

**PERMANENT BUILDING SOCIETIES (AMENDMENT)
ACT 1987 No. 18**

NEW SOUTH WALES



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PERMANENT BUILDING SOCIETIES (AMENDMENT) ACT 1987
No. 18

NEW SOUTH WALES



Act No. 18, 1987

An Act to amend the Permanent Building Societies Act 1967 to make further provision with respect to the regulation of permanent building societies; and for other purposes. [Assented to 24 April 1987]

See also Co-operation (Amendment) Act 1987.

Permanent Building Societies (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Permanent Building Societies (Amendment) Act 1987".

Commencement

2. (1) Subject to this section, this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedule 1 or 2, shall commence on the day on which that provision commences.

(3) The several provisions of Schedules 1 and 2 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(4) Section 5 shall commence on the day appointed and notified under subsection (3) in relation to Schedule 2 (16) (a)–(d).

Principal Act

3. The Permanent Building Societies Act 1967 is referred to in this Act as the Principal Act.

Amendment of Act No. 18, 1967

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Validation

5. A rule of a society made under section 75 (3) of the Principal Act before the date of commencement of Schedule 2 (16) (a)–(d), being a rule which could have been made had the amendment made to that subsection by this Act been in force, is validated with effect from that date.

Permanent Building Societies (Amendment) 1987

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND POWERS OF A TAKEOVER REVIEW
COMMITTEE(1) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of “Advertisement”—

Omit the definition.

(b) Section 3 (1), definition of “Equity fixed share”—

Before the definition of “Fixed share”, insert:

“Equity fixed share” means—

(a) if a society has only fixed shares and those shares are of one class—such a fixed share; or

(b) if—

(i) a society has more than one class of share (including fixed shares); and

(ii) the rules of the society provide that a particular class of fixed share will, in the event of a distribution of a surplus on a winding up, rank in priority before any other class of shares,

such a fixed share.

(c) Section 3 (1), definition of “Takeover Review Committee”—

After the definition of “Subsidiary corporation”, insert:

“Takeover Review Committee” means a Takeover Review Committee convened under section 117A.

(2) Section 26 (**Commencement of advertising**)—

Section 26 (1)—

After “advertise”, insert “the business or activities of the society”.

Permanent Building Societies (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND POWERS OF A TAKEOVER REVIEW
COMMITTEE—*continued*

(3) Section 39 (**Amalgamation**)—

Section 39 (1) (b)—

After “unless”, insert “, where Division 6 applies to the amalgamation, the provisions of that Division have been complied with or, where Division 6 does not apply to the amalgamation”.

(4) Section 40 (**Transfer of engagements**)—

Section 40 (2)—

After “unless”, insert “, where Division 6 applies to the transfer, the provisions of that Division have been complied with or, where Division 6 does not apply to the transfer”.

(5) Section 42 (**Registration of society as a company**)—

(a) Section 42 (1)—

Omit “may, by special resolution, determine that the society shall” insert instead “, other than a society prohibited from doing so by its rules, may”.

(b) Section 42 (1A)—

After section 42 (1), insert:

(1A) An application referred to in subsection (1) shall not be made unless—

(a) details of the proposed application have first been submitted to the registrar; and

(b) the provisions of Division 6 have been complied with in respect of the proposal.

(c) Section 42 (2)—

Omit “any such application”, insert instead “an application referred to in subsection (1)”.

(d) Section 42 (4) (b)—

Omit “state” insert instead “include”

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND POWERS OF A TAKEOVER REVIEW
COMMITTEE—*continued*

(e) Section 42 (6A)—

After section 42 (6), insert:

(6A) Subsection (6) does not prevent the articles of association of a proposed company from containing such provisions as the Takeover Review Committee may approve or require under Division 6 with respect to a proposal by a society to apply to be registered as a company under the Companies (New South Wales) Code.

(f) Section 42 (7) (a)—

Omit the paragraph.

(g) Section 42 (7) (b) (ii)—

Omit the subparagraph, insert instead:

(ii) a certificate under the hand of the registrar verifying that the provisions of Division 6 have been complied with;

(6) Part III, Division 6—

After section 46, insert:

**DIVISION 6—*Review of Certain Proposals for Amalgamation,
Transfer of Engagements, etc.***

Application of Division

46A. (1) This Division applies to and in respect of—

(a) a proposed—

(i) amalgamation of a society with another society;

(ii) transfer of the engagements of a society to another society;

(iii) issue by a society of equity fixed shares; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

- (iv) arrangement under section 39A between a society and another society to enter into the relationship of subsidiary society and holding society,

where, in the registrar's opinion, the effect of the amalgamation, transfer, issue or arrangement will be that the financial interests of the members of the societies concerned, or of any one of those societies, will not continue to be determined in a similar manner to that in which they were determined before the amalgamation, transfer, issue or arrangement;

- (b) a proposed—

- (i) amalgamation of a society with another society;
- (ii) transfer of the engagements of a society to another society;
- (iii) issue by a society of equity fixed shares; or
- (iv) arrangement under section 39A between a society and another society to enter into the relationship of subsidiary society and holding society,

of which the registrar becomes aware during the period between—

- (v) the referral of any other proposed transaction in relation to the society to the Takeover Review Committee under section 46B; and
- (vi) the final decision by the Committee or the Minister, as the case may be, with respect to that other proposed transaction,

(but does not include such an amalgamation, transfer, issue or arrangement in respect of which notices calling for a meeting to pass the requisite resolution have been issued prior to the referral of that other proposed transaction to the Committee);

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

- (c) a proposal by a society to apply to be registered as a company under the Companies (New South Wales) Code; or
- (d) a proposed—
 - (i) acquisition of;
 - (ii) offer to acquire; or
 - (iii) invitation in relation to acquiring,
relevant interests in a class of shares of a society where the acquisition of those interests would result in the limitation of shareholding prescribed for the purposes of—
 - (iv) section 52A (2) (b); or
 - (v) section 47B (3) (b) of the Co-operation Act 1923,
being exceeded.

(2) Before any person makes a proposal referred to in subsection (1) (d) that person shall advise the registrar in writing of the details of the proposal.

(3) A reference in this Division to a proposed transaction is a reference to a proposed transaction of a kind referred to in subsection (1).

(4) In subsection (1)—

- (a) a reference to a society is, in the application of this Division to a transaction involving a non-terminating building society registered under the Co-operation Act 1923 or a society mentioned in the Second Schedule to that Act, a reference to such a society; and
- (b) a reference to another society includes a reference to a non-terminating building society registered under this Act and a society registered under the Co-operation Act 1923 or a society mentioned in the Second Schedule to that Act.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(5) In forming an opinion for the purposes of subsection (1) (a), the registrar may, subject to subsection (7), have regard to such matters as the registrar considers appropriate.

(6) Without affecting the generality of subsection (5), the registrar may regard the financial interests of the members of a society as continuing to be determined in a similar manner to that in which they were determined before—

- (a) an amalgamation;
- (b) a transfer;
- (c) an issue; or
- (d) an arrangement,

if the proposed transaction is to take place or be made in such circumstances as may be prescribed for the purposes of this subsection.

(7) The registrar shall not regard the financial interests of the members of a society as continuing to be determined in a similar manner to that in which they were determined before—

- (a) an amalgamation;
- (b) a transfer;
- (c) an issue; or
- (d) an arrangement,

if the proposed transaction is to take place or be made in such circumstances as may be prescribed for the purposes of this subsection.

Approval of action to give effect to proposed transactions

46B. (1) The registrar, on becoming aware that action to give effect to a proposed transaction is to be taken, shall refer the matter to the Takeover Review Committee and advise the societies concerned accordingly.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND POWERS OF A TAKEOVER REVIEW
COMMITTEE—*continued*

(2) A proposed transaction that has been referred to the Takeover Review Committee shall not be effected except with the approval of the Minister given in accordance with section 46E.

(3) No preliminary action in connection with such a proposed transaction shall be taken without the consent of the Takeover Review Committee, or of the Minister given in accordance with section 46C.

(4) Subsection (3) does not apply to the submission to the registrar, the Takeover Review Committee or the Minister of any matter required to be so submitted for the purposes of this Act.

(5) If the Takeover Review Committee refuses to give a consent under this section it shall give notice to the affected parties accordingly.

Procedure if Committee refuses approval, etc.

46C. (1) An affected party may—

(a) within 14 days of receipt of a notice given under section 46B (5); or

(b) if the Takeover Review Committee has not made a decision in respect of a matter within a reasonable time,

make representations to the Minister concerning the matter

(2) If representations are so made, the Minister shall consult with the Takeover Review Committee before making a decision in respect of the matter.

(3) The Minister shall approve or refuse to approve of the relevant preliminary action being taken

(4) The Minister, in making a decision under this section, shall have regard to the public interest.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

Powers of Committee

46D. (1) Where a proposed transaction has been referred to the Takeover Review Committee, the Committee may—

- (a) request from any party to the transaction such information; and
- (b) direct that any party to the transaction make such applications to the Committee and take such other steps,

as the Committee sees fit in relation to any action to give effect to the transaction.

(2) Without affecting the generality of subsection (1), the Takeover Review Committee may give directions as to the manner and form of any distribution of consideration or reserves to the members of a society in connection with a proposed transaction.

(3) A party to whom a request has been made or a direction has been given shall comply with that request or direction.

Consideration of matter by Takeover Review Committee

46E. (1) In considering any action to give effect to a proposed transaction, the Takeover Review Committee shall, subject to the regulations, have regard to such of the following matters as are relevant:

- (a) whether or not a proposed company would be subject to prudential regulation similar to that applying to the society;
- (b) the contents of statements proposed to be made to members of a society;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

- (c) the extent to which the proposed transaction, and the documents proposed to be issued or entered into in relation to it, would, if the Companies (Acquisition of Shares) (New South Wales) Code applied to or in respect of a society in the same way as it applies to or in respect of a company, comply with that Code;
- (d) the adequacy of disclosure of the interests of directors of a society;
- (e) proposals for the payment of costs associated with the proposed transaction;
- (f) arrangements for the control of the postal ballot;
- (g) the nature of any distribution to be made to members of a society;
- (h) any guidelines issued to the Committee by the Minister;
- (i) whether it is in the interests of members of a society to make recommendations to the Minister concerning the dispensation of any requirement of this Act in relation to the proposed transaction.

(2) In considering any action to give effect to a proposed transaction, the Takeover Review Committee may have regard to such other matters, including the rules of a society, as it considers relevant.

(3) If there are a number of competing proposed transactions with respect to the same society, the Takeover Review Committee may evaluate, or arrange for the evaluation of, those transactions for the purposes of this Division.

(4) The registrar may, in respect of a proposed transaction, disclose to the Takeover Review Committee such information as is available to the registrar concerning the transaction or a party to the transaction.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(5) The Takeover Review Committee shall, after considering a proposed transaction—

(a) recommend to the Minister that the transaction be approved; or

(b) refuse to make such a recommendation to the Minister.

(6) If the Takeover Review Committee refuses to make a recommendation to the Minister, it shall give notice to the Minister and to the affected parties accordingly and an affected party may, within 14 days of receipt of a notice, make representations to the Minister concerning the matter.

(7) If the Takeover Review Committee does not make a decision in respect of a proposed transaction within a reasonable time, the Minister may consider the matter.

(8) The Minister shall approve or refuse to approve a proposed transaction.

(9) The Minister, in making a decision under subsection (8)—

(a) shall have regard to, but shall not be bound by, any recommendation of the Takeover Review Committee; and

(b) shall have regard to the public interest.

Dispensation with specified provisions of Act, etc.

46F. If the Minister is of the opinion that it is in the interests of the members of any society affected by a proposed transaction to do so, the Minister may order that any specified provision of this Act or the regulations, or the rules of the society, be dispensed with in relation to the transaction and the order shall have effect accordingly.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

Decision of Minister not to be subject to review

46G. No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any decision of the Minister under this Division.

Ballot of members, etc.

46H. (1) Subject to this Division, the Takeover Review Committee shall not recommend approval of a proposed transaction of the kind referred to in section 46A (1) (a)–(c) in relation to a society unless—

- (a) a postal ballot has been held, in accordance with the regulations, in relation to the proposed transaction;
- (b) not less than 20 per cent (or, in the case of a society whose rules specify a greater percentage, that greater percentage) of the eligible members of the society have voted in the ballot;
- (c) in the case of a proposed transaction of the kind referred to in section 46A (1) (a) or (c)—
 - (i) not less than 75 per cent of the eligible members of the society who have voted in the ballot have voted in favour of the proposed transaction;
 - (ii) not less than 75 per cent of the eligible holders of equity fixed shares in the society who have voted in the ballot have voted in favour of the proposed transaction;
 - (iii) the eligible members of the society who have voted in favour of the proposed transaction hold not less than 75 per cent of the shares held by all the eligible members who have voted in the ballot; and

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(iv) the eligible holders of equity fixed shares who have voted in favour of the proposed transaction hold not less than 75 per cent of the equity fixed shares held by all the eligible holders of equity fixed shares who have voted in the ballot; and

(d) in the case of a proposed transaction of the kind referred to in section 46A (1) (b)—it is approved by the same majority as would be required to pass a resolution in favour of the proposed transaction at a meeting of the society.

(2) The Takeover Review Committee may, with the approval of the Minister, by direction apply the provisions of subsection (1), or specified parts of those provisions, to a proposed transaction of the kind referred to in section 46A (1) (d).

(3) In this section—

“eligible holder of equity fixed shares”, in relation to a society, means a person—

(a) who is the holder of equity fixed shares in the society; and

(b) who is, in accordance with the rules of the society, eligible to vote at a meeting of the society;

“eligible member”, in relation to a society, means a person—

(a) who is a member of the society; and

(b) who is, in accordance with the rules of the society, eligible to vote at a meeting of the society.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

Regulation of advertising

46i. (1) If the registrar is of the opinion that any advertisement published in respect of a proposed transaction contains material that is false or misleading, or is not in the interests of the members of a society, the registrar, by notice in writing served on the person by whom or by which the advertisement was caused to be published—

- (a) may give a direction prohibiting the issue by that person of any further advertisements, or any further advertisements of a specified kind, with respect to the proposed transaction; or
- (b) may give a direction requiring that person to take all practicable steps to withdraw any advertisement, or any advertisement of a specified kind, with respect to the proposed transaction,

or may do both of those things.

(2) A person shall not fail to comply with a direction under this section.

Penalty: \$400.

(3) A direction under this section may be varied or revoked at any time by a subsequent direction under this section.

Lobbying of members prohibited

46j. (1) A person shall not—

- (a) publish any advertisement that is calculated to influence the opinions of members of a society; or
- (b) communicate directly (whether orally, in writing, by telephone, by facsimile transmission or otherwise) with any member of a society for the purpose of influencing the opinion of that member,

*Permanent Building Societies (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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with respect to a proposed transaction.

Penalty: \$400.

(2) Subsection (1) does not prevent a person from publishing any advertisement or communicating directly with any member of a society in accordance with an approval given or requirement made by the Takeover Review Committee with respect to the proposed transaction.

Certain things to be deemed to be authorised by resolution

46k. Where, in regard to any proposed transaction—

- (a) it would, but for this section, be necessary to pass a resolution or special resolution in order to do anything under this Act or the regulations or the rules of a society and
- (b) the doing of that thing is approved at a ballot held for the purposes of this Division.

the doing of that thing shall be deemed, for the purposes of this Act or the regulations or the rules of a society, to have been authorised by a resolution or special resolution, as the case may require.

Applications, fees and charges

46L. The regulations may make provision for or with respect to—

- (a) applications to be made in connection with proposed transactions that have been referred to the Takeover Review Committee; and
- (b) fees and charges payable in connection with the consideration of such transactions.

*Permanent Building Societies (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued***Review of completed transactions**

46M. If it appears to the registrar that through inadvertence or error or otherwise a transaction was not referred to and dealt with by the Takeover Review Committee in accordance with this Division before it was given effect to, that transaction may—

- (a) be referred to the Committee by the registrar; and
- (b) be dealt with by the Committee and the Minister,

under the provisions of this Division (so far as those provisions are applicable and with such modifications as are necessary) as if the transaction were a proposed transaction.

(7) Section 52F (Fixed share issues)—

Section 52F (1A)—

After section 52F (1), insert:

- (1A) A society shall not issue equity fixed shares unless—
 - (a) details of the proposed issue have first been submitted to the registrar in accordance with the regulations; and
 - (b) where Division 6 of Part III applies to the proposed issue, the provisions of that Division have been complied with.

(8) Section 63E (Meaning of designated capital)—

Section 63E (1) (a)—

After “priority”, insert “in the distribution of capital”.

(9) Part X, Division 3—

After section 117, insert:

DIVISION 3—*Takeover Review Committee***Takeover Review Committee**

117A. (1) The Minister may from time to time convene a Takeover Review Committee.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(2) The Committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) The Committee shall consist of the following members:

- (a) the registrar or an officer of the Department of Co-operative Societies nominated by the registrar;
- (b) the Chairman of the Corporate Affairs Commission or an officer of that Commission nominated by the Chairman;
- (c) the Department head of the Department of Housing or an officer of that Department nominated by the Department head;
- (d) the Department head of the Treasury or an officer of the Treasury nominated by the Department head;
- (e) a person appointed by the Minister, being an officer of the Australian Association of Permanent Building Societies or some other person from the building society industry;
- (f) a person appointed by the Minister, being a person nominated by the Labor Council of New South Wales,

and, if the Minister appoints an additional person as a member, that member.

(4) A nomination or appointment may from time to time be terminated by the person who made the nomination or appointment.

(5) The Minister may terminate a Takeover Review Committee after it has served the purpose for which it was convened.

(6) Schedule 4 has effect with respect to the members of the Committee.

(7) Schedule 5 has effect with respect to the procedure of the Committee.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(10) Schedule 3, Part 1—

After “36.”, insert “46A–46M.”.

(11) Schedules 4, 5—

After Schedule 3, insert:

SCHEDULE 4

(Sec. 117A (6))

PROVISIONS RELATING TO THE MEMBERS OF THE TAKEOVER
REVIEW COMMITTEE

Chairperson

1. The registrar or the nominee of the registrar shall be the Chairperson of the Takeover Review Committee.

Acting members

2. A person who made a nomination or appointment may, from time to time, nominate or appoint a person to act in the office of a member so nominated or appointed during the illness or absence of the member.

Remuneration

3. A member who is not a member of the Public Service is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Disclosure of pecuniary interests

4. (1) A member who has a direct or indirect pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Committee; or

(b) in a thing being done or about to be done by the Committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

*Permanent Building Societies (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(2) A disclosure by a member at a meeting of the Committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose in the office of the registrar and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be prescribed.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Committee or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is an officer of the Australian Association of Permanent Building Societies.

Effect of certain other Acts

5. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued*

(2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Liability of members, etc.

6. No matter or thing done by the Committee, any member or any person acting under the direction of the Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 5

(Sec. 117A (7))

PROVISIONS RELATING TO THE PROCEDURE OF THE
TAKEOVER REVIEW COMMITTEE

General procedure

1. The procedure for the calling of meetings of the Takeover Review Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

Quorum

2. The quorum for a meeting of the Committee is 4 members.

Presiding member

3. (1) The Chairperson shall preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

*Permanent Building Societies (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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COMMITTEE—*continued***Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Minutes

5. The Committee shall cause minutes to be kept of the proceedings of each meeting of the Committee.

First meeting of the Committee

6. The Minister shall call the first meeting of the Committee in such manner as the Minister thinks fit.

SCHEDULE 2

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 3A (**Subsidiary corporations and societies**)—

(a) Section 3A (1)—

After “corporation” wherever occurring, insert “or society”.

(b) Section 3A (2)—

After “corporation’s” wherever occurring, insert “or society’s”.

(c) Section 3A (3)—

After “corporation” wherever occurring, insert “or society”.

(d) Section 3A (3)—

After “society” where firstly, secondly, thirdly and seventhly occurring, insert “of which the corporation or society may be a subsidiary”.

*Permanent Building Societies (Amendment) 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(2) Section 4c (**Loans to non-members prohibited**)—

Section 4c (2)—

At the end of section 4c, insert:

(2) Nothing in subsection (1) limits the powers of a society to invest its funds in accordance with section 21.

(3) Section 11B (**Minimum percentage of loans to be secured by mortgage over owner-occupied residential land**)—

Section 11B (1), definition of “loan”—

After the definition of “land”, insert:

“loan” does not include an investment authorised by section 21;

(4) Section 20 (**Borrowing powers**)—

Section 20 (2A) (b) (i)—

Omit “currency futures contract”, insert instead “foreign exchange forward hedge contract”.

(5) Heading to Division 3, Part III—

Omit “and”, insert instead “, *Subsidiary Societies and*”.

(6) Section 39A—

After section 39, insert:

Subsidiary societies

39A. (1) A society may by special resolution take action to become a subsidiary society (within the meaning of section 3A) of another society (including a non-terminating building society registered under, or a society specified in the Second Schedule to, the Co-operation Act 1923).

(2) A society, or a non-terminating building society registered under, or a society specified in, the Second Schedule to, the Co-operation Act 1923, may—

(a) by special resolution; or

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) with the consent of the registrar, by resolution of a general meeting or of the board.

take action to become a holding society of a society referred to in subsection (1).

(3) An arrangement under this section between societies to enter into the relationship of subsidiary society and holding society shall not have effect unless, where Division 6 applies to the arrangement, the provisions of that Division have been complied with or, where Division 6 does not apply to the arrangement—

- (a) the holders of not less than two-thirds of the whole number of shares of each of the societies have consented in writing to the arrangement, or the arrangement has been confirmed under section 41 (3), and
- (b) the special resolution of the proposed subsidiary society has been registered.

(4) The registrar, before registering the special resolution referred to in subsection (2) (a), may require such evidence as the registrar deems necessary to ensure—

- (a) that the proposed holding society has taken action to become a holding society in accordance with this section;
- (b) that the statements referred to in section 41 have (unless an exemption has been granted by the registrar pursuant to section 41 (1)) been issued; and
- (c) that consent has been given under subsection (3) (a), or the arrangement has been confirmed under section 41 (3).

(5) A society shall, within one month of the passing of a resolution under subsection (2) (a), notify the registrar that the resolution has been passed and if the society fails to notify the registrar, the society and every officer of the society who is in default shall be guilty of an offence and liable to a penalty not exceeding \$500.

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(7) Section 40 (**Transfer of engagements**)—

(a) Section 40 (1A)—

After section 40 (1), insert:

(1A) A society may, by special resolution, resolve to transfer its engagements to a non-terminating building society registered under, or a society specified in the Second Schedule to, the Co-operation Act 1923.

(b) Section 40 (2), (5)—

After “under this section” wherever occurring, insert “(not being a transfer of engagements under subsection (1A))”

(8) Section 41 (**Supplementary provisions as to amalgamation, subsidiary societies or transfer of engagements**)—

(a) Section 41 (1)—

After “section 39,” insert “39A,”.

(b) Section 41 (1)—

After “amalgamation,” insert “arrangement to enter into the relationship of holding society and subsidiary society,”.

(c) Section 41 (1) (b), (d)—

After “amalgamation” wherever occurring, insert “, arrangement”.

(d) Section 41 (2)—

Omit “subsection (1) of section 39 or subsection (1) of section 40”, insert instead “section 39 (1), 39A (1) or 40 (1)”.

(e) Section 41 (3)—

After “amalgamation” wherever occurring, insert “, arrangement”.

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(9) Section 41A (**Transfer of engagements by direction of registrar**)—

Section 41A (1) (a)—

Omit the paragraph, insert instead:

(a) to transfer its engagements to—

(i) another society; or

(ii) a non-terminating building society registered under,
or a society specified in the Second Schedule to, the
Co-operation Act 1923,

approved by the registrar; and

(10) Section 49 (**Members**)—

Section 49 (8)—

Omit the subsection, insert instead:

(8) The rules of a society shall specify the number of shares, or
the number of shares of a particular class or particular classes, that
a person must subscribe for or hold in order to be and remain a
member of the society.

(11) Section 52 (**Share capital**)—

(a) Section 52 (10)—

After “association”, insert “or a subsidiary society referred to in
section 39A”.

(b) Section 52 (10)—

Omit “withdrawable”.

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 52 (11)—

After section 52 (10), insert:

(11) The rules of a holding society (as referred to in section 39A) must provide that a depositor in or a member of any subsidiary society of the holding society has a continuing opportunity of becoming a member of the holding society by subscribing for such number of shares as is necessary for that purpose.

(12) Section 52A (**Limitation of shareholding**)—

(a) Section 52A (1) (a)—

Omit “he”, insert instead “the person or an associate of the person”.

(b) Section 52A (1) (a1)—

After “the person”, insert “or an associate of the person”.

(c) Section 52A (1) (b1)–(b3)—

After section 52A (1) (b), insert:

(b1) subject to paragraph (b2), a reference to an associate of a person is a reference to an associate of a person within the meaning of section 136 of the Companies (New South Wales) Code, construed as if a reference in that section to a company included a reference to a society;

(b2) if the registrar has, by order, declared a person whose principal business is the business of holding marketable securities as a trustee or nominee to be an approved trustee or nominee, that person shall not be regarded as an associate of another person;

*Permanent Building Societies (Amendment) 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b3) if the registrar has, by order, declared that specified shares in respect of which an associate of a person has a power referred to in paragraph (a) or (a1) are to be disregarded for the purpose of ascertaining the shares in respect of which that person has a relevant interest, those shares shall be so disregarded;

(d) Section 52A (1) (d)—

Omit the paragraph, insert instead:

(d) the prescribed proportion for a society is—

- (i) in the case of equity fixed shares—**one-tenth;**
- (ii) in the case of shares of a class other than equity fixed shares—**one-fifth, or**
- (iii) in the case of shares (whether or not including equity fixed shares or shares of any other class)—**one-fifth.**

or, where a lesser proportion is specified in the rules of the society or any other proportion (whether lesser or greater) is specified in the regulations, the proportion so specified.

(e) Section 52A (2), (2A)—

Omit section 52A (2), insert instead:

(2) Where a person (other than a holding society created in accordance with section 39A of this Act or section 68A of the Co-operation Act 1923) has relevant interests—

- (a) in the equity fixed shares of a society exceeding the prescribed proportion of the nominal value of all equity fixed shares issued by the society;
- (b) in the shares of a society (being shares of a class other than equity fixed shares or any other prescribed class) exceeding the prescribed proportion of the nominal value of all shares of that class issued by the society or

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) in the shares of a society (whether or not including equity fixed shares or shares of any other class) exceeding the prescribed proportion of the nominal value of all shares issued by the society,

the society shall—

- (d) cancel the excess shares; and
- (e) pay to the person the amount paid up on the cancelled shares, together with any other money to which the person may be entitled in respect of those shares.

(2A) Subsection (2) (b) does not operate so as to require the cancellation of shares in which a person has relevant interests if—

- (a) the acquisition of the relevant interests in those shares was in accordance with an approval given under Division 6 of Part III;
- (b) the person had the relevant interests in those shares before the commencement of this subsection; or
- (c) the person has the relevant interests as the result of a share issue and those relevant interests represent a proportion of the issued shares no greater than the proportion which the person had before the share issue.

(13) Section 52c (**Cancellation of shares**)—

Section 52c (3)—

Omit “withdrawable”.

(14) Section 63 (**Liquidity**)—

Section 63 (2) (a)—

Omit “or other bills of exchange”.

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(15) Section 71 (**Directors, officers—remuneration, etc.**)—

Section 71 (3), (4)—

After section 71 (2), insert:

(3) A director or other officer of any society or a person who, for the purposes of section 70A, is associated with a director or other officer of any society shall not be paid any amount or be given any other benefit having a value in excess of such amount as may be determined by order of the Minister in connection with—

- (a) the loss of office by the director or other officer or the retirement from office by the director or other person; or
- (b) the transfer of engagements of a society, the amalgamation of societies or the registration of a society under another Act.

(4) An order made by the Minister may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

(16) Section 75 (**Voting**)—

(a) Section 75 (3)—

Omit “has”.

(b) Section 75 (3) (a), (b)—

Before “such minimum” wherever occurring, insert “has”.

(c) Section 75 (3) (a)—

After “share capital”, insert “, or had at a certain date or has held such paid-up share capital for such time,”.

*Permanent Building Societies (Amendment) 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 75 (3) (b)—

After “particular classes”, insert “, or had at a certain date or has held such deposits for such time,”.

(e) Section 75 (3B)—

After section 75 (3A), insert:

(3B) For the purposes of any rule of a holding society (as referred to in section 39A) made as referred to in subsection (3), deposits or paid-up share capital held in a subsidiary society of the holding society shall be deemed to be deposits or paid up share capital held in the holding society.

(17) Section 77 (**Special resolutions**)—

(a) Section 77 (1)—

Omit the subsection, insert instead:

(1) For the purposes of this Act, a special resolution (except as provided by section 30 (6)) means a resolution which is passed by—

(a) if paragraph (b) does not apply—a majority of not less than two-thirds of the persons who, being entitled to do so, vote in person or, where proxies are allowed, by proxy; or

(b) if a society has fixed shares and the rules of the society so provide—

(i) a majority of not less than two-thirds of the persons who are the holders of shares of the society (including fixed shares); and

(ii) a majority of not less than two-thirds of the persons who are the holders of fixed shares of the society,

and who, being entitled to do so, vote in person or, where proxies are allowed, by proxy,

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and the rules of the society.

(b) Section 77 (3)—

Omit “A special resolution shall not take effect until so registered.”.

(c) Section 77 (3A), (3B)—

After section 77 (3), insert:

(3A) If the registrar is satisfied that the society has complied with the provisions of this Act and of the regulations, and that the resolution is not contrary to this Act or the regulations, the registrar shall register the resolution.

(3B) A special resolution shall not take effect until it is so registered.

(d) Section 77 (5), (6)—

After section 77 (4), insert:

(5) If the registrar refuses to register a special resolution of a society, the registrar shall, if so required by the society, set forth in writing the grounds for that refusal.

(6) The society may apply to the Supreme Court for review of the refusal and, on the review, the Supreme Court may make such orders as may be proper in the circumstances.

Permanent Building Societies (Amendment) 1987

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(18) Section 103 (**Certain acts prohibited in relation to loans**)—

Section 103 (1A)—

After section 103 (1), insert:

(1A) Subsection (1) does not apply to a loan or finance unless—

- (a) the loan or finance is in respect of land (including freehold or leasehold land and land that is of any tenure under any Crown lands legislation) that is occupied or intended to be occupied personally for residential purposes by the mortgagors or persons obtaining finance; or
- (b) being any other kind of loan or finance, the arrangements for obtaining that loan or finance do not comply with such requirements as may be prescribed.

(19) Schedule 1, paragraph (v)—

Omit “withdrawable”.

(20) Schedule 3 (**Provisions of this Act applicable to certain building societies not registered under this Act**)—

Schedule 3, Part 1—

After “52 (10)”, insert “and (11)”.