

# AUSTRALIAN CAPITAL TERRITORY

---

## Co-operative Societies (Amendment) Ordinance (No. 3) 1987

No. 42 of 1987

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 18 August 1987.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

JOHN BROWN  
Minister of State for the Arts, Sport, the  
Environment, Tourism and 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 (No. 3) 1987*.<sup>1</sup>

### Principal Ordinance

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

### Interpretation

3. Section 4 of the Principal Ordinance is amended by inserting before the definition of "authorized bill of exchange" in subsection (1) the following definition:

(Ord. 50/87)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

“ ‘administrator’ means a person appointed to be an administrator under section 58B;”.

#### **Repeal of sections 14CE and 14CF**

4. Sections 14CE and 14CF of the Principal Ordinance are repealed.

5. After section 38 of the Principal Ordinance the following section is inserted:

#### **Transfer of engagements by direction**

“38AA. (1) The Registrar may, with the approval of the Minister:

- (a) direct a society to transfer its engagements to a financial institution approved by the Registrar that has undertaken to fulfil those engagements; and
- (b) require the society, within a specified period, to enter into an agreement approved by the Registrar to give effect to the direction.

“(2) The Registrar shall not give a direction under subsection (1) unless the Registrar has reasonable grounds for believing, and certifies, that:

- (a) the number of members of the society is reduced to less than 7;
- (b) the society:
  - (i) has not commenced business within 6 months of registration; or
  - (ii) has not carried on any business for a period of more than 6 months;
- (c) the society has, after notice by the Registrar of any contravention of this Ordinance or its Rules:
  - (i) failed, within the time specified in the notice, to remedy the contravention; or
  - (ii) committed any further contravention of a kind specified in the notice;
- (d) there are, and have been for a period of 1 month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum as provided by the Rules of the society;

- (e) as a result of an inquiry under section 7 into the affairs of the society, it is in the interests of its members, depositors or creditors that the society should transfer its engagements;
- (f) the transfer has been recommended by an administrator of the society; or
- (g) in the interests of members, depositors or creditors of the society, it is expedient for the society to transfer its engagements.

“(3) Where a society fails to comply with a direction referred to in paragraph (1) (a), the Registrar may notify the society that he or she has elected to treat the certificate given under subsection (2) in relation to the society as:

- (a) a certificate given under subsection 58B (2); or
- (b) a certificate given under subsection 59 (3).

“(4) Where the Registrar gives notice of election to a society under subsection (3), this Ordinance applies in relation to the society, from and including the day when the notice was given, as if the certificate specified in the notice had been duly given by the Registrar.

“(5) The Registrar may revoke a direction referred to in paragraph (1) (a) in respect of a society at any time before the society has entered into an agreement pursuant to paragraph (1) (b).

“(6) Notwithstanding subsection 38 (1) or the Rules of a society, a society may, by resolution of the Board, accept a transfer of engagements under this section.

“(7) Section 19 applies *mutatis mutandis* to a transfer of engagements under this section by a society to a financial institution and for that purpose:

- (a) a reference to amalgamation shall be read as a reference to transfer of engagements;
- (b) a reference to property shall be read as a reference to the engagements transferred;
- (c) a reference to the amalgamated society shall be read as a reference to the institution to which the engagements are transferred;
- (d) a reference to societies that have amalgamated shall be read as a reference to the bodies that are parties to the transfer of engagements; and

- (e) a reference to the notification in the *Gazette* of an incorporation and to the date of the notification shall be read as a reference to the notification of the transfer of engagements in the *Gazette* under subsection (9) and to the date specified in the last-mentioned notification as the day on which the transfer takes effect, respectively.

“(8) Where the engagements of a society are transferred to another society (in this subsection called ‘the transferee society’), notwithstanding anything contained in this Ordinance or the Rules of the transferee society, the transferee society may, in conducting such of its affairs as relate to the transfer of engagements:

- (a) raise money or obtain other financial accommodation; or
- (b) receive money on deposit;

in such amounts as the transferee society, with the approval of the Registrar, determines.

“(9) A transfer of engagements under this section takes effect on such day as is specified by the Registrar by notification in the *Gazette*.

“(10) On the transfer of the engagements of a society under this section, the Registrar may cancel its registration.

“(11) Before cancelling the registration of a society, the Registrar shall give notice in writing of the Registrar’s intention to do so to the institution to which the engagements are transferred.

“(12) An officer of a society to which a direction has been given or requirement made under subsection (1) shall not:

- (a) fail to take all reasonable steps to secure compliance by the society with that direction or requirement; or
- (b) by a wilful act or omission, cause a failure by the society to comply with that direction or requirement.

Penalty: \$2,000 or imprisonment for 12 months, or both.

“(13) Where the engagements of a society are transferred to another society under this section, the members of that other society shall be:

- (a) the persons who immediately before the transfer took effect were members of the societies; and
- (b) any other persons who are admitted after the transfer to membership of that society in accordance with its Rules.

“(14) In this section:

‘engagements’, in relation to a society, includes the property of the society;

‘financial institution’ means:

- (a) a registered building society;
- (b) a registered credit society;
- (c) a building society or credit society registered under a law of a State or another Territory; and
- (d) a bank within the meaning of the *Banking Act 1959*.”.

### **Registration of society as a company**

6. Section 38A of the Principal Ordinance is amended:

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

“(1A) Where, under subsection 38AA (1), the Registrar directs a society to transfer its engagements to an institution other than a society, the Registrar may apply to have the society registered as a company under the Companies Act.”;

(b) by omitting from subsection (2) “resolution—” and substituting “resolution, or the Registrar, as the case requires.”;

(c) by omitting from paragraph (2) (a) “under what name the society shall apply to be registered as a company” and substituting “the name under which registration of the society as a company is sought”;

(d) by omitting from subsection (6) “by the society”; and

(e) by inserting after subsection (8) the following subsection:

“(8A) An application by the Registrar for a society to be registered as a company:

- (a) shall be lodged with the Commission:
- (b) shall be accompanied by the memorandum of association adopted for the company and the articles of association (if any); and
- (c) shall be accompanied by a list, verified by a statutory declaration of the Registrar, showing the names, addresses and occupations of all persons who, on a day specified in the

list (being not more than 6 clear days before the day of lodgement), were members of the society and, with respect to each person, the number and nominal amount of, and amount credited as paid up on, any shares held by that person in the society.”.

### **Heading to Part VI**

7. The heading to Part VI of the Principal Ordinance is omitted and the following heading substituted:

“PART VI—SUSPENSION, ADMINISTRATION AND WINDING-UP”.

8. Before section 59 of the Principal Ordinance the following sections are inserted in Part VI:

### **Suspension of operations**

“58A. (1) Where, in relation to a society, the Registrar considers it expedient to do so in the interests of:

- (a) persons who are or may become members of the society; or
- (b) persons who have deposited or may deposit money with the society;

the Registrar may, with the approval of the Minister, by notice in writing given to the society, direct the society not to do any one or more of the following:

- (c) make any money available on loan to members or other persons;
- (d) accept the deposit of any money;
- (e) borrow any money;
- (f) raise money by negotiating prescribed bills of exchange;
- (g) accept any payment on account of share capital, other than a payment that fell due before the direction was given;
- (h) repay any money paid on shares;
- (i) repay any money on deposit or loan;
- (j) in the case of a credit society or building society—make any money available to a member pursuant to a continuing credit arrangement;
- (k) dispose of or otherwise deal with any of its property;
- (l) acquire any property.

“(2) A society to which a direction has been given under subsection (1) may make representations to the Minister in connection with the direction and the Minister may direct the Registrar to withdraw or amend the direction.

“(3) The Registrar may, and shall if directed by the Minister, withdraw or amend any direction given to a society under subsection (1).

“(4) A society shall comply with a direction given to it under subsection (1).

“(5) If a society fails to comply with subsection (4), a director or other officer who is concerned in, or takes part in, the management of the society shall be taken to have committed an offence and is punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

“(6) In subsection (1):

‘continuing credit arrangement’ means an agreement by which a society:

- (a) agrees with a member to provide credit to that member in respect of cash or cheques supplied by the society to that member from time to time; or
- (b) agrees with a member:
  - (i) on behalf of that member to satisfy liabilities of the member to a third person in respect of payment for goods and services or cash or cheques supplied by that third person to the member from time to time; and
  - (ii) to provide credit to that member in respect of payment by the member of amounts owing from time to time to the society in respect of the satisfaction by the society of those liabilities on behalf of that member;

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.

**Appointment of administrator**

“58B. (1) The Registrar may, with the approval of the Minister, appoint an administrator to conduct the affairs of a society.

“(2) The Registrar shall not appoint an administrator of a society unless the Registrar has reasonable grounds for believing, and certifies, that:

- (a) a ground referred to in paragraph 38AA (2) (a), (b), (c) or (d) exists in relation to the society;
- (b) as a result of an inquiry under section 7 into the affairs of the society, it is in the interests of its members, depositors or creditors that an administrator should be appointed to conduct the affairs of the society; or
- (c) in the interests of members depositors or creditors of the society, it is expedient that an administrator should be appointed to conduct the affairs of the society.

“(3) Upon the appointment of an administrator of a society, other than an appointment under subsection (7):

- (a) the directors of that society cease to hold office;
- (b) all contracts of employment with that society are terminated;
- (c) all contracts for the provision of secretarial or administrative services for that society are terminated; and
- (d) any delegation made by the Board of that society is revoked.

“(4) An administrator of a society has such powers, authorities, duties and functions as the Board would, but for this section, have had.

“(5) Notwithstanding anything contained in this Ordinance or the Rules of a society, an administrator may, in the conduct of the affairs of the society:

- (a) raise money or obtain other financial accommodation; or
- (b) receive money on deposit;

in such amounts as the administrator, with the approval of the Registrar, determines.

“(6) Except as provided by subsection (7), a director of a society shall not be appointed or elected while the appointment of an administrator is in force.

“(7) Before revoking the appointment of an administrator of a society, the Registrar shall:

- (a) appoint another person as administrator;
- (b) ensure that directors of that society have been elected in accordance with its Rules at a meeting convened by the administrator in accordance with those Rules; or
- (c) appoint directors of that society.

“(8) A director elected or appointed under subsection (7):

- (a) takes office upon revocation of the appointment of the administrator; and
- (b) if the director was appointed—holds office until:
  - (i) he or she ceases to hold office in accordance with this Ordinance or the Rules of the society; or
  - (ii) the annual general meeting of the society next succeeding the revocation of that appointment;

whichever first occurs.

“(9) 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.

“(10) An administrator who is not a public servant shall be paid such remuneration as is determined by the Registrar.

“(11) Where an administrator is a public servant, the Registrar shall certify an amount that represents the remuneration of the administrator referable to the conduct by the administrator of the affairs of the society and that amount is recoverable as a debt due to the Commonwealth.

“(12) A person who is or was an administrator of a society is not liable to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person as administrator.

“(13) The Registrar is not liable for any loss sustained by a society as a result of an act done or omitted to be done by an administrator, whether or not the administrator is liable.

“(14) In this section:

‘expenses’ includes:

- (a) in relation to an administrator who is not a public servant, the remuneration of the administrator; and
- (b) in relation to an administrator who is a public servant, the amount certified under subsection (11);

‘public servant’ means a person who is an officer or employee within the meaning of the *Public Service Act 1922*.

### **Winding-up**

9. Section 59 of the Principal Ordinance is amended:

- (a) by omitting from paragraph (3) (f) “or”; and
- (b) by adding at the end of subsection (3) the following word and paragraph:
  - “; or (h) as a result of an inquiry under section 7 into the affairs of the society, it is in the interests of its members or creditors that the society should be wound up.”.

---

### **NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 19 August 1987.
2. No. 9, 1939 as amended to date. For previous amendments *see* Note 2 to No. 7, 1987 and *see also* Nos. 7 and 8, 1987.