

No. 15 of 1975

AN ORDINANCE

To amend the *Co-operative Societies Ordinance 1939-1974*,
as amended by the *Co-operative Societies Ordinance 1975*.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice
of the Executive Council, hereby make the following Ordinance under
the *Seat of Government (Administration) Act 1910-1973*.

Dated this twentieth day of June, 1975.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

KEP. ENDERBY
Attorney-General, acting for and on behalf of the
Minister of State for the Capital Territory.

CO-OPERATIVE SOCIETIES ORDINANCE (No. 2) 1975

1. (1) This Ordinance may be cited as the *Co-operative Societies Ordinance (No. 2) 1975*.*

Short title
and
citation.

(2) The *Co-operative Societies Ordinance 1939-1974*,† as amended
by the *Co-operative Societies Ordinance 1975*,‡ is in this Ordinance
referred to as the Principal Ordinance.

(3) Section 1 of the *Co-operative Societies Ordinance 1975* is
amended by omitting sub-section (2).

(4) The Principal Ordinance, as amended by this Ordinance, may
be cited as the *Co-operative Societies Ordinance 1939-1975*.

2. Section 4 of the Principal Ordinance is amended—

Inter-
pretation.

(a) by inserting, before the definition of "bond", the following
definition:—

"'authorized bill of exchange' means a bill—

(a) that has been accepted by a bank, being a
bank within the meaning of the *Banking
Act 1959-1974*;

(b) that is payable on demand or not more than
200 days after the day on which it is
transferred to a society;

* Notified in the *Australian Government Gazette* on 23 June 1975.

† Ordinance No. 9, 1939, as amended by No. 1, 1946; No. 14, 1950; No. 14, 1954; No. 10, 1956; No. 18, 1958;
Nos. 3 and 7, 1962; No. 10, 1963; No. 18, 1966; No. 6, 1972; Nos. 16 and 29, 1973; and Nos. 35 and 47, 1974.

‡ Ordinance No. 13, 1975.

- (c) in respect of which the society, on the transfer of the bill to it, becomes a holder in due course; and
 - (d) that has not been endorsed, prior to its transfer to the society, by a person other than—
 - (i) a corporation that has, in pursuance of sub-section 38 (7) of the *Companies Ordinance* 1962-1974, been declared by the Attorney-General, by notice published in the *Gazette*, to be an authorized dealer in the short term money market; or
 - (ii) a registered building society or a building society registered under a law of a State or of another Territory;”;
 - (b) by inserting, after the definition of “credit society”, the following definition:—
 - “‘financial year’, in relation to a society, means the period in respect of which the accounts of the society are made up;”;
 - (c) by inserting, after the definition of “housing and services society”, the following definition:—
 - “‘inspector’ means an inspector appointed under section 5A;”;
 - (d) by inserting, after the definition of “the Secretary”, the following definition:—
 - “‘withdrawable funds’, in relation to a society, means the aggregate of—
 - (a) the amount of the paid up capital of the society; and
 - (b) the amount of the deposits held by the society otherwise than as deposits made by members of the society in consideration for shares for which the members were, by virtue of the Rules of the Society, required to subscribe as a condition to obtaining loans from the society.”;
- and
- (e) by adding at the end thereof the following sub-section:—
 - “ (2) For the purposes of this Ordinance, the surplus arising in a financial year of a society from the business of the society shall be calculated—
 - (a) after making proper allowance for depreciation in value of the property of the society and for contingent liability for loss;

- (b) after making proper allowance for the tax payable by the society under the *Income Tax Assessment Act 1936-1974* in respect of the income of the society for that financial year; and
- (c) in the case of a registered building society—without regard to dividends paid or intended to be paid by the society out of the income of the society for that financial year.”.

3. After section 5 of the Principal Ordinance the following sections are inserted:—

“ 5A. (1) The Minister may appoint such inspectors as he considers **Inspectors.** necessary for the purposes of this Ordinance.

“ (2) A person appointed under this section shall, subject to section 5B, perform such duties for the purposes of this Ordinance as the Registrar directs.

“ 5B. (1) The Registrar or an inspector may, at any reasonable **Inspections.** time, inspect and make copies of books, documents and records relating to the affairs of a society.

“ (2) For the purpose of exercising his powers under sub-section (1), the Registrar or an inspector may—

- (a) enter any premises occupied by a society; or
- (b) require a person who has in his custody or control any books, records or documents relating to the affairs of a society to produce them to him.

“ (3) A person shall not—

- (a) refuse or fail to comply with a requirement made under sub-section (2); or
- (b) obstruct, threaten or intimidate the Registrar or an inspector in the exercise of his powers under this section.

Penalty: \$200.”.

4. After section 8 of the Principal Ordinance the following section is inserted:—

“ 8A. (1) The Registrar may cause to be served on the manager, **Registrar may require bank to give information.** or other person in charge, of a bank a demand in writing signed by the Registrar requiring the manager or that other person to permit the Registrar or an inspector specified in the demand to inspect and make copies of the documents or records of the bank relating to a bank account kept by or on behalf of the society specified in the demand.

“ (2) The manager, or other person in charge, of a bank shall comply with a requirement made in accordance with sub-section (1).

Penalty: \$200.”.

5. Section 14B of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) the words “ A registered building society shall ” and substituting the words “ Subject to sub-section (1A), a registered building society shall ”; **Second mortgages.**

(b) by inserting after sub-section (1) the following sub-section:—

“(1A) A registered building society may make an advance on the security of property which is subject to a prior mortgage exceeding the amount authorized by paragraph (1)(b) if—

(a) the making of the advance would not result in the amount advanced on the security of the property, including the principal, and the interest and charges, if any, due under the prior mortgage, exceeding 95 per cent of the value of the property; and

(b) the society takes additional security, being an indemnity or guarantee by—

(i) the Housing Loans Insurance Corporation established by the *Housing Loans Insurance Act 1965-1973*; or

(ii) a body corporate authorized under the *Insurance Act 1973* to carry on insurance business within the meaning of that Act,

securing the repayment to the society of an amount equivalent to the amount by which the advance exceeds the amount of the maximum advance the society is authorized under paragraph (1)(b) to make.”; and

(c) by omitting from sub-section (2) the words “the last preceding sub-section” and substituting the words “this section”.

Terms of agreement.

6. Section 14P of the Principal Ordinance is amended by inserting in paragraph (a), after the word “through”, the words “the agency of”.

7. (1) After section 22 of the Principal Ordinance the following section is inserted:—

Reserves.

“22A. (1) A society shall, at the end of each financial year of the society, subject to sub-section (3), transfer to a reserve fund, out of the surplus arising in that financial year from the business of the society, the amount required to be transferred under this section.

Penalty: \$1,000.

“(2) The amount required to be transferred to a reserve fund by a society in respect of a financial year of the society is—

(a) an amount that is not less than—

(i) where the society does not have a reserve fund—the required amount for that financial year; or

(ii) where the society has a reserve fund but the fund is less than the required reserve amount for that financial year—

(A) the required amount for that financial year; or

(B) the amount necessary to increase the reserve fund to the required reserve amount for that financial year,
whichever is the lesser; or

- (b) subject to sub-section (5), an amount that is not less than the amount that would result in the proportion that the reserve fund for that financial year bears to the withdrawable funds of the society at the end of that financial year being not less than the proportion that the reserve fund in respect of the immediately preceding financial year had to the withdrawable funds of the society at the end of the immediately preceding financial year,

whichever is the greater.

“ (3) Notwithstanding sub-section (1), if a society is unable to comply with that sub-section—

- (a) the society shall forthwith notify the Registrar of the reasons for its inability so to comply; and
- (b) the Registrar shall, as soon as possible after being so notified, by notice in writing given to the society, direct that the transfer required by sub-section (1) be made by the society—
- (i) from such funds of the society as are specified in the notice; and
- (ii) within such period as is specified in the notice, being a period of not less than 7 days from the date on which the notice is given to the society.

“ (4) A society shall comply with a direction of the Registrar given under sub-section (3).

Penalty: \$1,000.

“ (5) Nothing in this section requires a society to transfer to a reserve fund at the end of a financial year of the society an amount that would result in the reserve fund exceeding the required reserve amount for that financial year.

“ (6) Moneys transferred to a reserve fund of a society in pursuance of this section shall not be distributed amongst the members of the society except in the event of the winding up of the society.

“ (7) Moneys transferred to a reserve fund of a society in pursuance of this section may at any time be applied for any purpose for which the capital of the society may be applied.

“ (8) It is a defence to a prosecution for an offence under sub-section (1) if the society proves—

- (a) that it has notified the Registrar in accordance with paragraph (3)(a); and
- (b) that it has not received a notice under paragraph (3)(b) or, if it has received a notice under that paragraph, that the period specified in the notice has not expired.

“(9) In this section—

‘required amount’, in relation to a financial year of a society, means an amount equal to—

(a) three-tenths of one per cent of the withdrawable funds of the society at the commencement of that financial year; or

(b) three-tenths of one per cent of the withdrawable funds of the society at the end of that financial year, whichever is the lesser;

‘required reserve amount’, in relation to a financial year of a society, means an amount equal to 2½ per cent of the withdrawable funds of the society at the end of that financial year.”

(2) Section 22A of the Principal Ordinance as amended by this Ordinance applies, in the case of a registered building society, in respect of the financial year of the society that commences on 1 July 1975 or in respect of the first financial year of the society that commences after that date, as the case may be, and in respect of all subsequent financial years of the society.

(3) For the purposes of sub-section (2), “financial year” has the same meaning as in section 4 of the Principal Ordinance as amended by this Ordinance.

8. Section 23 of the Principal Ordinance is repealed and the following sections substituted:—

Surplus
from
operations.

“23. (1) Subject to section 22A, any part of the surplus arising in a financial year of a society from the business of the society may, if authorized by the Rules of the society—

(a) be paid to a member by way of dividend in respect of the shares held by him;

(b) be paid to a member by way of bonus or rebate on the business done by him with the society;

(c) be credited to an employee who is not a member, but is qualified to be a member, by way of bonus in proportion to his salary or wages at a rate equal to the rate of bonus or rebate paid to a member on the business done by him with the society; or

(d) be credited to a person who is not a member, but is qualified to be a member, by way of bonus or rebate in proportion to the business done by him with the society.

“(2) A bonus or rebate shall only be credited to an employee or person who is not a member if the amount credited does not exceed the nominal value of the minimum number of shares for which a member is required by the Rules to subscribe and is to be applied in or towards payment for such minimum number of shares to be issued to him on application in accordance with the Rules of the society.

“(3) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his employment.

“(4) Subject to section 22A, a society may, if authorized by its Rules, apply an amount not exceeding 10 per cent of the surplus arising in a financial year of the society from the business of the society to a charitable purpose or for promoting community co-operation and advancement.

“(5) For the purposes of this section, the surplus arising in a financial year of a society from the business of the society does not include any funds which have been transferred in pursuance of section 22A to a reserve fund of the society.

“23A. (1) A registered credit society shall not approve of a loan unless, at the time the approval is given, the society holds liquid funds equal to not less than 10 per cent of the withdrawable funds of the society. Liquidity.

“(2) In this section—

‘commitments’, in relation to a registered credit society, means—

- (a) the sum of the loans approved of by the society in favour of members of the society but in respect of which no part of the moneys the subject of the loans has been made available to the members concerned;
- (b) where the society is authorized by its Rules to raise money on loan and, in pursuance of that authority, has raised money on loan from a person other than a member of the society and moneys remain to be paid by the society to that person in connexion with that loan—an amount calculated by dividing the moneys so remaining to be paid by—
 - (i) where the term of the loan is capable of being calculated—the number of months remaining in the term of the loan; or
 - (ii) where the term of the loan is not capable of being calculated—a number representing the number of months that the society anticipates will be required by it for the purpose of paying the moneys so remaining to be paid; and
- (c) the sum of the amounts payable but not paid, at the end of the immediately preceding month, to members of the society in respect of dividends or interest where payments in respect of those amounts are not normally credited to the members’ accounts,

less an amount equal to 4 times the average amount received each month by the society during the immediately preceding period of 12 months in respect of payments received by the society in connexion with loans made by it to its members;

'institutional loan', in relation to a registered credit society, means a loan in respect of which—

- (a) a charge is, by means of an instrument in writing, created by the society, being a charge that is required to be registered by the society in accordance with the provisions of the *Companies Ordinance* 1962-1974;
- (b) continuing security, in the form of mortgages or other charges given to the society by its members in connexion with loans made by the society to those members, is given by the society;
- (c) the moneys the subject of the loan are to be applied by the society for the purpose of making loans to its members; and
- (d) the society may, at any time and from time to time, draw the whole or a part of the moneys the subject of the loan;

'League' means the A.C.T. Credit Union League Co-operative Limited;

'liquid funds', in relation to a registered credit society, means the aggregate of the funds held by the society in the form of—

- (a) cash in hand;
- (b) cash at the bank (after allowing for cheques or other bills of exchange drawn but not presented for payment);
- (c) investments in securities authorized by law for the investment of trust funds (other than securities by way of mortgage over real or leasehold property) that are redeemable within 4 years of their acquisition;
- (d) during the period of 2 years commencing on the date of commencement of this Ordinance, investments of a kind referred to in paragraph (c) that are redeemable after a period of 4 years has expired since their acquisition if—
 - (i) the investments were made by the society before the date of commencement of this Ordinance; and
 - (ii) the amount of the investments does not exceed 2 per cent of the withdrawable funds of the society;
- (e) moneys deposited with a bank, including a savings bank carrying on business in Australia;
- (f) where the society is a member of the League, moneys on deposit with the League;

- (g) moneys on deposit with a registered building society;
- (h) authorized bills of exchange;
- (j) where the society has entered into an institutional loan—such part of the moneys the subject of the loan as are available to be drawn by the society; and
- (k) such other moneys or investments as are prescribed, less the aggregate of—
 - (l) any of those moneys or investments to the extent that they are subject to a lien or charge, other than a lien or charge given by the society to the League where the society is a member of the League;
 - (m) in the case of moneys referred to in paragraph (e), (f) or (g)—any moneys that have been deposited on terms that they may only be withdrawn—
 - (i) on giving more than 3 months' notice; or
 - (ii) where another period of notice is prescribed by the regulations—on giving that notice;
 - (n) where the regulations so provide—such of those moneys or investments as are specified by the regulations, to the extent that the amount of the moneys or investments so specified exceeds an amount prescribed by, or calculated as prescribed by, the regulations; and
 - (o) the commitments of the society;

'month' includes a part of a month;

" (3) For the purposes of calculating the amount of dividends and interest referred to in paragraph (c) of the definition of 'commitments' in sub-section (2), dividends and interest shall be treated as being payable at the end of the month immediately preceding the month in which the calculation is being made.

" (4) For the purpose of calculating the amount of liquid funds held by a registered credit society, investments referred to in paragraphs (c) and (d) of the definition of 'liquid funds' in sub-section (2) shall be valued at cost or market value, whichever is the lesser."

9. Section 33 of the Principal Ordinance is repealed and the following section substituted:—

" 33. (1) There shall be paid to the Registrar such fees as are **Fees.** prescribed.

" (2) Where a fee is payable to the Registrar for or in respect of the lodging of a document with the Registrar, the document shall be deemed not to have been lodged until the fee has been paid to the Registrar."

Investments.**10. Section 37 of the Principal Ordinance is amended—**

- (a) by omitting from sub-section (1) the words “A society may invest its funds—” and substituting the words “A society, other than a registered credit society, and, subject to sub-sections (2) and (2A), a registered credit society, may invest its funds—”;
- (b) by omitting from paragraph (1)(c) the word “or”;
- (c) by omitting paragraph (1)(d) and substituting the following paragraphs:—
 - “ (d) in authorized bills of exchange; or
 - (e) in a prescribed security.”;
- (d) by inserting after sub-section (1) the following sub-sections:—
 - “ (2) A registered credit society shall not invest under sub-section (1) funds that are immediately required for its objects or for purposes incidental to its objects.
 - “ (2A) Where a registered credit society does not hold liquid funds equal to not less than 10 per cent of the withdrawable funds of the society, the society shall invest its funds in such a manner that the investment constitutes a liquid fund of the society.”; and
- (e) by adding at the end thereof the following sub-section:—
 - “ (5) In this section, ‘liquid funds’ has the same meaning as in section 23A.”.

Returns.**11. Section 44 of the Principal Ordinance is amended—**

- (a) by omitting from sub-section (2) the words “the financial year” and substituting the words “each financial year”;
- and
- (b) by omitting paragraphs 2 (b) and (c) and substituting the following paragraphs:—
 - “ (b) a list of members of the society at the end of that financial year;
 - (c) a statement of the assets and liabilities of the society at the end of that financial year and of the accounts of the society for that financial year.”.

Regulations.**12. Section 81 of the Principal Ordinance is amended—**

- (a) by omitting the figure and symbols “(1.)”;
- (b) by omitting from paragraph (a) the word “and” (last occurring); and
- (c) by omitting paragraph (b) and substituting the following paragraphs:—
 - “ (b) prescribing fees to be paid to the Registrar for or in respect of matters or things required to be done under or for the purposes of this Ordinance;

- (c) prescribing, in respect of moneys or an investment specified in the definition of 'liquid funds' in sub-section 23A (2), an amount, or a method of calculating an amount, as the maximum amount for those moneys or that investment that may be taken into account in calculating, for the purposes of section 23A, the amount of the liquid funds of a society; and
- (d) requiring the verification by statutory declaration of a statement or return to be lodged with the Registrar.”.