

CREDIT UNIONS AMENDMENT ACT

No. 90 of 1990

AN ACT to amend the *Credit Unions Act 1979*.

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Credit Unions Amendment Act 1990*.

Commencement

2. (1) This section and sections 1, 3 and 5 come into operation on the day on which this Act receives the Royal Assent.

(2) The other provisions of this Act come into operation on such day as is fixed by proclamation but the proclamation cannot be made until section 5A (4) of the principal Act as amended by this Act has been complied with.

Principal Act

3. In this Act the *Credit Unions Act 1979** is referred to as the principal Act.

[*Act No. 54 of 1979 as amended by Acts Nos. 10 of 1982, 82 of 1984, 109 of 1985 and 120 of 1987.]

Section 4 amended

4. Section 4 of the principal Act is amended in subsection (1c) by deleting paragraph (j) and substituting the following paragraphs—

- “ (j) section 80 (1);
(k) Part VIIIA. ”.

Section 5A inserted

5. After section 5 of the principal Act the following section is inserted—

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

- “ 5A. (1) The Registrar shall as soon as is practicable after section 5 of the *Credit Unions Amendment Act 1990* comes into operation ensure that such steps are taken as are required to complete the arrangements necessary for the commencement of sections 4, 6, 7, 8, 9, 10 and 11 of that Act.
- (2) The arrangements to be so completed are—
- (a) that there is in existence a company limited by guarantee incorporated under the *Companies (Western Australia) Code* by the name “Credit Unions Savings Protection Board Limited”; and

(b) that the memorandum and articles of that company—

- (i) comply in all respects with the provisions of the Act as amended by the sections referred to in subsection (1) and the *Companies (Western Australia) Code*; and
- (ii) contain such provisions as are, and are in a form that is, approved by the Minister on the recommendation of the Registrar.

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

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

Section 37C amended

6. Section 37C of the principal Act is amended in paragraph (c) by inserting after “institutions” the following—

“ , the Credit Unions Savings Protection Board Limited ”.

Section 37D amended

7. Section 37D of the principal Act is amended—

(a) in subsection (3) by deleting “The” and substituting the following—

“ Subject to subsection (3a) the ”; and

(b) by inserting after subsection (3) the following subsection—

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

Section 51 amended

8. Section 51 of the principal Act is amended in subsection (1) by inserting after paragraph (c) the following paragraph—

“ (d) in the Credit Unions Savings Protection Fund; ”.

Section 84 amended

9. Section 84 of the principal Act is amended in subsection (4) by inserting after “Registrar,” the following—

“ the Credit Unions Savings Protection Board Limited, ”.

Section 101 amended

10. Section 101 of the principal Act is amended in subsection (3)—

(a) in paragraph (f) by deleting “or”;

(b) in paragraph (g) by deleting “up.” and substituting the following—

“ up; ”; and

(c) after paragraph (g) by inserting the following paragraphs—

“ (h) that as disclosed in a report provided by the Credit Unions Savings Protection Board Limited to the Registrar into the affairs of the credit union or the working and financial condition of the credit union, it is in the interest of members or creditors of the credit union that the credit union should be wound up; or

(i) that the credit union is not or has ceased to be a member of the Credit Unions Savings Protection Board Limited. ”.

Part VIIIA inserted

11. After Part VIII of the principal Act the following Part is inserted—

“ **PART VIIIA—CREDIT UNIONS SAVINGS
PROTECTION FUND**

Definitions

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

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

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

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

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

Credit Unions Savings Protection Fund

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

(2) The Fund is established to provide—

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

Payments into the Fund

104C. The Fund shall consist of—

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

Administration of the Fund

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

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

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

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

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

Memorandum and articles of Protection Board

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

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

(3) The memorandum and articles shall provide that—

- (a) none of the members of the Protection Board is a person other than a credit union;
- (b) no person other than a credit union may become or remain a member of the Protection Board;
- (c) the amounts to be paid into the Fund in any financial year pursuant to—
 - (i) a determination under section 104F (1) subject to section 104F (6);
 - (ii) a requisition under section 104G (1); or
 - (iii) an order under section 104H (1),

shall not be amended during that financial year unless approved.

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

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

Contributions by credit unions

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

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

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

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

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

(b) the Protection Board may recover any amount outstanding together with interest accrued thereon as a debt in any court of competent jurisdiction.

(5) Any amounts paid to the fund by a credit union by way of contribution under subsection (1) shall in the accounts of the credit union, subject to section 85 (5), be treated as deferred assets of the credit union.

(6) Where on the first day of July the amount held by way of contribution for a credit union in the Fund exceeds the amount required to be kept by way of contribution under this section, the Protection Board shall, within 30 days of the receipt of an application in writing from the credit union, pay the amount of the excess to the credit union.

(7) Where a credit union informs the Protection Board in writing, within 30 days of it being sent written notice of its contribution under subsection (1), that it is unable to comply with subsection (3), the Protection Board may, at any time

and on such conditions as the Protection Board thinks fit, vary the obligation of a credit union to comply with any of the provisions of this section and may at any time revoke such variation.

Making of levies

104G. (1) Where in the opinion of the Protection Board the capital amount of the Fund has been or is likely to be reduced to such an extent that it is desirable that further payment be made into the Fund, the Protection Board may require each credit union, other than a credit union to which Part VIII applies to pay into the Fund a levy as determined by the Protection Board.

(2) The Protection Board may require more than one levy to be paid during any period of 12 months commencing on 1 July.

(3) A levy under subsection (1) shall be paid by a credit union on or before the day determined by the Protection Board and of which not less than 30 days notice in writing is given by the Protection Board to the credit union.

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

- (a) interest shall accrue on the amount outstanding from the date of default at a rate to be determined by the Protection Board; and
- (b) the Protection Board may recover any amount outstanding together with interest accrued thereon as a debt in any court of competent jurisdiction.

(5) Notwithstanding any provision of this Act or any other written law, a levy under subsection (1) shall, on payment into the Fund, become the property of the Protection Board absolutely and shall be freed and discharged from any trusts, obligations, interests or charges to which it may have been subject in the hands of a credit union immediately prior to its payment into the Fund.

(6) Any amounts paid to the Fund by a credit union by way of levy under subsection (1) shall in the accounts of the credit union be treated as an expense of the credit union.

(7) An amount paid by way of levy under subsection (1) shall not be taken into account in determining the amount a credit union is required to contribute to the Fund under section 104F or lend to the Fund under section 104H.

Compulsory loans

104H. (1) The Protection Board may at any time order a credit union to pay to the Fund a specified amount by way of compulsory loan on such terms and conditions as may be determined by the Protection Board.

(2) A payment required to be made into the Fund by a credit union under this section shall be made in addition to any contribution required to be made by the credit union under section 104F or levy under section 104G.

(3) Notwithstanding anything to the contrary in this Act or in the rules of the credit union, a credit union may from time to time invest any of its funds not immediately required for the purposes of the credit union in the Fund and such investment shall be made upon and be subject to such terms and conditions as the Protection Board from time to time thinks fit.

Failure to make payment an offence

104I. (1) If default is made in making any payment required to be made under section 104F, 104G or 104H, the credit union and any director or other officer of the credit union who failed to take all reasonable steps to secure compliance by the credit union with those sections shall be guilty of an offence against this Act.

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

(2) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a credit union with a provision of section 104F, 104G or 104H, it shall be a

defence to prove that he or she had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Investment of Fund

104J. The Protection Board may invest any moneys standing to the credit of the Fund in any investment which would constitute liquid funds for the purposes of section 60 (2) (a).

Payments out of the Fund

104K. (1) There shall be paid out of the Fund—

- (a) all moneys ordered to be paid out of the Fund under section 104L;
- (b) all moneys due to be paid under the terms of voluntary or compulsory loans or borrowings made under section 104H or investments made under section 104J;
- (c) all moneys refundable under section 104F (5); and
- (d) all moneys necessary to meet expenses lawfully incurred in relation to the administration of the Fund or the carrying out by the Protection Board of its functions under this Part or under its memorandum and articles of association.

(2) The Protection Board may authorize payment out of the Fund for any purpose which in the opinion of the Protection Board will promote or encourage the use by credit unions of efficient methods of accounting and office management or which will assist credit unions in any other way to operate more efficiently.

Claims against the Fund

104L. (1) An application for payment out of the Fund may be made by—

- (a) a member of a credit union; or
- (b) a credit union.

(2) Where an application is made under this section the chairman shall, as soon as practicable, call a meeting of the Protection Board to consider the application.

(3) An application under subsection (1) (a) may be made within 6 months of the date of demand referred to in subsection (5) or within such longer period as the Protection Board may approve.

(4) Where a member referred to in subsection (1) (a) dies before a claim—

- (a) arises; or
- (b) is determined,

the claim may be made or pursued by the personal representatives of the member.

(5) Where an application is made by a member of a credit union and the Protection Board is satisfied that the credit union has failed or refused to satisfy a lawful demand by the member with respect to moneys paid by the member as withdrawable share capital to the credit union or deposited by the member with the credit union the Protection Board may pay the claim—

- (a) in full; or
- (b) where the Protection Board is of the opinion having regard to such matters as it considers relevant that it is unable to pay the claim in full, to the maximum extent not exceeding the amount fixed by the Protection Board from time to time on any conditions the Protection Board thinks fit.

(6) Where, under subsection (5), the Protection Board pays the whole or part of a claim, it shall be subrogated, to the extent of the payment, to all the rights and remedies of the claimant relating to the claim against the credit union in respect of which the claim is made.

(7) Where the Protection Board is subrogated under subsection (6) to the rights and remedies of a claimant—

- (a) the Protection Board shall be at liberty to exercise those rights and remedies in its own name or in the name of the claimant; and
- (b) any moneys recovered by the Protection Board in the exercise of those rights and remedies shall be paid into the Fund.

(8) The Protection Board shall indemnify a claimant against any costs awarded against the claimant in any proceedings brought by the Protection Board under subsection (7) in the name of the claimant to enforce the rights and remedies of the claimant to which the Protection Board is subrogated.

(9) Where an application is made by a credit union and the Protection Board is satisfied that if a payment is made to the credit union out of the Fund the credit union will or will be likely to be able to trade profitably the Protection Board may order that a sum not exceeding the amount fixed by the Protection Board from time to time be paid from the Fund to the credit union on any conditions the Protection Board thinks fit.

(10) Where a credit union—

- (a) is being wound up;
- (b) becomes registered as a financial society; or
- (c) amalgamates with, or transfers its engagements to, an institution other than a credit union,

the Protection Board shall—

- (d) on demand of the liquidator; or
- (e) on production of the appropriate certificate under Part IV or Part XIA,

pay to the liquidator or the institution which appears to the Protection Board from the certificate referred to in paragraph (e) entitled thereto—

- (f) except as provided in paragraph (g), the whole of the amount the credit union has on deposit with the Fund under section 104G; or
- (g) where the last balance sheet of the Fund discloses a loss or deficiency in the Fund, the whole of the amount referred to in paragraph (f) less an amount that bears to the amount of the loss or deficiency the same proportion as the amount referred to in paragraph (f) bears to the total amount paid by all credit unions under section 104G as shown in that balance sheet.

(11) Where the Protection Board becomes a creditor of a credit union, the Protection Board shall rank after withdrawable shareholders and depositors in order of priority on winding up in the recovery of the debt.

Minimum amount of Fund

104M. (1) The Protection Board shall ensure that not later than 30 days after the coming into operation of section 11 of the *Credit Unions Amendment Act 1990* there is an amount of not less than \$4 000 000 in the Fund.

(2) The Protection Board shall ensure that the amount referred to in subsection (1) is, subject to subsection (3), maintained in the Fund.

(3) The Protection Board may, with the approval in writing of the Minister, determine, by notice published in the *Gazette*, an amount (whether greater than or less than \$4 000 000) to be the minimum amount of the Fund.

Credit union may become subject to direction by Protection Board

104N. (1) Subject to section 104P (1) where—

- (a) a credit union fails to comply with any of the provisions of section 60, 61, 104F, 104G or 104H;
- (b) a credit union fails to lodge with the Registrar or Protection Board any document required to be so lodged under this Act;
- (c) a credit union is trading unprofitably or has an accumulated deficit;
- (d) a credit union requests the Protection Board to declare it to be subject to the direction of the Protection Board;
- (e) the Protection Board is of the opinion that the affairs of a credit union are being conducted in an improper or financially unsound manner; or
- (f) the Registrar recommends to the Protection Board that a credit union be made subject to the direction of the Protection Board,

the Protection Board may, by resolution, declare the credit union to be subject to its direction from the day specified in the resolution.

(2) The Protection Board shall give written notice of any resolution under subsection (1) to the credit union in respect of which the resolution is made and to the Registrar within 14 days after the making of the resolution.

Period of direction

104O. (1) Subject to section 104P where a credit union is subject to the direction of the Protection Board the credit union shall remain subject to the direction of the Protection Board until—

(a) after considering an application from the credit union the Protection Board, by resolution, declares that the credit union—

(i) has ceased; or

(ii) shall continue,

to be subject to its direction; or

(b) an administrator or liquidator of the credit union is appointed pursuant to Part VIII,

whichever first occurs.

(2) An application referred to in subsection (1) (a) shall—

(a) be in writing; and

(b) state the grounds on which the credit union considers that it should cease to be subject to the direction of the Protection Board.

(3) The Protection Board shall give written notice of a resolution made under subsection (1) (a) to the credit union in respect of which the resolution is made and to the Registrar within 14 days after the making of the resolution.

Appeal to Minister

104P. (1) A credit union dissatisfied with a resolution under section 104N (1) may appeal to the Minister in writing within 7 days of receiving notice under section 104N (3), to review the resolution.

(2) After considering an appeal under subsection (1) the Minister may—

- (a) endorse the resolution of the Protection Board; or
- (b) substitute his or her own resolution for that of the Protection Board.

(3) Where the Minister—

- (a) endorses a resolution under subsection (2) (a); or
- (b) substitutes a resolution under subsection (2) (b),

such endorsement or substitution has effect for the purposes of this Act as if it were a resolution of the Protection Board under section 104O (1).

Functions of Protection Board where credit union under direction

104Q. (1) The Protection Board may where a credit union is subject to the direction of the Protection Board—

- (a) subject to section 104T—
 - (i) make a direction under section 37G; or
 - (ii) appoint an administrator under section 97 (1);
- (b) require the credit union to correct any practices which, in the opinion of the Protection Board, are undesirable or unsound;
- (c) prohibit or restrict any of the functions of the credit union including the raising or lending of moneys; or
- (d) establish guidelines within which the affairs of the credit union shall be conducted.

(2) Nothing in subsection (1) shall preclude the Registrar from exercising his or her functions under this Act.

(3) For the purposes of carrying out the functions of the Protection Board—

- (a) under subsection (1) (a) (i), section 37G shall apply; and
- (b) under subsection (1) (a) (ii), sections 97, 98 and 99 shall apply,

and be construed as if a reference in those sections to the “Registrar” were a reference to the “Protection Board”.

Offence of failing to act under direction

104R. (1) A director or officer of a credit union which is subject to a resolution made under section 104N (1) shall in carrying out the duties of the position of director or officer act in accordance with the directions given by the Protection Board.

Penalty: \$5 000 or imprisonment for 2 years.

(2) A person who is convicted of an offence under this section shall not act as a director or officer of a credit union for the period of 3 years immediately following that conviction.

Inspection of books by Protection Board

104S. (1) The Protection Board may require the production of any books, minutes, papers or documents in the possession of a person relating to—

- (a) a credit union or any of its subsidiaries;
- (b) a foreign credit union to which Part IX applies or any of its subsidiaries.

(2) The Protection Board may inspect, make copies of or make extracts from any books, minutes, papers or documents produced to it.

(3) The Protection Board may authorize in writing any officer employed by it or any accountant engaged by it to require the production of, inspect, make copies of or make extracts from any books, minute papers or documents to which subsection (1) applies.

(4) A person who does not comply with subsections (1), (2) or (3) is guilty of an offence.

Penalty: \$500.

(5) For the purposes of this section "books" shall have the same meaning as in section 152 (1).

Protection Board may appoint auditor

104T. (1) The Protection Board may, at any time, appoint an auditor to audit the accounts of a credit union whether or not those accounts have been audited under section 85 (6).

(2) An auditor appointed under subsection (1) may require any director or other officer of a credit union to produce all or any of the books or documents of the credit union and to furnish such information as is necessary to enable the audit to be made.

(3) A director or other officer of a credit union who refuses or fails, without lawful excuse, to produce any books or documents required to be produced under subsection (2), or to furnish any information required of him or her under that subsection, shall be guilty of an offence.

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

(4) If a credit union is under the direction of the Protection Board or if the Protection Board has appointed an administrator to conduct the affairs of a credit union then the Protection Board may, notwithstanding any regulation to the contrary made under section 91, by notice in writing remove the auditor appointed by the credit union.

(5) The Protection Board may after notifying the Registrar recommend to a credit union to which subsection (4) does not apply that it remove its present auditor and appoint a new auditor.

(6) The Protection Board may require the auditor or former auditor of a credit union to produce all or any books or documents kept by the auditor in respect of the credit union and to furnish any other information which the Protection Board requires in respect of that credit union.

(7) An auditor who does not produce the books or documents or furnish the information as required under subsection (6) shall be guilty of an offence.

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

(8) The Protection Board may inspect, make copies of or make extracts from any book or document produced to it by an auditor.

**Returns etc., of credit unions to
be submitted to Protection Board**

104U. A credit union shall—

- (a) within 3 months after the close of its financial year submit copies of the documents referred to in section 95 (1) and (2); and
- (b) at any time when requested by the Protection Board submit such financial returns, statements and accounts,

to the Protection Board.

**Returns etc., of Protection Board
to be lodged with Registrar**

104V. The Protection Board shall within 6 months after the close of the financial year lodge with the Registrar copies of the annual returns lodged under section 263 of the *Companies (Western Australia) Code*.

**Registrar may provide documents etc.,
to Protection Board**

104W. (1) The Registrar may at the request of the Protection Board and with or without conditions, supply the Protection Board with—

- (a) copies of documents; and
- (b) any information,

held by the Registrar in the exercise of any of his or her functions under this Act.

(2) The Registrar shall not comply with subsection (1) unless the Registrar considers the documentation or information will assist the Protection Board to fulfil its functions under section 104B (2).

**Protection Board and its auditors shall
provide information to the Registrar**

104X. (1) The Registrar may by notice require the Protection Board or its auditors to provide the Registrar with reports and returns.

(2) A notice under subsection (1) shall—

- (a) be in writing;
- (b) specify the date up to which a report or return shall be made; and
- (c) specify any other information required by the Registrar.

Protection Board shall make rules

104Y. (1) The Protection Board shall prepare rules relating to prudential matters to be carried out by a credit union.

(2) The Protection Board shall serve each credit union with a copy of the rules.

(3) The Protection Board may amend the rules, and shall forthwith after the making of the amendment, give written notice of the amendment to each credit union.

Credit unions shall comply with rules

104Z. (1) A credit union shall comply with the rules of the Protection Board.

(2) The Protection Board shall serve notice on a credit union which, in the opinion of the Protection Board, has failed to comply with subsection (1).

(3) A notice served under subsection (2) shall state the nature of the contravention and until such time as the Protection Board is satisfied that the matter has been rectified the Protection Board may prohibit the credit union from—

- (a) accepting money for share capital or deposits; or
- (b) making loans,

without the approval of the Protection Board.

Protection Board may recover certain costs

104ZA. (1) Any costs incurred by the Protection Board in carrying out its functions under this Part may be recovered from the relevant credit union.

(2) The Protection Board may recover any costs outstanding together with interest from the date of demand for such costs at a rate to be determined by the Protection Board as a debt in any court of competent jurisdiction.

(3) The Protection Board shall pay any moneys received under this section into the Fund. ”.