

AUSTRALIAN CAPITAL TERRITORY

Co-operative Societies (Amendment) Ordinance 1986

No. 9 of 1986

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AUSTRALIAN CAPITAL TERRITORY

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No. 9 of 1986

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

Dated 22 May 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

G. SCHOLLES
Minister of State for Territories

An Ordinance to amend the *Co-operative Societies Ordinance 1939*

Short title

1. This Ordinance may be cited as the *Co-operative Societies (Amendment) Ordinance 1986*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Co-operative Societies Ordinance 1939*.²

Interpretation

3. Section 4 of the Principal Ordinance is amended—

- (a) by inserting after the definition of "mortgage" in sub-section (1) the following definition:

“ ‘mortgage-backed security’ means—

- (a) a security specified in the regulations as a mortgage-backed security; and
 - (b) a security included in a class of securities specified in the regulations as a class of mortgage-backed securities;”;
- (b) by omitting from sub-section (1) the definition of “registered” and substituting the following definitions:

“ ‘prescribed period’, in relation to a building society, means the period commencing on the relevant date and ending—

- (a) at the expiration of the day on which, in accordance with sub-section 14A (4), an alteration of the Rules of the society is approved; or
- (b) 3 months after the relevant date,

whichever first occurs;

‘primary loan’ means a loan made by a building society to a member of the society in pursuance of the primary object of the society;

‘primary object’, in relation to a building society, means—

- (a) where the society is formed on or after the relevant date—the objects referred to in sub-section 14A (1); and
- (b) where the society was, immediately before the relevant date, a registered building society—
 - (i) during the prescribed period applicable to the society—the objects that the society had immediately before that date; and
 - (ii) after that prescribed period—the object referred to in sub-section 14A (1);

‘registered’ means registered under this Ordinance;

‘relevant date’ means the date of commencement of the *Co-operative Societies (Amendment) Ordinance 1986*;

‘secondary object’, in relation to a building society, means an object determined under sub-section 14A (2) as a secondary object of the society;”;

(c) by inserting after sub-section (2) the following sub-sections:

“(2A) For the purposes of this Ordinance, a corporation shall, subject to sub-section (2C), be deemed to be a subsidiary of a society if the society—

- (a) controls the composition of the board of directors of the corporation;
- (b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) holds more than one-half of the issued share capital of the corporation (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).

“(2B) Without limiting by implication the circumstances in which the composition of a corporation’s board of directors is to be taken to be controlled by a society, the composition of a corporation’s board of directors shall be taken to be controlled by a society if the society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by the society, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, the 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 that person’s favour by the society of such a power; or
- (b) a person’s appointment as a director follows necessarily from that person being a director or other officer of the society.

“(2C) In determining whether a corporation is a subsidiary of a society—

- (a) any shares held or power exercisable by the society in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—

- (i) by any person as a nominee for the society (except where the society is concerned only in a fiduciary capacity); or
- (ii) by, or by a nominee for, a subsidiary of the society, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by the society;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation, or of a trust deed for securing any issue of any such debentures, shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, the society (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by the society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.”; and
- (d) by adding at the end the following sub-section:
- “(4) In sub-sections (2A), (2B) and (2C), ‘corporation’ has the same meaning as in the *Companies Act 1981*.”.

Inspections

4. Section 5B of the Principal Ordinance is amended by adding at the end the following sub-section:

“(4) In this section, ‘society’ includes a subsidiary corporation of a society.”.

Heading to Division 1 of Part IIIA

5. Before section 14A of the Principal Ordinance the following heading is inserted in Part IIIA:

“Division 1—General”.

6. Section 14A of the Principal Ordinance is repealed and the following sections are substituted:

Objects

“14A. (1) Subject to this Ordinance, a building society shall have as its primary object the object of making loans to its members upon the security of mortgages over freehold land or leasehold land that is used or is intended to be used wholly or partly, for residential purposes.

“(2) A building society may determine as its secondary objects such other objects, not being objects inconsistent with this Ordinance or the regulations, as it thinks fit.

“(3) Without limiting the generality of sub-section (2), the objects that may be determined by a building society as its secondary objects include objects relating to the making of loans to members of the society.

“(4) a building society, being a society that, immediately before the relevant date, was a registered building society, shall, within 3 months after that date, approve an alteration of its Rules for the purpose of specifying, as the primary object of the society, the object referred to in sub-section (1).

“(5) Where a building society determines objects under sub-section (2), it shall, as soon as practicable, approve an alteration of its Rules for the purpose of specifying, as the secondary objects of the society, the objects so determined.

Restrictions applicable in relation to objects

“14AA. (1) A building society shall not, in pursuance of sub-section 14A (2), determine as an object of the society an object that involves the making of loans to persons who are not members of the society.

“(2) A building society shall not, in pursuance of sub-section 14A (2), determine as an object of the society an object—

- (a) that is specified in the regulations as a prohibited object; or
- (b) that is included in a class of objects specified in the regulations as a prohibited class of objects.

“(3) A building society shall not carry out a secondary object of the society at any time after the coming into operation of regulations by virtue of which—

- (a) that object is specified as a prohibited object; or
- (b) a class of objects, being a class in which that object is included, is specified as a prohibited class of objects.

Association of assets with primary object

“14AB. (1) Subject to this Ordinance, a building society shall not, at any time, have less than the prescribed percentage of the value of the society’s assets associated with its primary object.

Penalty: \$5,000.

“(2) A building society shall, within 14 days after the expiration of each month, forward to the Registrar a statement in writing showing, as at the last day of that month—

- (a) the assets of the society;
- (b) the value of each of the assets; and
- (c) which of the assets were associated with the primary object of the society.

Penalty: \$5,000.

“(3) In this section, a reference to the assets of a building society as at a particular day shall, subject to the regulations, be read as a reference to the items shown, as at that day, in the accounts of the society as its assets.

“(4) In this section, a reference to the value, as at a particular day, of the assets of a building society shall, subject to the regulations, be read as a reference to the value of the assets of the society as shown, as at that day, in the accounts of the society, with such adjustments for outstanding entries as are necessary to properly reflect the value of the assets of the society as at that day.

“(5) In this section, ‘prescribed percentage’ means—

- (a) 50 per cent; or
- (b) where another percentage is prescribed—the percentage so prescribed.

Requirements relating to loans for residential purposes

“14AC. (1) A building society shall not, in respect of a financial year of the society, advance, on prescribed loans, less than the prescribed percentage of the money advanced during that year by the society on loans (whether or not primary loans).

Penalty: \$5,000.

“(2) A building society shall, within 14 days after the expiration of each financial year of the society, forward to the Registrar a statement in writing showing—

- (a) the amount of money advanced by the society on loans during that financial year; and
- (b) the amount of money advanced by the society on prescribed loans during that financial year.

Penalty: \$5,000.

“(3) In proceedings for an offence against sub-section (1), a loan made to a person by a society on the security of a mortgage of land shall be taken to be a prescribed loan if the society establishes that, at the time the loan was approved by the society, it believed on reasonable grounds that the land was, or was intended to be, occupied by the person personally for residential purposes.

“(4) In this section—

‘prescribed loan’ means a loan made to a person by a building society on the security of a mortgage of land that was, at the time the loan was approved by the society, occupied or intended to be occupied by the person personally for residential purposes;

‘prescribed percentage’ means—

- (a) 60 per cent; or
- (b) where another percentage is prescribed—the percentage so prescribed.

Loan Limit

“14AD. A building society shall not make a loan to a member of the society, not being a loan made upon the security of a mortgage over freehold or leasehold land, for an amount that exceeds the amount prescribed for the purposes of this section.”.

7. The Principal Ordinance is amended by adding at the end of Part IIIA the following Division:

“Division 2—Capital Adequacy

Interpretation

“14CG. (1) In this Division—

‘designated capital’, in relation to a building society, means the aggregate of the value of a—

- (a) fixed shares in the society to the extent to which they are paid up, being fixed shares that, in the event of the winding up of the society, rank in priority after all withdrawable shares in the society;
- (b) realised profits of the society, including realised profits transferred to reserves;
- (c) the prescribed percentage of revaluation reserves in respect of real property owned by the society;
- (d) subordinated deposits not repayable by the society within—
 - (i) a period of 3 years after the deposits were made; or
 - (ii) such other period as is prescribed; and
- (e) capital, or capital included in a class of capital, specified in the regulations for the purposes of this paragraph,

but does not include capital, or capital included in a class of capital, specified in the regulations as capital, or a class of capital, that is not to be taken into account for the purposes of this definition;

‘fixed share’ means a share in the share capital of a building society that, under the rules of the society, is not, subject to this Ordinance—

- (a) withdrawable by the member whose share it is; or
- (b) withdrawable by the member whose share it is, except at the direction or with the approval of the society,

but does not include a share, or a share included in a class of shares, specified in the regulations for the purposes of this definition;

‘minimum amount’, in relation to a building society, means—

- (a) the aggregate of—
 - (i) the weighted amount applicable to the society; and
 - (ii) where requirements are prescribed as additional requirements to be complied with by building societies in connection with the minimum amount of capital to be maintained—such amounts as are specified in, or calculated in accordance with, regulations prescribing those requirements; or

- (b) the amount obtained by multiplying the value of the assets of the society by the prescribed minimum percentage,

whichever is the greater,

‘prescribed minimum percentage’ means—

- (a) 3 per cent; or
- (b) where another percentage is prescribed—the percentage so prescribed;

‘prescribed percentage’ means—

- (a) 50 per cent; or
- (b) where another percentage is prescribed—the percentage so prescribed;

‘subordinated deposit’, in relation to a building society, means money invested with the society on deposit under an agreement whereby, in the event of the winding up of the society, any claim of the depositor against the society in respect of the deposit shall rank in priority—

- (a) equally with the claim of any other depositor who is party to a similar agreement; and
- (b) except as provided by paragraph (a), after the claims of any other creditor of the society and after the claims of members to repayment of any share capital in the society, other than capital comprised of fixed shares;

‘weighted amount’, in relation to a building society, means an amount equal to the sum of the amounts obtained by multiplying the value of each prescribed class of assets of the society by the weighted percentage applicable to that class;

‘weighted percentage’, in relation to a class of assets of a building society, means the percentage prescribed in relation to that class;

‘withdrawable share’ means—

- (a) a share in the share capital of a building society that, under the rules of the society, is, subject to this Ordinance, withdrawable by the member whose share it is; and
- (b) a share, or a share included in a class of shares, specified in the regulations for the purposes of this definition,

but does not include a fixed share.

“(2) For the purposes of the definition of ‘designated capital’ in sub-section (1)—

- (a) a revaluation reserve shall be disregarded if the real property to which the reserve relates has not, within a period of 3 years, or such other period as is prescribed, been valued by a person in respect of whom an approval under section 14C is in force; and
- (b) where real property to which a revaluation reserve relates has been revalued by a person, and within the period, referred to in paragraph (a), the reserve shall be disregarded to the extent to which the reserve is not supported by the valuation.

“(3) In this Division, a reference to the value, as at a particular day, of the assets, or of the assets included in a class of assets, of a building society shall, subject to the regulations, be read as a reference to the value of the assets, or of the assets included in that class of assets, of the society as shown, as at that day, in the accounts of the society, with such adjustments for outstanding entries as are necessary to properly reflect the relevant value as at that day.

Maintenance of capital adequacy

“14CH. (1) A building society shall not fail to maintain its capital adequacy.

Penalty: \$10,000.

“(2) For the purposes of this Ordinance, a building society shall be taken to have failed to maintain its capital adequacy if the designated capital of the society is less than the minimum amount applicable to the society.

Notification of failure to maintain capital adequacy

“14CJ. (1) Where a building society has failed to maintain its capital adequacy, it shall forthwith notify the Registrar of the failure.

“(2) Where a building society fails to notify the Registrar in accordance with sub-section (1), the society is, in respect of each day during which the failure so to notify occurs (including the day of a conviction under this section or any subsequent day), guilty of an offence punishable upon conviction by a fine not exceeding \$5,000.

Statement relating to capital adequacy

“14CK. (1) The Registrar may, by notice in writing given to a building society, require the society to furnish to the Registrar, within such period as is specified in the notice (being a period of not less than 14 days after the service of the notice), a statement in writing showing, as at such day or time as is specified in the notice—

- (a) the assets of the society;
- (b) the value of each of the assets;
- (c) the designated capital of the society;
- (d) in respect of each class of items specified in paragraphs (a), (b), (c), (d) and (e) of the definition of ‘designated capital’ in sub-section 14CG (1)—the aggregate value of the items in that class; and
- (e) such other matters relating to the capital adequacy of the society as are prescribed.

“(2) A society shall not refuse or fail to comply with a notice given to it under sub-section (1).

Penalty: \$5,000.

“(3) A notice under sub-section (1) shall not specify as the day or time as at which the information referred to in that sub-section is to be furnished—

- (a) in respect of a notice served 3 years, or within 3 years, after the relevant date—a day or time that is earlier than that date; and
- (b) in respect of a notice served more than 3 years after the relevant date—a day or time that is earlier than 3 years before the date of service of the notice.

Direction to restore capital adequacy

“14CL. (1) Where the Registrar becomes aware that a building society has failed to maintain its capital adequacy, the Registrar shall, by notice in writing given to the society, direct the society to restore its capital adequacy within 14 days after receiving the notice.

“(2) Where a building society fails to comply with a notice given to it under sub-section (1), the society is, in respect of each day during which the failure to comply occurs (including the day of a conviction under this section or any subsequent day), guilty of an offence punishable upon conviction by a fine not exceeding \$10,000.”.

Powers of registered societies

8. Section 16A of the Principal Ordinance is amended by omitting paragraphs (1) (a) and (b) and substituting the following paragraph:

- “(a) raise money (whether on loan or by negotiating prescribed bills of exchange) or obtain other financial accommodation;”.

Granting of securities

9. Section 35 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “, whether on loan or by negotiating prescribed bills of exchange,” and substituting “(whether on loan or by negotiating prescribed bills of exchange) or to obtain other financial accommodation”;
- (b) by omitting from paragraph (1) (a) “and”;
- (c) by adding at the end of sub-section (1) the following word and paragraph:
- “; and (c) where the society is authorised to obtain financial accommodation (otherwise than in a manner referred to in paragraph (a) or (b))—may so obtain that accommodation in such manner as the Board thinks fit.”;

and

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

“(1A) Without limiting the generality of the manner in which, in pursuance of paragraph (1) (c), financial accommodation may be obtained by a society, the Board may determine that the accommodation may be obtained—

- (a) by legal or equitable mortgage charged on the undertaking of the society or on all or any of the property of the society, including its uncalled or unpaid capital subscriptions, loan payments and other money;
- (b) by dealing with promissory notes and mortgage-backed securities; and
- (c) by arrangements involving—
- (i) the issue of letters of credit; and

- (ii) the indemnification of any person or body in respect of a payment made pursuant to such a letter of credit, whether or not the indemnification is secured by a legal or equitable mortgage or otherwise.”.

Raising of money, &c.

10. Section 36 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “, whether on loan or by negotiating prescribed bills of exchange,” and substituting “(whether on loan or by negotiating prescribed bills of exchange), to obtain other financial accommodation”;
- (b) by inserting in paragraph (1) (a) “, obtain” after “raise”;
- (c) by inserting in paragraph (1) (b) “, obtained” after “raised”;
- (d) by omitting from sub-section (2) “and the amounts payable” and substituting “, the amounts payable”;
- (e) by inserting in sub-section (2) “and the amounts payable by the society in respect of other financial accommodation obtained by it” after “negotiated by the society”;
- (f) by omitting from paragraph (3) (a) “and”;
- (g) by omitting paragraph (3) (b) and substituting the following paragraphs:
 - “(b) the amounts payable under prescribed bills of exchange negotiated by the society; and
 - (c) the amounts payable by the society in respect of other financial accommodation obtained by it,”;
- (h) by inserting after sub-section (5A) the following sub-section:

“(5B) A society shall not obtain financial accommodation (excluding money referred to in sub-section (5) or (5A)) so that, at any one time, the aggregate of the amounts payable by the society in respect of that accommodation exceeds \$2,000 unless a higher aggregate amount has been approved by special resolution of the society.”; and
- (i) by adding at the end of paragraph (8) (b) “or for the obtaining of other financial accommodation by it”.

11. After section 39 of the Principal Ordinance the following section is inserted:

Power of society to act as agent

“39A. A building society or a credit society may act as an agent in respect of any matter on behalf of any person or body, whether incorporated or not, to the same extent and in the same manner as a natural person may act as the agent of a person or body in relation to a similar matter.”.

Registers, accounts and records

12. Section 42 of the Principal Ordinance is amended by inserting after sub-section (1) the following sub-section:

“(1A) Subject to the regulations, a building society shall keep such records as are necessary to disclose whether or not the society has contravened or failed to comply with sub-sections 14AB (1) and 14AC (1) and section 14CH.”.

Returns

13. Section 44 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “the membership of the Board” and substituting “the composition of the board of directors of the society”;
- (b) by omitting from sub-section (1) “charge” and substituting “change”;
- (c) by omitting from paragraph (2) (b) “a list” and substituting “in the case of a society that is not a subsidiary corporation of a society— a list”; and
- (d) by adding at the end the following sub-section:

“(6) In this section, ‘society’ includes a subsidiary corporation of a society.”.

Regulations

14. Section 81 of the Principal Ordinance is amended—

- (a) by inserting after paragraph (a) the following paragraph:
 - “(b) restricting the application or scope (whether by the imposition of conditions or otherwise) of the secondary objects of building societies;”;
- (b) by omitting from paragraph (c) “and”; and

(c) by adding at the end the following paragraphs:

- “(e) determining whether, for the purposes of section 14AB or Division 2 of Part IIIA, an item is or is not to be taken to be an asset of a building society;
- (f) determining whether, for the purposes of Division 2 of Part IIIA, a class of items is or is not to be taken to be a class of assets of a building society;
- (g) determining, for the purposes of section 14AB or Division 2 of Part IIIA, the value of an asset of a building society;
- (h) determining, for the purposes of Division 2 of Part IIIA, the value of a class of assets of a building society;
- (j) determining whether, for the purposes of section 14AB, an asset of a building society is or is not to be taken to be associated with the primary object of the society; and
- (k) making provision with respect to the keeping or retention of any records referred to in sub-section 42 (1A).”

Application

15. If this Ordinance comes into operation on a day that is not the first day of a financial year of a building society, the period that commences on the relevant date and ends at the expiration of the financial year of the society in which the relevant date occurs shall, for the purposes of section 14AC of the Principal Ordinance as amended by this Ordinance, be taken to be a financial year of the society.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 28 May 1986.
2. 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; Nos. 35 and 47, 1974; Nos. 13 and 15, 1975; No. 14, 1977; No. 46, 1978; No. 35, 1979; Nos. 38, 89 and 90, 1982; No. 11, 1984; Nos. 4, 38, 67 and 74, 1985.