



NORTHERN TERRITORY OF AUSTRALIA

No. 76 of 1985

AN ACT

To amend the *Building Societies Act*

[Assented to 24 December 1985]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Building Societies Amendment Act 1985*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Building Societies Act* is in this Act referred to as the Principal Act.

4. BUILDING SOCIETIES ADVISORY COMMITTEE

Section 7 of the Principal Act is amended -

(a) by omitting from subsection (2)(d) "one person" and substituting "one shall be a person"; and

(b) by adding at the end the following:

"(8) The Committee may allow such persons as it thinks fit to attend a meeting of the Committee and to take part in discussions on any matter before the Committee at the meeting, but such a person shall not have a vote on any matter before the Committee or be counted towards a quorum at that meeting."

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5. REGISTRATION AND INCORPORATION

Section 14(3) of the Principal Act is amended by omitting "\$1,000,000, of which not less than \$500,000" and substituting "\$1,000,000 or such greater amount as may be determined under section 95A for the purposes of this subsection, of which not less than 50%".

6. ALTERATION OF RULES

Section 18 of the Principal Act is amended -

- (a) by omitting from subsection (1) "subsection (3)" and substituting "subsection (4)"; and
- (b) by omitting from subsection (2) "immediately" and substituting "within 7 days"; and
- (c) by omitting subsection (3) and substituting the following:

"(3) An application under subsection (2) shall be served on the Registrar personally or by posting it to him by pre-paid registered post.

"(4) The Registrar shall, not later than 14 days after an application under subsection (2) is served on him, if he is satisfied that the proposed alteration to the rules of the building society is not contrary to this Act or the Regulations, register the alteration."

7. REPEAL

Section 20 of the Principal Act is repealed.

8. TRANSFER OF ENGAGEMENTS

Section 27 of the Principal Act is amended by adding at the end the following:

"(7) Notwithstanding the *Stamp Duty Act*, no instrument or document executed or registered for or in respect of the transfer of property in pursuance of this section shall, on and after 31 January 1985, be liable to stamp duty.

"(8) The Registrar may, following the transfer of the whole of the engagements of a building society, remove from the register the name of the building society.

"(9) A person who is or was a member of a building society and whose account is or was transferred as a result of a transfer of engagements from a building society to another building society shall, on and from 31 January 1985, be and be deemed to have been subject to the same rules, rights and obligations as other members of the building society to which his account is or was transferred."

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9. LOANS

Section 29 of the Principal Act is amended -

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

"(aa) make unsecured advances to members where the Registrar is satisfied that the making of those advances will not prejudice the continuing compliance by the building society with conditions prescribed for the purposes of this paragraph"; and

(b) by omitting from subsection (5) "home unit within the meaning of the *Unit Titles Act*" and substituting "unit, within the meaning of the *Unit Titles Act*, for residential purposes".

10. REPEAL AND SUBSTITUTION

Section 32 of the Principal Act is repealed and the following substituted:

"32. BUILDING SOCIETY TO ADVISE BORROWER OF INTEREST CHARGES, &c.

"(1) Subject to subsection (2), where a building society approves an application made to it by a person wishing to obtain an advance on the security of a mortgage over land, it shall keep at its office, for the period of 5 working days from the day on which the application was so approved, a notice in the prescribed form, for collection by that person, setting out such particulars as are prescribed concerning -

(a) the rate or rates of interest that is or are payable under the proposed advance at the time that the advance is proposed to be made, including whether the rate or rates of interest may vary during the term of the advance;

(b) the date on which repayments of principal and interest are to commence; and

(c) the amount of any other fees, charges or expenses paid or to be paid by the person,

but, where that person does not collect the notice before the expiration of the period specified, the building society shall, as soon as practicable after the expiration of that period, cause the notice to be sent by pre-paid post to the person at his last-known place of residence or business as disclosed in his application.

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"(2) A building society which has approved an application referred to in subsection (1) shall not require the person obtaining the advance to which the application relates to execute such documents as are necessary to obtain the security on which the advance is to be made unless the person has first collected or received the notice under that subsection which relates to the approval."

11. MEANING OF SPECIAL ADVANCE

Section 33 of the Principal Act is amended -

- (a) by omitting from subsection (1)(b) "\$100,000 or, where some other amount is prescribed, the prescribed amount" and substituting "the amount determined under section 95A for the purposes of this paragraph";
- (b) by omitting from subsection (1)(c) "\$30,000 or, where some other amount is prescribed, the prescribed amount," and substituting "the amount determined under section 95A for the purposes of this paragraph";
- (c) by omitting from subsection (1)(d) "\$100,000 or, where an amount has been prescribed pursuant to paragraph (b), the prescribed amount" and substituting "the amount determined under section 95A for the purposes of paragraph (b)"; and
- (d) by omitting subsection (2) and substituting the following:

"(2) Where a member transfers or assigns to another person his interest in property which is the subject of a mortgage to the building society, the transfer or assignment shall -

- (a) where the amount of the mortgage debt remaining unpaid immediately after the transfer or assignment (which amount shall include any arrears of interest then outstanding) exceeds the amount determined under subsection 95A for the purposes of subsection (1)(b) or (c), whichever of those paragraphs is applicable to that property be treated as a special advance made by the building society to that other person of an amount equal to the first-mentioned amount; and
- (b) in any other case - not be treated as a special advance."

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12. LIMITATION ON SPECIAL ADVANCES

Section 34 of the Principal Act is amended -

- (a) by omitting from subsection (3) "20% or such other percentage as is prescribed" and "20%, or such other percentage as is prescribed" and substituting in both places "the percentage determined under section 95A for the purposes of this subsection";
- (b) by omitting from subsection (4) "20% or such other percentage as is prescribed", "25% or such other percentage as is prescribed" and "2½% or such other percentage as is prescribed" and substituting in each place "the relevant percentage determined under section 95A for the purposes of this subsection"; and
- (c) by omitting from subsection (5) "25% or such other percentage as is prescribed" and substituting "the percentage determined under section 95A for the purpose of this subsection".

13. REPEAL

Section 35 of the Principal Act is repealed.

14. LIQUIDITY

Section 38 of the Principal Act is amended -

- (a) by omitting from subsection (1) "10% or such other percentage as is prescribed" and substituting "the percentage determined under section 95A for the purposes of this subsection" and by omitting "43(1)" and substituting "44(6)";
- (b) by omitting subsection (2)(b)(ii) and substituting the following:
 - "(ii) funds on deposit with a bank which are redeemable within 2 years;"
- (c) by omitting from subsection (2)(b)(iv) "due to mature within 2 years" and substituting "saleable"; and
- (d) by omitting from subsection (3) "section 43" and substituting "sections 43 and 44".

15. BORROWING POWERS, &c.

Section 44 of the Principal Act is amended by adding at the end the following:

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"(8) A building society may borrow -

- (a) on a letter of credit issued or guaranteed by a bank; or
- (b) on a promissory note issued to a bank, merchant bank, or company approved by the Registrar.

"(9) For the purposes of this section -

'bank' has the same meaning as it has in section 38(3);

'merchant bank' means a merchant bank member of the Australian Merchant Bankers Association."

16. BUILDING SOCIETY AS COLLECTING AGENT

Section 49 of the Principal Act is amended -

- (a) by inserting in subsection (1) after "company, society," (twice occurring) "subsidiary,"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) A building society may act -

- (a) as a paying or collecting agent for its subsidiary in respect of -

- (i) money due to that subsidiary by the subsidiary's members; or

- (ii) such other money as the Registrar may approve;

- (b) as a paying or collecting agent for any other building society in Australia in respect of money due to that building society by its members; and

- (c) subject to subsection (1), as a paying or collecting agent on behalf of such company, society, person or body of persons as may be approved by the Registrar in respect of such money as he may approve.

"(3) For the purposes of this section 'subsidiary' means a body corporate in which a building society has a financial interest."

17. POWER OF BUILDING SOCIETY TO JOIN ASSOCIATION

Section 50 of the Principal Act is amended by omitting ", with the consent of the Registrar,".

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18. ADMINISTRATION MAY BE DISPENSED WITH IN CERTAIN CASES

Section 52(4) of the Principal Act is amended by omitting "of \$5,000 or, where some other amount is prescribed, that other amount" and substituting "determined under section 95A for the purposes of this subsection."

19. APPOINTMENT OF DIRECTORS

Section 62 of the Principal Act is amended by omitting subsection (7) and substituting the following:

"(7) Unless the Minister otherwise consents, the majority of directors of a building society shall be permanently resident in the Territory."

20. NEW SECTION

The Principal Act is amended by inserting after section 65 the following:

"65A. DEFENCE TO PROSECUTION FOR OFFENCE AGAINST SECTION 63, 64 OR 65

"It shall be a defence to a prosecution for an offence against section 63, 64 or 65 if the person charged with the offence proves that -

- (a) the offence was committed without his consent or connivance; and
- (b) he exercised due diligence to prevent the commission of the offence."

21. ACCOUNTS, RETURNS, AUDIT, &c.

Section 68 of the Principal Act is amended by omitting subsections (8) and (9) and substituting the following:

"(8) The directors and the manager or secretary of a building society shall prepare for submission to the annual general meeting of the building society a report in the prescribed manner on the affairs of the building society and such report shall contain a statement by the directors and the manager or secretary that, to the best of their knowledge and belief, the accounts and records of the building society comply with this Act and the Regulations.

"(9) A report prepared in pursuance of subsection (8) may include a statement setting out, for the financial year last ending before the annual general meeting at which the report is submitted -

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- (a) the total amount advanced during the financial year by the building society on the security of freehold or leasehold land, and the total number of mortgages lodged for registration at the office of the Registrar-General within the meaning of the *Real Property Act* during that year in favour of the building society;
- (b) the number of cases in which, at the end of the financial year, a mortgagor was in arrears with payments due to the building society under his mortgage on account of principal and interest to an amount which exceeded the amount which fell due under the mortgage on account of principal and interest in that financial year;
- (c) the total of the amounts of the arrears at the end of the financial year in all cases referred to in paragraph (b); and
- (d) the proportion of the total amount advanced by the building society as mentioned in paragraph (a) which represents special advances within the meaning of section 33, and the number of mortgages executed during that financial year to secure such special advances,

but, where the report does not include that statement or a part of that statement, the directors shall submit that statement or part to the Registrar not later than the last day before the day on which the annual general meeting of the building society is to be held."

22. USE OF WORDS "BUILDING SOCIETY", &c.

Section 78 of the Principal Act is amended by inserting before subsection (1) the following:

"(1A) The Minister may consent to the words 'building society' or 'building societies' being used in a name or title of a body corporate which is not a building society and, notwithstanding subsection (1)(a) and (c), the body corporate may use those words accordingly."

23. FALSE STATEMENTS

Section 85 of the Principal Act is amended by inserting after "who" the word "knowingly".

24. DEFAULT BY SOCIETY

Section 86(1) of the Principal Act is amended by inserting after "If a building society" the word "knowingly".

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25. ASSOCIATED CHARGES

Section 91 of the Principal Act is amended by omitting "Registrar" (twice occurring) and substituting "Minister".

26. NEW SECTION

The Principal Act is amended by inserting after section 95 the following:

"95A. MINISTER MAY DETERMINE AMOUNTS

"The Minister may, by notice in the *Gazette*, determine amounts or percentages, as the case requires, for the purposes of sections 14(3), 33(1)(b) or (c), 34(3), (4) or (5), 38(1) or 52(4)."

27. REGULATIONS

Section 96(2) of the Principal Act is amended by inserting after paragraph (b) the following:

"(ba) prescribe a purpose for which a building society's assets can be used and the maximum percentage of those assets which may be so used;

(bc) prescribe a percentage of a building society's assets, exclusive of prescribed liquidity, to be invested in mortgages of owner occupied land;"

28. TRANSITIONAL AND SAVINGS

(1) The amendments effected by section 21 shall first apply in relation to the report of a building society prepared for submission to the annual general meeting of that building society next held after the commencement of this Act.

(2) Until the Minister determines a relevant amount or percentage under section 95A of the Principal Act (as inserted by section 26 of this Act), the relevant amount or percentage applying immediately before the commencement of this Act shall continue to apply as if this Act had never commenced.
