than the liability to which they were subject as members of the society and in no case shall such memorandum of association or articles

of association as so adopted deprive any member of the company of any rights with respect to dividend or capital to which he was entitled as a member of the society immediately before its registration as a company.

(7) A society may apply to be registered as a company under the *Companies (Western Australia) Code* in the manner following—

- (a) the society shall register with the Registrar a copy of the special resolutions passed by the society pursuant to subsections (1) and (2);
- (b) the society shall deliver to the National Companies and Securities Commission—
 - (i) an application by the society under its common seal to be registered under the *Companies (Western Australia) Code*;
 - (ii) a copy of the special resolutions referred to in paragraph (a), verified under the hand of the Registrar;
 - (iii) the memorandum of association adopted for the company and the articles of association (if any); and
 - (iv) a list, verified by the statutory declaration of a director, showing the names, addresses and occupations of all persons who, on a day named in such list (being not more than 6 clear days before the day of such delivery) were members of the society, and also showing with respect to each such person the number, the nominal amount and amount credited as paid up of any shares held by such person in the society.

(8) The National Companies and Securities Commission shall, upon surrender to the Commission of the certificate of incorporation of the society, or production of such evidence of the loss thereof as the Commission may require, retain and register such memorandum of association and articles of association (if any), and shall certify that the company is incorporated, and in the case of a limited company that the company is limited and such registration, certificate and memorandum of association and articles of association (if any) shall have the same operation and effect, and the provisions of the *Companies (Western Australia) Code* shall apply to the said company and the members, contributories and creditors thereof, as if the said company had been registered in the manner prescribed by that Code.

(9) Upon the registration of a society as a company—

- (a) all persons who were members of the society at the date of such registration shall be deemed to become members of the company and their names shall be entered upon the register of members of the company;

and

- (b) every member of the society at the date of such registration who held shares in the society shall be deemed to be the holder of shares in the capital of the company equal in number and nominal value to the shares whereof he was then registered as the holder in the register of members of the society and entry shall be made in the register of members of the company accordingly and he shall thereupon be liable for the amount, if any, unpaid on his shares, of which the register of the company shall be *prima facie* evidence.

(10) If no persons are named as directors of the company in the articles of association of the company when a society is registered as a company under this section the persons who were directors of the society immediately before such registration shall be the first directors of the company.

(11) A certificate of incorporation of a society as a company given by the Corporate Affairs Commission or by the National Companies and Securities Commission shall be conclusive evidence that all the requirements of this section and of the *Companies (Western Australia) Code* or the Companies Act 1961, or any corresponding previous enactment in respect of registration under any such Code or Act have been complied with.

[Section 96 see note under Part heading.]

Transfer of registration

97. Where a society is registered as a company pursuant to an application made under section 96—

- (a) the National Companies and Securities Commission shall give notice of such registration to the Registrar who shall thereupon remove the name of the society from the register kept by him; and
- (b) the identity of the society shall not be affected and it shall continue as the same entity.

[Section 97 see note under Part heading.]

Rights and liabilities

98. Without affecting the generality of section 97 (a), upon registration pursuant to an application by a society referred to in that section—

- (a) all property and proprietary and other rights of the applicant society shall become vested in and exercisable by the company so registered;
- (b) all liabilities and obligations of the applicant society, whether certain or contingent and whether then existing or capable of arising at a future time, and whether contractual or other, and

all rights against the applicant society and all penalties (including default penalties) incurred by the applicant society shall be enforceable and recoverable against the company so registered;

and

- (c) all persons who would incur any liability for anything done or omitted by, or for any money if lent or credit if given to, or for any loss incurred by, or for any transaction it had with the applicant society, shall incur the same liability as would have been incurred if such thing had been done or omitted by, or money lent or credit given to, or loss incurred by, or transaction had with the company so registered.

[Section 98 see note under Part heading.]

NOTES

1. This reprint is a compilation as at 14 April 1986 of the *Building Societies Act 1976* and includes all amendments effected by the other Acts referred to in the following Table.

Table

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Building Societies Act 1976</i>	47 of 1976	10 September 1976	4 March 1977 (see <i>Gazette</i> 4 March 1977 p. 651)	
<i>Building Societies Act Amendment Act 1977</i>	20 of 1977	27 October 1977	Section (3) (b) and (d) 25 November 1977 (see <i>Gazette</i> 25 November 1977 p. 4347); balance 27 October 1977	
<i>Acts Amendment (Land Valuers) Act 1978</i>	56 of 1978	6 September 1978	1 July 1979	
<i>Companies (Consequential Amendments) Act 1982</i> Section 28	10 of 1982	14 May 1982	1 July 1982	
<i>Building Societies Amendment Act 1982</i>	71 of 1982	29 October 1982	29 October 1982	
<i>Building Societies Amendment Act 1984</i>	108 of 1984	19 December 1984	15 March 1985 (see <i>Gazette</i> 15 March 1985 p. 931)	
<i>Acts Amendment (Consumer Affairs) Act 1985</i> Section 17	1 of 1985	8 March 1985	Deemed to operate from 6 April 1983	

2. Previously referred to the Public Service Act 1904.