

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CO-OPERATIVE SOCIETIES (AMENDMENT) ORDINANCE (NO. 3) 1987

ORDINANCE NO. 42 1987

ISSUED BY AUTHORITY OF THE MINISTER OF STATE FOR THE ARTS, SPORT,
THE ENVIRONMENT, TOURISM AND TERRITORIES

The Co-operative Societies Ordinance 1939 ("the Principal Ordinance") provides for the incorporation, management and control of co-operative societies in the Australian Capital Territory.

The Co-operative Societies (Amendment) Ordinance 1987 amends the Principal Ordinance to provide for a power for the Registrar of Co-operative Societies to suspend the operation of a co-operative society, to transfer the engagements of that society to another institution and to appoint an administrator of the society.

The Ordinance is necessary because a co-operative society in the Australian Capital Territory is insolvent. Another ACT institution is willing to take over the engagements of the society. The result of not transferring those engagements would be extreme hardship and financial dislocation for some members of the public in the Territory.

The effect of each provision of the Ordinance is outlined in the Attachment.

PROPOSED CO-OPERATIVE SOCIETIES (AMENDMENT) ORDINANCE (NO. 3) 1987

Section 1 cites the short title of the proposed Ordinance as the Co-operative Societies (Amendment) Ordinance (No. 3) 1987.

Section 2 provides that the Principal Ordinance is the Co-operative Societies Ordinance 1939.

Section 3 amends section 4 of the Principal Ordinance to insert a definition of "administrator".

Section 4 repeals sections 14CE and 14CF of the Principal Ordinance which deal with the suspension of dealings by a society.

Section 5 inserts a new section 38AA into the Principal Ordinance:

- . Subsection (1) provides that the Registrar may, with the approval of the Minister, direct a society to transfer its engagements to a financial institution approved by the Registrar and to enter into an agreement to give effect to the direction.
- . Subsection (2) provides that the Registrar is not to give a direction unless he has reasonable grounds for believing, and certifies, that:
 - (a) the number of members is reduced to less than 7;
 - (b) the society has not commenced business within 6 months of registration or has not carried on any business for more than 6 months;
 - (c) after notice by the Registrar of a contravention of the Ordinance, or its rules, the society has failed to remedy the contravention or has committed a further contravention;
 - (d) there are insufficient directors to constitute a quorum;
 - (e) as a result of an enquiry under section 7 of the Principal Ordinance it is in the interests of the society, its members or creditors that the transfer be directed;
 - (f) the transfer has been recommended by an administrator; or
 - (g) the transfer is in the interests of the members, creditors or depositors of the society.

- . Subsection (3) provides that if a society does not comply with a direction under subsection (1) the Registrar may notify the society that he or she has elected to treat the certificate under subsection (2) as a certificate under new subsection 58B(2) or subsection 59(3) which relate to the appointment of an administrator and the winding up of a society.
- . Subsection (4) provides that a notice of election under subsection (3) has effect as if it were a notice under subsection 58B(2) or 59(3), as appropriate.
- . Subsection (5) provides for revocation of a notice under subsection (1) at any time before the society enters into an agreement under paragraph (1)(b).
- . Subsection (6) provides that a society may accept a transfer of engagements under the section notwithstanding the society's Rules or subsection 38(1), which relates to voluntary transfers of engagements.
- . Subsection (7) provides that the terms of section 19, which relates to amalgamation, apply to a transfer of engagements subject to the following modifications:
 - (a) references to amalgamation are to be read as references to 'transfer of engagements';
 - (b) references to property are to be read as references to the engagements;
 - (c) references to the amalgamated society are to be read as references to the institution to which the engagements are transferred;
 - (d) references to societies that have amalgamated are to be read as references to the bodies that are parties to the transfer; and
 - (e) a reference to notification and the date of notification is to be read as a reference to notification under subsection (8) and to the date specified in that notification.
- . Subsection (8) provides for a transferred society to raise money or receive money on deposit, in relation to the transfer notwithstanding its own rules.
- . Subsection (9) provides that a transfer of engagements takes effect on a day notified by the Registrar in the Gazette.
- . Subsection (10) provides for the Registrar to cancel the registration of a society whose engagements are transferred.
- . Subsection (11) requires the Registrar to give written notice of intention to cancel the registration of a society to the institution to which the engagements are transferred.

- . Subsection (12) makes it an offence for an officer of a society to fail to take all reasonable steps to secure the society's compliance with a direction under subsection (1) or to cause the society to fail to comply with such a direction. A penalty of \$2,000 or imprisonment for 12 months, or both, is provided.
- . Subsection (13) provides for the amalgamation of membership of the societies.
- . Subsection (14) is an interpretation provision.

Section 6 amends section 38A of the Principal Ordinance as follows:

- (a) by inserting a new subsection (1A) which allows the Registrar to apply to have a society, which he has directed to transfer its engagements, registered as a company;
- (b) by making minor consequential amendments to subsections 38A(2) and 38A(6)
- (c) by inserting a new subsection (8A) which provides for an application by the Registrar to be
 - i) lodged with the Commission;
 - ii) accompanied by a memorandum and articles of association; and
 - iii) accompanied by a list of members and details of their shareholdings.

Section 7 amends the heading to Part VI of the Principal Ordinance.

Section 8 inserts new sections 58A and 58B into the Principal Ordinance:

- . Subsection 58A(1) provides for the Registrar, with the approval of the Minister, to direct the society to suspend its operations.
- . Subsections 58A(2) and (3) provide for a review of the Registrar's direction by the Minister.
- . Subsection 58A(4) provides that a society shall comply with a direction to suspend trading and subsection 58A(5) provides for a penalty of \$5,000 or 2 years imprisonment, or both, where a director or other officer of the society is taken to have committed the offence under subsection (4).

- . Subsection 58A(6) defines "continuing credit arrangement".
- . Subsection 58B(1) provides for the Registrar, with the approval of the Minister, to appoint an administrator to conduct the affairs of a society.
- . Subsection 58B(2) provides that the Registrar is not to appoint an administrator unless he has reasonable grounds for believing, and certifies, that there are similar grounds to those under paragraphs 38AA(2)(a) to (d) or that it is in the interests of the society, its members or customers that an administrator be appointed.
- . Subsection 58B(3) provides that when an administrator is appointed the directors cease to hold office; contracts of employment are terminated; service contracts are terminated; and delegations made by the Board are revoked.
- . Subsection 58B(4) provides that the administrator has all the powers, authorities, duties and functions of the Board.
- . Subsection 58B(5) provides that an administrator may raise money or receive money or deposit notwithstanding the limits imposed by this Ordinance or the Society's rules.
- . Subsection 58B(6) prevents the appointment or election of a director during the appointment of an administrator.
- . Subsection 58B(7) requires the Registrar to replace an administrator or ensure that directors have been appointed or elected before revoking the appointment of an administrator.
- . Subsection 58B(8) provides that directors appointed by the Registrar hold office from the revocation of the administrator's appointment until they cease to hold office under the Ordinance or the Rules of the society or the next annual general meeting of the society, whichever first occurs.
- . Subsection 58B(9) provides that the expenses of the appointment of an administrator are payable from the funds of the society.
- . Subsection 58B(10) provides that an administrator who is not a public servant is to be paid such remuneration as is determined by the Registrar.
- . Subsection 58B(11) provides that the Commonwealth may recover an amount representing the remuneration of a public servant who is an administrator.

- . Subsection 58B(12) provides that an administrator is not liable for things done in good faith as an administrator.
- . Subsection 58B(13) provides that the Registrar is not liable for anything done or omitted to be done by an administrator.
- . Subsection 58B(14) is an interpretation provision.

Section 9 amends subsection 59(3) to allow a society to be wound up because it is in the interests of its members or creditors.