

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CO-OPERATIVE SOCIETIES (AMENDMENT) ORDINANCE (NO. 3) 1985

ORDINANCE NO. 74, 1985

The Co-operative Societies Ordinance 1939 (the Principal Ordinance) regulates the operation of co-operative societies in the ACT. The Ordinance establishes an office of The Registrar of Co-operative Societies. The Registrar is responsible for administering the Ordinance. In particular the Registrar is empowered with duties under the Ordinance which relate to protecting the interests of persons who are members of, or who deal with, co-operative societies.

The Co-operative Societies (Amendment) Ordinance (No3) 1985 (the proposed Ordinance) gives effect to undertakings given by the Minister to the Senate Standing Committee on Regulations and Ordinances following the Committee's consideration of the Co-operative Societies (Amendment) Ordinance 1985.

The Committee recommended that before the Registrar exercised certain powers of consent under the Ordinance he should be required to be satisfied that certain proposals would have adverse consequences as distinct from being required, as he is at present, to form an opinion that certain proposals could have adverse consequences. The Committee also recommended that where the Registrar failed to provide a society with a statement of reasons for his decision the validity of the decision may be affected by the Registrars failure.

Details of the proposed Ordinance are set out below:

Sections 1 and 2 are interpretation provisions.

Section 3 amends sub-section 25(3) of the Principal Ordinance. The effect of sub-section 25(3) was that the Registrar shall not consent to the purchase of a share of a member of a society or to the repayment to a member of the value of his shares where the society has received from any person who is not a member of the society any money on loan or deposit that is not secured by mortgage and has not been repaid and in the Registrar's opinion the proposed purchase of a share of a member of a society or repayment to a member of the value of his shares could be prejudicial to members, prospective members and creditors of the society.

Section 3 ensures that the consent of the Registrar shall not be given to a proposed purchase or repayment if the Registrar is satisfied that the purchase or repayment would be prejudicial. The Registrar will now be required to be satisfied of certain matters rather than forming an opinion and will be required to be satisfied that the purchase or repayment would be prejudicial rather than could be prejudicial.

Section 4 amends section 37A of the Principal Ordinance. The effect of section 37A was that the Registrar shall not consent to a proposed investment by a society in a corporation where, in the Registrar's opinion, the investment would have certain adverse consequences, the investment is not necessary or the investment is not permitted by the rules of the society or by the Principal Ordinance (the 'prescribed criteria'). Section 4 ensures that the Registrar shall not consent to a proposed investment if the Registrar is satisfied that the proposed investment would infringe the prescribed criteria. The Registrar will now be required to be satisfied as to whether the prescribed criteria would be infringed rather than being required to form an opinion that the prescribed criteria would be infringed.

Section 5 amends sub-section 80B(3) of the Principal Ordinance. The effect of sub-section 80B(3) was that the validity of a decision of the Registrar made under sections 25 or 37A of the Principal Ordinance was not affected by the failure of the Registrar to provide a statement of the reasons for the decision and a notice of appeal rights to a society affected by the decision. Section 5 ensures that the validity of a decision of the Registrar made under sections 25 or 37A may be affected by the failure of the Registrar to provide a statement of reasons for the decision to a society affected by the decision.

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