

BUILDING SOCIETIES.

No. 108 of 1984.

AN ACT to amend the Building Societies Act 1976.

[Assented to 19 December 1984.]

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:—

1. (1) This Act may be cited as the *Building Societies Amendment Act 1984*. Short title and principal Act.

(2) In this Act the Building Societies Act 1976 is referred to as the principal Act. Act No. 47 of 1976 as amended by Acts Nos. 20 of 1977, 56 of 1978 and 10 and 71 of 1982.

Commence-
ment.

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

Section 3
repealed.

3. Section 3 of the principal Act is repealed.

Section 5
amended.

4. Section 5 of the principal Act is amended—

(a) in paragraph (a) of the definition of “banker’s books” by inserting after “banker” the following—

“ , including any documents used in the ordinary course of business of a banker ”;

(b) by inserting after the definition of “books” the following definition—

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

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

or

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

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

- (c) by inserting after the definition of “Starr Bowkett society” the following definition—

“ “subordinated loan” means a loan—

- (a) which is not secured by any charge or other security over the assets of a society;
 - (b) which ranks in priority of repayment after all other debts due to creditors of the society; and
 - (c) which is lodged with the society for a term of not less than 3 years; ”; and
- (d) in the definition of “valuer”, by inserting after “1978” the following—
- “ or similar legislation of a State or Territory ”.

5. Section 7 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

Section 7
amended.

“ (1) For the purposes of ascertaining whether a society or a person who is or has been an officer or employee of a society is complying or has complied with the provisions of this Act and the rules of the society, the Registrar may require the production of, inspect and make copies of—

- (a) any books of a society;

- (b) any books of any person insofar as those books record affairs of a society;
- (c) any banker's books insofar as they relate to the business of a society;
- (d) books, kept by, or by a person in respect of, a corporation in the shares of which a society has invested any of its funds by virtue of section 47 (1) (ca) (whether or not the corporation has been dissolved) insofar as such books record affairs relating to the society; and
- (e) banker's books kept by a banker who acts or has acted as banker to a corporation in the shares of which a society has invested any of its funds by virtue of section 47 (1) (ca) insofar as the banker's books relate to the corporation (whether or not the corporation has been dissolved) and record affairs relating to the society. ”.

Section 12
amended.

6. Section 12 of the principal Act is amended—

(a) in paragraph (b)—

- (i) by inserting after “respect to” the following—

“ the administration of this Act
and the ”; and

- (ii) by deleting “to be made”; and

(b) by inserting after paragraph (c) the following paragraph—

“ (ca) to make recommendations to the Minister with respect to the functions and powers of societies; ”.

7. After section 13 of the principal Act the following section is inserted—

Section 13A
inserted.

“ 13A. Subject to this Act, a building society shall have and may exercise such powers, incidental to its objects, as are prescribed or conferred from time to time by its rules and, without limiting the powers which may be so conferred, a society may—

Powers of
a building
society.

- (a) raise money as authorized by this Act;
- (b) apply moneys raised in such ways as are authorized by this Act;
- (c) acquire and dispose of real and personal property;
- (d) act as an agent for other persons;
- (e) enter into sale, purchase, leasing, hire-purchase and building contracts. ”.

8. Section 15 of the principal Act is amended—

Section 15
amended.

(a) in paragraph (b) of subsection (2)—

- (i) by deleting “and” at the end of subparagraph (v);
- (ii) in subparagraph (vi) by deleting “in subsection (3).” and substituting the following—

“ in subsection (3); ”;

(iii) by inserting after subparagraph (vi) the following subparagraphs—

- “ (vii) a feasibility study of the commercial viability of the proposed society prepared in accordance with such requirements as are prescribed and signed by the chairman and the secretary;
- and

(viii) such other relevant information or evidence as the Registrar may require. ”;

(b) in subsection (3), by deleting “one million dollars, of which not less than five hundred thousand dollars” and substituting the following—

“ \$2 000 000 which ”; and

(c) in paragraph (c) of subsection (4), by inserting after “will be” the following—

“ commercially viable and ”.

Section 23
amended.

9. Section 23 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) A society shall include in its name the words “building society” in consecutive form. ”.

Section 29A
inserted.

10. After section 29 of the principal Act the following section is inserted—

Transfer of
engagements
by direction
of Registrar.

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

(a) to transfer its engagements to another society with the consent of the transferee society; and

(b) within a period specified by the Registrar when giving the direction, to enter into an agreement, approved by the Registrar, to give effect to the transfer of engagements directed.

(2) The Registrar shall not give a direction under subsection (1) unless he certifies as would be provided by section 71 (3) and (4) if section 71 were amended—

(a) by omitting from subsection (3) “In the case of a winding up upon a certificate of the Registrar, the

society may be wound up if” and by inserting instead “The Registrar may not direct a transfer of engagements under section 29A (1) unless”; and

- (b) by omitting from subsection (3) (g) “the society should be wound up” and by inserting instead “the society should transfer its engagements”.

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

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

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

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

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements;
- (b) a reference to the amalgamated society shall be construed as a reference to the society to which the engagements are transferred;
- (c) a reference to a society that is a party to the amalgamation shall be construed as a reference to the society transferring its engagements; and

- (d) a reference to the issue of the certificate of incorporation shall be construed as a reference to the date specified pursuant to subsection (6).

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

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

(8) An officer of a society who—

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

is guilty of an offence.

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

Section 31
amended.

11. Section 31 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

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

- (a) advance moneys on the security of a mortgage over freehold or leasehold land situated within Australia;
- (b) make advances to a local authority secured by debentures issued by that local authority under and in accordance with the Local Government Act 1960 or the Town Planning and

Development Act 1928, or secured in any other manner approved by the Minister;

- (c) advance moneys on the security of a guarantee given by the Government of a State, Territory or the Commonwealth or a guarantee given by an agency or instrumentality of a State, Territory or the Commonwealth that is approved for the purpose by the Minister;
- (d) provide financial accommodation to members by way of continuing credit arrangement with or without security on such conditions as may be approved by the Registrar. ”.

12. Section 32 of the principal Act is amended— Section 32
amended.

- (a) in subsection (1), by inserting after “land”, where it first occurs, the following—

“ , except for the purpose of obtaining security in relation to a continuing credit arrangement, ”;

- (b) in subsection (2), by inserting after “State” at the end of paragraph (b) the following—

“ or by the Government of a State, Territory or the Commonwealth ”;

and

- (c) in subsection (4), by deleting “or any Act amending or in substitution for that Act, or any corporation for the time being approved by the Registrar as a mortgage insurer for the purposes of this section” and substituting the following—

“ or any body corporate authorized under the Insurance Acts 1973 of the Commonwealth to carry on insurance business ”.

Section 33
amended.

13. Section 33 of the principal Act is amended by inserting after "land" the following—

" or a continuing credit arrangement ".

Sections 34,
35 and 36
repealed and
section 34
substituted.

Limit on
advances to
person.

14. Sections 34, 35 and 36 of the principal Act are repealed and the following section is substituted—

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

(a) make an advance to or investment with any person; or

(b) accept a guarantee from any person, without the prior written approval of the Minister to that advance, investment or guarantee where the aggregate indebtedness or contingent indebtedness to the society of the person to or with whom the advance or investment is to be made or from whom the guarantee is to be accepted equals or exceeds $2\frac{1}{2}\%$ of the aggregate assets of that society as at the beginning of the last preceding financial year.

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

Section 37
amended.

15. Section 37 of the principal Act is amended in subsection (1) by inserting after "land" the following—

" , other than land used wholly or principally for farming or agricultural purposes, ".

Section 38
amended.

16. Section 38 of the principal Act is amended by—

(a) inserting after the section designation "38." the subsection designation "(1)"; and

- (b) inserting after subsection (1) the following subsection—

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

17. Section 40 of the principal Act is amended— Section 40
amended.

- (a) in subsection (1)—

- (i) by deleting “ten per cent” and substituting the following—

“ $12\frac{1}{2}\%$ ”; and

- (ii) by deleting “of members’ paid up share capital, deposits held with and loans to the society and amounts for which the society is or may become liable under or in respect of bills of exchange that it has indorsed, discounted or otherwise negotiated under subsection (1a) of section 48.” and substituting the following—

“ of the aggregate of—

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

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

(b) in subsection (2) by deleting “due to mature within two years and are” in subparagraph (iv) of paragraph (b); and

(c) in subsection (4)—

(i) by deleting “its cost to the society or” and “, whichever is the less” in paragraph (a); and

(ii) by deleting “amount or” and “(as the case may be)” in paragraph (b).

Section 42
repealed and
substituted.

18. Section 42 of the principal Act is repealed and the following section is substituted—

Net worth
requirement.

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

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

(3) Subject to this section, every permanent society shall, not later than 3 years after the commencement of the Building Societies

Amendment Act 1984, have and maintain at all times thereafter net worth amounting to not less than 2%, or such other percentage as may be prescribed, of the aggregate assets of the society as at the beginning of the last preceding financial year.

(4) Where a permanent society invests moneys pursuant to section 47 (1) (ca), 47 (1) (cb) or 47 (1) (d), the Registrar may by notice in writing served on the society direct that the minimum amount of net worth to be maintained by that society during the period stated in the notice shall be such greater amount than that applicable under subsection (1), (2) or (3) as is specified in the notice and the Registrar may, by further notice or notices served on the society, vary or revoke a direction given under this subsection.

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

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

- (a) share capital which is subscribed on terms which do not permit repayment of the capital or terms which do not at the time of calculation of the net worth permit repayment of the capital within 3 years;

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

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

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

Sections 43
and 44
repealed.

19. Sections 43 and 44 of the principal Act are repealed.

Section 45
amended.

20. Section 45 of the principal Act is amended—

- (a) in subsection (2), by inserting after “48” in paragraph (a) the following—

“ or issue promissory notes ”;

(b) in subsection (3)—

(i) by deleting “47” and substituting the following—

“ 47 (2) ”;

(ii) by deleting “or” at the end of paragraph (a);

(iii) by inserting at the beginning of paragraph (b) the following—

“ issue promissory notes or ”;

(iv) by deleting “48.” in paragraph (b) and substituting the following—

“ 48; or ”; and

(v) by inserting after paragraph (b) the following paragraph—

“ (c) accept share capital which is subscribed on terms which do not permit repayment thereof and share capital which is subscribed on terms which do not permit repayment thereof before the expiration of 10 years after the day on which it is received by the society. ”.

21. Section 46 of the principal Act is repealed.

Section 46
repealed.

22. Section 47 of the principal Act is amended—

Section 47
amended.

(a) in subsection (1)—

(i) by deleting “, unless its rules otherwise direct, invest any portion of its

funds not immediately required for its objects or purposes incidental thereto” and substituting the following—

“ invest its funds ”;

(ii) in paragraph (a), by deleting “other than by way of loan secured by mortgage over land”;

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

“ (ca) with the approval of the Registrar, in the shares of any corporation registered under an Act or other enactment of a State or of a Territory of the Commonwealth that has agreed to render special services to the society in the furtherance of its objects;

(cb) with the approval of the Registrar, in a loan to a corporation in the shares of which the society has invested by virtue of paragraph (ca);

(cc) in the purchase of mortgages and mortgage backed securities pursuant to section 32; ”; and

(b) by repealing subsections (3) and (4).

Section 48
amended.

23. Section 48 of the principal Act is amended—

(a) in subsection (1), by deleting “at interest”;

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

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

(a) issue promissory notes; and

(b) draw, indorse, discount or otherwise negotiate bills of exchange. ”;

- (c) by repealing subsection (1c) and substituting the following subsections—

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

(a) receive a deposit or loan;

(b) issue a promissory note; or

(c) draw, indorse, discount or otherwise negotiate a bill of exchange,

if the total of—

(d) the aggregate amount of deposits and loans received by the society; and

(e) the aggregate amount for which the society is or may become liable under or in respect of—

(i) promissory notes issued by it; and

(ii) bills of exchange that it has drawn or accepted (but in calculating such an aggregate

amount, an amount that has been taken into account as a deposit or loan shall not be taken into account again by reason of any bill of exchange or promissory note),

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

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

(a) 40 times—

- (i) the fully paid share capital of the society which is subscribed on terms which do not permit repayment thereof;
- (ii) the fully paid share capital of the society which at the time of calculation of the fixed limit is not repayable within 3 years;
- (iii) the subordinated loans to the society which at the time of calculation of the fixed limit are not repayable by the society within 3 years; and
- (iv) the amount of the reserve account referred to in section 42 (6);

- (b) 4 times the paid up amount of the share capital of the society, other than such capital referred to in subparagraphs (i) and (ii) of paragraph (a); and
- (c) 20 times the amount of reserves established by the revaluation of real property in accordance with section 42 (6) (c),

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

24. Section 50 of the principal Act is amended— Section 50
amended.

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

“ (2a) The members of a society to which engagements are transferred pursuant to section 29 or 29A shall be the persons who, immediately before the transfer of engagements, were members of the societies that were parties to the transfer and any other persons who are admitted to membership of the society to which the engagements were transferred. ”; and

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

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

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

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

(b) be a member of the society for a prescribed period of time,

before being entitled to exercise a vote at any meeting of the society.

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

Section 53
amended.

25. Section 53 of the principal Act is amended—

(a) in subsection (6), by deleting “one million dollars” and substituting the following—
“ \$2 000 000 ”; and

(b) by repealing subsection (10) and substituting the following subsection—

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

Section 58
amended.

26. Section 58 of the principal Act is amended by repealing subsection (7) and substituting the following subsection—

“ (7) Notwithstanding any other provision of this Act or anything contained in the rules of a society, a person shall not be appointed a director of a society for life, for an indefinite

term or for a term exceeding 5 years, but nothing in this subsection renders a person whose term of office as director expires or determines, ineligible for re-appointment. ”.

27. Section 59 of the principal Act is amended— Section 59
amended.

- (a) in subsection (4), by inserting after “occurring shall be filled” the following—

“ within 60 days and otherwise ”; and

- (b) by inserting after subsection (4) the following subsection—

“ (4a) Where—

- (a) a vacancy in the office of a director of a society is not filled within 60 days; and

- (b) by reason of that vacancy, that society has—

- (i) in the case of a permanent society, less than 5 directors; or

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

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

Section 60
amended.

28. Section 60 of the principal Act is amended by repealing subsections (1), (2), (3), (4), (5), (6), (7) and (8) and substituting the following subsections—

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

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

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

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

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

firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

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

(5) A director of a society who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall, in accordance with subsection (6), declare at a meeting of the board the fact and the nature, character and extent of the conflict.

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

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

- (a) where the person holds the office or possesses the property as mentioned in subsection (5) when he becomes a director, at the first meeting of the board held after—
 - (i) he becomes a director; or

- (ii) the relevant facts as to the holding of the office or the possession of the property come to his knowledge,

whichever is later; or

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

(7) A secretary of a society shall record every declaration under this section in the minutes of the meeting at which it was made.

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

Section 61
amended.

29. Section 61 of the principal Act is amended—

- (a) in subsection (1), by deleting “director, except by special resolution of the society, and if” and substituting the following—

“ director—

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

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

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

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

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

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

and if ”;

(b) in subsection (3)—

(i) by deleting “, or other officer of the society,”; and

(ii) by deleting “and expenses”; and

(c) in subsection (4), by inserting after “may be” the following—

“ , 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 ”.

30. Section 62 of the principal Act is amended by deleting “special resolution of the society” and substituting the following—

Section 62
amended.

“ resolution of the board ”.

Section 63
amended.

31. Section 63 of the principal Act is amended by inserting after subsection (4) the following subsections—

“ (5) All meetings of a society shall, unless the Registrar otherwise approves, be held in the registered office of the society.

(6) Subject to subsection (7), not less than 7 days' notice shall be given of every meeting of a society.

(7) Not less than 14 days' notice shall be given of a meeting of a society called for the purpose of passing a special resolution.

(8) Notice of a meeting of a society may be given by advertisement in the form and manner prescribed. ”.

Sections 64A
and 64B
inserted.

32. The principal Act is amended by inserting after the heading to Division 3 of Part VII the following sections—

Interpreta-
tion.

“ 64A. (1) For the purposes of this Division, an incorporated body is a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of that body;
- (b) controls or is in a position to control not less than 50% of the voting power at a general meeting of that body; or
- (c) holds not less than 50%, or such smaller percentage as may be determined from time to time by the Registrar by notice published in the *Gazette*, of the issued share capital of the body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(2) Without limiting by implication the circumstances in which the composition of the board of directors of an incorporated body is to be taken to be controlled by a society, the composition of such a board of directors shall be taken to be controlled by a society if that society by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that society, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that society shall be deemed to have power to make such an appointment if—

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

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

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

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

Financial
year of
subsidiaries.

Section 65
amended.

33. Section 65 of the principal Act is amended—

- (a) by inserting after subsection (2) the following subsections—

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

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

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

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

- (b) in subsection (4)—

- (i) in paragraph (a), by deleting “form; and” and substituting the following—

“ form; ”;

- (ii) in paragraph (b), by deleting “prescribed.” and substituting the following—

“ prescribed; and ”; and

- (iii) by inserting after paragraph (b) the following paragraph—

“ (c) a valuation of real property shown on a balance sheet of a society at other than cost to that society shall be certified as correct by a valuer who is not an officer or employee of the society. ”; and

- (c) in subsection (9)—

- (i) in paragraph (c), by deleting “financial year;” and substituting the following—

“ financial year; and ”;

- (ii) in paragraph (d), by deleting “the last preceding paragraph; and” and substituting the following—

“ paragraph (c). ”; and

- (iii) by deleting paragraph (e).

34. Section 66 of the principal Act is amended in subsection (5) by inserting before “an employee” the following—

Section 66
amended.

“ a director of, ”.

35. Section 68 of the principal Act is amended—

Section 68
amended.

- (a) in paragraph (f) of subsection (5), by inserting after “neither” the following—

“ a director of, ”;

(b) in subsection (6)—

(i) in paragraph (d), by deleting “in a State or Territory of the Commonwealth” and substituting the following—

“ in the State ”; and

(ii) in paragraph (g), by inserting after “firm is” the following—

“ a director of, ”;

(c) in subsection (7), by deleting “in a State or Territory of the Commonwealth” and substituting the following—

“ in the State ”;

(d) by repealing subsection (17) and substituting the following subsections—

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

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

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

(17c) Unless the Registrar on the application of the society otherwise orders, the society shall send a copy of the representations in accordance with the auditor's request, and the auditor may (without prejudice to his right to be heard orally or when a firm is the auditor to have a member of the firm heard orally on its behalf) require that the representations be read out at the meeting. "; and

- (e) in subsection (24), by deleting "removal or".

36. After section 70 of the principal Act the following sections are inserted—

Sections 70A
and 70B
inserted.

" 70A. (1) Subject to this section, the Registrar may, with the approval of the Minister, appoint an administrator to conduct the affairs of a society and may revoke any such appointment.

Appointment
of admin-
istrator of
society.

(2) The Registrar shall not appoint an administrator unless he certifies as would be provided by section 71 (3) and (4) if section 71 were amended—

- (a) by omitting from subsection (3) "In the case of a winding up upon a certificate of the Registrar, the society may be wound up if" and by inserting instead "An administrator may not be appointed under section 70A (1) unless"; and

- (b) by omitting from subsection (3) (g) "the society should be wound up" and by inserting instead "an administrator should be appointed to conduct the affairs of the society".

(3) Upon the appointment of an administrator of a society—

- (a) the directors of the society cease to hold office;
- (b) all contracts of employment with the society are terminated; and
- (c) all contracts for the provision of secretarial or administrative services for the society are terminated.

(4) An administrator of a society has the powers, authorities, duties and functions of the board of the society and, except as provided by subsection (5), no appointment of a director of the society may be made while the administrator is in office.

(5) Before revoking the appointment of an administrator of a society, the Registrar shall, except in the case of a revocation under section 70B (2)—

- (a) ensure that directors of the society have been elected in accordance with the rules of the society at a meeting convened by the administrator in accordance with those rules; or
- (b) appoint directors of the society.

(6) Directors elected under subsection (5) (a) or appointed under subsection (5) (b)—

- (a) take office upon revocation of the appointment of the administrator; and
- (b) in the case of appointed directors, hold office until the annual general meeting of the society that next succeeds revocation of that appointment.

(7) The expenses of and incidental to the conduct of the affairs of a society by an administrator are payable from the funds of the society.

(8) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (7) and shall be fixed by the Registrar.

(9) Where an administrator appointed under this section is a servant of the Crown, the reimbursement of the Crown in an amount certified by the Registrar in respect of the remuneration of its servant is an expense referred to in subsection (7) and is recoverable as a debt due to the Crown.

(10) An administrator of a society is not liable for any loss sustained by the society during his term of office unless the loss was due to his wilful misconduct or gross negligence or to his wilful failure to comply with the provisions of this Act or the regulations or the rules of the society.

(11) The Registrar is not liable for any loss sustained by a society during the term of office of an administrator, whether or not the administrator is so liable.

70B. (1) Where an administrator of a society is appointed, a majority of the directors who ceased to hold office upon the appointment of the administrator may, not later than 14 days after the appointment, make representations to the Advisory Committee with respect to the appointment and, where any such representations are so made, the Advisory Committee shall report thereon to the Minister.

Advisory
Committee
may make
certain
report to
Minister.

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

Section 71
amended.

37. Section 71 of the principal Act is amended—

(a) in subsection (3)—

(i) in paragraph (d), by deleting “less than one million dollars” and substituting the following—

“ at least \$2 000 000 ”;

(ii) in paragraph (e), by deleting “notice;” and substituting the following—

“ notice; or ”; and

(iii) by deleting paragraph (f); and

(b) in subsection (4), by deleting “, (f)”.

Section 76
amended.

38. Section 76 of the principal Act is amended by inserting after subsection (4) the following subsection—

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

Section 77
amended.

39. Section 77 of the principal Act is amended in paragraph (b) of subsection (1) by deleting “one million dollars” and substituting the following—

“ \$2 000 000 ”.

40. Section 78 of the principal Act is amended— Section 78 amended.

(a) in subsection (1) by deleting “If any” and substituting the following—

“ Subject to subsection (3), if any ”;
and

(b) by inserting after subsection (2) the following subsection—

“ (3) Notwithstanding subsection (1), a person who is a licensed finance broker under the Finance Brokers Control Act 1975 may receive a commission, fee or reward as a consideration or charge for procuring or obtaining an advance from a society upon security of a mortgage over land on which is erected a dwelling-house where the advance is for a purpose other than the financing of the purchase of the ordinary place of residence of the person to whom the advance is to be made. ”.

41. Section 87 of the principal Act is amended in subsection (1) by deleting “or removal”. Section 87 amended.

42. After section 95 of the principal Act the following Part is inserted— Part XI inserted.

“ PART XI.—TRANSFER TO COMPANIES (*WESTERN AUSTRALIA*) CODE.

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

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

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

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

(4) Every such memorandum of association—

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

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

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

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

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

- (a) the society shall register with the Registrar a copy of the special resolutions passed by the society pursuant to subsections (1) and (2);
- (b) the society shall deliver to the National Companies and Securities Commission—
 - (i) an application by the society under its common seal to be registered under the *Companies (Western Australia) Code*;
 - (ii) a copy of the special resolutions referred to in paragraph (a), verified under the hand of the Registrar;
 - (iii) the memorandum of association adopted for the company and the articles of association (if any); and

- (iv) a list, verified by the statutory declaration of a director, showing the names, addresses and occupations of all persons who, on a day named in such list (being not more than 6 clear days before the day of such delivery) were members of the society, and also showing with respect to each such person the number, the nominal amount and amount credited as paid up of any shares held by such person in the society.

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

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

- (a) all persons who were members of the society at the date of such registration shall be deemed to become

members of the company and their names shall be entered upon the register of members of the company;

and

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

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

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

Transfer of
registration.

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

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

Rights and
liabilities.

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

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

it had with the applicant society, shall incur the same liability as would have been incurred if such thing had been done or omitted by, or money lent or credit given to, or loss incurred by, or transaction had with the company so registered. ”.
