

WESTERN AUSTRALIA

ACTS AMENDMENT (BUILDING SOCIETIES AND CREDIT UNIONS) ACT

No. 120 of 1987

AN ACT to amend the *Building Societies Act 1976* and the *Credit Unions Act 1979* and for connected purposes.

[Assented to 24 December 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I - PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Building Societies and Credit Unions) Act 1987*.

Commencement

2. This Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART II - BUILDING SOCIETIES ACT 1976

Principal Act

3. In this Part, the *Building Societies Act 1976** is referred to as the principal Act.

[*Reprinted as at 14 April 1986.].

Section 5 amended

4. Section 5 of the principal Act is amended -

- (a) by inserting after the section designation "5." the subsection designation "(1)";
- (b) in the definition of "Registrar", by deleting "Building Societies pursuant to the provisions of this Act" and substituting the following -

" Co-operative and Financial Institutions referred to in section 6(1) ";

- (c) by deleting the definitions of "Advisory Committee", "section", and 'subsection";
- (d) by inserting, in their appropriate alphabetical positions, the following definitions -

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

" "non-withdrawable", in relation to shares issued by a society, refers to shares for which a person has subscribed on terms that do not permit repayment of any of the amount subscribed other than an amount subscribed in excess of the nominal value of the shares except upon the winding up of the society; "

" "prime net worth", in relation to a society, means -

- (a) the paid up non-withdrawable share capital of the society;
- (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; and
- (c) reserves established by the revaluation of real property held by the society and certified in accordance with section 65(4)(c); "

" "provide financial accommodation" means to advance moneys, to provide credit under a continuing credit arrangement, or to give any guarantee; "

" "withdrawable", in relation to shares issued by a society, refers to shares other than non-withdrawable shares; "

(e) by inserting the following subsection -

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

Part II heading amended

5. The heading to Part II of the principal Act is amended by deleting "AND INSPECTIONS".

Section 6 amended

6. (1) Section 6 of the principal Act is amended -

(a) by repealing subsection (1) and substituting the following subsection -

" (1)The person appointed under and subject to the *Public Service Act 1978* to the office of Registrar of Co-operative and Financial Institutions shall carry out the duties and functions vested by or under this Act in the Registrar. ";

(b) in subsection (2), by deleting "of Building Societies"; and

(c) by repealing subsection (7).

(2) Until a person is appointed to the office of Registrar of Co-operative and Financial Institutions as referred to in section 6(1) of the principal Act as amended by this Act, the person holding the office of Registrar of Building Societies immediately before the coming into operation of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to have been so appointed.

Section 7 amended

7. Section 7 of the principal Act is amended -

(a) by inserting after subsection (1) the following subsection -

" (1a) Without limiting subsection (1), the Registrar may, of his own volition, investigate the affairs of a society, including its working and financial condition, whenever the Registrar sees fit, and for the purposes of that investigation the Registrar has all of the powers given by subsection (1) to the Registrar for the purposes mentioned in that subsection. "; and

(b) in subsection (3)(a), by inserting after "inspection" the following -

" or investigation ".

Sections 11 and 12 repealed

8. Sections 11 and 12 of the principal Act are repealed.

Section 15 amended

9. Section 15 of the principal Act is amended -

(a) in subsection (2)(b)(vi), by deleting "available to it the funds" and substituting the following -

" non-withdrawable share capital not less than that ";

- (b) by repealing subsection (3) and substituting the following subsection -

"(3) The Registrar shall not register a permanent society under this Act unless at least \$5 000 000 of its share capital is non- withdrawable. "; and

- (c) in subsection (4) by deleting "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" and substituting the following -

" If the Registrar, after considering an application for registration ".

Section 22 repealed

10. Section 22 of the principal Act is repealed.

Part IV repealed and a Part substituted

11. Part IV of the principal Act is repealed and the following Part is substituted -

"PART IV - AMALGAMATION, TRANSFER OF ENGAGEMENTS, AND TAKE-OVERS

Interpretation of this Part

26. In this Part—

"amalgamated society" means the society that is proposed to be formed, or has been formed, by the amalgamation of 2 or more institutions under this Part;

"amalgamating institution" means an institution that has applied under section 28 (1) for approval to amalgamate with one or more other institutions;

"credit union" means a credit union (other than a foreign credit union) registered under the *Credit Unions Act 1979*;

"financial society" means a financial society registered under the *Credit Unions Act 1979*;

"institution" means a society, a credit union, or a financial society;

"permanent institution" means a permanent society, a credit union, or financial society;

"special resolution" in relation to a credit union or a financial society means a special resolution of that institution passed in accordance with the *Credit Unions Act 1979*.

Amalgamation of institutions

27. Subject to this Part—

(a) 2 or more permanent institutions, one or more of which is a permanent society, may amalgamate to form a permanent society;

(b) 2 or more terminating societies may amalgamate to form a terminating society;

- (c) 2 or more Starr Bowkett societies may amalgamate to form a Starr Bowkett society.

Application for amalgamation

28. (1) Two or more institutions may apply to the Registrar for approval to amalgamate in accordance with section 27.

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

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

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

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

Amalgamation with approval of members and Registrar

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

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

- (d) the Registrar shall reject the application if, within 14 days after the sending of the notices under paragraph (b) by an institution, written objections to the proposed amalgamation are lodged with the Registrar by persons entitled to cast more than 25% of the maximum number of votes that might be cast at a general meeting of that institution.

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

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

Amalgamation without approval of members

29A. If the Registrar directs that this section is to apply to an application under section 28 (1)—

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

Registration of amalgamated society and effect of amalgamation

29B. (1) If the Registrar approves of a proposed amalgamation under section 29 or 29A, the Registrar shall, upon the surrender to him of the certificate of incorporation of the society, or each society, that is an amalgamating institution or production of such evidence as to the loss of that certificate as the Registrar may require, register the amalgamated society and its rules, and issue a certificate of incorporation in respect of the amalgamated society.

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

(3) The amalgamation shall not prejudice any right of a creditor of any amalgamating institution.

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

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

(6) Upon production of the certificate of the Registrar, and of the appropriate certificates of title (if any) the Registrar of Titles or the Registrar of Deeds, as the case requires, shall make such entries or notations

upon existing 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.

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

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

Voluntary transfer of engagements of institutions

29C. (1) Subject to this Part—

- (a) any permanent institution may transfer all its engagements to a permanent society that undertakes to fulfil those engagements;
- (b) a permanent society may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (a);
- (c) a terminating society may transfer all its engagements to another terminating society that undertakes to fulfil those engagements;
- (d) a terminating society may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (c);
- (e) a Starr Bowkett society may transfer all its engagements to another Starr Bowkett society that undertakes to fulfil those engagements;
- (f) a Starr Bowkett society may undertake to fulfil the engagements pursuant to a transfer in accordance with paragraph (e).

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

(3) The provisions of section 28(2) (other than paragraph (a)), 28(3), 29, 29A and 29B(3) to (8) shall apply, with necessary modifications, to a transfer of engagements under this section and for the purpose of the application of those provisions—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to an amalgamating institution in section 28(3), 29 or 29A shall be construed as a reference to the institution transferring its engagements or the society to which the engagements are being transferred;
- (c) a reference to an amalgamating institution in section 29B(3) to (8) shall be construed as a reference to the institution transferring its engagements;
- (d) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred; and
- (e) a reference to the issue of the certificate of incorporation of the amalgamated society shall be construed as a reference to the approval of the transfer of engagements by the Registrar under section 29 or 29A as applied by this subsection.

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

Transfer of engagements of societies by direction of Registrar

29D. (1) Notwithstanding anything to the contrary contained in the rules of a society, the Registrar may, with the approval of the Minister and agreement of the transferee society—

- (a) direct the transfer of all the engagements of a society to another society; and
- (b) give a society such directions as the Registrar considers necessary to give effect to the transfer of engagements directed under paragraph (a).

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

- (a) of a permanent society only to another permanent society;
- (b) of a terminating society only to another terminating society;
- (c) of a Starr Bowkett society only to another Starr Bowkett society.

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

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

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

(5) Subsections (3) to (8) of section 29B shall apply, with necessary modifications, to a transfer of engagements under this section, and for the purpose of the application of those subsections—

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

(6) Section 29C(4) shall apply to a society that has its engagements transferred under this section.

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

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

(9) An officer of a society who—

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

is guilty of an offence.

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

Power to undertake to fulfil engagements transferred by direction

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

(2) A permanent society may fulfil the engagements of another permanent institution pursuant to a transfer of engagements under section 37G of the *Credit Unions Act 1979*.

Take-over of permanent society

29F. (1) Subject to subsection (2), the Registrar shall not approve, under section 53(10), of the issue, holding or acquisition of shares of a permanent society (in this section called the “target society”) if, as a result of the issue, holding, or acquisition, the shares held beneficially by a person or 2 or more associated persons (in this section called “the party seeking control”) would entitle the party seeking control to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the target society.

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

- (a) a permanent institution;
- (b) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth;
- (c) a bank constituted under the laws of this State; or
- (d) a body corporate approved by the Minister for the purposes of this section.

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

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

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

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

Direction to permit take-over

29G. (1) Notwithstanding anything in this Act or the rules of a society (in this section called “the target society”) the Registrar may with the approval of the Minister and agreement of the party taking control—

- (a) direct the target society to issue shares of the class mentioned in section 53(1)(c) to a person so that, as a result of the issue, the shares held beneficially by a person or 2 or more associated persons (in this section called “the party taking control”) would entitle the party taking control to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the target society; and
- (b) give the target society and the party taking control such directions as the Registrar considers necessary in relation to the issue of shares directed under paragraph (a).

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

- (a) a permanent institution;
- (b) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth;
- (c) a bank constituted under the laws of this State; or
- (d) a body corporate approved by the Minister for the purposes of this section.

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

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

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

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

(6) An officer of a 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.

(7) Sections 29F (1) and 53 (10) do not apply to the issue of shares pursuant to a direction under subsection (1) (a). "

Section 31 amended

12. Section 31 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting "advance moneys' in paragraph (a) and substituting the following -

" provide financial accommodation ";

and
 - (ii) by deleting paragraph (d) and substituting the following paragraph -

" (d) provide financial accommodation to members, with or without security. ";
- (b) in subsection (2), by deleting "repayment of an advance" and substituting the following -

"provision of financial accommodation ";
- (c) by inserting after subsection (2) the following subsections -

"(3)Where the rules of a society so provide, the Board may, by instrument in writing, delegate any or all of its powers under subsection (1), and in respect of matters ancillary thereto, to any person or body of persons of a prescribed class.

(4)Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984*, a delegation under subsection (3) is subject, in addition to such conditions, qualifications, limitations or exceptions, if any, as may be specified in accordance with section 59(1)(b) of that Act, to such conditions, if any, as may be prescribed.

(5) A society shall not provide financial accommodation unless there are reasonable grounds for believing, before the application for financial accommodation is approved-

- (a) that the person to whom financial accommodation is to be provided has, and will continue to have, an income or other financial resources sufficient to provide for the fulfilment of his obligations in respect of that financial accommodation, or to which the financial accommodation relates; or
- (b) where the financial accommodation is to be provided with security, that the security is adequate. "

Sections 32, 33 and 34 repealed and sections substituted

13. Sections 32, 33 and 34 of the principal Act are repealed and the following sections are substituted -

Registrar's directions

" 32. (1) The Registrar may, in writing, give to a society such directions as he sees fit as to the circumstances in which, and the conditions on which, the society may provide financial accommodation under section 31(1), and as to the extent of the financial accommodation that may be provided but a direction under this subsection shall not relate to the rate of interest to be payable.

(2) The Registrar may, by writing given to the society to which a direction has been given under subsection (1), vary or revoke the direction.

(3) The power of a society to provide financial accommodation under section 31(1) is subject to any direction as for the time being in force under this section.

Society to advise borrower of certain matters

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

(2) The notice required by subsection (1) shall be in the prescribed form and shall set out the amount of any fees, charges and other expenses paid or to be paid by the person and, except where the financial accommodation to be provided is a guarantee—

- (a) the prescribed particulars as to the rate of interest to be payable when the financial accommodation is to be provided;
- (b) whether or not any variation of the rate of interest may be made during the period for which financial accommodation is to be provided;
- (c) the date on which interest commences to accrue; and
- (d) the date on which repayments or payments are to commence.

Limit on financial accommodation

34. Unless the approval in writing of the Minister has been first obtained a permanent society shall not—

- (a) under section 31, provide financial accommodation to a person; or
- (b) accept any guarantee from a person,

if as a result the aggregate indebtedness or contingent indebtedness to the society of that person, together with the aggregate indebtedness or contingent indebtedness to the society of any person associated with that person would exceed 20% of the prime net worth of the society. ”.

Section 38 amended

14. Section 38 of the principal Act is amended -

- (a) in subsection (1), by inserting after "society" the following -
 - " (other than a permanent society) "; and
- (b) by repealing subsection (2).

Section 40 amended

15. Section 40 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting "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" and substituting the following -
 - " approve the provision of. provide, or offer to provide, any financial accommodation if, at the time the approval is given, the financial accommodation is provided or the offer is made, the society holds liquid funds equal to "; and
 - (ii) by inserting in paragraph (a), before "share", the following -
 - " withdrawable ";
- (b) in subsection (2) -
 - (i) by deleting paragraph (a); and
 - (ii) in paragraph (b) by deleting subparagraph (ii) and substituting the following subparagraph -
 - " (ii) funds held upon convertible certificate or negotiable certificate of deposit with any bank; ";

and

- (c) in subsection (3), by deleting "as amended from time to time" in paragraph (i) of the definition of "bank".

Section 41 amended

16. Section 41 of the principal Act is amended -

- (a) in subsection (3), by deleting "to furnish" and substituting the following -
 - " or its auditor to furnish to the Registrar a special report or reports or ";
and
- (b) by inserting the following subsection -
 - " (4) Section 83(2) applies in respect of a report or return that an auditor has been required under subsection (3) to furnish to the Registrar, as if the reference therein to "a society" were a reference to "an auditor". "

Section 42 amended and savings

17.(1) Section 42 of the principal Act is amended -

- (a) by repealing subsections (1), (2) and (3) and substituting the following subsection -
 - " (1) Subject to this section, every permanent society shall -
 - (a) have, at the beginning of the financial year of the society that commences in 1989 and at the beginning of each financial year thereafter, net worth amounting to not less than the relevant percentage for that year of the mean assets of the society for the last preceding financial year; and
 - (b) maintain the net worth that, under paragraph (a), it is required to have at the beginning of a particular financial year until the beginning of the next succeeding financial year. ";
- (b) in each of subsections (4) and (5), by deleting ", (2) or (3)"; and
- (c) by repealing subsections (6) and (7) and substituting the following subsections -
 - " (6) For the purposes of this section, in relation to a society -
 - "mean assets", with reference to a particular financial year, means the amount obtained by adding the value of the aggregate assets of the society as at the end of that financial year to the value of the aggregate assets of the society as at the end of the previous financial year and dividing the total of those values by 2;

"net worth" means -

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

"the relevant percentage", for a particular financial year, means -

- (a) 5%; or
- (b) where, as at the beginning of that financial year, the net worth of the society expressed as a percentage of the mean assets of the society for the last preceding financial year was less than 5% and the following calculation would result in a percentage less than 5%, the percentage calculated by increasing the transitional percentage by one-fifth of the difference between the transitional percentage and 5% for each complete financial year of the society since the beginning of 1988;

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

(7) The regulations may prescribe a percentage other than 5% for the purposes of paragraph (a) of the definition of "the relevant percentage" in subsection (6) and make transitional provision in place of paragraph (b) of that definition, and that definition shall be read subject to any such regulations. "

(2) Notwithstanding the amendments made by subsection (1) to section 42 of the principal Act, that section as in force before the coming into operation of those amendments shall continue to apply in relation to a society until the beginning of the financial year of the society that commences in 1989.

Section 43 inserted

18. After section 42 of the principal Act the following section is inserted -

Certain reserve accounts

" 43. Any amount maintained by a society in a reserve account referred to in the definition of "prime net worth" in section 5 -

- (a) shall not be distributed amongst members of the society, other than by way of a bonus issue of non-withdrawable shares, 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 47 amended

19. Section 47 of the principal Act is amended by repealing subsection (2) and substituting the following subsections -

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

(3) The Registrar may, under subsection (2), impose such limitations as to amount as he sees fit, which limitations may vary according to the term of the investment, the class or form of investment, the person or class of persons with whom the investment is to be made, or such other matters as he considers relevant. "

Section 48 amended

20. Section 48 of the principal Act is amended by repealing subsections (1c) and (1d).

Section 50 amended

21. Section 50 of the principal Act is amended -

(a) in subsection (2) by deleting " societies" in both places where it occurs and substituting in each case, the following -

" institutions ";

(b) in subsection (2a) -

(i) by deleting "29 or 29A" and substituting the following -

" 29C or 29D, or section 37G of the *Credit Unions Act 1979*, "; and

(ii) by deleting "societies" and substituting the following -

" institutions ";

(c) by inserting after subsection (2a) the following subsection -

" (2b) In subsections (2) and (2a) "institutions" has the same meaning as it has in Part IV. "; and

(d) by repealing subsections (4), (5) and (6).

Section 53 amended

22. (1) Section 53 of the principal Act is amended -

(a) by repealing subsections (1), (2) and (3) and substituting the following subsections -

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

(a) withdrawable shares that, subject to this Act, entitle the holder to one and only one vote at a meeting of the society irrespective of the number of those shares held;

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

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

(3) The rules of a society may provide for -

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

(b) in subsection (5), by inserting before "cancellation", in both places where it occurs, the following -

" transfer or ";

(c) in subsection (6) -

(i) by inserting before "share" the following -

" paid up non-withdrawable ";

(ii) by deleting "\$2 000 000" and substituting the following -

" \$5 000 000 ";

(d) by repealing subsection (10) and substituting the following subsections -

" (10) Unless the written approval of the Registrar thereto has been first obtained -

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

if, as a result, the shares held beneficially by any person, together with the shares held beneficially by any person associated with that person -

- (c) would exceed 20% of the subscribed capital for the time being of the society; or

- (d) would entitle the holder or the holders of those shares to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the society.

Default penalty: \$500.

(10a) Where the issue of shares to a person or acquisition or holding of shares by a person contravenes subsection (10), the person by whom the shares are beneficially held also commits an offence.

Default penalty: \$500.

(10b) Without affecting the liability of a society or any person for an offence against subsection (10) or (10a), the Registrar may, by order in writing given to -

- (a) a society any shares of which are held contrary to subsection (10); and
- (b) the person holding the shares concerned and, if they are held for the benefit of another person, that other person,

direct that any shares held contrary to subsection (10) -

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

and the order has effect according to its tenor. "

(2) Where on 13 October 1987 the shares held beneficially by a person (in this section called "the relevant person"), together with the shares held beneficially by any person associated with that person -

- (a) were a percentage of the subscribed capital on that day of the society (in this section called "the modified shareholding percentage") that exceeds 20%; or
- (b) would have entitled the holder or the holders of those shares to cast or control the casting of a percentage of the maximum number of votes that might have been cast at a general meeting of the society held on that day (in this section called "the modified voting percentage") that exceeds 10%,

then, subject to subsection (3) of this section, section 53 of the principal Act applies in relation to the holding of shares beneficially by the relevant person as if -

- (c) the reference to 20% in subsection (10)(c) of that section were a reference to the modified shareholding percentage or 20%, whichever is greater; and
- (d) the reference to 10% in subsection (10)(d) of that section were a reference to the modified voting percentage or 10%, whichever is greater.

(3) Where the operation of section 53 of the principal Act in relation to a person is modified by subsection (2) and, after the coming into operation of this section, that person permits the number of shares held beneficially by him to be such that those shares, together with the shares held beneficially by any person associated with him -

- (a) are a percentage of the subscribed capital for the time being of the society (in this subsection called "the reduced shareholding percentage") that is less than the modified shareholding percentage, the reduced shareholding percentage shall become the modified shareholding percentage for the purposes of subsection (2)(c);
- (b) would entitle the holder or the holders of those shares to cast or control the casting of a percentage of the maximum number of votes that might be cast at a general meeting of the society (in this subsection called "the reduced voting percentage") that is less than the modified voting percentage, the reduced voting percentage shall become the modified voting percentage for the purposes of subsection (2)(d).

Transitional

23. (1) Any shares of a society created before the commencement of this Act that are not of a class mentioned in section 53(1) of the principal Act as amended by this Act shall not be issued if they have not then already been issued and, if they have then already been issued, are, upon the commencement of this Act, non-transferable and the society shall, before the expiration of one year after the commencement of this Act -

- (a) cancel the shares and pay to the holder, if any, the paid up value of the shares cancelled, or convert the shares into shares of a class mentioned in section 53(1); and
- (b) amend the rules of the society to bring them into accordance with the principal Act as to the classes of shares that may be issued.

(2) Where a society fails to comply with subsection (1)(a), the Registrar may, by order in writing given to -

- (a) the society; and
- (b) the holder, if any, of the shares concerned and, if they are held for the benefit of another person, that other person,

direct that the shares concerned are redeemed or converted, as specified in the order and the order has effect according to its tenor.

Section 53A inserted

24. After section 53 of the principal Act the following section is inserted -

Registrar's approval to raise capital by share issue

"53A. A society registered under this Act may raise funds by the issue of shares but, in the case of shares of the class mentioned in section 53(1)(c), only with the prior approval in writing of the Registrar. "

Section 61 amended

25. Section 61 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections -

" (1) A director of a society shall not obtain the provision of financial accommodation by the society on conditions that are more favourable than those generally extended to members, and the society shall not so provide financial accommodation to a director -

- (a) where the director is also a full time officer of the society -
 - (i) if the financial accommodation is to be provided on the security of a mortgage over his ordinary place of residence, except by a resolution of the board;
 - (ii) if the financial accommodation is to be provided other than on such security, except by special resolution of the society;

- (b) where the director is not also a full time officer of the society -
 - (i) if the financial accommodation is to be provided 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 financial accommodation is to be provided other than on such security, except by special resolution of the society,

and if any financial accommodation is provided in contravention of this subsection, the directors who authorized the provision of the financial accommodation are jointly and severally liable for any loss suffered by the society in respect to the provision of the financial accommodation.

(2) A society shall not provide financial accommodation to any officer of the society who is not a director unless the provision of the financial accommodation has been first approved at a meeting of the board of the society.

Section 64. amended

26. Section 64 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by inserting after "two-thirds of" the following -
" the votes of "; and
 - (ii) by deleting "register their"; and
- (b) in subsection (2), by deleting "poll" and substituting the following -
" count of votes ".

Section 64A amended

27. Section 64A of the principal Act is amended in subsection (1) by deleting "not less" in each of paragraphs (b) and (c) and substituting in each the following -

" more " . . .

Section 65 amended

28. Section 65 of the principal Act is amended -

(a) by inserting after subsection (1) the following subsections -

"(1a) A society shall each month ensure that provision is made in accordance with subsections (1b), (1c) and (1d) for contingent liabilities for loss in its books of account.

(1b) Subject to subsections (1c) and (1e), the provision required by subsection (1a) to be made in respect of financial accommodation provided by the society on terms requiring payments to be made to the society at intervals of -

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

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

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

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

(1c) Where financial accommodation has been provided by the society and any amount appears to the board or the auditors of the society to be unlikely to be recoverable, the provision required by subsection (1a) to be made in respect of that financial accommodation is an amount equal to the whole of the amount considered to be unrecoverable.

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

(1e) Provision is required by subsection (1a) to be made in respect of any financial accommodation that is secured by a registered mortgage over land to the extent only that -

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

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

- (b) in subsection (4)(c), by deleting "a valuer who is not an officer or employee of the society" and substituting the following -

" an independent valuer ".

Section 70B amended

29. Section 70B of the principal Act is amended -

- (a) in subsection (1), by deleting "Advisory Committee" and all of the subsection after those words, and substituting the following -

" Minister with respect to the appointment. ";

and

- (b) in subsection (2), by deleting "a report" and substituting the following -

" representations ".

Section 71 amended

30. Section 71 of the principal Act is amended in subsection (3) -

- (a) by deleting paragraph (d) and substituting the following -

"(d) that the society (being a permanent society) is contravening section 42; "; and

- (b) in paragraph (g), by deleting "inquiry pursuant to the provisions of this Act" and substituting the following -

" investigation under section 7(1)(a) or an inquiry under section 92(1)(b)

Section 77 amended

31. Section 77 of the principal Act is amended in subsection (1) by deleting paragraph (b).

Section 78 amended

32. Section 78 of the principal Act is amended -

- (a) in each of subsections (1) and (3), by deleting "an advance" and substituting the following -

" the provision of financial accommodation ";

and

- (b) in subsection (3) -

- (i) by deleting "the advance" in the first place where it occurs and substituting the following -

" the provision of financial accommodation ";

- (ii) by deleting "advance is to be made" and substituting the following -

" financial accommodation is to be provided ".

Section 84 amended

33. Section 84 of the principal Act is amended -

- (a) by inserting after the section designation "84." the subsection designation "(1)"; and

- (b) by inserting the following subsection -

" (2) Where a society is guilty of an offence against this Act and, irrespective of whether the offence was committed with or without the knowledge of a particular officer of the society, it is proved that that officer ought to have had such knowledge having regard to the nature of his functions as such officer and to all the circumstances of the case, that officer is also guilty of an offence and liable to the same penalty as applies in respect of the offence of which the society is guilty. "

Section 90 amended

34. Section 90 of the principal Act is amended in subsection (1) -

- (a) by deleting ", having first sought the advice of the Advisory Committee, ";

and

- (b) by deleting "making of advances" in paragraph (a) and substituting the following -

" provision of financial accommodation ".

Section 92 amended

35. Section 92 of the principal Act is amended in subsection (1)(b) by deleting "conditions" and substituting the following -

" condition ".

Section 92A inserted

36. After section 92 of the principal Act the following section is inserted -

Levy

" 92A. (1) The Minister may, by order, notice of which is given to each permanent society, require each permanent society to pay to the Minister a levy of an amount that is a specified percentage of the aggregate assets of the society as at the beginning of the financial year last ending before the making of the order.

(2) An order under subsection (1) may require the payment of the levy mentioned in the order -

- (a) once only, on a specified day; or
- (b) periodically, as specified,

and, where the levy is required to be paid periodically, may specify a time after which no further requirement to pay the levy arises under the order.

(3) Where, by an order under subsection (1), permanent societies are required to pay a levy periodically and -

- (a) the order did not specify a time after which no further requirement to pay the levy arises under the order; or
- (b) the order specified a time as mentioned in paragraph (a) but the time has not yet elapsed,

the Minister may, by further order, notice of which is given to each permanent society, revoke the order with effect from a time specified in that further order.

(4) Where he is satisfied that it is inappropriate to require a society to pay a levy in accordance with an order under this section, the Minister may, in writing, exempt the society wholly or in part from that requirement.

(5) The Minister may, by order in writing given to a society exempted under subsection (4), vary or revoke the exemption.

(6) Where a society has been given notice of an order under subsection (1) and has failed to pay to the Minister, in accordance with the order, any amount required by the order to be paid, the amount outstanding is, subject to any exemption under subsection (4), recoverable by the Minister from the society as a debt due.

(7) Amounts paid to or recovered by the Minister under this section shall be credited to an account to be established and kept, as part of the Trust Fund, at the Treasury for the purposes of this section and section 170 of the *Credit Unions Act 1979*.

(8) On the recommendation of the Registrar, the Minister may authorize any money credited under subsection (7) or section 170 of the *Credit Unions Act 1979* to the account referred to in subsection (7) to be applied, on such terms as the Minister may specify in the authorization, towards meeting liabilities of a permanent society in financial difficulty or towards recouping to the State any moneys of the State that have been applied for any such purpose.

(9) A person who -

- (a) supplies any false or misleading information for the purposes of causing an exemption to be given under subsection (4) to a permanent society; or
- (b) by any wilful act, default or neglect evades or attempts to evade payment by a permanent society of all or any of a levy under this section,

commits an offence and is liable to a fine of \$1 000 and, in the case mentioned in paragraph (a), any exemption given is of no effect and is deemed never to have been of any effect.

(10) The imposition on any person of a fine under subsection (9) does not affect the liability of a permanent society to pay any levy under this section.

(11) In this section -

"specified", in relation to an order under subsection (1), means specified in the order. "

Section 96 amended

37. Section 96 of the principal Act is amended -

- (a) in subsection (1), by deleting "Division" and substituting the following -
" Part "; and
- (b) in subsection (2)(a) by deleting "and may determine that such name shall be different from the name of the society".

PART III - CREDIT UNIONS ACT 1979

Principal Act

38. In this Part, 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 and 109 of 1985.]

Section 4 amended

39. Section 4 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting the definitions of "Advisory Committee", "credit union", "paragraph", "Part", "Registrar", "Schedule", "section" and "subsection";

(ii) by inserting in their appropriate alphabetical positions, the following definitions -

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

" "financial society" means a financial society registered under this Act and includes a financial society formed by amalgamation and registered under this Act; ";

" "independent valuer" means a valuer who is not an officer or employee of the credit union concerned; ";

" "non-withdrawable", in relation to shares issued by a credit union, refers to shares for which a person has subscribed on terms that do not permit repayment of any of the amount subscribed other than an amount subscribed in excess of the nominal value of the shares except upon the winding up of the credit union; ";

" "prime net worth", in relation to a credit union, means -

(a) the paid up non-withdrawable share capital of the credit union;

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

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

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

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

" "withdrawable", in relation to shares issued by a credit union, refers to shares other than non-withdrawable shares."; and

(b) by inserting after subsection (1a) the following subsections -

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

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

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

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

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

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

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

Section 7 amended

40. Section 7 of the principal Act is amended -

- (a) by inserting after the section designation "7." the subsection designation "(1);
- (b) in paragraph (b), by deleting "from its members";
- (c) in paragraph (c), by deleting ", approved by the Advisory Committee"; and
- (d) by inserting the following subsection -

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

Section 9 amended

41. Section 9 of the principal Act is amended by inserting the following subsection -

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

Section 10 amended

42. Section 10 of the principal Act is amended -

- (a) in subsection (4) -
 - (i) by inserting before "share" in paragraph (a) the following -
" paid up "; and
 - (ii) by deleting "by members" in paragraph (b);
- (b) in subsection (5)(b)(iv), by deleting "to members";,
- (c) in subsection (8), by deleting "member" and substituting the following -
" person or associated persons ";
- (d) in subsection (9) -
 - (i) by deleting "a member" and substituting the following -
" a person ";
 - (ii) by deleting "that member" and substituting the following -
" that person, together with all other deposits (if any) held by the credit union in respect of any person associated with that person, "; and
- (e) by repealing subsections (11) and (12).

Section 15 repealed and a section substituted

43. Section 15 of the principal Act is repealed and the following section is substituted -

Credit union as agent

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

Heading to Part III, Division 1 amended

44. In Part III of the principal Act the heading to Division 1 is amended by inserting after "*Registration*" the following -

" *of Credit Unions* ".

Section 20 amended

45. Section 20 of the principal Act is amended in subsection (1) -

(a) in paragraph (b) by deleting "this Act" and substituting the following -

" the provisions of this Act that are applicable to credit unions "; and

(b) in paragraph (ba) -

(i) by deleting "share subscriptions or deposits" and substituting the following -

" non-withdrawable share subscriptions "; and

(ii) by deleting "\$1 000 000" and substituting the following -

" \$5 000 000 ".

Section 21 repealed

46. Section 21 of the principal Act is repealed.

Section 23 amended

47. Section 23 of the principal Act is amended in subsection (1) by deleting "a credit union, or any of its proposed rules, or".

Part III, Division 1a inserted

48. After section 24 of the principal Act the following Division is inserted -

" *Division 1a - Registration of Financial Societies*

Application for registration as a financial society

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

(2) The application shall be accompanied by—

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

(3) After considering the application the Registrar shall—

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

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

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

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

Registration of a financial society

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

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

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

Effect of registration

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

Section 26 amended

49. Section 26 of the principal Act is amended by repealing subsection (2).

Section 29 amended

50. Section 29 of the principal Act is amended by inserting after subsection (5) the following subsections -

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

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

Section 31 amended

51. Section 31 of the principal Act is amended in subsections (1) and (2) by deleting "or (3)" and substituting, in each case, the following -

", (3) or (5a) "

**Part IV repealed and a Part substituted;
regulations revoked**

52. (1) Part IV of the principal Act is repealed and the following Part is substituted -

" PART IV - AMALGAMATION, TRANSFER OF ENGAGEMENTS, AND TAKE-OVERS

Interpretation of this Part

36. In this Part—

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

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

"bank" means—

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

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

"institution" means a credit union or a financial society;

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

Amalgamation of institutions

37. Subject to this Part—

- (a) 2 or more institutions, one or more of which is a financial society, may amalgamate to form a body to be registered as a financial society;
- (b) 2 or more credit unions may amalgamate to form a body to be registered as a credit union.

Application for amalgamation

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

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

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

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

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

Amalgamation with approval of members and Registrar

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

- (a) each amalgamating institution shall, unless exempted in writing by the Registrar, send to each of its members a statement the contents of which have been approved by the Registrar concerning—
 - (i) the financial position of each of the amalgamating institutions;
 - (ii) any interest that the officers of any amalgamating institution may have in the amalgamation;

- (iii) any compensation or other consideration proposed to be paid to the officers of any amalgamating institution;
 - (iv) any payments to be made to members of any amalgamating institution in consideration of the amalgamation; and
 - (v) such other matters as the Registrar may direct;
- (b) each amalgamating institution shall send a notice to each person who is entitled to vote at a general meeting of the institution informing the person that a written objection to the proposed amalgamation may be lodged with the Registrar not more than 28 days after the sending of the notice;
 - (c) subject to paragraph (d) the Registrar shall, approve the proposed amalgamation if the terms of amalgamation are approved by a special resolution of each of the amalgamating institutions and the Registrar is satisfied that the proposed rules of the amalgamated institution are not contrary to this Act or the regulations;
 - (d) the Registrar shall reject the application if, within 28 days after the sending of the notices under paragraph (b) by an institution, written objections to the proposed amalgamation are lodged with the Registrar by persons entitled to cast more than 25% of the maximum number of votes that might be cast at a general meeting of that institution.

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

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

Amalgamation without approval of members

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

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

**Registration of amalgamated institution
and effect of amalgamation**

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

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

(3) The amalgamation shall not prejudice any right of a creditor of any amalgamating institution.

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

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

(6) Upon production of the certificate of the Registrar, and of the appropriate certificates of title (if any) the Registrar of Titles or the Registrar of Deeds, as the case requires, shall make such entries or notations upon existing 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 institution pursuant to this section.

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

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

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

Voluntary transfer of engagements of institutions

37E. (1) Subject to this Part—

- (a) any institution may transfer all its engagements to a financial society that undertakes to fulfil those engagements;
- (b) a financial society may undertake to fulfil engagements pursuant to a transfer in accordance with paragraph (a);

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

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

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

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

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

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

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

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

**Transfer of engagements of institutions
by direction of Registrar**

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

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

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

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

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

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

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

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

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to an amalgamating institution shall be construed as a reference to the institution that has its engagements transferred;
- (c) a reference to the amalgamated institution shall be construed as a reference to the institution or permanent building society to which the engagements are transferred; and

- (d) a reference to the issue of the certificate of incorporation of the amalgamated institution shall be construed as a reference to the date specified pursuant to subsection (7).

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

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

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

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

(10) An officer of an institution who—

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

is guilty of an offence.

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

Power to undertake to fulfil engagements transferred by direction

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

Take-over of financial society

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

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

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

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

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

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

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

Direction to permit take-over

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

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

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

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

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

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

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

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

(6) An officer of a financial society who—

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

is guilty of an offence.

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

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

(2) Part IV of the *Credit Unions Regulations 1980** is revoked.

*[*Published in the Gazette of 2 July 1980 at pp. 2053- 2111. For amendments to 8 October 1987 see page 203 of 1986 Index to Legislation of Western Australia.]*

Section 38 amended

53. Section 38 of the principal Act is amended -

- (a) by inserting after subsection (1) the following subsection -

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

- (b) by deleting subsection (2) and substituting the following subsection -

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

- (c) in subsection (4), by deleting "Subject to subsection (5) no" and substituting the following -

” No ”; and

- (d) by repealing subsection (5).

Section 45 amended

54. Section 45 of the principal Act is amended -

- (a) in subsection (2) by inserting after "capital" the following -
" of a credit union ";
- (b) in subsection (3) by inserting after "The shares" the following -
" of a credit union ";
- (c) in subsection (4), by deleting paragraph (a) and substituting the following paragraph -
" (a) subject to this Act, for share capital to be withdrawable or non-withdrawable" ";
- (d) in subsection (5) by inserting after "share" the following -
" of a credit union ";
- (e) by inserting after subsection (5) the following subsections -

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

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

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

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

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

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

(5e) The rules of a financial society may provide for the transfer or cancellation of shares, or the withdrawal of share capital, but no such

rules shall be registered unless the Registrar approves of the provisions governing the transfer or cancellation of shares, or the withdrawal of share capital.

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

- (f) in subsection (6), by inserting after "whatever" the following -
 " except with the prior approval in writing of the Minister "; and
- (g) in subsection (7), by inserting after "A share" the following -
 " of a credit union ".

Section 46 repealed and a section substituted

55. Section 46 of the principal Act is repealed and the following section is substituted -

Restriction on shareholding

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

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

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

Default penalty: \$500.

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

Default penalty: \$500.

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

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

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

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

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

- (b) a person shall not acquire shares by transfer or otherwise, or continue to hold shares of a financial society,

if, as a result, the shares held beneficially by any person, together with the shares held beneficially by any person associated with that person—

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

Default penalty: \$500.

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

Default penalty: \$500.

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

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

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

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

and the order has effect according to its tenor. ”.

Section 48 amended

56. Section 48 of the principal Act is amended in subsection (1) by inserting before "share" the following -

" withdrawable ".

Section 49 amended

57. Section 49 of the principal Act is amended in subsection (2) by deleting ", at any time after seven days' notice in writing to the member or past member, ".

Section 51 amended

58. Section 51 of the principal Act is amended -

(a) in subsection (1) -

- (i) by deleting paragraphs (c) and (d) and substituting the following paragraph -

" (c) in any manner in which a trustee is authorized under the law of the State to invest trust funds: ";

- (ii) in paragraph (f), by inserting before "in the shares" the following -
 - " with the consent of the Registrar, ";
 - and
- (iii) in paragraph (i), by deleting "prescribed" and substituting the following -
 - " approved by the Registrar for the purposes of this subsection "; and
- (b) by repealing subsection (3) and substituting the following subsections -
 - " (3) A credit union shall not in any way invest any portion of its funds pursuant to subsection (1) in excess of any limitation as to amount that the Registrar, by notice in writing given to the credit union, has imposed.
 - (3a) The Registrar may, under subsection (3), impose such limitations as to amount as he sees fit, which limitations may vary according to the term of investment, the class or form of investment, the person or class of persons with whom the investment is to be made, or such other matters as he considers relevant. "

Section 52 amended

59. Section 52 of the principal Act is amended -

- (a) in subsection (4), by deleting "Advisory Committee" and substituting the following -
 - " Registrar "; and
- (b) by repealing subsections (8), (9) and (9a) and substituting the following subsection -
 - " (8) The proper allowance for contingent liability for loss referred to in subsection (7) shall be in accordance with the provision required by section 84(1a) to be made in the accounting records. "

Section 54 amended

60. Section 54 of the principal Act is amended by repealing subsection (1).

Section 56 amended

61. Section 56 of the principal Act is amended -

- (a) by inserting after subsection (1) the following subsection -
 - " (1a) Subject to any regulations referred to in subsection (1), the Registrar may, by notice in writing served on a credit union, give directions to the credit union as to the terms and conditions on which the credit union may make a loan or continuing credit arrangement, and the credit union on which the notice is served shall give effect to the notice according to its tenor. "; and
- (b) by repealing subsection (4).

Section 57 repealed

62. Section 57 of the principal Act is repealed.

Section 60 amended

63. Section 60 of the principal Act is amended -

(a) in subsection (2) -

(i) by deleting paragraph (a) and substituting the following paragraph -

" (a) the expression "liquid funds" means the aggregate of -

- (i) cash at bank (after allowing for cheques and other bills of exchange drawn but not presented for payment) or in hand;
- (ii) funds held upon convertible certificate or negotiable certificate of deposit with any bank;
- (iii) the value of authorized bills of exchange;
- (iv) the value of debentures, stocks and bonds that are either issued by the government of the Commonwealth or of a State or are issued by a public statutory authority and guaranteed by such a government;
- (v) the value of any loan made by the credit union to a corporation which is declared to be an authorized dealer in the short term money market pursuant to section 97(7)(b) of the *Companies (Western Australia) Code*; and
- (vi) the value of any investment in any security or class of security approved for the time being by the Registrar for the purposes of this section,

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

(ii) in paragraph (b), by deleting "seven per centum" and substituting the following -

" 10% "; and

(iii) by deleting paragraph (c) and substituting the following paragraph -

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

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

- (ii) the amount of the deposits held by the credit union. "; and
- (b) in subsection (4)(a), by inserting before "share" the following -
 - " withdrawable " .

Section 61 repealed sections substituted, and savings

64. (1) Section 61 of the principal Act is repealed and the following sections are substituted. -

Net worth requirement

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

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

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

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

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

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

“net worth” means—

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

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

(a) 5%; or

(b) where, as at the beginning of that financial year, the net worth of the credit union expressed as a percentage of the mean assets of the credit union for the last preceeding financial year was less than 5% and the following calculation would result in a percentage less than 5%, the percentage calculated by increasing the transitional percentage by one-fifth of the difference between the transitional percentage and 5% for each complete financial year of the credit union since the beginning of 1988;

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

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

Certain reserve accounts

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

(a) shall not be distributed amongst members of the credit union, other than by way of a bonus issue of non-withdrawable shares, except upon the winding up of the credit union; and

(b) may be applied to any other purpose to which the capital of the credit union may be applied. ”.

(2) Notwithstanding the repeal by this section of section 61 of the principal Act, that section as in force before its repeal shall continue to apply in relation to a credit union until the beginning of the financial year of the credit union that commences in 1989.

Section 65 amended

65. Section 65 of the principal Act is amended in subsection (1) by deleting “Advisory Committee” and substituting the following -

“ Registrar ”.

Section 72 repealed and sections substituted

66. Section 72 of the principal Act is repealed and the following sections are substituted -

Disclosure of interest by directors

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

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

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

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

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

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

(5) A director of a credit union who holds any office or possesses any property whereby, whether directly or indirectly, duties or 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 credit union shall record every declaration under this section in the minutes of the meeting at which it was made.

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

Director not to borrow from credit union, etc

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

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

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

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

(3) For the purposes of this section and of section 72, any thing done by a proprietary company within the meaning of the *Companies (Western Australia) Code* 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 73 amended

67. Section 73 of the principal Act is amended -

- (a) in subsection (2), by deleting "determined by the Advisory Committee" and substituting the following - " approved by the Minister "; and
- (b) in subsection (3) -
 - (i) by deleting "A determination" and substituting the following - " An approval "; and
 - (ii) by deleting "shall be published in the *Gazette* and".

Section 74 amended

68. Section 74 of the principal Act is amended -

- (a) in subsection (2), by inserting after "officer", in both places where it occurs, the following -
" or employee "; and
- (b) in subsection (3)(a), by inserting before "damage" the following -
" loss or ".

Section 79 amended

69. Section 79 of the principal Act is amended -

- (a) in subsection (6), by deleting "under the rules";
and
- (b) by repealing subsection (8) and substituting the following subsection -
" (8) Every member of a credit union who holds a share is, irrespective of the number or class of shares he holds, entitled to one and only one vote at a meeting of the credit union. ".

Section 80 amended

70. Section 80 of the principal Act is amended -

- (a) in subsection (1) by inserting after "special resolution" where it first occurs the following -
" , in relation to a credit union, ";
- (b) by inserting after subsection (1) the following subsection -
" (1a) For the purposes of this Act, a special resolution, in relation to a financial society, is a resolution passed by a majority of not less than two-thirds of the votes of those persons who, being present either personally or by proxy and entitled to vote, vote in favour of the resolution at any general meeting of the financial society of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and of the rules of the financial society. ";
and
- (c) in subsection (2) -
 - (i) by deleting "poll" and substituting the following -
" count of votes "; and
 - (ii) by inserting after "carried" the following -
" by a specified majority ".

Section 82 amended

71. Section 82 of the principal Act is amended in subsection (2) by deleting "not less" in each of paragraphs (b) and (c) and in each case substituting the following -
" more ".

Section 84 amended

72. Section 84 of the principal Act is amended -

(a) by inserting after subsection (1) the following subsections -

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

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

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

(i) where a payment is due and unpaid for a period of more than 3 but less than 6 months, 40% of the outstanding balance;

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

(iii) where a payment is due and unpaid for a period of 9 months or more, the whole of the outstanding balance,

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

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

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

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

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

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

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

- (b) in each of subsections (5) and (6), by inserting after "(1)" the following -
 " , (1a) ".

Section 90 amended

73. Section 90 of the principal Act is amended in subsection (1) by inserting before "published" the following -

" lodged with the Registrar and ".

Section 92 amended

74. Section 92 of the principal Act is amended by inserting the following subsections -

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

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

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

Part VII repealed

75. Part VII of the principal Act is repealed.

Section 100 amended

76. Section 100 of the principal Act is amended in subsection (1) by deleting "Advisory Committee" in both places where it occurs and substituting the following -

" Registrar ".

Section 101 amended

77. Section 101 of the principal Act is amended -

(a) in subsection (3) -

(i) by inserting after paragraph (d) the following paragraph -

" (da) that the credit union is contravening section 61; "

(ii) in paragraph (e), by deleting "to" after "specified"; and

(iii) in paragraph (g), by deleting "a result of an inquiry pursuant to the provisions of this Act" and substituting the following -

" disclosed by an investigation held by the Registrar under section 168 "; and

(b) in subsection (6), by deleting "Advisory Committee" and substituting the following -

" Registrar ".

Section 102 amended

78. Section 102 of the principal Act is amended in subsection (2)(c) by deleting "of Credit Unions".

Section 109A inserted

79. After section 109 of the principal Act the following section is inserted -

Reports and returns to be lodged

" 109A. The Registrar may at any time by notice in writing, require a foreign credit union to lodge with him a special report or return, made up to a date specified in the notice, relating to any matter relevant to the affairs of the foreign credit union, and a foreign credit union shall comply with a requirement set out in a notice given to it under this section. "

Section 115 amended

80. Section 115 of the principal Act is amended by deleting "of Credit Unions".

Section 116A inserted

81. After section 116 of the principal Act the following section is inserted -

Certificate of incorporation conclusive

- " 116A. A certificate of incorporation under this Act shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the credit union referred to therein is duly incorporated under this Act but this section does not derogate from or affect any provisions of this Act for the winding up or dissolution of a credit union, or the cancellation of its registration. "

Section 130 amended

82. Section 130 of the principal Act is amended -

- (a) by inserting after paragraph (a) the following -
" or ";
- (b) by deleting "; or" at the end of paragraph (b) and substituting a comma; and
- (c) by deleting paragraph (c).

Section 145 amended

83. (1) Section 145 of the principal Act is amended -

- (a) by repealing subsection (1) and substituting the following subsection -

" (1) The person appointed under and subject to the *Public Service Act 1978* to the office of Registrar of Co-operative and Financial Institutions shall carry out the duties and functions vested by or under this Act in the Registrar. "; and

- (b) by repealing subsection (4).

(2) Until a person is appointed to the office of Registrar of Co-operative and Financial Institutions as referred to in section 145(1) of the principal Act as amended by this Act, the person holding the office of Registrar of Credit Unions immediately before the coming into operation of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to have been so appointed.

Section 146 amended

84. Section 146 of the principal Act is amended -

- (a) in subsection (1), by deleting "of Credit Unions";
- (b) in subsection (3), by deleting "under" after "appointed" and substituting the following -
" in accordance with "; and
- (c) by repealing subsection (6).

Section 147 amended

85. Section 147 of the principal Act is amended by repealing subsection (6).

Section 167 amended

86. Section 167 of the principal Act is amended in subsection (4) by deleting "Advisory Committee" in both places where it occurs and substituting the following -

" Registrar ".

Section 169 amended

87. Section 169 of the principal Act is amended by deleting "Advisory Committee" in subsection (2), and in both places where it occurs in subsection (5), and in each case substituting the following -

" Registrar ".

Part XI, Division 5 repealed and a section substituted

88. Part XI of the principal Act is amended by repealing Division 5 and substituting the following section -

Levy

" 170. (1) The Minister may, by order, notice of which is given to each credit union, require each credit union to pay to the Minister a levy of an amount that is a specified percentage of the aggregate assets of the credit union as at the beginning of the financial year last ending before the making of the order.

(2) An order under subsection (1) may require the payment of the levy mentioned in the order -

- (a) once only, on a specified day; or
- (b) periodically, as specified, and, where the levy is required to be paid periodically, may specify a time after which no further requirement to pay the levy arises under the order."

(3) Where, by an order under subsection (1), credit unions are required to pay a levy periodically and -

- (a) the order did not specify a time after which no further requirement to pay the levy arises under the order; or
- (b) the order specified a time as mentioned in paragraph (a) but the time has not yet elapsed,

the Minister may, by further order, notice of which is given to each credit union, revoke the order with effect from a time specified in that further order.

(4) Where he is satisfied that it is inappropriate to require a credit union to pay a levy in accordance with an order under this section, the Minister may, in writing, exempt the credit union wholly or in part from that requirement.

(5) The Minister may, by order in writing given to a credit union exempted under subsection (4), vary or revoke the exemption.

(6) Where a credit union has been given notice of an order under subsection (1) and has failed to pay to the Minister, in accordance with the order, any amount required by the order to be paid, the amount outstanding is, subject to any exemption under subsection (4), recoverable by the Minister from the credit union as a debt due.

(7) Amounts paid to or recovered by the Minister under this section shall be credited to an account to be established and kept, as part of the Trust Fund, at the Treasury for the purposes of this section and section 92A of the *Building Societies Act 1976*.

(8) On the recommendation of the Registrar, the Minister may authorize any money credited under subsection (7) or section 92A of the *Building Societies Act 1976* to the account referred to in subsection (7) to be applied, on such terms as the Minister may specify in the authorization, towards meeting liabilities of a credit union in financial difficulty or towards recouping to the state any moneys of the State that have been applied for any such purpose.

(9) A person who -

- (a) supplies any false or misleading information for the purposes of causing an exemption to be given under subsection (4) to a credit union; or
- (b) by any wilful act, default or neglect evades or attempts to evade payment by a credit union of all or any of a levy under this section,

commits an offence and is liable to a fine of \$1 000 and, in the case mentioned in paragraph (a), any exemption given is of no effect and is deemed never to have been of any effect.

(10) The imposition on any person of a fine under subsection (9) does not affect the liability of a credit union to pay any levy under this section.

(11) In this section -

"specified", in relation to an order under subsection (1), means specified in the order. "

Part XIIA inserted

89. After Part XII of the principal Act the following Part is inserted -

" PART XIIA - TRANSFER TO COMPANIES (WESTERN AUSTRALIA) CODE

Registration of credit union as a company

175A. (1) A credit union may, by special resolution, determine that the credit union shall, pursuant to this Part, apply to be registered as a company under the *Companies (Western Australia) Code*.

(2) Before any such application is made the credit union shall, by special resolution -

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

(3) A credit union shall not be so registered under a name which includes the words "credit union" or the words "credit society" or any other words importing a similar meaning.

(4) Every such memorandum of association -

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

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

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

(6) The memorandum of association and articles of association (if any) as so adopted shall not impose upon the members of the company who were members of the credit union at the date of its registration as a company any greater or different liability to contribute to the assets of the company than the liability to which they were subject as members of the credit union and in no case shall such memorandum of association or articles of association as so adopted deprive any member of the company of any rights with respect to dividend or capital to which he was entitled as a member of the credit union immediately before its registration as a company.

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

- (a) the credit union shall register with the Registrar a copy of the special resolutions passed by the credit union pursuant to subsections (1) and (2);
- (b) the credit union shall deliver to the National Companies and Securities Commission -
 - (i) an application by the credit union under its common seal to be registered under the *Companies (Western Australia) Code*;

- (ii) a copy of the special resolutions referred to in paragraph (a), verified under the hand of the Registrar;
- (iii) the memorandum of association adopted for the company and the articles of association (if any); and
- (iv) a list, verified by the statutory declaration of a director, showing the names, addresses and occupations of all persons who, on a day named in such list (being not more than 6 clear days before the day of such delivery) were members of the credit union, and also showing with respect to each such person the number, the nominal amount and amount credited as paid up of any shares held by such person in the credit union.

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

(9) Upon the registration of a credit union as a company -

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

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

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

Transfer of registration

175B. Where a credit union is registered as a company pursuant to an application made under section 175A -

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

Rights and liabilities

175C. Without affecting the generality of section 175B(a), upon registration pursuant to an application by a credit union referred to in that section -

- (a) all property and proprietary and other rights of the applicant credit union shall become vested in and exercisable by the company so registered;
 - (b) all liabilities and obligations of the applicant credit union, whether certain or contingent and whether then existing or capable of arising at a future time, and whether contractual or other, and all rights against the applicant credit union and all penalties (including default penalties) incurred by the applicant credit union shall be enforceable and recoverable against the company so registered; and
 - (c) all persons who would incur any liability for anything done or omitted by, or for any money if lent or credit if given to, or for any loss incurred by, or for any transaction it had with the applicant credit union, shall incur the same liability as would have been incurred if such thing had been done or omitted by, or money lent or credit given to, or loss incurred by, or transaction had with the company so registered ".
-