

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE



No. 42 of 1985

An Act to consolidate and amend the law relating to building societies and for other purposes

[ASSENTED TO 24TH APRIL, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Building Societies Act 1985*.

2. **Commencement.** (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

3. **Arrangement of Act.** This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-7);

PART II—INCORPORATION (ss. 8-30):

Division 1—Formation and Registration;

Division 2—Rules;

Division 3—Names;

Division 4—Office and Service of Documents;

PART III—OBJECTS AND POWERS (ss. 31-45):

Division 1—Objects;

Division 2—Advances;

Division 3—Investment;

PART IV—CAPITAL AND MEMBERSHIP (ss. 46-62):

Division 1—Membership;

Division 2—Share Capital;

Division 3—Deposits and Loans;

Division 4—Liquidity and Reserves;

Division 5—Contracts;

Division 6—Unclaimed Moneys;

PART V—MANAGEMENT (ss. 63-116):

Division 1—Directors and Officers;

Division 2—Meetings and Voting;

Division 3—Accounts;

Division 4—Audit;

Division 5—Registers;

Division 6—Returns;

PART VI—DISPUTES (s. 117);

PART VII—AMALGAMATION AND TRANSFER OF ENGAGEMENTS (ss. 118-122);

PART VIII—SUSPENSION, ADMINISTRATION, RECEIVERSHIP AND WINDING UP OF BUILDING SOCIETIES (ss. 123-133);

Division 1—Suspension;

Division 2—Appointment of Administrator;

Division 3—Receivers and Managers;

Division 4—Winding Up;

PART IX—CONTINGENCY FUND AND COMMITTEE (ss. 134-154);

PART X—ADMINISTRATION (ss. 155-184);

Division 1—Administrative Staff and Office;

Division 2—General;

Division 3—Investigations;

Division 4—Inquiry by Registrar and Special Audit;

Division 5—Advisory Committee;

PART XI—EVIDENCE AND OFFENCES (ss. 185-221);

Division 1—Evidence;

Division 2—Offences;

Division 3—Proceedings;

PART XII—MISCELLANEOUS (ss. 222-228);

PART XIII—TRANSITIONAL, ETC. (ss. 229-235).

4. Interpretation. (1) In this Act, unless the contrary intention appears—

“accounting records” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“administrator” means a person appointed as an administrator under Part VIII;

“Advisory Committee” means the Housing and Building Societies Advisory Committee as constituted from time to time under

- section 57 of the *Co-operative Housing Societies Act 1958-1974* and constituted by section 183 of this Act to be the advisory committee for the purposes of this Act;
- “annual general meeting”, in relation to a building society, means a meeting of the building society required to be held by section 83;
- “bank” means—
- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth as amended and in force for the time being; or
 - (b) a bank constituted under a law of a State or Territory;
- “banker’s books” means—
- (a) books of a bank, including any documents used in the ordinary business of a bank;
 - (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a bank; and
 - (c) securities or documents of title to securities in the possession or under the control of a bank whether by way of pledge or otherwise;
- “*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being and includes an Act passed in substitution for that Act;
- “board” means the board of directors of a building society;
- “books” includes any register or other record of information and any accounts or accounting records however compiled, recorded or stored and also includes any document;
- “building society” means a permanent building society formed and registered under this Act, or a permanent building society or a terminating building society deemed pursuant to section 16 (1) to be registered under this Act;
- “certified” in relation to a copy of or extract from a document means certified by a statement in writing to be a true copy of or extract from the document;
- “charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;
- “Contingency Fund” means the Permanent Building Societies Contingency Fund established and kept pursuant to Part IX;
- “Contingency Fund Committee” means the Permanent Building Societies Contingency Fund Committee constituted under section 138;
- “corporation” means any body corporate whether formed or incorporated within or outside the State but does not include—
- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown; or
 - (b) a corporation sole;

“Court” means the Supreme Court of Queensland;

“director” in relation to a building society includes—

- (a) any person occupying or acting in the position of a director of the building society by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; and
- (b) any person in accordance with whose directions or instructions a director of the building society is accustomed to act;

“document” includes—

- (a) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced.

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice;

“emoluments” means the amount or value of any money, consideration or benefit given, directly or indirectly, to a director of a building society, in connexion with the management of the affairs of the building society, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the building society;

“employee” includes—

- (a) any person (other than a director) in the paid employment of a building society (whether by way of salary, allowance, fee, stipend, wage, commission or other payment of a like nature);
- (b) any other person or body of persons who or which provides the building society with secretarial or administrative services;
- (c) any person in the paid employment of a person or body referred to in paragraph (b);

“executive officer” in relation to a building society means any person, by whatever name called, and whether or not he is a director of the building society, who is concerned, or takes part, in the management of the building society;

“functions” includes duties;

“insolvent under administration” means a person who—

- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which he has not been discharged; or

- (b) under the law of a country other than Australia or the law of an external Territory, has the status of an undischarged bankrupt,

and includes—

- (c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia where the terms of the deed have not been fully complied with; and
- (d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or the law of a country other than Australia where a final payment has not been made under that composition;

“land” includes any building thereon or to be erected thereon and any other improvements thereon or to be made thereon;

“machine copy” has the meaning ascribed to that expression in Part VII of the *Evidence Act 1977-1984*;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act; the term includes a Minister of the Crown who is temporarily performing the duties of the Minister;

“mortgage insurer” means the Housing Loans Insurance Corporation established by the *Housing Loans Insurance Act 1965* of the Commonwealth or other insurer approved under section 36 as a mortgage insurer for the purposes of this Act;

“officer” in relation to a building society includes—

- (a) a director, secretary, executive officer, treasurer, employee or administrator of the building society or any other person empowered under the rules of the building society to give directions or instructions in regard to the conduct of the business of the building society;
- (b) a receiver and manager of the property or any part of the property of the building society appointed under a power contained in an instrument;
- (c) a liquidator of a building society appointed in a voluntary winding up,

but does not include—

- (d) a receiver who is not also a manager;
- (e) a receiver and manager appointed by the Court; or
- (f) a liquidator appointed by the Court;

- “permanent building society” means a building society which has not by its rules any fixed date at which, or specified event or result on the attainment of which, it is to terminate;
- “power” includes an authority;
- “prescribed bill of exchange” means a bill of exchange—
- (a) that is drawn by a building society in favour of itself;
 - (b) that has been accepted by the bank or prescribed corporation on which it is drawn; and
 - (c) under which the date for payment is either fixed or determinable at the time the bill is drawn;
- “prescribed corporation” means a prescribed corporation within the meaning of section 97 (7) (b) of the *Companies (Queensland) Code*;
- “principal executive officer” in relation to a building society means the principal executive officer of the building society for the time being, by whatever name called, and whether or not he is a director;
- “registered company auditor” means a person registered as an auditor under the *Companies (Queensland) Code*;
- “registered liquidator” means a person registered as a liquidator under the *Companies (Queensland) Code*;
- “Registrar” means the Registrar of Commercial Acts, Brisbane, appointed under the *Administration of Commercial Laws Act 1962-1981*; the term includes any Deputy Registrar of Commercial Acts, Brisbane, appointed under that Act;
- “repealed Act” means the *Building Societies Act 1886-1976*;
- “reproduction” in relation to a document has the meaning ascribed to that expression in Part VII of the *Evidence Act 1977-1984*;
- “secondary mortgage market” has the meaning ascribed to that term by section 4 of the *Mortgages (Secondary Market) Act 1984*;
- “special notice” in relation to a general meeting of a building society, means a notice of that meeting given not less than 28 days before the meeting;
- “terminating building society” means a building society registered under the repealed Act as a terminating building society;
- “Territory” means a Territory of the Commonwealth;
- “transparency” in relation to a document has the meaning ascribed to that term in Part VII of the *Evidence Act 1977-1984*.

(2) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a building society, are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his professional capacity.

(3) A reference in this Act to the holding building society of a corporation shall be read as a reference to a building society of which the corporation is a subsidiary.

(4) For the purposes of this Act, a receiver of the whole or any part of the property of a building society shall be deemed to be also a manager of the building society if the receiver manages affairs of the building society or has power under the terms of his appointment to manage affairs of the building society.

5. Repeals. (1) The Acts referred to in the First Schedule are repealed or, as the case may be, amended to the extent indicated therein.

(2) An Act as amended by this Act may be collectively cited as indicated in relation to that Act in the First Schedule.

6. Subsidiaries. (1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of a building society if—

- (a) the building society—
 - (i) controls the composition of the board of directors of that corporation;
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that corporation; or
 - (iii) holds more than one-half of the issued share capital of that corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) that corporation is a subsidiary of any corporation that is a subsidiary of the building society (including a corporation that is a subsidiary of the building society by another application or other applications of this paragraph).

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by a building society the composition of a corporation's board of directors shall be taken to be controlled by a building society if that building society, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that building society, can appoint or remove all or a majority of the directors, and for the purposes of this provision that building society shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that building society of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that building society.

(3) In determining whether a corporation is a subsidiary of a building society—

- (a) subject to paragraphs (b) and (c), any shares held or power exercisable—
 - (i) by any person as a nominee for that building society; or
 - (ii) by, or by a nominee for, a subsidiary of that building society not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that building society;
- (b) any shares held or power exercisable by any person by virtue of the provisions of any debentures of that corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded; and
- (c) any shares held or power exercisable by, or by a nominee for, that building society or its subsidiary (not being held or exercisable as mentioned in paragraph (b)) shall be treated as not held or exercisable by that building society if the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connexion with the lending of money.

(4) In subsection (3) (b), “debentures” means debentures within the meaning of the *Companies (Queensland) Code*.

7. Application of Companies (Queensland) Code. (1) Subject to the express provisions of this Act, the *Companies (Queensland) Code* and the *Companies (Acquisition of Shares) (Queensland) Code* do not apply to, or to acts, matters, circumstances or things of, or in relation to, building societies.

(2) The provisions of section 169 of the *Companies (Queensland) Code* apply to building societies except in relation to the issue of shares pursuant to section 51 or except where the Governor in Council, by Order in Council, directs in respect of—

- (a) a particular building society; and
- (b) such prescribed interest as is specified in the Order in Council,

that those provisions do not apply to that building society in respect of that prescribed interest.

For the purposes of this subsection “prescribed interest” has the same meaning as is ascribed to that term by section 5 (1) of the *Companies (Queensland) Code*.

(3) Where under this Act provisions of the *Companies (Queensland) Code* are expressed to be applicable to, or to acts, matters, circumstances or things of, or in relation to, building societies, a reference to the applied provisions shall be construed as including a reference to—

- (a) rules made under the *Companies (Queensland) Code* and the relevant provisions of those rules shall, *mutatis mutandis*, apply accordingly; and

- (b) the Companies (Queensland) Regulations and the relevant provisions of those regulations shall, *mutatis mutandis* and with such modifications (if any) as may be prescribed, apply accordingly.

PART II—INCORPORATION

Division 1—Formation and Registration

8. New building societies. On and after the commencement of this Act, a building society shall not be formed or established unless—

- (a) it is formed and established under this Act;
- (b) it is a permanent building society.

9. Formation of new building societies. (1) Subject to this Act, a permanent building society may be formed by not less than the prescribed number of persons aged 18 years or upwards who are, by the rules of the proposed society, qualified to be members.

(2) No permanent building society shall be formed unless there is a meeting, called the formation meeting, for the purpose of forming the society at which there are present not less than the prescribed number of persons of the age, and having the qualifications, required by subsection (1).

(3) At the formation meeting there shall be presented to the prospective members of the proposed permanent building society—

- (a) a written statement showing the objects of the society and the reasons for believing that, when registered, it will be able to carry out its objects successfully, and
- (b) a copy of the rules that are to be tendered for registration.

(4) If, at the formation meeting or any subsequent or adjourned meeting, not less than the prescribed number of persons of the age, and having the qualifications, required by subsection (1)—

- (a) approve the rules with or without amendment;
- (b) sign 2 copies of the rules (each of which signatures shall be attested by a witness);
- (c) sign an application for membership and shares (which application shall state the respective names, addresses and occupations of the persons and the number of shares for which each will respectively subscribe),

they shall proceed to elect the first directors of the permanent building society in accordance with the rules as so approved.

(5) The expenses of and incidental to the formation of the permanent building society may be paid either out of capital or income.

(6) In this section “the prescribed number” means 100 or, where some other number is prescribed by the regulations for the purposes of this section, the number so prescribed.

10. Application for registration. (1) A permanent building society formed in accordance with section 9 may apply to the Registrar in the prescribed form and manner to be registered under this Act.

(2) An application for registration—

(a) shall be made within 2 months after the formation meeting at which the first directors were elected or within such further period as the Registrar allows; and

(b) shall be accompanied by—

(i) the prescribed fee;

(ii) a statutory declaration by the chairman and secretary of the formation meeting that the requirements of section 9 have been complied with;

(iii) a copy of the statement presented to the formation meeting signed by the chairman and secretary of the meeting;

(iv) the 2 copies of the proposed rules signed as prescribed by section 9;

(v) a list in the prescribed form containing such particulars referred to in section 80 as are specified in that form;

(vi) a list containing the full name and the occupation and address of each applicant for membership and the number of shares subscribed for by him;

(vii) such evidence as the Registrar may require that the permanent building society will, upon registration, have available to it the funds referred to in section 11 (1) (c);

(viii) such other particulars as may be prescribed.

11. Registration. (1) If the Registrar—

(a) is satisfied that the permanent building society has complied with the requirements of this Act;

(b) approves the proposed rules or approves the proposed rules subject to such modifications as he thinks fit;

(c) is satisfied that from the date of its registration the permanent building society will have available to it not less than \$2 000 000 (whether by way of share capital or by way of loan or deposit) and that such amount—

(i) will include members' share capital of not less than \$1 000 000; and

(ii) will include funds that aggregate not less than \$500 000 which funds are expressly prohibited by the agreement or agreements relating to the subscription of the capital or, as the case may be, the loan or deposit and by the rules

from being withdrawn or repaid within the period of 10 years after the date of their receipt by the society; and

- (iii) will, to the extent of not less than \$500 000, be lodged by a corporation or corporations within the class prescribed;
- (d) is satisfied that there are reasonable grounds for believing that the permanent building society, if registered, will be able to carry out its objects successfully.

he shall register the permanent building society and shall issue a certificate of incorporation in the prescribed form to the effect that the society is registered under this Act on and from the date specified in the certificate.

(2) The Registrar shall forward to the permanent building society the certificate of incorporation together with one copy of the rules approved by him (whether subject to alteration or not) certified as prescribed.

(3) Any of the amounts specified in subsection (1) (c) may, in relation to a particular permanent building society, be reduced by Order in Council but in no event shall—

- (a) the amount firstly specified be reduced below \$1 000 000;
- (b) the amount secondly specified be reduced below \$500 000;
- (c) the amount thirdly specified be reduced below \$250 000;
- (d) the amount fourthly specified be reduced below \$250 000.

(4) During the period of 10 years from the date of registration of a permanent building society the Registrar may, in relation to any amount lodged in the funds of the society for the purpose of satisfying the provisions of subsection (1) (c), permit, with the consent of the society, the person who lodged such amount (or his assignees or personal representative) to withdraw the shares or, as the case may be, be repaid the loan or deposit representing such amount if he is satisfied—

- (a) that the withdrawal or, as the case may be, repayment will not have the effect of reducing the amount required to be lodged in its funds under the said subsection below the amount applying to the society; and
- (b) that the amount referred to in subsection (1) (c) (ii) will not be reduced below the amount applying to the society.

(5) The sums of money specified in this section may be varied by Order in Council on and from the date specified in the Order, whereupon they shall have the same force and effect as if enacted in this section.

12. Incorporation. (1) Upon the registration of a permanent building society under this Act the Registrar shall forthwith notify in the Gazette, in the prescribed form, that the society is registered.

The publication of such notification shall, in the absence of evidence to the contrary, be conclusive evidence that all the requirements of this Act in respect of registration have been complied with.

(2) Every building society registered under the repealed Act and in existence immediately before the commencement of this Act and every permanent building society registered under this Act upon the publication of the notification referred to in subsection (1) shall—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and being sued;
- (c) subject to this Act and the rules of the society, be capable of holding, acquiring, dealing with and disposing of real and personal property;
- (d) have the powers, rights and functions conferred, imposed or prescribed by or under this Act and the rules of the society;
- (e) be capable of doing and suffering all such other acts and things as bodies corporate may in law do and suffer (other than such acts or things as may be prescribed).

13. Proof of incorporation. (1) The Registrar shall, when so requested by any person and on payment of the prescribed fee, furnish that person with a certificate in the prescribed form.

(2) A certificate under the hand of the Registrar furnished under subsection (1) shall be, in the absence of evidence to the contrary, conclusive evidence that the building society named in the certificate is incorporated under this Act or, as the case may be, the repealed Act.

14. Fidelity guarantee insurance. (1) Every building society shall, within one month after its date of registration, effect and continue in force at all times a fidelity guarantee insurance policy with the State Government Insurance Office (Queensland) or any other insurer authorized to carry on business in Queensland under the *Insurance Acts* 1973 of the Commonwealth (as amended and in force for the time being) or under the *Insurance Act* 1960-1976 or such other arrangement as is approved by the Minister on the recommendation of the Advisory Committee for the purpose of safeguarding to the extent prescribed under this Act shareholders' and depositors' funds and any other moneys, securities or the like held in trust or otherwise against fraudulent misappropriation or fraudulent embezzlement by—

- (a) any officer, employee or agent of the building society; or
- (b) any other person to whom, the building society has given a franchise or who on behalf of the building society, conducts all or any of its affairs.

A certified copy of such policy and all conditions and memoranda (if any) applicable thereto, together with certified copies of the acceptance or renewal certificates relating thereto shall be furnished by the building society to the Registrar within 14 days of the acceptance or renewal, as the case may be.

(2) If default is made by a building society in complying with any condition of a fidelity guarantee insurance policy or of an arrangement

effected by it under subsection (1) the building society shall be deemed to have failed to comply with a provision of this Act.

(3) Every building society shall, in respect of all real and personal property vested in the building society, insure and keep the property insured to an adequate extent against all risks properly insurable against in accordance with good and prudent management.

(4) Every building society shall insure and keep itself insured to an adequate extent against all liabilities properly insurable against which may arise through injury to any person or damage to any property caused during the course of the conduct of its business as a building society.

15. Review of decisions of the Registrar. (1) Where the Registrar—

- (a) refuses to register a proposed permanent building society, or any of its proposed rules, or any proposed alteration of the rules of a building society;
- (b) registers the rules or the alteration of the rules subject to such modifications as he thinks fit;
- (c) requires the revision or alteration of a rule;
- or
- (d) directs a change of name of a building society,

and the applicant for registration or, as the case may be, the building society, within one month of the receipt by him or it of notification of the refusal, registration, requirement or direction, requires the Registrar so to do, the Registrar shall specify in writing under his hand within one month of the date of receipt of the requisition—

- (i) the grounds of his refusal;
- or
- (ii) in the case of the registration of the alteration of a rule subject to modification, the grounds on which the alteration was modified;
- or
- (iii) in the case of a requirement or direction by him, the grounds upon which the requirement or direction was made or given.

(2) Within one month of the receipt by him or it of the document specifying the grounds of the Registrar's refusal, modification, requirement or direction, the applicant for registration or, as the case may be, the building society may, unless the grounds of the Registrar's refusal, requirement or direction are that the permanent building society would be or the building society is registered by a name or a name of a kind that the Minister has directed the Registrar not to accept for registration, apply to the Court for review of the refusal, modification, requirement or direction.

(3) On the review—

- (a) the Registrar may be represented and may oppose any modification or reversal of the refusal, modification, requirement or direction;
- (b) the Court may confirm, modify or reverse the refusal, modification, requirement or direction and make such further

order in the matter (including an order as to costs) as to it seems proper in the circumstances.

(4) A review under this section shall be by way of rehearing and the decision of the Court is final and shall be given effect to by the Registrar.

(5) In this section a reference to any refusal, modification, requirement or direction of the Registrar shall be construed as extending to any such refusal, modification, requirement or direction of any Deputy Registrar or any person authorized by the Registrar pursuant to section 161.

16. Certain building societies deemed to be registered under this Act. (1) A permanent building society or a terminating building society that was registered under the repealed Act, and that was in existence immediately before the commencement of this Act, shall, on and from that commencement, be deemed, subject to this Act, to be registered under this Act as a permanent building society or, as the case may be, a terminating building society, and the rules thereof in force immediately before that commencement shall, on and from that commencement, be deemed, subject to this Act, to be the rules thereof registered under this Act.

(2) The identity of a building society, registered under this Act by virtue of subsection (1) shall not be affected and it shall continue as the same entity.

(3) A reference in any document, or in any other Act, to a building society, or to the repealed Act shall, in so far as it affects a building society registered under this Act by virtue of subsection (1), be deemed to be a reference to a building society registered under this Act or, as the case requires, to this Act.

(4) Where a building society, registered under this Act by virtue of subsection (1) so applies, the Registrar shall, upon surrender of its certificate of incorporation under the repealed Act or production of such evidence as to its loss as the Registrar may require, issue a substitute certificate of incorporation in the prescribed form.

(5) It is not competent to a terminating building society deemed to be registered under this Act pursuant to subsection (1) to apply to alter its rules whereby it would become a permanent building society.

Division 2—Rules

17. Rules. The rules of a building society shall, in addition to rules otherwise required or permitted by this Act to be included, include rules, not inconsistent with this Act relating to matters set forth in the Second Schedule.

Where there is any inconsistency between a rule of a building society and a provision of this Act, the latter shall prevail and the former shall to the extent of that inconsistency be invalid.

18. Forms of conveyance, etc., may be prescribed. A building society may by its rules prescribe the forms of any conveyance, mortgage, transfer, agreement, bond, security for a deposit or loan, or any other instrument necessary for carrying its objects into execution.

19. Members and building society bound by rules. Subject to this Act, the rules of a building society shall, when registered, bind the building society and all members thereof and all persons claiming through them respectively to the same extent as if each member had subscribed his name and affixed his seal to the rules, and there were contained in the rules a covenant on the part of each member and his legal representatives to observe all the provisions of the rules.

20. Alterations of rules. (1) The rules of a building society shall not be altered unless the alteration has been approved by a special resolution.

(2) Where the alteration of the rules has been so approved, the building society shall, within the prescribed time and in the prescribed manner, lodge with the Registrar an application to have the alteration registered and shall furnish with the application such documents and particulars as may be prescribed.

(3) The Registrar may—

(a) register the alteration;

(b) register the alteration subject to such modifications as he thinks fit;

(c) refuse to register the alteration.

and shall, within 3 months of the date on which the application was lodged notify the building society accordingly.

(4) If notice has not been given by the Registrar as provided for in subsection (3) he shall be taken to have refused to register the alteration.

(5) The Registrar may, at any time prior to the determination by the Court of the review of his refusal to register the alteration, register the alteration and give notice thereof to the building society concerned.

(6) The alteration shall not have any force or effect until it is registered in accordance with this section.

(7) The rules of the building society shall be read subject to any alteration registered in accordance with this section.

(8) For the purpose of this Act, alteration of the rules includes a repeal, rescission, revocation, variation, amendment, substitution or modification otherwise of the rules or any part thereof.

(9) Where, in the opinion of the Registrar, the rules of a building society should be altered to achieve conformity with any requirement of this Act, he may by instrument in writing served upon the building society require it, within a period specified in the instrument, to alter its rules in a manner specified in the instrument or otherwise in a manner approved by the Registrar.

(10) If within the period specified in the instrument, the building society fails to alter its rules as required by the instrument, the Registrar

may himself, by notation upon the registered copy of the rules, alter the rules of the building society.

(11) The Registrar shall give notice to a building society of any alteration of its rules made by him under subsection (10).

(12) Any alteration made by the Registrar to the rules of a building society under subsection (10) shall be as valid and effectual as an alteration made and registered under subsections (1) to (8) (both inclusive).

(13) The rights and obligations of a person who holds shares in a building society in accordance with its rules before an alteration to its rules made by the Registrar under subsection (10) shall, upon and by virtue of such an alteration, be varied to conform with the rules of the building society, as so altered.

21. Copy of rules, etc., to be supplied. A building society shall furnish any person with a copy of its rules, together with a copy of its certificate of incorporation upon application to the building society and payment of a fee which shall not exceed the amount prescribed.

Division 3—Names

22. Names of building societies. (1) Except with the consent of the Minister, a building society shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under subsection (1) to be published in the Gazette.

23. Change of name. (1) Subject to this section, a building society may, by an alteration of its rules in the manner provided by this Act, and with the approval of the Registrar, change its name to a name by which it could be registered under this Act without contravention of section 22 (1).

(2) If a building society, through inadvertence or otherwise, is registered by a name by which the building society could not be registered, without contravention of section 22 (1) the building society may, by an alteration of its rules in the manner provided by this Act, change its name to a name by which the building society could be registered without contravention of that section and, if the Registrar, with the approval of the Minister so directs, shall so change it within 6 weeks of the date of the direction or such longer period as the Registrar allows unless the direction is withdrawn.

(3) Upon registration of an alteration of the rules of a building society pursuant to this section, the Registrar shall register the change of name and either note the change of name on the certificate of incorporation, or upon surrender to the Registrar of the certificate of incorporation, or production of such evidence as to its loss as the

Registrar may require, issue a new certificate of incorporation in the prescribed form in lieu thereof.

(4) Where a change of name of a building society has been registered pursuant to this section, or the repealed Act, the name of the building society so registered shall be the registered name of the building society, and a reference in this Act to the registered name of a building society, shall, in relation to the building society be construed as a reference to its new name registered pursuant to this section or the repealed Act or where more than one change of name has been so registered, the name lastly registered.

24. When Registrar to change name. (1) Where an administrator has been appointed to conduct the affairs of a building society under section 124, the Registrar may, with the approval of the Minister, on the application of the administrator, if he considers it expedient to do so in the interests of persons who—

- (a) are or may become members of the building society;
- (b) have invested or may invest in the building society;
- (c) have deposited or may deposit money with the building society.

change its name to a name by which it could be registered without contravention of section 22 (1).

(2) Upon the change of a name made by the Registrar pursuant to this section the Registrar shall—

- (a) notify the building society concerned of the change of name; and
- (b) request the building society concerned to surrender the certificate of incorporation to the Registrar.

The Registrar, at his discretion, shall either note the change in name on the certificate of incorporation or issue a new certificate in the prescribed form.

25. Effect of change of name. (1) The change of name of a building society pursuant to section 23 or 24 shall be advertised as prescribed.

- (2) (a) The change of the name shall not—
 - (i) affect the identity of the building society;
 - (ii) affect any rights or obligations of the building society or of any member or other person;
 - (iii) render defective any legal proceedings by or against the building society.

(b) Any legal proceedings that might have been continued or commenced by or against the building society by its former name may be continued or commenced by or against it by its new name.

(3) Any reference in any share certificate, mortgage, lien, security, bond, debenture, agreement, contract, deed or other document,

instrument or writing to a building society by its former name shall on and from the date of registration of the change of name be read and construed as a reference to the building society by its new name.

(4) In the case of any estate in land registered in the name of a building society before its change of name—

- (a) the Registrar of Titles, where the *Real Property Act* 1861-1981 applies to such estate; or
- (b) the person or authority charged with registering instruments of title to or dealings with such estate, where that Act does not apply thereto,

shall without any authority other than this Act and without payment of any fee have power and authority to—

- (i) make and shall make or cause to be made any necessary entries or endorsements in the appropriate register book or other record of titles or dealings;
- (ii) do and execute all such acts, matters and things as may be necessary and proper.

to give full effect to the change of name of the building society.

(5) Where the name of a building society has been changed pursuant to section 23 or 24 the Registrar of Titles or, as the case may be, the person or authority referred to in subsection (4) shall not be bound, unless sooner requested to do so by the building society, to act in accordance with that subsection until the first dealing subsequent to the change of name is lodged, filed or deposited in the Real Property Office or other appropriate office, as the case may be, together with all other documents requisite for the due registration of that dealing.

26. Publication of name. (1) The name of a building society shall appear in legible characters on—

- (a) its seal; and
- (b) every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the building society,

and, if default is made in complying with this subsection, the building society commits an offence against this Act.

(2) If an officer of a building society, or any person on its behalf—

- (a) uses or authorizes the use of a seal that purports to be a seal of the building society, but on which the name of the building society, does not appear as required by subsection (1);
- (b) issues or authorizes the issue of any business letter, statement of account, invoice, order for goods, order for services or

official notice or publication of the building society, on which the name of the building society does not appear as required by that subsection; or

- (c) signs, issues or authorizes to be signed or issued on behalf of the building society, any bill of exchange, promissory note, cheque or other negotiable instrument, any indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any receipt or letter of credit, on which the name of the building society does not appear as required by that subsection.

he commits an offence against this Act.

(3) If an officer of a building society, or any person on its behalf signs, issues or authorizes to be signed or issued on behalf of the building society, any bill of exchange, promissory note, cheque or other negotiable instrument, or any indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any letter of credit, on which the name of the building society does not appear as required by subsection (1), he is liable to the holder of the instrument or letter of credit for the amount due on it unless that amount is paid by the building society.

(4) A building society shall paint or affix and keep painted or affixed on the outside of every office or place in which the business of the building society is carried on, in a conspicuous position and in letters easily legible, the name of the building society and also, in the case of the registered office, the words "Registered Office" and, if default is made in complying with this subsection, the building society commits an offence against this Act.

27. Building Society using other than registered name. (1) A building society shall not use any name or title, other than its registered name or an abbreviation or elaboration of that name approved in writing by the Registrar.

(2) An approval referred to in subsection (1) may be given subject to such terms and conditions as to the Registrar seem fit.

Division 4—Office and Service of Documents

28. Registered office. (1) A building society shall have a registered office within the State to which all communications and notices may be addressed.

(2) The person making application for registration of a permanent building society shall lodge with the Registrar a notice in the prescribed form of the address of the proposed registered office.

(3) A building society shall, not later than 14 days after a change in the address of its registered office, lodge with the Registrar, in the prescribed form, notice of the change and the Registrar shall thereupon register the new address as the address of the registered office of the building society.

29. Service of documents. (1) A document may be served on a building society by leaving it at or sending it by post to, the registered office of the building society.

(2) If communications left at or sent by post to the address of the registered office of a building society will not be, or are not likely to be, received by the building society, a document may be served on the building society by delivering a copy of the document personally to each of 2 directors of the building society who reside in the State or by sending a copy of the document by post to each of 2 such directors at the address of those directors last known to the person sending the copy of the document.

(3) A document may be served on a director or other officer of a building society by sending it by post to the director or other officer at the last address of the director or other officer as disclosed in returns lodged by the building society with the Registrar pursuant to this Act.

(4) Where a liquidator of a building society has been appointed, a document may be served on the building society by leaving it at, or sending it by post to the last address of the office of the liquidator, notice of which has been lodged with the Registrar.

(5) For the purposes of subsections (1) and (2), the situation of the address of the registered office of the building society—

(a) in a case to which paragraph (b) does not apply, shall be deemed to be the address of which notice had been lodged with the Registrar;

(b) if a notice of change of address had been lodged with the Registrar under section 28 (3), shall from the date on which the notice is lodged, be deemed to be the address specified in the notice.

(6) In the application of subsection (5) to a building society that has lodged more than one notice of change of address of the registered office of the building society, a reference in paragraph (b) of that subsection to a notice shall be construed as a reference to the notice last duly lodged.

30. Removal of name signs. (1) If a building society ceases to carry on business the Registrar may direct the Queensland Association of Permanent Building Societies Limited, at its expense, to remove any sign bearing the name of that building society.

(2) Neither the Queensland Association of Permanent Building Societies Limited nor any person acting on behalf of the Association is liable in any proceedings, whether civil or criminal, for any act done under authority conferred by subsection (1) where it or, as the case may be, he has done the act in good faith, save where negligence or breach of duty imposed by law on its or his part is established in connexion with its or his doing the act.

PART III—OBJECTS AND POWERS

Division 1—Objects

31. Objects. The objects of a building society shall be—

- (a) to raise funds by subscription or otherwise, as authorized by this Act;
- (b) to apply those funds, subject to this Act and the rules of the building society, in making advances and in such other ways as are authorized by this Act and the rules; and
- (c) to render such services to its members and depositors as are incidental to attaining the objects specified in paragraph (a) or (b).

Division 2—Advances

32. Employment of funds for residential purposes. (1) Subject to this Act and its rules a building society shall employ its funds for making advances to members of the building society, and if the board so resolves—

- (i) to its employees; or
- (ii) to any person who is not a member.

(2) Notwithstanding anything to the contrary contained in the rules of a building society—

- (a) the employment of funds for making advances pursuant to subsection (1)—
 - (i) shall, directly or indirectly, be related to providing finance for accommodation for residential purposes; or may be for—
 - (ii) repairing or extending accommodation for residential purposes;
 - (iii) purchasing, developing or improving the land upon which accommodation for residential purposes is, is to be, or is being constructed; or
 - (iv) providing furniture and fittings for accommodation for residential purposes;
- (b) advances referred to in subsection (1) shall be made only on such security as is provided for in subsection (4).

(3) (a) A building society shall not advance money on the security of a mortgage over land that is subject to a prior mortgage or mortgages unless the provisions of paragraph (b) are complied with.

(b) A building society may advance money on the security of a mortgage over land that is subject to a prior mortgage or prior mortgages, or such security together with such other security as is provided for in subsection (4), where the aggregate of—

- (i) the amount owing under the prior mortgage or mortgages at the time the advance is made; and
- (ii) the amount of the advance,

does not exceed the amount of the maximum advance the building society would be authorized to make on the security of a first mortgage

over the land, or where such other security is taken, on the security of a first mortgage and that other security.

(4) The security that a building society may take pursuant to subsection 2 (b) or 3 (b) shall comprise one or more of the following:—

- (a) a mortgage on freehold or leasehold land situated in the State;
- (b) a charge upon, and appropriate assignment of, a life insurance policy issued by—
 - (i) a company registered under the Life Insurance Act 1945 of the Commonwealth (as amended and in force for the time being); or
 - (ii) the State Government Insurance Office (Queensland) or a body constituted under a law of another State or a Territory to carry on the business of insurance;
- (c) a charge upon any shares or deposits with the building society; or
- (d) such other form of security as may be prescribed.

33. Employment of funds for other purposes. (1) Subject to this Act and its rules, a building society shall employ its funds for—

- (a) making loans pursuant to section 44 to other building societies;
- (b) paying—
 - (i) moneys to officers and other persons;
 - (ii) such other moneys as the society considers necessary, in order to carry out the objects and exercise the powers of the building society;
- (c) investing any of its funds in—
 - (i) the shares or the capital of; or
 - (ii) making a secured loan (other than a loan referred to in paragraph (a) or a special loan) to, a corporation.

(2) An investment or loan referred to in subsection (1) (c) shall not be made by a building society without the prior written approval of the Registrar.

(3) (a) The Registrar shall not approve of an investment or loan referred to in subsection (1) (c), and the Minister shall not direct the Registrar to approve of an investment or loan under subsection (4), unless the business of the corporation concerned is primarily that of providing services to the building society or to building societies in the furtherance of its or their objects and—

- (i) the corporation is, in the opinion of the Registrar or, as the case may be, Minister a fund transfer corporation;
- (ii) the corporation is, in the opinion of the Registrar or, as the case may be, Minister, of a class of corporation which class

has been sanctioned by Order in Council on the recommendation of the Minister; or

- (iii) if the corporation is not one or one of a class, as the case may be, referred to in subparagraph (i) or (ii), it has been sanctioned by Order in Council on the recommendation of the Minister.

(b) A sanction under paragraph (a) may be given to—

- (i) a building society;
 - (ii) building societies generally;
 - (iii) a particular class or particular classes of building societies.
- and shall be subject to such conditions as are specified in the Order in Council.

(4) Where the Registrar refuses to approve of an investment or loan referred to in subsection (1) (c) the building society concerned may make representations to the Minister with respect to the refusal who may direct the Registrar to approve of the investment.

(5) The Registrar shall comply with the direction of the Minister given under subsection (4).

34. Maximum advances. (1) Subject to this section, a building society shall not make an advance to a person if the amount of the proposed advance exceeds 75 per centum of the value of the security to be mortgaged or charged pursuant to section 32 (4).

(2) Where the whole repayment of a proposed advance is to be insured by a mortgage insurer the amount of the advance may be equal to, but shall not exceed, 100 per centum of the value of the security to be mortgaged or charged pursuant to section 32 (4).

(3) Where part only of a proposed advance is to be insured by a mortgage insurer the security that is to be mortgaged or charged pursuant to section 32 (4) in respect of that part shall not be mortgaged or charged to a greater extent than 100 per centum of the value of that security.

(4) The amount of the premium paid in respect of insurance effected for the purposes of this section shall be payable by the person to whom the advance is made and may be included in the amount of the advance.

35. Building societies shall not guarantee borrowings. A building society shall not give a guarantee for or provide a security in relation to a loan made to its subsidiary or any other corporation.

36. Mortgage insurers. (1) The Registrar may, on the application of an insurer, approve of that insurer as a mortgage insurer for the purposes of this Act.

(2) An approval pursuant to subsection (1) may be made subject to such terms and conditions as the Registrar thinks fit which terms

and conditions may be altered or varied by the Registrar from time to time.

37. Building society to advise borrower of interest, charges, etc. Where a building society approves an application for an advance the building society shall—

- (a) within 7 days of approving the application; or
- (b) before requiring the applicant for the advance to execute such documents as are necessary to obtain the security,

whichever is the earlier, send by post to the applicant for the advance at his address last known to the building society, or deliver to the applicant, a notice in such form as may be prescribed setting out in respect of the advance whether or not the rate of interest or term thereof may vary and particulars concerning—

- (i) the rate of interest payable under the advance on the date that the advance is proposed to be made;
- (ii) the term of the advance;
- (iii) the date on which interest commences to accrue;
- (iv) the amount of periodical payments of principal and interest and the date on which they are to commence;
- (v) the amounts of any costs, fees or other charges paid or payable by the applicant to the building society in connexion with the advance.

Failure to comply with the provisions of this section shall not avoid the advance.

38. Restrictions concerning interest on loans. (1) A building society shall not charge and shall not be entitled to any interest in respect of a loan approved by it until the loan has been actually advanced by it to or on account of the borrower for a purpose for which the loan was approved.

If the loan is advanced in parts, interest is chargeable only on that part actually advanced.

(2) The Governor in Council may by Order in Council prescribe a rate per centum as the maximum rate of interest that a building society is entitled to charge on moneys advanced by it and may, in the Order, specify the rests at which interest at the prescribed rate shall be calculated.

(3) At any time when a maximum rate of interest is prescribed pursuant to subsection (2)—

- (a) a building society shall not charge interest on moneys advanced by it at a rate in excess of the prescribed rate;
- (b) save as is otherwise provided by this section, a building society shall not seek, accept, demand or receive, directly or indirectly, from a person to whom moneys are advanced by the building society any commission, fee, bonus or reward for or in connexion with the advances if the total amount

of any such commission, fee, bonus or reward together with the amount of the interest at the applicable rate paid or payable by the borrower to the building society exceeds, or would exceed, the amount of the interest on such advances that would have been paid, or would be payable, by the borrower if such interest had been or were calculated at the prescribed rate at the relevant time or times.

(4) (a) It is lawful for a building society to charge and recover from a prospective borrower a fee fixed by the building society to cover the cost of processing an application by the prospective borrower for an advance by the building society of certain moneys, such fee not to exceed 0.75 per centum of the amount of the advance applied for and in addition to charge and recover from the borrower costs, fees and charges—

- (i) paid or payable by the building society in respect of the preparation by a solicitor or conveyancer in private practice of documents properly evidencing or securing the contract for the advance;
- (ii) assessed and paid or assessed and payable (whichever is the less) by the building society in respect of stamp duties or registration fees payable under any Act in respect of the advance or in respect of documents relating (whether wholly or in part) thereto and in the latter case, attributable to the advance in question;
- (iii) incurred by the building society in respect of a valuation obtained in connexion with the advance in question.

but it shall not be lawful for a building society, directly or indirectly, to seek, accept, demand or receive any commission, fee, bonus or reward for or in connexion with any payment as specified in subparagraph (i), (ii) or (iii) from the person to whom such a payment has been made or is payable.

(b) The costs, fees and charges that may be charged and recovered pursuant to paragraph (a) (iii) (where the valuation is carried out by an officer of the building society) shall be only in respect of such matters as are prescribed and shall not exceed the amount prescribed in respect of those matters.

(5) Where the rules of a building society or the provisions of a charge given to a building society by a borrower provide that the building society may impose an additional fee in the event of the early discharge of the borrower's debt then, notwithstanding such rules or provisions, it is lawful for the building society to impose and recover from the borrower such additional fee subject to the following conditions:—

- (a) the additional fee does not exceed 0.5 per centum of the portion of the debt discharged before it falls due under the charge; and

- (b) the debt is discharged within 3 years of the date of the approval on behalf of the building society of the advance to the borrower,

and not otherwise and a building society that imposes or recovers from a borrower such an additional fee when it is not lawful for it to do so commits an offence against this Act.

(6) A building society that contravenes a provision of subsection (1) or (3) or commits the offence defined in subsection (5) is liable to a penalty of \$2 000 and in addition to imposing a penalty on the building society the court by which the building society is convicted may order the building society to repay to the person from whom it has received moneys in contravention of that subsection the amount of such moneys.

A provision of any document that purports to exclude or modify the operation of this section or any part of it is void.

(7) A person who has paid to or on account of a building society moneys the receipt of which by the building society constitutes or would constitute a contravention of subsection (1) or (3) or renders the building society guilty of the offence defined in subsection (5) may recover from the building society by action in a court of competent jurisdiction, as a debt due and owing to such person by the building society, the moneys so paid together with interest thereon at such rate as the court may order.

(8) In this section the expression "prescribed rate" means the rate of interest for the time being prescribed pursuant to subsection (2) as the maximum rate of interest that a building society is entitled to charge on moneys advanced by it such interest being payable at the rests (if any) specified in the Order in Council whereby such maximum rate of interest is prescribed.

- (9) (a) In this subsection—

"prior advance" means an advance made by a permanent building society prior to 17 September, 1974, in respect of which, at the commencement of this Act, any moneys remain payable;

"subsequent advance" means an advance made by a permanent building society on or after 17 September, 1974.

(b) A permanent building society that has made a prior advance in respect of which it is, for any reason, precluded from charging interest at the rate which it is entitled, from time to time, to charge in respect of a subsequent advance may, on and from the commencement of this Act, in respect of that prior advance charge interest at the rate which the society is entitled, from time to time, to charge in respect of that subsequent advance.

(c) Any person by whom moneys remain payable to a permanent building society in respect of a prior advance shall, subject to paragraph (d), on and from the commencement of this Act, be liable to pay interest

at the rate which the society is entitled, from time to time, to charge in respect of a subsequent advance, notwithstanding—

- (i) the provisions of this or the repealed Act or any other Act or law to the contrary;
- (ii) any term or covenant of any mortgage or other instrument securing the repayment of that prior advance;
- (iii) any form of mortgage or other instrument used by the society, whether prescribed or not;
- (iv) the rules of the society as they stood at any time before or on the commencement of this Act.

(d) Nothing contained in this subsection requires, by reason only of the provisions of paragraphs (b) and (c), that the amount of periodic payments of principal and interest which may be required to be made in accordance with any mortgage or other instrument by a person by whom moneys remain payable to a permanent building society in respect of a prior advance be increased.

(e) Any reference, in any mortgage or other instrument to which the provisions of this subsection have application, to the rate of interest shall, on and from the commencement of this Act, be read, construed and have effect for all purposes as a reference to the rate of interest at which a permanent building society is entitled, from time to time, to charge in respect of a subsequent advance.

39. Meaning of "special loan". (1) In this Act, "special loan" means a loan approved by a building society pursuant to section 32, being a loan that is—

- (a) a loan of any amount to a corporation other than a building society;
- (b) a loan to a person other than a corporation of an amount that exceeds the prescribed sum;
- (c) a loan to a person other than a corporation of an amount that exceeds the prescribed sum and that is secured by mortgage over vacant land;
- (d) a loan of any amount to a person other than a corporation, being a person who, after the loan is advanced, is indebted to the building society in respect of the loan and any other moneys, whether immediately repayable or not, in an aggregate amount of not less than the prescribed sum.

(2) Where a member transfers or conveys to another person his interest in any property that is the subject of a mortgage to a building society the transfer or conveyance shall, for the purposes of this Act relating to special loans be treated as a loan approved by the building society to that other person of an amount equal to the amount of the mortgage debt remaining unpaid immediately after the transfer or conveyance together with any arrears of interest then outstanding.

(3) A loan made jointly to 2 or more persons shall, for the purposes of this Act, be taken to be a special loan if a loan of the like amount

approved under the like conditions to any one of those persons would be a special loan.

40. Ordinary limitation on special loans. (1) Subject to this Act, a building society shall so conduct its business as to ensure that special loans are not approved by it except as authorized by this section.

(2) At the end of each financial year a building society shall review the loans approved by it that are outstanding at the end of that year, and shall ascertain—

- (a) the total amount of those loans which at that time has not been repaid to the building society, together with any arrears of interest in respect of those loans; and
- (b) the proportion of that amount not repaid which is in respect of special loans and any arrears of interest thereon.

(3) If the proportion ascertained at the end of a financial year in accordance with subsection (2) (b) (in this section referred to, in relation to that year, as “the ascertained proportion” for that year) does not exceed 20 per centum, the building society may approve special loans in the next following financial year, but so that the total amount of special loans approved by it in that following financial year does not exceed 20 per centum of the total amount of all loans approved by the building society during that following financial year.

(4) If the ascertained proportion for a financial year exceeds 20 per centum but does not exceed 50 per centum the building society may approve special loans in the next following financial year, but so that the total amount of special loans approved by it in that following financial year does not exceed 5 per centum of the total amount of all loans approved by the building society in that following financial year.

(5) If the ascertained proportion for a financial year exceeds 50 per centum the building society shall not approve any special loans in the next following financial year.

(6) A permanent building society registered under section 9 shall not approve any special loans in its first financial year.

(7) If loans are approved by a building society in contravention of this section, the building society and every officer who is in default commits an offence against this Act.

41. Permission to make special loan to purchaser of mortgaged property. (1) The provisions of this section shall have effect where a building society, in the exercise of its powers as mortgagee, proposes to sell land, or an estate or interest in land, mortgaged to the building society, or land, estate or interest in respect of which the equity of redemption has been foreclosed, and to approve of a loan that will constitute a special loan to the purchaser of that land, estate or interest upon the security of that land, estate or interest.

(2) If, on an application to the Registrar, the building society shows to his satisfaction—

- (a) that the person who is or was, immediately before foreclosure, entitled to redeem the mortgage is a corporation, or a person who is, or was immediately before foreclosure, indebted to the building society (taking into account the loan secured by the mortgage and all other debts to the building society of any description, whether immediately repayable or not) in an amount exceeding that prescribed pursuant to section 39 (1) (b); and
- (b) that the amount of the principal sum secured by the mortgage, which at the time of the application has not been repaid to the building society, together with arrears of interest in respect of the loan secured by the mortgage, exceeds the amount of the loan that the building society proposes to approve to the purchaser of the land, estate or interest,

the Registrar may at his discretion, in writing permit the building society to approve the special loan to which the application relates.

42. Valuation of security. A building society shall not make an advance unless there has first been obtained a valuation of the security proposed to be mortgaged or charged pursuant to section 32 (4) which valuation shall be—

- (a) a valuation of land made by a registered valuer within the meaning of the *Valuers Registration Act 1965-1984*;
 - (b) the surrender value of a life insurance policy issued by—
 - (i) a company registered under the Life Insurance Act 1945 of the Commonwealth (as amended and in force for the time being); or
 - (ii) the State Government Insurance Office (Queensland) or a body constituted under a law of another State or a Territory to carry on the business of insurance;
 - (c) the amount of any shares or deposits with the building society; or
 - (d) in the case of any prescribed security, such value as is prescribed,
- as the case may be.

Division 3—Investment

43. Investment of funds. (1) A building society may, notwithstanding its rules, invest any of its funds not immediately required for any of its objects or for purposes incidental thereto—

- (a) in any of the Parliamentary stocks, public funds or Government securities of the United Kingdom, of the Commonwealth, of any of the States of the Commonwealth, or of the Dominion of New Zealand;
- (b) in debentures or other securities charged on the funds or property of the Brisbane City Council or of any Local Authority in the State;

- (c) in any security in respect of which repayment of the amount secured and payment of interest thereon is guaranteed by the Parliament of the United Kingdom or the Commonwealth or any State of the Commonwealth, or of the Dominion of New Zealand;
 - (d) in or on the security of authorized bills of exchange;
 - (e) in either or both of the following, namely—
 - (i) on deposit in any bank;
 - (ii) on the security of a certificate of deposit issued by any bank;
 - (f) with any dealer in the short term money market approved by the Reserve Bank of Australia as an authorized dealer, who has established lines of credit with that bank as a lender of last resort;
 - (g) in the shares of or on deposit with a permanent building society;
 - (h) in the purchase on the secondary mortgage market of marketable securities to which section 27 (1) of the *Mortgages (Secondary Market) Act 1984* applies;
 - (i) in any other manner from time to time prescribed,
- and may also from time to time vary any such investment.

(2) Without in any way limiting the operation of subsection (1), a building society may also, notwithstanding anything to the contrary in its rules, invest any portion of its funds, not immediately required for any of its objects or for purposes incidental thereto, in the purchase of mortgage debts from another building society and for that purpose that other building society may, notwithstanding anything to the contrary in its rules, assign its mortgage debts.

(3) It is lawful for a building society that purchases mortgage debts from another building society pursuant to subsection (2) to charge and recover from that other building society a fee fixed by the purchasing building society to cover the cost of processing the purchase and assignment of those debts, such fee not to exceed 0.75 per centum of the amount of the mortgage debts shown in the document that is registered to assign the mortgage debts and in addition to charge and recover from that other building society, costs, fees and charges—

- (i) paid or payable by the purchasing building society in respect of the preparation by a solicitor or conveyancer in private practice of documents properly evidencing or securing the transfer and assignment of the mortgage debts;
 - (ii) assessed and paid or assessed and payable (whichever is the less) by the purchasing building society in respect of stamp duty or registration fees payable under any Act in respect of the transfer and assignment of the mortgage debts,
- but it shall not be lawful for a building society, directly or indirectly, to seek, accept, demand or receive any commission, fee, bonus or reward for or in connexion with any payment as specified in subparagraph (i)

or (ii) from the person to whom such a payment has been made or is payable.

- (4) For the purpose of subsection (2) it is hereby declared that—
- (a) on registration of the document assigning the mortgage debt secured by the instrument of mortgage the mortgagor referred to in that instrument shall be deemed to be a member of the building society that purchased the mortgage debt;
 - (b) the mortgagor shall be subject to and comply with the rules of the purchasing building society in substitution for the rules of the building society to which he was subject prior to the assignment of the mortgage debt;
 - (c) the mortgagor shall be admitted as a member of the purchasing building society without complying with the rules for admission as a member of that building society and without any expense to the mortgagor;
 - (d) there shall be issued to the mortgagor by the purchasing building society shares in that building society equivalent to the value of the minimum number of shares that a member of that building society is required by its rules to hold, without any expense to the mortgagor;
 - (e) the mortgagor may, within the period of 3 months after the date on which the assignment of the mortgage debt is registered on the relevant instrument of title elect by notice in writing to the purchasing building society not to continue as a member of that building society, whereupon the mortgagor is required to discharge in full his mortgage debt to that building society in accordance with the rules of the original building society and the terms and conditions of the instrument of mortgage within the period of one month from the date of his election;
 - (f) if the mortgagor having elected pursuant to paragraph (e) fails to discharge his mortgage debt within the time limited by that paragraph he shall continue as a member of the purchasing building society and be subject to and comply with its rules.

(5) Notwithstanding anything to the contrary contained in the rules of a permanent building society the building society is empowered to invest in the Contingency Fund any portion of its funds which it is required so to do pursuant to section 137 and such further portion of its funds as it sees fit that is not immediately required for its purposes.

(6) Nothing in this section shall affect the validity of any investments of its funds made before the commencement of this Act by a building society, but any reinvestment thereof shall be made only in conformity with this section.

(7) In this section “authorized bills of exchange” mean bills of exchange which are payable on demand or not more than 200 days from the date on which they are acquired by the building society and which if bought for value by the building society would give the building society as holder in due course a right of recourse against a bank for an amount equal to the face value of the bills.

44. Financial assistance to building societies. (1) Where it appears to the Registrar that a building society is in financial difficulties he may, with the consent in writing of the Minister, authorize any other building society to lend money to the firstmentioned building society and that other building society shall have power to do so accordingly, notwithstanding anything to the contrary contained in the rules of either building society.

(2) Every loan made pursuant to an authority conferred under subsection (1)—

- (a) shall be made upon security that equals or exceeds in value the amount of the loan; and
- (b) shall be on such terms as to interest payable that the rate of interest charged thereon is not less than the rate of interest ordinarily paid by the lending building society, at the time the loan is made, to its depositors in respect of funds deposited with it.

(3) In giving an authority under subsection (1) the Registrar may include therein such stipulations as he thinks fit as to the terms and the amount of the loan and as to the security to be taken for the loan, subject always to subsection (2).

(4) Where the Registrar gives an authority under subsection (1), the building societies concerned or any of them may make representations to the Advisory Committee with respect to the authority or any stipulation therein and the committee shall report thereon to the Minister.

(5) The Minister may, having regard to a report of the Advisory Committee, revoke an authority given under subsection (1) or vary any stipulation therein made pursuant to subsection (3), subject always to subsection (2).

(6) A building society that fails to comply with a stipulation made pursuant to subsection (3) or with a variation thereof made pursuant to subsection (5) shall be deemed to have failed to comply with a provision of this Act.

45. Business premises. (1) A permanent building society may purchase, build or take upon lease, any building or any part thereof, in which to conduct its business, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building in which to conduct the business of the society, and may sell, mortgage, exchange, or let such building or land, or any part thereof.

(2) The powers conferred on a building society by subsection (1) refer only to a building that is primarily or mainly required for conducting therein its business.

(3) The amount expended pursuant to subsection (1) in any financial year together with the amount expended in previous years shall not exceed a sum equal to 5 per centum, or such other proportion as is prescribed by Order in Council, of the amount of members' paid up share capital and deposits (whether by members or other persons) held by the building society at the end of the financial year immediately preceding the financial year in question.

(4) Notwithstanding the provisions of subsection (3), where a building society pursuant to subsection (1) sells a building or any land or part thereof it may use the proceeds of the sale for the purpose of purchasing or erecting another building in which to conduct the business of the building society or for purchasing land only for the purpose of erecting thereon a building in which to conduct the business of the building society.

PART IV—CAPITAL AND MEMBERSHIP

Division 1—Membership

46. Membership—general. (1) The members of a permanent building society formed under this Act shall be those persons who sign an application for membership on the formation of the society and any other persons who are admitted to membership in accordance with the rules of the society.

(2) The members of a building society that, immediately before the commencement of this Act, was registered under the repealed Act shall be the persons who, immediately before that commencement, were members of the building society and any persons who are admitted to membership in accordance with its rules after that commencement.

(3) No rights of membership of a building society shall be exercised by any person unless or until the person has made such payment to the building society in respect of membership and has acquired such shares as are provided by the rules of the building society to be made or acquired by a person before exercising the rights of membership.

47. Corporations as members. (1) Subject to this section, where a corporation is a member of a building society it may by instrument in writing appoint a person, being a natural person, to represent it in respect of the shares held by it.

(2) A person appointed pursuant to subsection (1)—

(a) shall be entitled to receive all notices in the same manner as the members of the building society are so entitled; and

- (b) shall be entitled to exercise the same rights of voting as a member in respect of the shares held by the corporation as he would have as a natural person who as a member held those shares; and
- (c) shall be eligible to be elected to the board of the building society if the corporation holds such qualifications other than those relating to age and being a natural person as may be requisite for holding office as a director.

48. Minors as members. (1) Subject to this section, unless otherwise provided by the rules, a person under the age of 18 years may be a member of a building society and may, to the extent required by reason of his membership, execute all instruments and give all necessary acquittances, and such instruments and acquittances shall be as binding and sufficient in law for all purposes as if he had been of the age of 18 years at the time he executed the instruments or gave the acquittances in question.

(2) Where a member of a building society under the age of 18 years who is married borrows money from a building society, he shall, in respect of his agreement to repay the loan and in respect of any security for repayment of the loan given by him to the building society, be subject to the same liabilities and obligations as he would have been subject to, and shall have the same rights as he would have had if he had been of the age of 18 years at the time the loan was made.

(3) Any guarantee or surety by any person in respect of a loan to which subsection (2) relates shall be as binding and effectual as if the person who borrowed the money had been of the age of 18 years when the guarantee or surety was given or entered into.

(4) A person under the age of 18 years is not eligible to hold office in a building society.

49. Power to impose fines for breach of rules. A building society may impose a fine not exceeding \$20.00 or such other amount as may be prescribed on a member for an infringement by the member of its rules but no fine exceeding \$10.00 or such other amount as may be prescribed shall be imposed until written notice of intention to impose the fine and of the reason for its imposition has been given to the member and he has had an opportunity of appearing before the board, with or without witnesses, or of sending to the board a written statement for the purpose of showing cause against the imposition of the fine.

50. Liability of members. The liability of a member of a building society in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security, or under the rules of the building society.

Division 2—Share Capital

51. Issue of shares. (1) A building society may from time to time, in accordance with its rules, raise funds by the issue of shares of one or more denominations, either paid up in full, or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds at such time as is approved in the rules of the building society.

(2) A share of a building society may be held by 2 or more persons jointly and, where a share is so held—

- (a) the joint holder who is named first in the register of members and shares shall be the “primary joint holder” for the purposes of this subsection;
- (b) except where the rules of the building society otherwise provide but without prejudice to the right under this Act of a member of a building society to obtain from the building society on demand a copy of the balance-sheet, any notice or other document may be given or sent by the building society to the joint holders by being given or sent to the primary joint holder;
- (c) for the purpose of determining—
 - (i) who is qualified to vote on a resolution at a meeting of the building society; and
 - (ii) the number or proportion of any members required to give effect to any provisions of this Act or of the rules, the shares shall be treated as being held by the primary joint holder alone;
- (d) the register of members and shares shall indicate if a person is a joint holder; and
- (e) the joint holders shall be entitled to choose the order in which they are named in the register of shares, but failing any such choice the building society may enter the names in such order as the board thinks fit.

(3) The Governor in Council may by Order in Council prescribe a rate per centum as the maximum rate of dividend or interest that may be paid by a building society in respect of any share issued by the building society whether pursuant to this section or otherwise.

(4) At any time when a maximum rate of dividend or interest is prescribed pursuant to subsection (2) a building society shall not pay a dividend or interest in respect of any share issued by the building society whether pursuant to the section or otherwise, at a rate in excess of the maximum rate so prescribed.

52. Deceased members, payment prior to administration or probate.

(1) If any member or other person entitled in respect of any share in, loan to or deposit with a building society dies intestate, the building society may, upon such evidence as it deems sufficient and subject to

subsection (4), pay the money or transfer the shares to any person who appears to the building society to be entitled to obtain a grant of letters of administration of the estate of the deceased, and that person shall hold the moneys or shares on the same trusts as if he had obtained such a grant.

(2) If any member or other person entitled as specified in subsection (1) dies testate, the building society may, upon such evidence as it deems sufficient and subject to subsection (4), pay the money or transfer the shares to the person appearing to the building society to be entitled thereto under the will of the deceased member or other person.

(3) The provisions of this section shall, subject to subsection (4), extend to any surplus arising on the sale by a building society as mortgagee of any property mortgaged by the deceased member or other person to the society or by a building society exercising as a transferee the powers of a mortgagee of any property mortgaged by the deceased to a building society.

(4) The provisions of subsection (1), (2) or (3) do not authorize a payment or a transfer of any assets of any deceased member or other person the total value of which, together with the total value of any other assets of that deceased member or other person already paid or transferred under any of those subsections, exceeds the amount of \$10 000 or, where some other amount is prescribed, that other amount.

(5) Any payment or transfer made by the building society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the building society by any other person but that person may have recourse against the person to whom the money was paid or the shares transferred by the building society.

(6) No payment or transfer pursuant to this section shall be made after evidence has been produced to the building society that letters of administration of the estate, or probate of the will, of the deceased member or other person have or has been granted.

Division 3—Deposits and Loans

53. Raising of money. (1) Subject to this section, a permanent building society may, whether or not authorized by its rules but within the limits provided in this section—

- (a) raise money on loan, or receive money on deposit;
- (b) raise money by negotiating promissory notes or prescribed bills of exchange;
- (c) raise money on the secondary mortgage market by selling marketable securities to which section 27 (1) of the *Mortgages (Secondary Market) Act 1984* applies,

to be applied for the objects of the society.

(2) Where a permanent building society raises money on loan, it may raise the money in such manner as the board may think fit provided that it shall not borrow money otherwise than in Australian currency

or undertake to repay money borrowed otherwise than in Australian currency.

(3) Without limiting in any way the manner in which a permanent building society may raise money on loan, money may be raised by legal or equitable mortgage charged upon the undertaking of the society or upon all or any part of the property and rights (both present and future) of the society including its share capital, subscriptions, loan payments and other moneys.

(4) (a) The total amount raised by a permanent building society pursuant to subsections (1), (2) and (3) and not repaid by the society shall not at any time exceed 4 times the amount for the time being of the existing paid up share capital of or subscriptions to the society and the accumulations thereon.

(b) The Minister may, if he thinks fit, exempt a permanent building society from compliance with this subsection.

(5) Any member or other person who lends or pays money to or deposits money with a permanent building society shall not be bound to see to the application thereof or be in any way affected or prejudiced by the fact that the society in borrowing or raising such money or receiving such deposit has contravened any provision of this Act or the rules of the society.

(6) Nothing in this section shall affect the validity of any deposits with or loans to a permanent building society made before the commencement of this Act but any redepositing or relending of the moneys in question shall be made only in conformity with this section.

(7) A building society shall not issue to the public, offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any debenture.

(8) The Governor in Council may by Order in Council prescribe a rate per centum as the maximum rate of interest that may be paid by a permanent building society in respect of moneys deposited with or lent to the society.

(9) Where so prescribed in an Order in Council under subsection (8) or in another Order in Council the maximum rate of interest for the time being applicable pursuant to that subsection shall not apply with respect to specified loans to or deposits with permanent building societies or to such loans or deposits of a specified class.

(10) At any time when a maximum rate of interest is prescribed pursuant to subsection (8), subject to subsection (9)—

- (a) a permanent building society shall not pay interest on moneys deposited with or lent to the society at a rate in excess of the rate so prescribed;
- (b) a permanent building society shall not pay or give, directly or indirectly, a commission, fee, bonus or reward whether pecuniary or otherwise to or on account of a person who

deposits with or lends to the society moneys if the total amount or value so paid or given by way of commission, fee, bonus or reward together with the amount of the interest at the applicable rate paid or payable on the moneys by the society to the lender or depositor exceed, or would exceed, the amount of the interest on such moneys that would have been paid, or would be payable, to the lender or depositor if such interest had been or were calculated at the maximum rate of interest prescribed under subsection (8) at the relevant time or times.

54. Application of Companies (Queensland) Code in relation to charges by building societies. (1) The provisions of Division 9 of Part IV of the *Companies (Queensland) Code* shall, *mutatis mutandis*, and with such modifications (if any) as may be prescribed, extend to any charge created by a building society.

(2) For the purposes of the extension of provisions specified in subsection (1)—

- (a) a reference in any of those provisions to the Commission shall be construed as a reference to the Registrar under this Act; and
- (b) a reference in any of those provisions to a company shall be construed as a reference to a building society.

Division 4—Liquidity and Reserves

55. Liquidity. (1) A building society shall not approve of an advance unless, at the time such approval is given, the building society holds resources equal to not less than the prescribed proportion of the total of members' paid up share capital and deposits held with the building society.

(2) In this section "resources" means—

- (a) cash at any bank or in hand and the value of any investments made in the manner authorized by section 43 (1);
- (b) the moneys which a corporation approved by the Registrar undertakes to lend to the building society in accordance with an agreement approved by the Registrar,

but does not include—

- (c) any amount approved to be advanced (whether the whole or part thereof) which has not been disbursed from the funds of the building society;
- (d) such cash, investments or moneys to the extent of the amount necessary to satisfy bank overdrafts and other borrowings—
 - (i) repayable at call;
 - (ii) repayable within a period of one month; or

(iii) which may become repayable within a period of one month;

(e) any amount necessary to satisfy any lien or fixed charge on the cash, investments or money referred to in paragraphs (a) and (b).

(3) For the purpose of calculating the proportion referred to in subsection (1), investments referred to in subsection (2) (a) shall be taken at their market value at the time in question.

(4) In this section "prescribed proportion" means 7.5 per centum or such other proportion as determined by Order in Council.

56. Building society receiving moneys from State, etc. (1) The Registrar shall exempt a building society from the provisions of section 55 where he is satisfied—

(a) that a greater proportion of its funds were lodged by a prescribed authority than by other persons; and

(b) that having regard to all the circumstances the building society should be so exempted.

and thereupon, and while the exemption remains in force, the provisions of section 55 shall not apply to the building society.

(2) The Registrar may at any time withdraw an exemption granted by him where he is satisfied that at least one of the circumstances prescribed by subsection (1) no longer applies to the building society.

(3) In this section "prescribed authority" means—

(a) the Government of the State or the Commonwealth;

(b) any Crown corporation.

57. Reserve fund. (1) Every permanent building society shall, during the whole of each financial year, maintain a reserve fund separate and apart from the reserve account referred to in section 101 amounting to not less than 0.25 per centum or such other percentage as is prescribed by Order in Council of the amount of the aggregate liabilities of the society as at the beginning of the financial year last preceding the financial year during which the reserve fund is required to be maintained.

Such lastmentioned Order in Council may be made to apply in respect of permanent building societies generally or in respect of one or more such societies and to apply in respect of financial years generally or in respect of one or more financial years.

(2) Any amount maintained in a reserve fund pursuant to subsection (1)—

(a) shall not be distributed among members of the permanent building society except upon the winding up of the society; and

(b) may be applied to any other purpose to which the capital of the permanent building society may properly be applied.

Division 5—Contracts

58. Contracts, authorization of documents and execution. (1) Contracts on behalf of a building society may be made, varied or discharged as is provided in this section.

(2) Any contract which, if made between natural persons, would by law be required to be in writing under seal, may be made in the name and on behalf of a building society in writing under the common seal of the building society and the contract may be varied or discharged in the same manner.

(3) Any contract which, if made between natural persons, would by law be required to be in writing and signed by the parties to be charged therewith may be made in the name and on behalf of a building society in writing and signed by any person acting under the express or implied authority of the building society and the contract may be varied or discharged in the same manner.

(4) Any contract which, if made between natural persons, would by law be valid, although made by parol only (and not reduced into writing), may be made by parol in the name and on behalf of a building society by any person acting under the express or implied authority of the building society and the contract may be varied or discharged in the same manner.

(5) Any contract made according to the provisions of this section is effectual in law and binds the building society and its successors and all other parties to the contract.

(6) A document or proceeding requiring authentication by a building society may be signed by an authorized officer of the building society and need not be under its common seal.

(7) A building society may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such agent or attorney on behalf of the building society and under his seal or, subject to subsections (8) and (9), under the appropriate official seal of the building society shall bind the building society and have the same effect as if it were under its common seal.

(8) The authority of an agent or attorney empowered pursuant to subsection (7) shall, as between the building society and any person dealing with him continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is so mentioned, until notice of the revocation or determination of his authority has been given to the person dealing with him.

(9) A building society whose objects require or comprise the transaction of business outside the State may, if authorized by its rules, have for use outside the State an official seal, which shall be a facsimile of the common seal of the building society with the addition on its face of the name of every place where it is to be used and the person affixing any such official seal shall, in writing under his hand, certify on the

instrument to which it is affixed the date on which and the place at which it is affixed.

59. Assignment and purchase of mortgages. (1) A building society may, notwithstanding anything to the contrary in its rules, transfer or assign its mortgage debts to a mortgage insurer or to any other person approved by the Minister.

(2) A mortgage insurer or other approved person shall have, in relation to a debt transferred or assigned to it or him pursuant to subsection (1), all the authorities and powers had by the building society as mortgagee or exercisable by its directors under its rules in relation to that debt save that the mortgage insurer or other approved person is not authorized to reduce the term of repayment of the debt without the consent of the mortgagor.

(3) A building society may also, notwithstanding anything to the contrary in its rules, invest any portion of its funds, not immediately required for its purposes, in the purchase of mortgage debts from any mortgage insurer or other approved person that are debts that were assigned or transferred to the mortgage insurer or other approved person by a building society, where it has been demonstrated that the obligations of the mortgagor under the mortgage have, in the opinion of the firstmentioned building society been satisfactorily met for a period of not less than 6 months prior to the date of the purchase.

(4) The provisions of section 43 (4) shall apply, *mutatis mutandis*, to a purchase pursuant to subsection (3), and for the purpose of that application—

- (a) paragraph (b) of that section shall be deemed to be amended by omitting the words “of the building society” and substituting the words “, conditions or provisions”;
- (b) paragraph (e) of that section shall be deemed to be amended by omitting the words “original building society” and substituting the words “building society that transferred or assigned the mortgage debt to the mortgage insurer or other approved person”.

60. Agency contracts, etc. (1) A building society shall not enter into a contract or arrangement whereby administrative, technical or financial services or other services are to be provided—

- (a) to the building society or its members or depositors by a person other than the building society;
- (b) by the building society to persons other than its members or depositors,

unless the service in question has been, or is of a type that has been, approved by Order in Council.

(2) A building society shall not enter into a contract or arrangement referred to in subsection (1) without the prior written approval of the Registrar which approval may be made subject to such conditions as are prescribed or, if not prescribed, as the Registrar thinks fit.

(3) Where the Registrar refuses to approve of a contract or arrangement under subsection (2) the building society concerned may make representations to the Minister with respect to the refusal and the Minister may direct the Registrar to approve of the contract or arrangement.

(4) The Registrar shall comply with the direction of the Minister given under subsection (3).

61. Contracts, etc., to assist certain corporations. (1) A building society may join or become a member of an organization, by whatever name it is constituted, whether registered as or forming part of a corporation that has been created for the purpose of assisting—

- (a) building societies;
 - (b) corporations incorporated in another State or a Territory that have the same or similar objects as building societies,
- to carry on its or their business.

(2) A building society shall not join or become a member of an organization referred to in subsection (1) if such joining or becoming involves the employment of its funds for a purpose referred to in section 33 (1) (b) or (c) unless—

- (a) the organization has been, or is of a class, approved by Order in Council; and
- (b) the written approval of the Registrar, which may be made subject to such conditions as the Registrar thinks fit, is first obtained.

(3) Where the Registrar refuses to give approval under subsection (2) the building society concerned may make representations to the Minister with respect to the refusal who may direct the Registrar to grant the approval.

(4) The Registrar shall comply with the directions of the Minister given under subsection (3).

(5) Where a building society, prior to the commencement of this Act, has entered into a contract or arrangement whereby it has joined or become a member of an organization referred to in subsection (1), it shall within 6 months after the date of that commencement apply to the Registrar to have that contract or arrangement approved and ratified.

A building society that fails to comply with this subsection commits an offence against this Act.

Penalty: \$5 000.

(6) Where a building society applies under subsection (5) and the contract or arrangement is not approved and ratified and the building society fails, within 14 days of being so notified, to cease carrying on its business in accordance with that contract or arrangement it commits an offence against this Act.

Penalty: \$5 000.

Division 6—Unclaimed Moneys

62. Dormant accounts. (1) Subject to this section, a building society may classify an account of a member or other person in which there have been no transactions for a period of 2 years as a dormant account.

(2) Before an account is classified as a dormant account, the building society shall give to the member or, as the case may be, other person notice of intention to declare the account dormant and of the subsequent action proposed by the building society. Such notice shall be given by—

- (a) certified post to the member's or, as the case may be, other person's address last known to the building society; and
- (b) where the balance in the dormant account exceeds the prescribed amount, publishing it in a newspaper circulating generally throughout the State.

(3) Unless within one month after the posting of the letter or publication of the advertisement in accordance with subsection (2), whichever is the later—

- (a) in the case of a member, the member gives notice in writing to the building society of his desire to remain a member, the building society may, subject to the provisions of this section—

- (i) cancel the membership of the member; and

- (ii) transfer the share capital and funds of the member to a special account established for this purpose;

- (b) in the case of a person other than a member, the person gives notice in writing to the building society of his desire to retain the account, the building society may, subject to the provisions of this section, transfer the funds of the person to a special account established for that purpose.

(4) A member whose share capital and funds were so transferred and a person other than a member whose funds were so transferred may within 6 years after the date upon which the transfer occurred, claim upon the building society in respect of the moneys so transferred and if no such claim is made the capital and funds shall be dealt with in accordance with Part VIII of the *Public Trustee Act 1978-1981*.

(5) A building society is, upon payment to the Public Trustee of an amount as required by this section, discharged from further liability in respect of that amount.

PART V—MANAGEMENT*Division 1—Directors and Officers*

63. Board of directors. (1) Subject to this Act and the rules of a building society, the business and operations of a building society shall

be managed and controlled by the board of directors all of whom shall be natural persons.

(2) Every director acting in the business or operations of a building society pursuant to this Act and the rules or to a resolution duly passed by the board shall be the agent of the building society for all purposes within the objects of the building society.

64. Validity of acts of directors. (1) The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his election, appointment or qualification.

(2) Where a person, whose office as director is vacated pursuant to section 67 (1), purports to do an act as director that act is as valid in relation to a person dealing with the building society in good faith and for value and without actual knowledge of the matter referred to in that section by reason of which the office of the firstmentioned person was vacated, as if that office had not been vacated.

65. Election of directors. (1) (a) Subject to this Act, the directors of a building society shall be elected at a general meeting of the building society or, where a casual vacancy in the office of director is to be filled, at a meeting of the directors in either case in accordance with the rules of the building society.

(b) The directors of a building society shall hold or vacate office or be removed from office in such manner as may be specified in the rules of the building society or this Act.

(2) The number of directors of a building society, shall not be less than 5.

(3) A director shall not be removed from or required to vacate his office by any resolution, request or notice of the directors or any of them, notwithstanding anything to the contrary in the rules of a building society.

(4) At a meeting of a building society, a motion for the election or appointment of 2 or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being given against it.

(5) A resolution passed pursuant to a motion moved in contravention of subsection (4) is void, whether or not its being so moved was objected to at the time, and where such a resolution moved in contravention of subsection (4) is passed any provision for the automatic re-election or re-appointment of retiring directors in default of another election shall not apply.

(6) For the purposes of this section, a motion for approving a person's election or for nominating a person for election shall be treated as a motion for his election.

(7) Nothing in this section shall prevent the election of 2 or more directors by ballot or poll.

(8) The rules of a building society may provide for the election or appointment—

- (a) of not more than 2 employees as directors where the number of directors is 7 or more;
- (b) of not more than one employee as a director in any other case.

(9) A director who is an employee of a building society shall not be eligible to be elected as chairman of the board of that building society.

(10) A person whose usual place of residence is outside the State shall not be appointed a director of a building society if, on his appointment as such, a majority of the directors of the building society would not be resident in the State.

(11) A person shall not, after the commencement of this Act, be appointed a director of a building society for an indefinite term or for a term exceeding 5 years and where, immediately prior to the commencement of this Act, a person held office as a director for life, for an indefinite term or a term not due to expire before the expiration of 5 years after the date of that commencement, the term of office of that person as a director shall, unless sooner determined, determine at the expiration of the period of 5 years immediately following the date of that commencement.

66. Qualifications of directors. (1) A person is not qualified to be a director of a building society, unless—

- (a) at the time of election or appointment he is a member of the building society and, where the rules make provision in that respect, the holder of not less than the minimum number of shares specified in the rules of the building society as the shareholding qualification requisite for holding the office of director; and
- (b) he has attained the age of 18 years.

(2) Except as provided in section 77, a person who, if he were a director, would be required under section 67 to vacate his office is not qualified to be a director of a building society.

67. Vacation of office. (1) A director of a building society vacates his office in such circumstances, if any, as may be prescribed by the rules of the building society and in any of the following circumstances:—

- (a) if he becomes an insolvent under administration;
- (b) if he is admitted into and detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the *Mental Health Act 1974-1978* or becomes a protected person within the meaning of Part VI of the *Public Trustee Act 1978-1981*;
- (c) if he is convicted of an offence referred to in section 77 (2);

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- (d) if he absents himself from 3 consecutive ordinary meetings of the board of which due notice has been given to him without prior leave of the board;
 - (e) if within 2 months after any money becomes due from him to the building society he does not pay the same;
 - (f) he ceases to be qualified as provided by section 66 (1);
 - (g) if he resigns in writing, whereupon such vacation has effect upon the day of receipt by the building society of the resignation in writing sent or given by the director or, where some date subsequent thereto is specified for that purpose in the resignation, that later date;
 - (h) if he is removed from office by resolution of a general meeting of the building society;
 - (i) if he becomes an employee of the building society;
 - (j) if having been elected as a director in accordance with section 65 (8), he ceases to be an employee of the building society;
 - (k) if he or his associate has a direct or indirect pecuniary interest in any agreement with the building society otherwise than—
 - (i) as a member of, and in common with the other members of a corporation consisting of more than 20 persons;
 - (ii) as a partner in a body of persons that provides the building society with secretarial or administrative services; or
 - (iii) as a person who provides the building society with secretarial or administrative services;
 - (l) if he or his associate receives an advance or makes any purchase from the building society otherwise than in accordance with a special resolution;
 - (m) if he or his associate is a party to any of the following dealings with the building society other than a dealing made in good faith in the ordinary course of business of the building society and on such conditions and terms as are usual and proper in similar dealings between the building society and its members:—
 - (i) a loan made to the building society whether by deposit or otherwise;
 - (ii) a loan made to the building society in which the pecuniary interest of the director or his associate consists of his having guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan;
 - (iii) any other dealing (other than a dealing to which paragraph (1) applies) between the building society and a director or his associate, which under its objects the building society may have with its members;
 - (iv) such other dealings as are prescribed;
 - (n) if he is, or becomes, employed by a director;

- (o) if he becomes subject to an order made under section 78 of this Act or an order made under section 227A or 562 of the *Companies (Queensland) Code* or under the law of another State or of a Territory that corresponds to section 227A or 562 of that Code;
- (p) if he dies.

(2) For the purposes of subsection (1) (k), pecuniary interest shall not include—

- (a) an interest in any advance made or approved by the building society in the ordinary course of business of the building society;
- (b) an interest in any purchase from the building society if made in accordance with a special resolution;
- (c) an interest in any dealing referred to in subsection (1) (m) if made in good faith, in the ordinary course of business of the building society, and on such conditions and terms as are usual and proper in similar dealings between the building society and its members;
- (d) an interest in any dealing between the building society and a director or his associate—
 - (i) who is a solicitor or conveyancer within the meaning of the *Queensland Law Society Act* 1952-1980 and bona fide carries on practice as such if such dealing is in respect of legal work performed by the director or his associate for and on behalf of the building society; or
 - (ii) who is a registered valuer within the meaning of the *Valuers Registration Act* 1965-1984 and bona fide carries on practice as such if such dealing is in respect of valuation work performed by the director or his associate for and on behalf of the building society;
 - (iii) who is a public accountant registered under the *Public Accountants Registration Act* 1946-1975 and bona fide carries on practice as such if such dealing is in respect of accountancy work performed by the director or his associate for and on behalf of the building society.

(3) The provisions of paragraphs (k) and (m) (iii) of subsection (1) shall not apply to a director who, in respect of the interest or, as the case may be, dealing in question, makes a disclosure under section 69.

(4) For the purposes of this section “associate” includes—

- (a) a director’s spouse and any person with whom he cohabits in a connubial relationship;
- (b) a director’s partner in any business undertaking;
- (c) a director’s employer;
- (d) a partner of a person referred to in paragraph (a) or (c) in any business undertaking;

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- (e) a corporation, where a person who is—
- (i) a director;
 - or
 - (ii) a person referred to in any of the preceding paragraphs of this subsection
- has, or 2 or more such persons together have, a direct or indirect beneficial interest in shares in the corporation the nominal value of which is not less than 10 per centum of the nominal value of the issued share capital of the corporation.

(5) Where a person is, at the same time, a director of a building society and a director of another corporation the Registrar may subject to this section, determine that, in his opinion, the activities and operations in which the other corporation is engaged are or are likely to be such that that person should not be a director of the building society while he is a director of the other corporation.

(6) The Registrar shall not make a determination under subsection (5) in relation to a director unless the Registrar—

- (a) has, by notice in writing duly given to the director informed him that he proposes to consider whether the determination should be made with respect to the corporation or corporations specified in the notice; and
- (b) has given the director an opportunity to be heard why the determination should not be made.

(7) (a) The Registrar shall duly give notice in writing of a determination under subsection (5) to the director to whom it relates.

(b) The director may within 14 days after the giving of the notice make representations to the Advisory Committee with respect to the determination and the committee shall report thereon to the Minister.

(8) Where a director makes representations under subsection (7), the Minister may—

- (a) uphold the determination of the Registrar;
- (b) revoke the determination of the Registrar;
- (c) where the determination relates to more than one corporation, uphold or revoke the determination in relation to the corporation or corporations specified by the Minister and revoke or uphold it in relation to the other or others.

(9) A director given a notice under subsection (7) vacates his office as such a director—

- (a) if he does not make representations against the determination to which the notice relates, at the expiration of the period within which he might have made representations; or
- (b) if he makes representations and the Minister—
 - (i) upholds the determination; or
 - (ii) upholds the determination in relation to one or more corporations and revokes the determination in relation to another corporation or other corporations,at the expiration of the period of 7 days that next succeeds the due giving to the director of notice of the determination having been upheld.

unless before the expiration of that period he ceases to be a director of the corporation or corporations to which the determination relates and, where he has made representations, in respect of which the determination was upheld.

68. Prohibition of certain dealings. (1) A director or other officer shall not, unless he is authorized to do so by a special resolution of a building society—

- (a) sell, or have an interest in the selling of, any land to or act as agent, or have an interest in the acting as agent, for the sale of any land (whether or not improvements are situated thereon) to any person who proposes to pay for the same, in whole or in part, out of an advance made by the building society;
- (b) undertake, or have an interest in the undertaking of, the erection or act as agent, or have an interest in the acting as agent, in respect of the erection of any dwelling house for any person who proposes to pay for the same, in whole or in part, out of an advance made by the building society; or
- (c) accept as payment, or have an interest in the acceptance of payment, in whole or in part of any moneys due to him by any person the whole or part of any advance made by the building society.

(2) The provisions of subsection (1) shall not extend or apply to an advance made to a person who is not an officer, for the purpose of enabling that person to purchase from an officer a dwelling house that has been owned and occupied by the officer for not less than 2 years immediately preceding the date of granting of approval to such advance.

(3) A director or other officer shall be deemed to have an interest in the doing of any act, matter or thing specified in subsection (1) if such person is at the relevant time—

- (i) a director or other member of the governing body of any corporation;
- (ii) a partner in any unincorporate body;
- (iii) the manager or a person who assists in the management, administration or government of the business of any corporate or unincorporate body,

which does the act or has the interest in question.

No director or other officer who is so deemed shall be thereby convicted of an offence against this section if the court is satisfied that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to all the circumstances.

69. Disclosure of interest. (1) Subject to this section, a director of a building society who is in any way, whether directly or indirectly,

interested in a contract or proposed contract with the building society shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest to the board in accordance with this section.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) The requirements of subsection (1) do not apply in any case where the interest of a director of a building society consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the building society if the interest of the director may properly be regarded as not being a material interest.

(3) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made—

- (a) at the meeting of the board at which the question of entering into the contract is first taken into consideration;
- (b) if the director was not present at the meeting referred to in paragraph (a), at the next meeting of the board held thereafter; or
- (c) if the director was not at the date of the meeting referred to in paragraph (a) interested in the proposed contract, at the next meeting of the board held after he becomes interested in the proposed contract,

as the case may require.

(4) Where the director becomes interested in a contract with a building society after it is made, the declaration required by this section shall be made at the first meeting of the directors held after he becomes interested in the contract.

(5) For the purposes of this section, a general notice in writing given to all the other directors by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm;
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(6) A director of a building society who holds any office or possesses any property whereby, directly or indirectly, duties or interests might

be created in conflict with his duties or interests as director, shall, in accordance with subsection (7), declare at a meeting of the board of the building society the fact and nature, character and extent of the conflict.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(7) A declaration in pursuance of the requirements of subsection (6) shall be made at the first meeting of the board held—

- (a) after he becomes a director; or
- (b) if already a director, after he commenced to hold the office or to possess the property,

as the case requires.

(8) Nothing in this section shall be taken to prejudice the operation of any rule or law restricting directors of a building society from having any interest in contracts with the building society or affecting the obligations of a director to account for any profit arising from any such contract or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

(9) The secretary of a building society shall record every declaration made under this section in the minutes of the meeting at which it is made.

(10) The directors of a building society shall report any declaration made under this section to the Registrar forthwith.

70. Directors to make disclosure. A director of a building society shall give notice in writing to the building society of such matters and events affecting or relating to himself as are necessary for compliance by the building society with sections 80 (1) and (7) and 95 (4) (c).

71. Secretary. (1) A building society shall have a secretary.

(2) The secretary of a building society shall be appointed by the board of the building society.

(3) A person is not capable of being the secretary of a building society unless the person is a natural person and has attained the age of 18 years.

(4) The secretary of a building society shall be a person who ordinarily resides in the State.

(5) If the office of secretary of a building society is vacant or for any other reason the secretary is not capable of acting, any act or thing required or authorized to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary or no assistant or deputy secretary is capable of acting, by or in relation to any officer of the building society authorized by the directors to act as secretary either generally or in relation to the doing of that act or thing.

(6) A provision of this Act or the rules of a building society requiring or authorizing any act or thing to be done by or in relation

to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

(7) If default is made in complying with any provision of this section, the building society and any officer of the building society who is in default each commits an offence against this Act.

72. Provisions indemnifying directors or officers. (1) Any provision, whether contained in the rules of, or in a contract with, a building society, or otherwise, for exempting any officer of the building society from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the building society is void.

(2) Notwithstanding anything in this section, a building society may, pursuant to its rules or otherwise, indemnify an officer against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application in relation to any such proceedings in which relief is, under this Act, granted to him by the Court.

(3) Subsection (1) does not apply in relation to a contract of insurance, not being a contract of insurance the premiums in respect of which are paid by the building society.

(4) For the purposes of this section, "officer", in relation to a building society means—

- (a) any director, secretary, executive officer, treasurer, employee or administrator of the building society or any other person empowered under the rules of the building society to give directions or instructions in regard to the conduct of the business of the building society;
- (b) a receiver, or receiver and manager, of the property or any part of the property of the building society;
- (c) a liquidator of the building society.

73. Remuneration of directors. (1) No director of a building society shall be paid any remuneration for his services as a director other than such fees, salary or other monetary consideration, concessions and other benefits as may be approved at a general meeting of the building society.

(2) Notwithstanding subsection (1), a director may be paid all travelling and other expenses properly incurred by him in attending and returning from meetings of the directors or any committee of the directors or general meetings of the building society or otherwise in connexion with the business of the building society.

74. Chairman. The Chairman of the board of a building society shall be elected in accordance with the rules of the building society and

shall hold office and retire and may be removed from office as set out in those rules and by this Act.

75. Meetings of the board, quorum. (1) Meetings of the board of a building society shall be held as often as may be necessary for properly conducting the business and operations of the building society, and shall be held at least once in every 2 calendar months.

(2) A quorum of a meeting of a board shall be as specified in the rules of the building society but shall not in any case be less than half the number of directors.

76. Director not to vote on certain matters. A director of a building society shall not vote on any question in which he or his associate has any direct or indirect pecuniary interest otherwise than as a member in common with other members of the building society and if he does vote in contravention of this section his vote shall not be counted.

This section does not apply in respect of any agreement, advance, purchase or dealing specified in section 67 (1) (k), (l) or (m), which the director or his associate may make without the director's office being thereby vacated.

For the purposes of this section "associate" includes those persons specified in section 67 (4).

77. Certain persons not to manage building societies. (1) A person who is an insolvent under administration shall not act as a director, or directly or indirectly take part in or be concerned in the management of a building society except with leave of the Court.

Penalty: \$5 000 or imprisonment for one year, or both.

(2) Where a person is convicted whether within or without the State—

- (a) on indictment of any offence in connexion with the promotion, formation or management of a building society or any other corporation;
- (b) of any offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months;
- (c) of an offence under section 82, 197, 202, 204, 205 or 206 of this Act or the provisions of any law of another State or of a Territory that corresponds to any section specified in this paragraph,

and that person within a period of 5 years after his conviction, or if he was sentenced to imprisonment, after his release from prison, without the leave of the Court acts as a director, or is in any way directly or indirectly concerned or takes part in the management, of a building society, he commits an offence against this Act.

Penalty: \$5 000 or imprisonment for one year, or both.

(3) In any proceedings for an offence against subsection (2), a certificate by a prescribed authority stating that a person was released

from prison on a specified date is prima facie evidence that that person was released from prison on that date.

(4) When granting leave under this section, the Court may impose such conditions or limitations as it thinks fit and a person who contravenes or fails to comply with any such condition or limitation that is applicable to him commits an offence against this Act.

Penalty: \$5 000 or imprisonment for one year, or both.

(5) A person intending to apply for leave of the Court under this section shall give to the Registrar not less than 21 days notice of his intention to apply for such leave.

(6) On the hearing of an application under this section, the Registrar may be represented at the hearing of, and may oppose the granting of, the application.

(7) The Court may at any time, on the application of the Registrar, revoke leave granted by the Court under this section.

78. Court may disqualify person from acting as director, etc., in certain circumstances. (1) Unless cause to the contrary is shown, the Court may, on an application by the Registrar and on being satisfied as to the matters referred to in subsection (2), make an order prohibiting a person specified in the order from acting as a director of, or from being concerned or taking part in the management of, a building society during such period, not exceeding 5 years, after the date of the order as is specified in the order.

(2) The Court shall not make an order under subsection (1) unless it is satisfied—

- (a) that the person to whom the application for an order relates was given notice of the application;
- (b) that, within the period of 7 years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of this Act, that person was a director of, or was concerned or took part in the management of—

(i) a building society—

- (A) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due without assistance from the Contingency Fund;
- (B) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 383 of the *Companies (Queensland) Code* as applied to the winding up by Part VIII;
- (C) in respect of which an administrator has been appointed pursuant to this Act because it was unable to pay all

its debts in full without the assistance of the Contingency Fund;

- (ii) a corporation other than a building society—
 - (A) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
 - (B) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 383 of the *Companies (Queensland) Code*;
 - (C) that has been or is under official management or like form of administration; or
- (iii) a building society or other corporation—
 - (A) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
 - (B) in respect of which a levy of execution was not satisfied;
 - (C) in respect of the property or part of the property of which a receiver, or a receiver and manager, has been appointed, whether by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated;
 - (D) that has entered into a compromise or scheme of arrangement with its creditors; and
- (c) that the manner in which the affairs of a building society or other corporation had been managed was wholly or partly responsible for any of the events referred to in paragraph (b) in relation to the building society or, as the case may be, corporation.

(3) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: \$5 000 or imprisonment for one year, or both.

(4) Subsection (3) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

79. Age limit for directors. (1) Subject to this section, no person of or over the age of 72 years shall be elected, or appointed, a director of a building society, but nothing in this subsection prevents a person from acting as a director of a building society during the period commencing on the day on which he attains the age of 72 years and ending at the conclusion of the annual general meeting commencing next after that day.

(2) The office of a director of a building society shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of 72 years or if he has attained the age of 72 years

before the commencement of this Act, at the conclusion of the annual general meeting next after that commencement.

(3) An act done by a person as director is valid notwithstanding that it is afterwards discovered that he was of or over the age of 72 years at the time of his appointment or that his appointment had terminated by virtue of subsection (2).

(4) Where the office of a director has become vacant by virtue of subsection (2) no provision for the automatic re-appointment, or re-election, of retiring directors in default of another appointment or re-election applies in relation to that director.

(5) If a vacancy created by reason of subsection (2) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6) A vacancy in the office of a director occurring by virtue of subsection (2) shall not be taken into account in determining when other directors retire.

(7) Nothing in this section limits or affects the operation of any provision of the rules of a building society preventing any person from being elected or appointed a director, or requiring any director to vacate his office, at any age less than 72 years.

(8) Notwithstanding anything in this section a person of or over the age of 72 years may by a special resolution be appointed or re-appointed as a director of a building society to hold office until the conclusion of the next annual general meeting of the building society.

80. Register of directors, principal executive officers and secretaries.

(1) A building society shall keep a register of its directors, principal executive officers and secretaries.

(2) The register shall contain with respect to each director his consent in writing to appointment as such and shall specify—

- (a) his present christian or given name and surname, any former christian or given name or surname, his usual residential address, and his business occupation (if any);
- (b) particulars of directorships held by the director in other corporations.

(3) Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall specify with respect to each principal executive officer and secretary his full name and address and other occupation (if any) and shall contain his consent in writing to his appointment as principal executive officer or secretary, as the case may be.

(5) The register shall be open for inspection by a member of the building society without charge and by any other person on payment of such amount (if any), not exceeding the prescribed amount, as the building society requires.

(6) A person may request a building society to furnish him with a copy of the register or any part of the register and, where such a request is made and there is paid to the building society such amount (if any), not exceeding the prescribed amount, as the building society requires, the building society shall send the copy to that person within 21 days after the day on which the payment is received by the building society or within such longer period as the Registrar approves.

(7) A building society shall lodge with the Registrar—

- (a) within one month after a person ceases to be, or becomes, a director of the building society, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each person who is, at the time of lodgment of the return, a director of the building society, the particulars required to be specified in the register;
- (b) within one month after a person becomes the principal executive officer or secretary of the building society, a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation (if any) of that person: and
- (c) within one month after a person ceases to be the principal executive officer or secretary of the building society, a return in the prescribed form notifying the Registrar of that fact.

(8) If default is made in complying with any of the preceding provisions of this section, a building society and any officer of the building society who is in default each commits an offence against this Act.

(9) The Registrar may at any time, by notice in writing to a person who appears to the Registrar to be a director, or the principal executive officer or secretary of a building society, require the person to lodge with the Registrar, within a period specified in the notice, a notice in the prescribed form stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which he so ceased, and, where a person receives such a notice, the person shall comply with the notice.

(10) A certificate of the Registrar stating that, from any return or notice lodged with the Registrar pursuant to this section, it appears that at any time specified in the certificate, or throughout a period specified in the certificate, a person was a director, or the principal executive officer or secretary of a building society shall, in all courts and by all persons having power to take evidence for the purposes of this Act, be received as prima facie evidence of the facts stated in the certificate.

For the purposes of this subsection, a person who appears from any return or notice so lodged to be a director, or the principal executive officer or secretary of a building society shall be deemed to continue as such until, from a return or notice subsequently so lodged with the Registrar, it appears that he has ceased to be such a director, principal executive officer or secretary.

81. Acting as director after office vacated. A person who knowingly purports to exercise the powers of a director of a building society after his office as director has been vacated and any director of a building society who knowingly permits or suffers any person to exercise the powers of a director after that person's office as director has been vacated commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months, or both.

82. Duty and liability of officers. (1) An officer of a building society shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

Penalty—

(a) where the offence was committed with the intent to deceive or defraud the building society, members or creditors of the building society or creditors of any other person or for any other fraudulent purpose—\$20 000 or imprisonment for 5 years, or both; or

(b) in a case to which paragraph (a) does not apply—\$5 000.

(2) An officer of a building society shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.

Penalty: \$5 000.

(3) An officer of a building society—
shall not do; or

shall not aid, abet, counsel, or procure or by act or omission be in any way directly or indirectly concerned in or party to the doing of,

any act or thing that is directed to an object that is not an object of the society as prescribed.

Penalty: \$5 000.

(4) An officer or employee of a building society or a former officer or employee of a building society shall not make improper use of information acquired by virtue of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the building society.

Penalty: \$20 000 or imprisonment for 5 years, or both.

(5) An officer or employee of a building society shall not make improper use of his position as such an officer or employee, to gain,

directly or indirectly, an advantage for himself or for any other person or to cause detriment to the building society.

Penalty: \$20 000 or imprisonment for 5 years, or both.

(6) For the purposes of this section, "officer", in relation to a building society, means—

- (a) any director, secretary or executive officer of the building society;
- (b) a receiver, or receiver and manager, of the property or part of the property of the building society;
- (c) an administrator of the building society; and
- (d) a liquidator of the building society.

(7) Where—

- (a) a person is convicted of an offence under this section; and
- (b) the court is satisfied that the building society has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which he is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the building society of such amount as the court specifies, and any such order may be enforced as if it were a judgment of that court.

(8) Where a person contravenes or fails to comply with a provision of this section in relation to a building society, the building society may, whether or not the person has been convicted of an offence under this section in relation to that contravention or failure to comply, recover from the person as a debt due to the building society by action in any court of competent jurisdiction—

- (a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit; and
- (b) if the building society has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

(9) This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of his office or employment in relation to a building society and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Division 2—Meetings and Voting

83. Meetings. (1) Subject to this section, every building society shall, in addition to any other meeting held by it, hold a general meeting to be called the "annual general meeting" within 4 months after the close of its financial year.

(2) The Registrar may, on written application made by a building society in accordance with a resolution of the board signed by a director or the secretary and subject to such conditions as the Registrar thinks fit, extend the period of 4 months referred to in subsection (1).

(3) An application by a building society for an extension of time under subsection (2) shall be made before the expiration of the period in which the annual general meeting would otherwise be required by subsection (1) to be held.

(4) A building society is not in default in holding an annual general meeting if that meeting is held within the extended period in which, under subsection (2), it is permitted to be held.

(5) Meetings of a building society, other than its annual general meeting, shall be held or may be called as provided for in the rules of the building society.

(6) At any meeting of a building society no item of business shall be transacted unless a quorum (as prescribed by the rules of the building society) of members entitled under the rules to vote is present at the meeting of the building society during the time when the meeting is considering that item.

(7) Subject to subsections (8) and (9), notice of every meeting of a building society shall be—

- (a) given to the Registrar by the sending of written notice thereof to him;
- (b) given to all members as at the date of calling the meeting in such manner as is provided for in the rules of the building society.

(8) Subject to subsection (9) it shall be sufficient compliance with the provisions of subsection (7) (b) if the notice is advertised in such a way as to comply in all respects with the requirements prescribed for such advertising.

(9) Not less than—

- (a) in the case of a meeting of a building society called for the purpose of passing a special resolution, 21 days' notice shall be given;
- (b) in the case of a meeting called for a purpose other than that referred to in paragraph (a), 14 days' notice shall be given.

(10) If default is made in holding an annual general meeting under this section or in complying with any conditions imposed by the Registrar under subsection (2)—

- (a) a building society and any officer of the building society, who is in default each commits an offence against this Act; and
- (b) the Court may, on the application of any member, order a general meeting to be convened.

Penalty: \$1 000 or imprisonment for 3 months, or both.

84. Voting. (1) Except as is otherwise provided by this Act or the rules of a building society every question for decision by a meeting of the building society shall be determined by a majority of the votes which the persons present in person at the meeting are entitled to cast, and, unless a poll is demanded by at least 5 persons present in person who are entitled to vote on the question, the question shall be determined on a show of hands.

(2) In the case of an equality of votes on a show of hands or on a poll at any meeting of a building society, or of a board of a building society, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall, unless the rules of the building society provide to the contrary, be entitled to exercise a casting vote in addition to any other vote to which he may be entitled.

85. Proxies. (1) Subject to subsections (2), (3) and (4), a member of a building society who is entitled to attend and vote at a meeting of the building society is entitled to appoint another member or, where the rules so provide, another person (whether a member or not) as his proxy to attend and vote instead of the member at the meeting.

(2) A proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting but, unless the rules otherwise provide, a proxy is not entitled to vote except on a poll.

(3) In every notice convening a meeting of a building society or of any class of member of the building society, there shall appear with reasonable prominence, a statement—

(a) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member; and

(b) that a proxy must, or need not, be a member (as the case requires),

and, if default is made in complying with this subsection as respects any meeting, every officer of the building society who is in default commits an offence against this Act.

(4) A person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at a building society's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy commits an offence against this Act.

(5) A person is not guilty of an offence under subsection (4) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

86. Power of Court to order meeting. (1) If for any reason it is impracticable to convene a meeting in any manner in which meetings may be convened or to conduct the meeting in the manner prescribed by the rules of the building society or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting, order a meeting to be convened, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting convened, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly convened, held and conducted.

(3) For the purposes of an application to the Court or of a meeting held by order of the Court under this section, the personal representative of a deceased member of a building society shall be deemed to be a member of the building society and, notwithstanding anything to the contrary in this Act or the rules of the building society, to have the same voting rights as the deceased member had immediately before his death by reason of his holding shares that on his death were transmitted to his personal representative by operation of law.

87. Special resolution. (1) For the purposes of this Act, a special resolution means a resolution—

- (a) where the voting on the resolution is by show of hands—that is passed by a majority of not less than two-thirds of the number of persons who, being entitled so to do, vote in person or, where proxies are allowed, by proxy; or
- (b) where the voting on the resolution is by poll—that is passed by a majority of not less than two-thirds of the number of votes cast by the persons who, being entitled so to do, cast votes,

at a general meeting of a building society 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 of the rules of the building society.

(2) At a meeting at which a resolution mentioned in this section is submitted, a declaration by the chairman that the resolution has been carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) A building society shall, within the time prescribed and in the prescribed manner, lodge with the Registrar an application to have a special resolution registered and a special resolution does not take effect until registered by the Registrar.

(4) A certificate of registration of any special resolution or of any alteration of the rules of a building society given by the Registrar shall, in so far as any person lending money to the building society on the faith of such a certificate is concerned, or in so far as any guarantor of any such loan is concerned, be conclusive evidence that the resolution was duly passed or the alteration in the rules was duly made, as the case may be.

(5) In any rules made by a building society, whether before or after the commencement of this Act, "special resolution" means a special resolution as defined in this section.

88. Minutes of meetings. (1) A building society shall—

- (a) cause minutes of every meeting of the board and of every meeting of the building society to be entered, within one month after the relevant meeting is held, in books kept for that purpose; and
- (b) cause those minutes to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting.

(2) Any minute that is so entered and, in a case to which subsection (1) (b) applies, purports to be signed as provided by that subsection is prima facie evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and, in a case to which subsection (1) (b) applies, signed, then, unless the contrary is proved—

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
- (c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

(4) If a building society fails to comply with this section, the building society and any officer of the building society who is in default each commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months, or both.

89. Inspection of minutes. (1) The minutes of proceedings of each general meeting and of each meeting of the board of a building society shall be kept by the building society at its registered office.

(2) The minutes of proceedings of each general meeting of a building society shall be open for inspection by any member without charge.

(3) A member of a building society may request the building society, in writing, to furnish him with a copy of any minutes of proceedings of a general meeting of the building society and, where he does so and pays to the building society such amount (if any) as is required by the building society (not exceeding the prescribed amount), the building

society shall furnish the member with the copy within 21 days after the payment is received or, in a case where payment is not required, within 21 days after the request is made.

Division 3—Accounts

4— **90. Interpretation.** (1) For the purposes of this Division and Division

“accounts” means profit and loss accounts and balance-sheets and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance-sheets;

“group accounts” in relation to a holding body, means—

- (a) a set of consolidated accounts for the group of corporations of that holding body;
- (b) 2 or more sets of consolidated accounts together covering that group;
- (c) separate accounts for each corporation in that group; or
- (d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group;

“group of corporations” in relation to a holding body, means the holding body and the corporations that are subsidiaries of the holding body;

“holding body” means a building society that is the holding building society of a corporation;

“prescribed accounting standard” means an accounting standard prescribed in the regulations;

“the profit or loss” means—

- (a) in relation to a building society that is not a holding body, the profit or loss resulting from operations of that building society;
- (b) in relation to a building society that is a holding body of a group of corporations for which group accounts are required, the profit or loss resulting from operations of that building society; and
- (c) in relation to a building society referred to in paragraph (b) and its subsidiaries, the profit or loss resulting from operations of the group of corporations of which the building society is the holding body.

(2) Unless the contrary intention appears in a prescribed accounting standard, an expression used in the prescribed accounting standard has the same meaning as the expression has in this Division and Division 4.

91. Financial year. (1) Subject to this section, and notwithstanding anything to the contrary contained in the rules of the building society the financial year of a building society shall be the period of one year ending on 30 June in each year.

(2) The first financial year of a building society may extend from the date of its registration to a date (being 30 June) not later than 18 months from the date of its registration.

92. Accounts to be kept and controls to be established. (1) A building society shall—

- (a) keep such accounting records as correctly record and explain the transactions of the building society and the financial position of the building society;
- (b) keep its accounting records in such a manner as will enable—
 - (i) the preparation from time to time of true and fair accounts of the building society; and
 - (ii) the accounts of the building society to be conveniently and properly audited in accordance with this Act; and
- (c) establish and maintain a system of control and inspection of its books of account, a system for supervising its cash holdings and all receipts and remittances and a system to ensure the safe custody of all documents of title and securities belonging to the building society and of the documents of title relating to property mortgaged to the building society.

(2) A building society shall retain the accounting records kept under this section or under the repealed Act (except such accounting records as are prescribed) for a period of 7 years after the completion of the transactions to which they relate.

(3) A building society shall keep the accounting records of the building society at such place or places in the State as the directors think fit.

(4) A building society shall give to the Registrar notice in writing of the place in the State where any accounting records referred to in subsection (3) are kept unless those accounting records are kept at the registered office of the building society.

This subsection shall not apply to branch records maintained at a branch office.

(5) The accounting records of a building society shall be kept in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language.

(6) The Court may, on application by a director of a building society, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the building society.

(7) A building society shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the building society and by any other person authorized or permitted by or under this Act to inspect the accounting records of the building society.

(8) Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (6), he shall not disclose to a person, other than the director on whose application the order was made, the Registrar or a person conducting an inquiry or making a special audit under Division 4 of Part X with respect to the building society concerned any information acquired by him in the course of his inspection.

(9) If default is made in complying with a provision of this section, other than subsection (8)—

- (a) the building society;
- (b) a director of the building society who failed to take all reasonable steps to secure compliance by the building society with the provisions; and
- (c) any officer of the building society who is in default,

each commits an offence against this Act.

Penalty: \$2 500 or imprisonment for 6 months, or both.

(10) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a building society with a provision of this section, it is a defence if the person proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

93. Financial years of grouped corporations. (1) Subject to this section, the directors of a holding body shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding body coincides with the financial year of the holding body.

(2) The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than 12 months after the date on which the subsidiary becomes a subsidiary of the holding body.

(3) Subject to any order by the Registrar under this section, where the financial year of a holding body and the financial year of each of its subsidiaries coincide, the directors of the holding body shall at all times take such action as is necessary to ensure that the financial year of any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(4) Where the directors of a holding body are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding body, they may apply in writing to the Registrar for an order authorizing the

subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding body.

(5) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding body, signed by not less than 2 directors and stating the reasons for seeking the order.

(6) The Registrar may require the directors making the application to supply such information relating to the operations of the holding body, and of any subsidiary, as the Registrar thinks necessary for the purpose of determining the application.

(7) The Registrar may engage a registered company auditor to investigate and report to him on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding body of which the applicants are directors.

(9) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit, and shall serve a copy of the order on the holding body.

(10) Where the applicants are aggrieved by an order made by the Registrar, the applicants may, within 2 months after the service of the order upon the holding body, appeal against the order to the Court.

(11) The Court shall determine the appeal and, in determining the appeal, may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.

(12) Where the directors of a holding body have applied to the Registrar for an order under this section, subsection (1) shall be deemed not to apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(13) Where an order is made authorizing a subsidiary to have or to adopt a financial year that does not coincide with that of its holding body, compliance with the terms of the order of the Registrar (including any limitations or conditions set out in the order) or, where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, shall be deemed to be compliance with the provisions of subsection (1) in relation to the subsidiary.

(14) Where an application for an order by the Registrar under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been withdrawn or dismissed, the time within which the directors of the holding body are required to comply with the provisions of subsection (1) in relation to the subsidiary shall be deemed to be the period of 12 months after the date upon which the order of the Registrar is served on the holding body or, where

there has been an appeal that has been dismissed, the period of 12 months after the determination of the appeal.

(15) Where the directors of a holding body have applied to the Registrar for an order under this section, and the application has been refused and the appeal (if any) arising out of the refusal has been withdrawn or dismissed, the directors of the holding body are not entitled to make an application under this section with respect to the subsidiary within 3 years after the refusal of the first mentioned application or, where there was an appeal that has been dismissed, after the dismissal of the appeal, unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

94. Profit and loss account, balance-sheet and group accounts.

(1) The directors of a building society shall, not less than 14 days before an annual general meeting of the building society or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not less than 14 days before the end of that period, cause to be made out a profit and loss account for the last financial year of the building society, being a profit and loss account that gives a true and fair view of the profit or loss of the building society for that financial year.

(2) The directors of a building society shall, not less than 14 days before an annual general meeting of the building society or, if no annual general meeting is held within the period within which it is required by section 83 to be held, not less than 14 days before the end of that period cause to be made out—

- (a) a balance-sheet as at the end of the last financial year of the building society, being a balance-sheet that gives a true and fair view of the state of the affairs of the building society as at the end of that financial year;
- (b) a true and fair statement of the sources and application of the funds of the building society for that financial year.

(3) Where, at the end of a financial year of a building society, the building society is a holding body, the directors of the building society shall, not less than 14 days before the next annual general meeting of the building society or, if no annual general meeting of the building society is held within the period after the end of that financial year within which it is required by section 83 to be held, not less than 14 days before the end of that period, cause to be made out group accounts dealing with—

- (a) the profit or loss of the building society and its subsidiaries for their respective last financial years; and
- (b) the state of affairs of the building society and its subsidiaries as at the end of their respective last financial years;
- (c) the sources and application of the funds of the building society and its subsidiaries for their respective last financial years.

and giving a true and fair view of the profit or loss, state of affairs and sources and application of funds so far as they concern members of the holding body.

(4) The directors of a building society shall take reasonable steps to ensure that the accounts of the building society and, if it is a holding body, the group accounts are audited as required by this Part not less than 14 days before the annual general meeting of the building society or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not less than 14 days before the end of that period.

(5) The directors of a building society shall cause to be attached to, or endorsed upon, the accounts or group accounts in relation to the building society the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors in accordance with section 110 (2).

(6) The directors shall, before the profit and loss account and balance-sheet referred to in subsections (1) and (2) are made out, take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realize, whether directly or indirectly, in the ordinary course of business their value as shown in the accounting records of the building society and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realize; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize; and
- (c) to ascertain whether any non-current asset is shown in the books of the building society at an amount that, having regard to its value to the building society as a going concern, exceeds the amount that it would have been reasonable for the building society to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(7) Without affecting the generality of the preceding provisions of this section, the directors of a building society shall ensure that the accounts of the building society and, if it is a holding body, the group accounts comply with such of the prescribed requirements as are relevant

to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the building society shall add such information and explanations as will give a true and fair view of those matters.

(8) Without affecting the generality of the preceding provisions of this section, the directors of a building society shall ensure that the accounts of the building society and, if the building society is a holding body, the group accounts of the holding body are made out in accordance with applicable prescribed accounting standards.

(9) Notwithstanding subsection (8), where the accounts of a building society or the group accounts of a holding body would not, if made out in accordance with a particular applicable prescribed accounting standard, give a true and fair view of the matters required by this section to be dealt with in those accounts or group accounts, as the case may be, the directors of the building society are not required to ensure that those accounts or group accounts, as the case may be, are made out in accordance with that accounting standard.

(10) The directors of a building society shall cause to be attached to any accounts required by section 100 to be laid before an annual general meeting of the building society before the auditor reports on the accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating whether, in the opinion of the directors—
 - (i) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the building society for its last financial year; and
 - (ii) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the building society as at the end of its last financial year; and
 - (iii) the statement of the sources and application of the funds of the building society is drawn up so as to give a true and fair view of the sources and application of the funds of the building society for its last financial year;
- (b) stating whether the accounts have been made out in accordance with applicable prescribed accounting standards; and
- (c) if the accounts have not been made out in accordance with a particular applicable prescribed accounting standard—
 - (i) stating why the accounts, if made out in accordance with that accounting standard, would not have given a true

and fair view of the matters required by this section to be dealt with in the accounts; and

- (ii) giving particulars of the quantified financial effect on the accounts of the failure to make out the accounts in accordance with that accounting standard.

(11) The directors of a building society that is a holding body shall cause to be attached to group accounts of the building society required by section 100 to be laid before an annual general meeting of the building society, before the auditor reports on the group accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting, or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating whether, in the opinion of the directors, the group accounts are drawn up so as to give a true and fair view of—
 - (i) the profit or loss of the building society and its subsidiaries for their respective last financial years;
 - (ii) the state of affairs of the building society and its subsidiaries as at the end of their respective last financial years;
 - (iii) the sources and application of the funds of the building society and its subsidiaries for their respective last financial years,
 - so far as they concern members of the building society;
- (b) stating whether the group accounts have been made out in accordance with applicable prescribed accounting standards; and
- (c) if the group accounts have not been made out in accordance with a particular applicable prescribed accounting standard—
 - (i) stating why the group accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters required by this section to be dealt with in the group accounts; and
 - (ii) giving particulars of the quantified financial effect on the group accounts of the failure to make out the group accounts in accordance with that accounting standard.

(12) The directors of a building society shall—

- (a) in forming an opinion, for the purposes of a statement under subsection (10) in relation to accounts of the building society, as to the matters specified in paragraph (a) of that subsection, have regard to—
 - (i) circumstances that have arisen; and
 - (ii) information that has become available,
 - since the end of the financial year to which the accounts relate, being circumstances or information that would, if

those accounts had been made out when the statement is made, have affected the determination of an amount or particular in those accounts; and

- (b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that such adjustments have not been made.

(13) The directors of a building society that is a holding body shall—

- (a) in forming an opinion, for the purposes of a statement under subsection (11) in relation to group accounts of the building society, as to the matters specified in paragraph (a) of that subsection, have regard to circumstances that have arisen, and information that has become available, since—
 - (i) in the case of circumstances or information concerning the building society, the end of the financial year of the building society to which those accounts relate; or
 - (ii) in the case of circumstances or information concerning a subsidiary of the building society, the end of the financial year of that subsidiary to which those accounts relate.

being circumstances or information that would, if those accounts had been made out when the statement is made, have affected the determination of an amount or particular in those accounts; and

- (b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that such adjustments have not been made.

95. Directors' reports. (1) The directors of a building society, other than a building society to which subsection (2) applies, shall, not less than 14 days and not more than 56 days before the annual general meeting of the building society or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not less than 14 days and not more than 56 days before the end of that period, cause to be made out a report, made

in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating—
 - (i) the names of the directors in office at the date of the report;
 - (ii) the principal activities of the building society in the course of its last financial year and any significant change in the nature of those activities that occurred during that financial year; and
 - (iii) the net amount of the profit or loss of the building society for that financial year after provision for income tax;
- (b) containing a review of the operations of the building society during that financial year and of the results of those operations;
- (c) giving particulars of any significant change in the state of affairs of the building society that occurred during that financial year;
- (d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the building society;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the building society, in financial years subsequent to that financial year; and
- (e) referring to—
 - (i) likely developments in the operations of the building society; and
 - (ii) the expected results of those operations, in financial years subsequent to that financial year.

(2) The directors of a building society that, at the end of its last financial year, was a holding body shall, not less than 14 days and not more than 56 days before the annual general meeting of the building society or, if no annual general meeting of the building society is held within the period within which it is required by section 83 to be held, not less than 14 days and not more than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating—
 - (i) the names of the directors of the building society in office at the date of the report;
 - (ii) the principal activities of the corporations in the group of the holding body in the course of that financial year and any significant change in the nature of those activities that occurred during that financial year; and

- (iii) the net amount of the consolidated profit or loss of the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than a corporation in the group;
- (b) containing a review of the operations of the group during that financial year and of the results of those operations;
- (c) giving particulars of any significant change in the state of affairs of the group that occurred during that financial year;
- (d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the group;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the group, in financial years subsequent to that financial year; and
- (e) referring to—
 - (i) likely developments in the operations of the group; and
 - (ii) the expected results of those operations, in financial years subsequent to that financial year.

(3) Where, in the opinion of the directors of a building society, it would prejudice the interests of the building society if particular information, being some or all of the information required by subsection (1) (e) or (2) (e) to be included in a report, were so included—

- (a) the firstmentioned information need not be included in the report; and
- (b) if the firstmentioned information is not included in the report, the report shall state that some or all, as the case may be, of the information required by that subsection to be so included has not been so included.

(4) The directors of a building society shall include in, or attach to, a report made for the purposes of subsection (1) or (2) a statement setting out, as at the date of the statement, in respect of each director of the building society—

- (a) particulars of the qualifications, experience and special responsibilities (if any) of the director; and
- (b) particulars of any interest of the director in a contract or proposed contract with the building society, being an interest the nature of which has been declared by the director in accordance with section 69—
 - (i) in the case of the first statement made by the directors of the building society under this subsection, since the commencement of this Act; or

- (ii) in any other case, since the date of the last statement made under this subsection;
- (c) particulars of shares in any subsidiary of the building society required by section 231 (1) (a) of the *Companies (Queensland) Code* to be shown with respect to that director in a register kept in accordance with section 231 (1) of that Code.

(5) The directors of a building society shall state in the report whether, since the end of the previous financial year, a director of the building society has received or become entitled to receive a benefit, other than—

- (a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the building society is a holding body, the group accounts, in accordance with the regulations made for the purposes of section 94 (7); or
- (b) the fixed salary of a full-time employee of the building society.

by reason of a contract made by the building society or a subsidiary of the building society or a person who provides the building society or subsidiary with secretarial or administrative services with the director or with a firm of which he is a member, or with a corporation in which he has a substantial financial interest, and, if so, the general nature of the benefit.

(6) Where there is attached to or included with a report of the directors laid before a building society at its annual general meeting or made available to the members under section 99 a statement, report or other document relating to affairs of the building society or any of its subsidiaries, not being a statement, report or document required by this Act to be laid before the building society in general meeting, the statement, report or other document shall, for the purposes of section 100, be deemed to be part of that firstmentioned report.

96. Rounding off of amounts in accounts and reports. (1) The regulations may make provision permitting every building society, or every building society included in a class of building societies specified in the regulations, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Act, in substitution for an amount that the building society would, but for this section, be required or permitted to set out in the accounts or report, an amount ascertained in accordance with the regulations but not being an amount that is more than \$500 greater or less than the firstmentioned amount.

(2) For the purposes of subsection (1), the insertion of zero shall be deemed to be the insertion of an amount.

97. Directors of holding body to obtain all necessary information. (1) Subject to subsection (3), the directors of a holding body shall not

cause to be made out the group accounts referred to in section 94 (3), the statement referred to in section 94 (11) or the report referred to in section 95 (2) unless they have available to them sufficient information, in relation to each subsidiary, to enable them to ensure—

- (a) that the group accounts will give a true and fair view of—
 - (i) the profit or loss of the holding body and its subsidiaries for their respective last financial years; and
 - (ii) the state of affairs of the holding body and its subsidiaries as at the end of their respective last financial years;
 - (iii) the sources and application of the funds of the holding body and its subsidiaries for their respective last financial years.
- so far as they concern members of the holding body; and
- (b) that neither the statement nor the report will be false or misleading in a material particular.

(2) The directors of a subsidiary shall, at the request of the directors of the holding body, supply to the holding body all the information that is required by the directors of the holding body for the preparation of the group accounts, the statement and the report referred to in subsection (1).

(3) Where the directors of a holding body, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding body for the preparation of the group accounts, the statement and the report referred to in subsection (1) within the period within which those accounts, that statement and that report are respectively required, by the provisions referred to in that subsection, to be prepared—

- (a) the directors of the holding body shall cause to be made out those group accounts, that statement and that report without incorporating in, or including with, those group accounts, or incorporating in that statement or report, as the case requires, the information relating to the subsidiary, but—
 - (i) they shall include in those group accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those group accounts, that statement and that report such qualifications and explanations as are necessary to prevent those group accounts, that statement and that report from being misleading; and
 - (ii) they may qualify accordingly that part of that statement that is made in pursuance of section 94 (11) (a); and
- (b) where the directors of the holding body have caused to be made out those group accounts, that statement and that report in accordance with paragraph (a), they shall, within

one month after receiving any of that information from the directors of the subsidiary—

- (i) lodge with the Registrar a statement setting out or summarizing the information and containing such qualifications and explanations, by the directors of the holding body, of those group accounts, that statement or that report as are necessary having regard to the information received from the directors of the subsidiary; and
- (ii) have available at the registered office of the holding body and at each branch office and open at all reasonable hours to inspection by a member a copy of the statement required by subparagraph (i) to be lodged with the Registrar.

(4) A holding body shall, during the period of 12 months next occurring after the documents are made available for inspection under subsection (3), furnish to a member, on request in writing being made by him to the holding body, as soon as practicable and without charge a copy of that statement.

(5) It is a defence to a prosecution for a failure to comply with subsection (4) if the defendant proves that the person in relation to whom the failure occurred had, before the failure occurred, been furnished with a copy of the statement referred to in subsection (4)

98. Relief from requirements as to accounts and reports. (1) The directors of a building society may apply to the Registrar in writing for an order relieving them from compliance with any specified requirements of this Act relating to, or to the audit of, accounts or group accounts or to the report required by section 95 (1) or (2) and the Registrar may make an order relieving the directors from compliance with all or any of those requirements either unconditionally or on condition that the directors comply with such other requirements relating to, or to the audit of, the accounts or group accounts or to the report as the Registrar imposes.

(2) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the building society, signed by not less than 2 directors and stating the reasons for seeking an order.

(3) The Registrar may require the directors making the application to supply such information relating to the operations of the building society and of any subsidiary thereof as the Registrar thinks necessary for the purpose of determining the application.

(4) Notice of an order under subsection (1) shall be served on the building society to which it relates.

(5) The Registrar may, where he considers it appropriate, make an order in respect of a specified class of building societies relieving the

directors of a building society in that class from compliance with any specified requirements of this Act relating to, or to the audit of, accounts or group accounts or to the report required by section 95 (1) or (2) and the order may be made either unconditionally or on condition that the directors of the building society comply with such other requirements relating to, or to the audit of, accounts or group accounts or to the report as the Registrar imposes.

(6) Notice of an order under subsection (5) shall be published in the Gazette.

(7) The Registrar shall not make an order under subsection (1) or (5) relating to the form or content of accounts or group accounts or of a report required by section 95 (1) or (2) unless the Registrar is of the opinion that compliance with the requirements of this Act would render the accounts or group accounts or the report, as the case may be, misleading or inappropriate to the circumstances of the building society or would impose unreasonable burdens on the building society or on an officer of the building society.

(8) The Registrar may make an order under subsection (1) or (5) that is limited to a specific period and—

(a) in the case of an order under subsection (1)—may from time to time either on application by the directors, or without any such application, revoke or suspend the operation of the order; or

(b) in the case of an order under subsection (5)—may from time to time revoke or suspend the operation of the order.

(9) The revocation or suspension under subsection (8) of an order does not take effect until—

(a) in the case of an order under subsection (1)—notice of the revocation or suspension is served on the building society to which the order relates; and

(b) in the case of an order under subsection (5)—notice of the revocation or suspension is published in the Gazette.

(10) A person aggrieved by—

(a) an order under subsection (1) or (5);

(b) the revocation or suspension of the operation of such an order; or

(c) the refusal of an application for an order or for revocation or suspension of the operation of an order,

may, within 2 months after the service or publication, as the case may be, of notice of the order or notice of the revocation or suspension or after the refusal, as the case may be, appeal to the Court, and the Court may confirm, set aside or modify the order, or confirm or set aside the revocation, suspension or refusal, and may make such further order as it thinks just.

99. Persons entitled to inspect balance sheets, etc., of building society. (1) A building society shall, not less than 14 days before each annual general meeting, send to the Registrar and have available at its registered office and at each branch office and open at all reasonable hours to inspection by any member, depositor or creditor without fee a copy of all accounts and, if it is a holding body, group accounts that are to be laid before the building society at the meeting, together with a copy of the statements required under section 94, a copy of the directors' report required under section 95 and a copy of the auditor's report or reports required by section 110 (1).

(2) A building society shall furnish to a member, depositor or creditor, on request in writing being made by him to the building society, as soon as practicable and without charge, a copy of the documents last made available for inspection under subsection (1).

(3) It is a defence to a prosecution for a failure to comply with subsection (2) if the defendant proves that the person in relation to whom the failure occurred had, before the failure occurred, been furnished with a copy of the documents referred to in subsection (2).

100. Accounts and reports to be laid before annual general meeting. The directors of a building society shall cause to be laid before each annual general meeting of the building society held in accordance with section 83—

- (a) a copy of the profit and loss account made out in accordance with section 94 (1) for the last financial year of the building society;
- (b) a copy of the balance-sheet made out in accordance with section 94 (2) (a) as at the end of the last financial year of the building society;
- (c) a copy of the statement of sources and application of funds made out in accordance with section 94 (2) (b) for the last financial year of the building society;
- (d) in the case of a building society that, at the end of its last financial year before the relevant annual general meeting, was not a holding body—a copy of the directors' report made out in accordance with section 95 (1) in respect of that financial year;
- (e) in the case of a building society that, at the end of its last financial year before the relevant annual general meeting, was a holding body—a copy of the group accounts made out in accordance with section 94 (3) in relation to that financial year and a copy of the directors' report made out in accordance with section 95 (2) in respect of the profit or loss and the state of affairs of the group of corporations of the holding body as at the end of that financial year;
- (f) a copy of any auditor's report required by section 94 (5) to be attached to the accounts or group accounts of the building society; and

- (g) a copy of the statement by the directors required by section 94 (10) or (11) to be attached to the accounts or group accounts of the building society.

101. Assets revaluation reserve account. Where in the accounts of a building society any amount is or has been applied or transferred to an assets revaluation reserve account (by whatever name called) as a result of a revaluation of the assets of the building society or by reason of the adoption and use of any accounting principle that has the effect of creating such a reserve account, the building society shall not apply or transfer any amount from that account for any purpose unless the amount has been actually realised through the sale or disposal of those assets.

102. Failure to comply with this Division. (1) Subject to this section, if a director of a building society fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the preceding provisions of this Division (other than section 92) he commits an offence against this Act.

Penalty—

- (a) if the offence was committed with intent to deceive or defraud members or creditors of the building society or any other person or for any other fraudulent purpose—\$20 000 or imprisonment for 5 years, or both; or
- (b) in a case to which paragraph (a) does not apply—\$5 000.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a building society or group accounts of a holding body by reason of an omission from the accounts or group accounts it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 94 to be dealt with in the accounts or group accounts, as the case may be.

(3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, or for having knowingly been the cause of any default under, any of the preceding provisions of this Division relating to the accounts of a building society or the group accounts of a holding body by reason that the accounts or group accounts, as the case may be, have not been made out in accordance with an applicable prescribed accounting standard, the onus of proving that the accounts or group accounts, as the case may be, would not, if made out in accordance with that accounting standard, have given a true and fair view of the matters required by section 94 to be dealt with in the accounts or group accounts lies on that person.

(4) If, after the expiration of the period within which any accounts of a building society, or any report of the directors of a building society,

are or is required by section 94 or 95 to be made out, the Registrar, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with section 94 or 95, proof of the failure to produce the accounts or report as required by the notice is prima facie evidence that the accounts or report were not made out within that period.

Division 4—Audit

103. Qualifications of auditors. (1) Subject to this section, a person shall not—

- (a) consent to be appointed as auditor of a building society;
- (b) act as auditor of a building society; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a building society.

if—

- (d) the person is not a registered company auditor;
- (e) the person, or a corporation in which the person is a substantial shareholder for the purposes of Division 4 of Part IV of the *Companies (Queensland) Code* or the provisions of the law of another State or of a Territory that correspond with that Division, is indebted in an amount exceeding \$5 000 to the building society or to a subsidiary thereof;
- (f) the person is an officer of the building society;
- (g) the person is a partner, an employer or an employee of, an officer of the building society; or
- (h) the person is a partner or an employee of an employee of an officer of the building society.

(2) A firm shall not—

- (a) consent to be appointed as auditor of a building society;
- (b) act as auditor of a building society; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a building society.

unless—

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in Queensland;
- (e) where the business name under which the firm is carrying on business is not registered under the *Business Names Act 1962-1979*—there has been lodged with the Registrar a return in the prescribed form showing, in relation to each member

of the firm, his full name and his address as at the time when the firm so consents, acts or prepares a report;

- (f) no member of the firm, and no corporation in which any member of the firm is a substantial shareholder within the meaning of Division 4 of Part IV of the *Companies (Queensland) Code* or the provisions of the law of another State or of a Territory that correspond with that Division, is indebted in an amount exceeding \$5 000 to the building society or to a subsidiary thereof;
- (g) no member of the firm is—
 - (i) an officer of the building society;
 - (ii) a partner, an employer or an employee of an officer of the building society; or
 - (iii) a partner or an employee of an employee of an officer of the building society; and
- (h) no officer of the building society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For the purposes of subsections (1) and (2), a person shall be deemed to be an officer of a building society if he is an officer of a subsidiary of the building society or, except where the Registrar, if he thinks fit in the circumstances of the case, directs otherwise, if he has at any time within the immediately preceding period of 12 months been an officer of the building society or of a subsidiary thereof.

(4) For the purposes of this section, a person shall not be taken to be an officer of a building society by reason only of his being or having been the liquidator of that building society or of a subsidiary thereof.

(5) For the purposes of this section, a person shall not be deemed to be an officer of a building society by reason only of his having been appointed as auditor of that building society or of a subsidiary thereof or, for any purpose relating to taxation, a public officer of the building society, or by reason only of his being or having been authorized to accept on behalf of the building society, or the subsidiary service of process or any notices required to be served on the building society or the subsidiary.

(6) The appointment of a firm as auditor of a building society shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in the State or not, at the date of appointment.

(7) Where a firm that has been appointed as auditor of a building society is reconstituted by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member or members or both—

- (a) a person who was deemed under subsection (6) to be an auditor of the building society and who has so retired or withdrawn from the firm as previously constituted shall be

deemed to have resigned as auditor of the building society as from the day of his retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and after the retirement or withdrawal of that person there is no member of the firm who is a registered company auditor, section 107 does not apply to that resignation:

- (b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the building society as from the date of his admission: and
- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the building society.

but nothing in this subsection affects the operation of subsection (2).

(8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a building society that is deemed by subsection (6) to have been made by reason of the appointment of the firm as auditor of the building society is not affected by the dissolution of the firm.

(9) A report or notice that purports to be made or given by a firm appointed as auditor of a building society shall not be taken to be duly made or given unless it is signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(10) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a building society or prepares a report required by this Act to be prepared by an auditor of a building society each member of the firm commits an offence against this Act.

(11) A person shall not—

- (a) if he has been appointed auditor of a building society—knowingly disqualify himself while the appointment continues from acting as auditor of the building society: or
- (b) if he is a member of a firm that has been appointed auditor of a building society—knowingly disqualify the firm while the appointment continues from acting as auditor of the building society.

104. Appointment of auditors of existing building societies. (1) Within one month after the date of commencement of this Act, or within such longer period as the Registrar, if he thinks fit in the circumstances of the case, allows, the directors of a building society that does not have an auditor or that does not have an auditor qualified under section 103 for appointment as an auditor shall take all steps necessary for the appointment of a person or persons, a firm or firms, or a person or persons and a firm or firms who or which are so qualified as auditor or auditors of the building society unless the building society at a general meeting has appointed an auditor or auditors so qualified.

(2) If a director of a building society fails to take all reasonable steps to comply with or secure compliance with subsection (1) he commits an offence against this Act.

(3) A person or firm appointed as auditor of a building society under subsection (1) shall, subject to this Act, hold office until the next annual general meeting of the building society.

105. Nomination of auditors. (1) Subject to this section, a building society is not entitled to appoint a person or a firm as auditor of the building society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his or its nomination as auditor was given to the building society by a member of the building society—

- (a) before the meeting was convened; or
- (b) not less than 21 days before the meeting.

(2) If a building society purports to appoint a person or firm as auditor of the building society in contravention of subsection (1), the purported appointment is of no effect and the building society and any officer of the building society who is in default each commits an offence against this Act.

(3) Where notice of nomination of a person or firm for appointment as auditor of a building society is received by the building society whether for appointment at a meeting or an adjourned meeting referred to in section 106 (10) or at an annual general meeting, the building society shall—

- (a) not less than 7 days before the meeting; or
- (b) at the time notice of the meeting is given.

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the building society, to each member of the building society and to the Registrar.

(4) It shall be sufficient compliance with the provisions of subsection (3) in so far as the sending of a copy of the notice of nomination to each member is concerned if the nomination is advertised in such a way as to comply in all respects with the requirements prescribed for such advertising.

106. Appointment of auditors. (1) Within one month after the date on which a building society is registered, the directors of the building society shall appoint, unless the building society at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the building society.

(2) A person or firm appointed as auditor of a building society under subsection (1) shall hold office subject to this Division until the first annual general meeting of the building society.

(3) A building society shall—

- (a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms as auditor or auditors of the building society; and
- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the building society appoint a person or persons or a firm or firms, or a person or persons and a firm or firms to fill the vacancy.

(4) A person or firm appointed as auditor under subsection (3) holds office until death, removal or resignation from office in accordance with section 107 or until ceasing to be capable of acting as auditor by reason of section 103 (1) or (2).

(5) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of a building society, if there is no surviving or continuing auditor of the building society, the directors shall, unless the building society, at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy, appoint a person or persons, a firm or firms or a person or persons and a firm or firms, to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A building society, or the directors of a building society, shall not appoint a person or firm as auditor of the building society unless that person or firm has, before the appointment, consented by notice in writing given to the building society, or to the directors, to act as auditor and has not withdrawn his or its consent by notice in writing given to the building society, or to the directors.

(8) A notice under subsection (7) given by a firm shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(9) If a building society appoints a person or firm as auditor of the building society in contravention of subsection (7), the purported appointment does not have any effect and the building society, and any officer of the building society, who is in default each commits an offence against this Act.

(10) Where an auditor of a building society is removed from office at a general meeting in accordance with section 107—

- (a) the building society may at that meeting (without adjournment) by a resolution passed by a majority of not less than two-thirds of such members of the building society as, being entitled so to do, vote in person or, where proxies are allowed, by proxy forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms to whom or which has been sent a copy

of the notice of nomination in accordance with section 105 (3); or

- (b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the building society may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the building society, from a member of the building society, at least 14 clear days before the date to which the meeting is adjourned.

(11) If after the removal from office of an auditor of a building society, the building society fails to appoint another auditor under subsection (10), the building society shall, within 7 days after the failure, notify the Registrar accordingly, whereupon the Registrar shall, unless there is another auditor of the building society whom the Registrar believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor or auditors of the building society, a person or persons, a firm or firms, or a person or persons and a firm or firms who or which consents or consent to be so appointed.

(12) Subject to subsection (11), if a building society does not appoint an auditor when required by this Act to do so, the Registrar may, on the application in writing of a member of the building society appoint as auditor or auditors of the building society a person or persons, a firm or firms, or a person or persons and a firm or firms who or which consents or consent to be so appointed.

(13) A person or firm appointed as auditor of a building society under subsection (5), (10), (11) or (12) holds office, subject to this Division, until the next annual general meeting of the building society.

(14) If a director of a building society fails to take all reasonable steps to comply with, or secure compliance with, subsection (1) or (5) he commits an offence against this Act.

(15) Where a person or firm is appointed as an auditor under subsection (1), (3), (5) or (10), the building society shall within 14 days after the appointment, lodge with the Registrar a notice in the prescribed form stating that the appointment has been made and specifying the name of the person or firm and such other particulars relating to the appointee as are prescribed.

107. Removal and resignation of auditors. (1) An auditor of a building society may be removed from office by resolution of the building society at a general meeting of which special notice has been given, but not otherwise.

(2) Where notice of a resolution to remove an auditor is received by a building society, it shall forthwith send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.

(3) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing to the building society not exceeding a reasonable length, and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the building society at its expense to every member of the building society and to the Registrar.

(4) Unless the Registrar on the application of the building society otherwise orders, the building society shall send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his right to be heard orally or where a firm is the auditor to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) An auditor of a building society may, by notice in writing given to the building society, resign as auditor of the building society if—

(a) he has, by notice in writing given to the Registrar, applied for consent to his resignation and stated the reasons for his application and, at or about the same time as he gave the notice to the Registrar, notify the building society in writing of his application to the Registrar; and

(b) he has received the consent of the Registrar.

(6) The Registrar shall, as soon as practicable after receiving a notice from an auditor under subsection (5), notify the auditor and the building society whether he consents to the resignation of the auditor.

(7) A statement made by an auditor in an application to the Registrar under subsection (5) or in answer to an inquiry by the Registrar relating to the reasons for the application—

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate signed by the Registrar that the statement was made in the application or in answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

(8) A person aggrieved by the refusal of consent by the Registrar to the resignation of an auditor of a building society may, within one month after the date of the refusal, appeal to the Court from the refusal, and thereupon the Court, after giving the building society an opportunity to be heard, may confirm or reverse the refusal and may make such further order as it thinks just.

(9) Subject to any order of the Court under subsection (8), the resignation of an auditor takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Registrar gives his consent to the resignation; or

(c) on the date (if any) fixed by the Registrar for the purpose, whichever last occurs.

(10) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of section 103 (2) (d), of acting as auditor of a building society, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the building society) be deemed to be the auditor of the building society until he obtains the consent of the Registrar to his retirement or withdrawal.

(11) Forthwith after receipt of a notice of resignation from an auditor of a building society, or, where an auditor of a building society is removed from office, forthwith after the removal, the building society shall lodge a notice of the resignation or removal in the prescribed form with the Registrar.

108. Effect of winding up on office of auditor. An auditor of a building society ceases to hold office if—

- (a) a special resolution is passed for the voluntary winding up of the building society;
- (b) an order is made by the Court for the winding up of the building society; or
- (c) the Registrar certifies under section 130 (3) as to any of the events referred to in that section in relation to the building society.

109. Fees and expenses of auditors. The reasonable fees and expenses of an auditor of a building society are payable by the building society.

110. Duties of auditors. (1) An auditor of a building society shall report to the members of the building society on the accounts required to be laid before the building society at the annual general meeting and on the building society's accounting records and other records relating to those accounts and if it is a holding body for which group accounts are required shall also report to the members on the group accounts.

(2) A report by an auditor of a building society under subsection (1) shall be furnished by the auditor to the directors of the building society in sufficient time to enable the building society to comply with the requirements of section 99 (1) in relation to that report.

(3) An auditor shall, in a report under this section, state—

- (a) whether the accounts, and if the building society is a holding body for which group accounts are required, the group accounts are in his opinion properly drawn up—
 - (i) so as to give a true and fair view of the matters required by section 94 to be dealt with in the accounts and, if there are group accounts, in the group accounts;
 - (ii) in accordance with the provisions of this Act;
 - (iii) in accordance with the applicable prescribed accounting standard;
- (b) if, in his opinion, the accounts, or, if the building society is a holding body for which group accounts are required,

the accounts or group accounts, have not been drawn up in accordance with a particular applicable prescribed accounting standard—

- (i) whether, in his opinion, the accounts or group accounts, as the case may be, would, if drawn up in accordance with that accounting standard, have given a true and fair view of the matters required by section 94 to be dealt with in the accounts or group accounts;
 - (ii) if, in his opinion, the accounts or group accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters, his reasons for being of that opinion;
 - (iii) if the directors have caused to be attached to the accounts or group accounts a statement under section 94 (10) or (11), as the case may be, giving particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts, his opinion concerning the particulars; and
 - (iv) in a case to which neither subparagraph (ii) nor (iii) applies, particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts, as the case may be;
- (c) whether the accounting records and other records, and the registers, required by this Act, or its rules, to be kept by the building society have been, in his opinion, properly kept in accordance with the provisions of this Act and the rules;
 - (d) whether the accounting records and other records and the registers required by the *Companies (Queensland) Code* to be kept by a subsidiary of the building society (other than a subsidiary of which he has not acted as auditor) have been, in his opinion, properly kept in accordance with the provisions of that Code or, in the case of a subsidiary incorporated in another State or in a Territory, in accordance with the provisions of the corresponding law of that State or Territory;
 - (e) whether the building society maintained a satisfactory system of control over its transactions and records, and in particular whether the requirements of paragraphs (b) and (c) of section 92 (1) have been complied with;
 - (f) in the case of group accounts—
 - (i) the names of the subsidiaries (if any) of which he has not acted as auditor;
 - (ii) whether he has examined the accounts and auditors' reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether

separately or consolidated with other accounts) in the group accounts;

- (iii) whether he is satisfied that the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for that purpose; and
- (iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under section 285 (4) of the *Companies (Queensland) Code* or the corresponding provisions of the law in force in another State or in a Territory and, if so, particulars of the qualification or comment;
- (g) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and
- (h) if he is not satisfied as to any matter referred to in paragraph (a), (b), (c), (d), (e) or (f) his reasons for not being so satisfied.

(4) It is the duty of an auditor of a building society to form an opinion as to each of the following matters:—

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether the returns received from branch offices of the building society are adequate;
- (c) whether the provisions of this Act and the rules relating to the administration and employment of the funds of the building society have been observed;
- (d) whether proper accounting records and other records, including registers, have been kept by the building society as required by this Act or its rules;
- (e) where the building society is a holding body, whether the procedures and methods used by the holding body and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate in the circumstances of the consolidation;
- (f) where group accounts are prepared otherwise than as one set of consolidated accounts for the group, whether he agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts; and
- (g) whether the provisions of this Act relating to the making of advances have been observed,

and he shall state in his report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(5) An auditor of a building society has a right of access at all reasonable times to the accounting records and other records, including registers, of the building society and is entitled to require from any officer of the building society such information and explanations as he desires for the purposes of audit.

(6) An auditor of a holding body has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding body, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(7) The auditor's report shall be attached to or endorsed upon the accounts or group accounts and shall, if a member so requires, be read before the building society at the annual general meeting.

(8) An auditor of a building society or his agent authorized by him in writing for the purpose is entitled to attend any meeting of the building society and to be given written notice of and other communications relating to, any meeting that a member of the building society is entitled to receive, and to be heard at any meeting which he attends on any part of the business of the meeting that concerns the auditor in his capacity as auditor and is entitled so to be heard notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.

(9) If an auditor of a building society becomes aware that the building society or the directors has or have made default in complying with section 83 or the provisions of section 100 relating to the laying of accounts or group accounts before the annual general meeting of the building society the auditor shall forthwith furnish to the Registrar a written report on the matter.

(10) Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of his duties as auditor of a building society—

(a) is satisfied that there has been a breach or non-observance of any of the provisions of this Act or of the rules of the building society; or

(b) becomes aware of a prescribed matter,

he shall forthwith furnish to the Registrar a written report on the breach, non-observance or matter.

(11) An auditor shall at the time at which he furnishes his report to the directors of a building society pursuant to subsection (2) send a copy thereof accompanied by the accounts or, as the case may be, the group accounts to the Registrar.

(12) Any auditor or former auditor of a building society shall give to the Registrar such information and explanations in respect of the

affairs of the building society as the Registrar requires and the auditor or former auditor is able to give.

111. Obstruction of auditor. An officer or auditor of a building society, or any subsidiary thereof, who refuses or fails without lawful excuse to allow an auditor of the building society access, in accordance with section 110, to any accounting records and other records, including registers, of the building society or subsidiary in his custody or control, or to give any information or explanation as and when required under that section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

112. Provisions indemnifying auditors. (1) Any provision, whether contained in the rules of, or in a contract with, a building society, or otherwise, for exempting any auditor from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the building society is void.

(2) Notwithstanding anything in this section a building society may, pursuant to its rules or otherwise, indemnify any auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application in relation to any such proceedings in which relief is, under this Act, granted to him by the Court.

(3) Subsection (1) does not apply in relation to a contract of insurance, not being a contract of insurance the premiums in respect of which are paid by the building society.

113. Auditors and other persons to enjoy qualified privilege in certain circumstances. (1) A person is not, in the absence of ill-will to the person concerned or any other improper motive on his part, liable to any action for defamation at the suit of any person in respect of any statement that he makes in the course of his duties as auditor of a building society.

(2) A person is not, in the absence of ill-will to the person concerned or any other improper motive on his part, liable to any action for defamation at the suit of any person in respect of the publishing of any document prepared by an auditor of a building society in the course of his duties and required by or under this Act to be lodged with or furnished to the Registrar, or required by or under a law in force in another State or in a Territory to be lodged with or furnished to a person who under that law exercises functions similar to those exercised by the Registrar under this Part, whether or not the document has been so lodged or furnished.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Division 5—Registers

114. Registers. (1) A building society shall keep—

- (a) a register of members and shares;
- (b) a register of loans raised by the building society;
- (c) a register of bills of exchange and promissory notes negotiated by the building society for the purpose of raising money;
- (d) a register of loans made by, and securities given in respect of such loans to, the building society;
- (e) a register of investments made by the building society; and
- (f) such other registers as are prescribed.

(2) The registers required to be kept by a building society shall be kept in such form and in such manner and shall contain such particulars, as are prescribed.

(3) Subject to any regulations made for the purposes of subsection (2), for the purposes of this Act any register, index, minute book or book of account may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(4) Where any register, index, minute book or book of account required by this Act to be kept is not kept by making entries in a bound book, but by some other means, reasonable precautions shall be taken for guarding against falsification and for facilitating its discovery, and where default is made in complying with this subsection a building society and any officer of the building society who is in default each commits an offence against this Act.

(5) Except as provided in this section, no notice of any express, implied or constructive trust, shall be entered in any register or account kept by a building society or be received by a building society or by the Registrar.

(6) Where the rules of a building society so provide, an entry in a register or an account kept by the the building society in respect of any shares in the building society or moneys deposited with the building society may, in the circumstances and in the manner authorized by the rules, be made so as to indicate that the shares or the moneys are held by, or vested in, a person upon trust.

(7) No liabilities are affected by anything done in pursuance of subsection (6) and the building society concerned shall not be affected with notice of any trust by anything so done.

115. Inspection by members of registers, etc. (1) A building society shall keep at its registered office and open at all reasonable hours to inspection by any member without fee—

- (a) a copy of this Act;
- (b) a copy of the rules of the building society;
- (c) the prescribed register of loans raised by the building society;
- (d) the prescribed register of bills of exchange and promissory notes negotiated by the building society for the purpose of raising money; and
- (e) such other registers (other than a register to which section 114 (1) (a), (d) or (e) relates) as may be prescribed, for the purposes of this subsection.

(2) A building society shall keep at each branch office and open at all reasonable hours to inspection by any member without fee, the documents to which paragraphs (a) and (b) of subsection (1) refer.

(3) A member may inspect his own account in the books of a building society at any reasonable time.

Division 6—Returns

116. Returns. (1) A building society shall in respect of each financial year of the building society lodge with the Registrar a copy, certified by one of the directors to be a true copy, of the balance-sheet, profit and loss account, source and application of funds' statement and other statements and reports prepared in pursuance of sections 94, 95 and 110 and laid or required to be laid before the annual general meeting.

(2) The documents required to be lodged with the Registrar under subsection (1) shall be accompanied by—

- (a) a declaration by the prescribed officer of the building society in the prescribed form and containing the prescribed particulars; and
- (b) such other statements and returns as are prescribed.

(3) The documents referred to in subsections (1) and (2) in respect of each financial year of a building society shall be lodged within 4 months after the close of the financial year in question.

(4) The Registrar may on such conditions as he thinks fit, on written application by a building society made in accordance with a resolution of its board and signed by a director or the secretary extend the period of 4 months referred to in subsection (3).

(5) A building society shall furnish to the Registrar such other statements and returns as are prescribed.

(6) In addition to the returns, reports and other documents required elsewhere in this Act to be submitted to him, a building society shall, at the request of the Registrar, furnish to the Registrar such further information and particulars with respect to the affairs, and any matters

relevant to the affairs, of the building society as he may from time to time require and the building society shall furnish to the Registrar the information and particulars so requested in the form and within the time and at the place specified by him in the request.

(7) If a building society fails to comply in any respect with this section or with a requirement by, or a request of, the Registrar pursuant to this section, the building society and any officer of the building society who is in default each commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months.

PART VI—DISPUTES

117. Disputes. (1) For the purpose of this section “building society” shall include the board and any officer, and “member” shall include—

- (a) any person aggrieved who has not for more than 3 months ceased to be a member;
- (b) any person claiming through or under a member, or through or under a person referred to in paragraph (a).

(2) Subject to this section, every dispute between a member of a building society, in his capacity as a member, and the building society shall be determined in the manner prescribed by the rules of the building society.

(3) Any party to a dispute referred to in this section may refer the dispute to the Registrar, if it has not been referred to arbitration in accordance with the rules of the building society or, in the case of such a dispute that has been so referred to arbitration, if one month has elapsed without an award being made.

(4) (a) Where the dispute is referred to the Registrar, the Registrar or any person deputed by him may hear and determine the dispute, and may order the expenses of the hearing and such costs of the parties as he specifies to be paid out of the funds of the building society or by such party to the dispute as he thinks fit.

(b) Where the Registrar decides not to hear or depute the hearing of the dispute, he shall, within one month of receipt of the reference, notify the parties in writing of his decision.

(c) If the Registrar decides not to hear or depute the hearing of the dispute, the dispute shall be determined in the manner (other than by reference to the Registrar under this section) prescribed by the rules of the building society but where the only manner prescribed by those rules for the determination of the dispute is by reference to the Registrar the dispute shall be determined by arbitration in accordance with the *Arbitration Act 1973* in which case subsections (6), (7), (8), (9) and (10) shall not apply.

(5) Where the dispute is so referred and the Registrar decides to hear, or depute the hearing of, the dispute, the Registrar or person deputed by him may administer an oath or affirmation and may, by

notice in writing given in the prescribed manner, require the attendance of any party or witness, and the production of any books, accounts, records, minutes, registers or documents relating to the matter in question.

(6) The provisions of section 29 of the *Arbitration Act 1973*, and of any rules made under that Act that relate to the operation of that section, shall apply, *mutatis mutandis*, to and in respect of a dispute as if the Registrar or person deputed by him to hear the dispute were an arbitrator and as if the reference of the dispute to the Registrar were a reference under that Act.

(7) Any determination or order in accordance with this section, whether made on a reference to the Registrar or otherwise, shall be binding and conclusive on all parties without appeal, and shall not be removable into any court or be restrainable by injunction.

(8) Any determination or order referred to in subsection (7) may be registered, by any person interested, in the Court and thereupon it shall be deemed to be a judgment or order of that Court and may be enforced in the same manner as such a judgment or order.

(9) The Court may give such relief and make such orders and give such directions in relation to the enforcement of any determination or order registered in the Court under subsection (8) as it may deem proper.

(10) Any order made or direction given by the Court under this section may be enforced by any process or procedure which would be applicable if the order had been made upon the hearing of an action in the Court or by such process or procedures as the Court may direct.

(11) Nothing in this section shall extend to any dispute as to the construction or effect of this Act or of any mortgage or other security or of any contract contained in any document other than the rules of the building society.

(12) Any person who fails, without lawful excuse, to comply with a requirement of the Registrar, or person deputed by him, pursuant to subsection (5) commits an offence against this Act.

Penalty: \$1000 or imprisonment for 3 months.

PART VII—AMALGAMATION AND TRANSFER OF ENGAGEMENTS

118. Amalgamation. (1) Subject to this section, any 2 or more building societies may apply to the Registrar to be registered as an amalgamated building society with or without any winding up or division of the funds of the building societies or any of them.

(2) An application under subsection (1) shall not be made—

(a) unless the amalgamation and the terms thereof have been approved by a special resolution of each of the building societies; or

- (b) if the amalgamation is disapproved in writing by the holders of not less than one-third of the whole number of shares of an amalgamating building society and the disapprovals are received by the building society in question before the day on which the meeting to consider the special resolution referred to in paragraph (a) is held unless the amalgamation is confirmed under section 121 (6).

(3) The application shall be in the form prescribed and shall be accompanied by—

- (a) 2 copies of the proposed rules of the amalgamated building society;
- (b) such other particulars as may be prescribed.

(4) If the Registrar is satisfied that the building societies have complied with the provisions of this Act in relation to the application and that the proposed rules of the amalgamated building society are not contrary to this Act, are adequate for the proper conduct and operation of the amalgamated building society and are such as may reasonably be approved by him, the Registrar shall, upon the surrender to him of the certificates of incorporation of the amalgamating building societies—

- (a) register the amalgamated building society and its rules;
- (b) issue a certificate in the prescribed form that the building society is incorporated as an amalgamated building society under this Act on and from the date specified in the certificate; and
- (c) notify the issue of the certificate in the Gazette.

(5) The Registrar may exercise his powers under subsection (4) notwithstanding that a relevant certificate of incorporation has not been surrendered to him where he is satisfied that the certificate has been lost.

(6) The Registrar may, following the issue of the certificate under subsection (4), cancel the registration and remove from the register the name of any building society that has so amalgamated but before so doing the Registrar shall give notice of his intention so to do to the amalgamated building society.

(7) On and from the day on which the certificate of incorporation of the amalgamated building society is issued—

- (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to a building society that is a party to the amalgamation shall, by virtue of this Act without any conveyance, transfer or assignment, vest in or belong to the amalgamated building society;
- (b) all debts, moneys and claims, liquidated and unliquidated, that, immediately before that day, were due or payable to,

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- or recoverable by, a building society that is a party to the amalgamation shall be debts due and moneys payable to and claims recoverable by the amalgamated building society;
- (c) all suits, actions and proceedings pending immediately before that day at the suit of a building society that is a party to the amalgamation shall be respectively suits, actions and proceedings pending at the suit of the amalgamated building society and all suits, actions and proceedings so pending at the suit of any person against a building society that is a party to the amalgamation shall be respectively suits, actions and proceedings pending at the suit of that person against the amalgamated building society;
 - (d) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by a building society that is a party to the amalgamation and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the amalgamated building society;
 - (e) the amalgamated building society may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of moneys and claims referred to in this subsection and for the prosecution of suits, actions and proceedings so referred to as a building society that is a party to the amalgamation might have done but for the amalgamation;
 - (f) the amalgamated building society may enforce and realise any security or charge existing immediately before that day in favour of a building society that is a party to the amalgamation and may exercise any powers thereby conferred on a building society that is a party to the amalgamation as if the security or charge were a security or charge in favour of the amalgamated building society;
 - (g) all debts, moneys and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, a building society that is a party to the amalgamation shall be debts due and moneys payable by and claims recoverable against the amalgamated building society; and
 - (h) all liquidated and unliquidated claims for which a building society that is a party to the amalgamation would, but for the amalgamation, have been liable shall be liquidated and unliquidated claims for which the amalgamated building society shall be liable.
- (8) On and from the day on which the certificate of incorporation of the amalgamated building society is issued, a reference in any instrument to a building society that is a party to the amalgamation

shall be read and construed as if it were a reference to the amalgamated building society.

(9) The members of an amalgamated building society shall be the persons who, immediately before the amalgamation, were members of the building societies that were parties to the amalgamation and any other persons who are admitted to membership in accordance with the rules of the amalgamated building society.

(10) The amalgamation shall not prejudice any right of a creditor of any building society which is a party to the amalgamation.

(11) For the purposes of this section the property of the building societies that are parties to the amalgamation shall include all estates and interests in property, whether real or personal, vested or contingent.

(12) Upon production of the certificate of the Registrar issued pursuant to subsection (4) (b) and of the appropriate instrument of title (if any)—

(a) the Registrar of Titles, where the *Real Property Act 1861-1981* applies; or

(b) the person or authority charged with registering instruments of title or dealings, where that Act does not apply.

shall make such entries or notations upon existing instruments of title or shall issue such new instruments of title as are necessary to evidence the vesting by virtue of this section of any estate or interest in land in the amalgamated building society.

(13) Any property that is vested in or transferred to the amalgamated building society by virtue of or in pursuance of this section shall be subject to any debt, liability or obligation specially charged on or affecting the same immediately before the vesting or transfer.

119. Transfer of engagements. (1) Subject to this section a building society may by special resolution transfer its engagements to another building society which undertakes to fulfil those engagements.

(2) For the purposes of subsection (1), a building society may—

(a) by special resolution; or

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

undertake to fulfil the engagements of another building society.

(3) A transfer of engagements between a building society and another building society under this section shall not have effect—

(a) unless the special resolution of the transferor building society has been registered;

(b) if the holders of not less than one-third of the whole number of shares of the transferor building society have disapproved in writing of the transfer and the disapprovals were received by the transferor building society before the day on which the meeting to consider the special resolution referred to in

paragraph (a) is held, unless the transfer has been confirmed under section 121 (6);

- (c) where a building society has, by special resolution, undertaken to fulfil the engagements of another society—if the holders of not less than one-third of the whole number of shares of the transferee building society have disapproved in writing of the transfer and the disapprovals were received by the transferee building society before the day on which the meeting to consider the special resolution is held, unless the transfer has been confirmed under section 121 (6).

(4) The Registrar, before registering the special resolution referred to in subsection (3) (a) may require such evidence as he deems necessary to ensure—

- (a) that the transferee building society has by means authorized by this section undertaken to fulfil the engagements of the transferor building society;
- (b) that the statements referred to in section 121 (1) have (unless exemption has been granted by the Registrar pursuant to that section), been sent in accordance with that section; and
- (c) that the transfer has not been disapproved as specified in subsection (3) (unless the Registrar has, pursuant to the provisions of section 121 (6) confirmed the transfer).

(5) Within one month of the passing under subsection (2) of a resolution to which paragraph (b) of that subsection refers, the building society shall lodge in the prescribed form notice of the resolution with the Registrar and if the building society fails so to lodge, the building society and any officer of the building society who is in default each commits an offence against this Act.

(6) The provisions of subsections (7) and (10) to (13) (both inclusive) of section 118 shall apply, *mutatis mutandis*, to a transfer of engagements where a building society transfers the whole of its engagements to another building society, and for the purpose of that application—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements or property or specified part thereof as the case may be;
- (b) a reference to property shall be construed as a reference to the engagements transferred or property or specified part thereof;
- (c) a reference to the amalgamated building society shall be construed as a reference to the building society to which the engagements or property or specified part thereof are or is transferred;
- (d) a reference to a building society that is a party to the amalgamation shall be construed as a reference to the building society transferring its engagements or property or specified part thereof as the case may be; and

- (e) a reference to the issue of the certificate of incorporation shall be construed as a reference to the registration of the special resolution of the transferor building society referred to in subsection (1).

(7) The Registrar may, following the registration, in accordance with the requirements of subsection (3) (a), of the special resolution of the transferor building society for the transfer of the whole of its engagements, cancel the registration and remove from the register the name of that building society but before so doing the Registrar shall give notice of his intention so to do to the transferee building society.

(8) The members of a building society to which another building society has transferred the whole of its engagements pursuant to this section shall be the persons who immediately before the transfer took effect were members of the building societies that were parties to the transfer and any other persons who are admitted after the transfer to membership of the transferee building society in accordance with its rules.

120. Transfer of engagements by direction of Registrar. (1) Subject to this section, the Registrar may, with the approval of the Minister—

- (a) direct a building society to transfer its engagements to another building society approved by the Registrar that has undertaken to fulfil those engagements;
- (b) at the same time, require the building society, within a period specified by the Registrar when giving the direction or within such further period as the Registrar may allow, to enter into an agreement, approved by the Registrar, to give effect to the transfer of engagements directed.

(2) The Registrar shall not give a direction under subsection (1) unless he certifies—

- (a) that the number of members is reduced to less than 100 or such other number as is prescribed for the purposes of section 9;
- (b) that the building society has not commenced business within 6 months of registration or has not done any business for a period of more than 6 months;
- (c) that the building society has, after notice by the Registrar of any breach of, or non-compliance with this Act, or the rules of the building society failed, within the time specified in the notice, to remedy the breach or non-compliance or has committed any further breach of a kind specified in the notice;
- (d) that there are, and have been for a period of one month immediately before the date of the certificate, insufficient directors of the building society to constitute a quorum as provided by the rules of the building society;
- (e) that, as a result of an inquiry pursuant to the provisions of Division 4 of Part X into the affairs of the building society

or the working and financial condition of the building society, or a special audit pursuant to those provisions, it is in the interests of members, depositors or creditors of the building society that the building society should transfer its engagements:

- (f) that, as a result of an investigation pursuant to the provisions of Division 3 of Part X into all or any of the affairs of the building society it is in the interests of members, depositors or creditors of the building society that the building society should transfer its engagements:
- (g) that the Advisory Committee or an administrator of the building society has recommended the transfer; or
- (h) that he considers it expedient to do so in the interests of members, depositors or creditors of the building society, for the building society to transfer the engagements.

(3) The Registrar shall not certify under subsection (2) unless the ground or matter to be certified has been proved to his satisfaction and unless, in the case of a matter specified in paragraph (c), (d), (e), (f), (g) or (h) of that subsection the Minister consents to the issue of the certificate.

(4) Where a building society fails to comply with a direction given to it under subsection (1) (a), the Registrar may notify the building society that he has elected to treat the certificate given under subsection (2) in relation to the building society as—

- (a) a certificate given under section 124 (2); or
- (b) a certificate given under section 130 (3).

(5) Where the Registrar notifies a building society as provided by subsection (4), this Act applies to and in respect of the building society as from the time when the notice is given as if the certificate that pursuant to subsection 4 (a) or (b) was specified in the notice has been duly given by the Registrar.

(6) The Registrar may, before a building society has, pursuant to a direction under subsection (1) (a), entered into an agreement pursuant to a requirement under subsection (1) (b) to transfer its engagements, revoke the direction.

(7) Notwithstanding anything to the contrary in the rules, a building society may, by resolution of the board, accept a transfer of engagements directed under this section.

(8) Sections 119 and 121 do not apply to a transfer of engagements under this section.

(9) The provisions of subsections (7) and (10) to (13) (both inclusive) of section 118 shall apply *mutatis mutandis* to a transfer of the whole

of its engagements pursuant to this section by a building society to another building society and for the purpose of that application—

- (a) a reference to amalgamation shall be construed as a reference to transfer of engagements or property or specified part thereof as the case may be;
- (b) a reference to property shall be construed as a reference to the engagements transferred or property or specified part thereof;
- (c) a reference to the amalgamated building society shall be construed as a reference to the building society to which the engagements or property or specified part thereof are or is transferred;
- (d) a reference to a building society that is a party to the amalgamation shall be construed as a reference to the building society transferring its engagements or property or specified part thereof as the case may be; and
- (e) a reference to the issue of the certificate of incorporation and to the date thereof shall be construed as a reference to the notification of the transfer of engagements in the Gazette in pursuance of subsection (10) and to the date specified therein as the day on which the transfer takes effect.

(10) A transfer of engagements under this section takes effect at the time and on the day specified by the Registrar by notification in the Gazette.

(11) All debts and liabilities, whether certain or contingent, and whether then existing or capable of arising at a future time to or with which any building society that is a party to the transfer of the whole of its engagements pursuant to this section is liable or charged at the date specified by the Registrar in the notification pursuant to subsection (10) in relation to the transfer, shall, by virtue of this Act, on and from that date become and be the debts and liabilities of the building society to which the transfer has been effected.

(12) In the case of a partial transfer of its engagements pursuant to this section by a building society debts and liabilities, whether certain or contingent, and whether then existing or capable of arising at a future time to or with which the building society is liable shall as specified by instrument in writing under the hand of the Registrar annexed to and identified in the agreement to give effect to the transfer approved by the Registrar under subsection (1)—

- (i) remain with the transferor building society; or
- (ii) become and be, by virtue of this Act, the debts and liabilities of the transferee building society,

according as, in the opinion of the Registrar at the time of the transfer having regard to all the circumstances including the engagements the subject of the transfer, the interests of members, the claims of creditors and the justice of the case requires.

(13) On the transfer of the whole of its engagements under this section, the Registrar may cancel the registration and remove from the register the name of the transferor building society but, before so doing, the Registrar shall give notice of his intention so to do to the transferee building society.

(14) An officer of a building society who—

- (a) fails to take all reasonable steps to secure compliance by the building society with a direction given or a requirement made under subsection (1); or
- (b) by a wilful act or omission is the cause of a failure by the building society to comply with a direction given or a requirement made, under subsection (1).

commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months.

(15) Subject to any applicable provisions expressed to apply to the transfer of the whole of the engagements of a building society the provisions of this section apply to and with respect to a transfer of the whole of its engagements and to a transfer of any of them.

(16) The members of a building society to which another building society has transferred the whole of its engagements pursuant to this section shall be the persons who immediately before the transfer took effect were members of the building societies that were parties to the transfer and any other persons who are admitted after the transfer to membership of the transferee building society in accordance with its rules.

(17) In the case of a partial transfer of its engagements pursuant to this section by a building society subsection (16) shall apply *mutatis mutandis* in relation to the transfer but the members of the transferor building society who cease to be members of that building society and become members of the transferee building society are such of the persons who, immediately before the transfer took effect, were members of the transferor building society as are specified for the purposes of this subsection in the agreement to give effect to the transfer approved by the Registrar under subsection (1).

121. Supplementary provisions as to amalgamation or transfer of engagements. (1) A building society—

- (a) desiring to amalgamate with one or more other building societies;
- (b) desiring to transfer its engagements to another building society; or
- (c) desiring, by way of special resolution, to undertake to fulfil the engagements of another building society.

shall, unless exempted in writing by the Registrar, send to each of its members a statement the contents of which have been approved by the Registrar concerning—

- (d) in respect of each of the parties of the proposed amalgamation or transfer of engagements—
 - (i) the financial position of the building society;
 - (ii) the interest of the directors of the building society in the amalgamation or transfer;
 - (iii) the compensation or other consideration proposed to be paid to the directors or other officers of the building society in relation to the amalgamation or transfer;
 - (iv) the payments to be made to members of the building society in consideration of the amalgamation or transfer of engagements; and
 - (v) such other matters as the Registrar may direct; and
- (e) in respect of the building society sending a statement—
 - (i) the right of its members to disapprove of the amalgamation or transfer of engagements and the effect of disapproval by holders of not less than one-third of the whole number of shares of the building society where such disapprovals are received before the day mentioned in section 118 (2) (b) or section 119 (3) (b) or (c), as the case may be; and
 - (ii) such other matters as the Registrar may direct.

(2) A statement sent pursuant to subsection (1) (d) shall include—

- (a) a report by a registered company auditor on the financial position of the building society;
- (b) a report by the directors of the building society as to whether there has arisen in the interval between the date up to which the auditor has prepared his report and the date of the statement any matter or circumstance that has significantly affected or that may significantly affect—
 - (i) the operations of the building society;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the building society.

(3) A statement under subsection (1) shall be sent so that it will in due course of post reach each member and the auditor of the building society not later than 21 days prior to the date of the meeting called to pass the special resolution referred to in section 118 (2) or section 119 (1), (2), or (3), as the case may require.

(4) A building society may apply to the Registrar to confirm an amalgamation or transfer of engagements, notwithstanding that the amalgamation or transfer of engagements has been disapproved in writing by the holders of not less than one-third of the whole number of shares of that building society and the disapprovals have been received before the day specified in that regard in subsection (1) (e) (i).

(5) Where an application is made under subsection (4), the building society shall give notice of the application in such manner, at such times and in such newspapers as the Registrar may direct.

(6) The Registrar shall consider the application and may, after hearing the building society and any other person whom he may consider entitled to be heard, confirm the amalgamation or transfer of engagements accordingly.

122. Representations to Advisory Committee. (1) Where a direction is given to a building society under section 120 (1), the building society may, not later than 14 days after the direction is given, make representations to the Advisory Committee with respect to the direction and, where any such representations are made, the Advisory Committee shall report thereon to the Minister.

(2) The Registrar shall exercise in relation to a building society his powers under section 120 (6) if the Minister so directs after considering a report under subsection (1) with respect to the building society.

PART VIII—SUSPENSION, ADMINISTRATION, RECEIVERSHIP AND WINDING UP OF BUILDING SOCIETIES

Division 1—Suspension

123. Power to suspend operations. (1) If, with respect to a building society, the Registrar considers it expedient to do so in the interests of persons—

- (a) who are or may become members of the building society;
- (b) who have invested or may invest in the building society;
or
- (c) who have deposited or may deposit money with the building society.

he may, with the approval of the Minister, by notice in writing served on the building society direct it not to do any one or more of the following:—

- (i) make any money available on loan to members or others;
- (ii) accept the deposit of any money;
- (iii) borrow any money;
- (iv) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the building society (other than a payment that fell due before the giving of the direction);
- (v) make repayment of any deposit or loan;
- (vi) make repayment of any amount representing the whole or any part of the amount of subscriptions for shares in the building society; or
- (vii) dispose of or otherwise deal with any property of the building society.

The provisions of paragraph (iv) do not apply to amounts due in respect of a share which represents interest on, or the repayment of, an advance made to the holder of the share.

(3) This section shall not make it unlawful for a building society to borrow money pursuant to section 44 or, with the consent in writing of the Minister, to borrow money from—

(a) a bank or a finance company;

(b) an insurer authorized to carry on business in Queensland under the Insurance Acts 1973 of the Commonwealth (as amended and in force for the time being) or under the *Insurance Act 1960-1976*, the State Government Insurance Office (Queensland) or a body constituted under a law of another State or a Territory to carry on the business of insurance;

(c) a director or other officer of the building society.

or to repay any money so borrowed or to repay any money duly secured and bona fide loaned to the building society prior to the date of the direction given pursuant to subsection (1).

(4) Where the Registrar gives a direction pursuant to subsection (1) the building society may make representations to the Advisory Committee with respect to the direction and the committee shall report thereon to the Minister.

(5) The Minister may, at any time, direct the Registrar to withdraw a direction, or any part thereof, served under subsection (1), and on such terms and conditions as he may specify.

(6) (a) A building society that contravenes a direction, or any part thereof, served under subsection (1) commits an offence against this Act.

Penalty: \$5 000.

(b) An officer of a building society who knowingly and wilfully authorizes or permits a contravention of a direction, or any part thereof, served under subsection (1) commits an offence against this Act.

Penalty: \$5 000 or imprisonment for 2 years, or both.

Division 2—Appointment of Administrator

124. Appointment of an administrator. (1) Subject to this section, the Registrar may, with the approval of the Minister, appoint an administrator to conduct the affairs of a building society and may revoke any such appointment.

(2) The Registrar shall not appoint an administrator unless he certifies—

(a) that the number of members is reduced to less than 100 or such other number as is prescribed for the purposes of section 9;

(b) that the building society has not commenced business within 6 months of registration or has not done any business for a period of more than 6 months;

(c) that the building society has, after notice by the Registrar of any breach of, or non-compliance with, this Act, or the

rules of the building society failed, within the time specified in the notice, to remedy the breach or non-compliance or has committed any further breach of a kind specified in the notice;

- (d) that there are, and have been for a period of one month immediately before the date of the certificate, insufficient directors of the building society to constitute a quorum as provided by the rules of the building society;
- (e) that, as a result of an inquiry pursuant to the provisions of Division 4 of Part X into the affairs of the building society or the working and financial condition of the building society, or a special audit pursuant to those provisions, it is in the interests of members, depositors or creditors of the building society that an administrator should be appointed to conduct the affairs of the building society;
- (f) that, as a result of an investigation pursuant to the provisions of Division 3 of Part X into all or any of the affairs of the building society it is in the interests of members, depositors or creditors of the building society that an administrator should be appointed to conduct the affairs of the building society;
- (g) that the appointment has been recommended by the Advisory Committee; or
- (h) that he considers it expedient to do so in the interests of members, depositors or creditors of the building society that an administrator should be appointed to conduct the affairs of the building society.

(3) The Registrar shall not certify under subsection (2) unless the ground or matter to be certified has been proved to his satisfaction.

(4) Upon the appointment of an administrator of a building society—

- (a) the directors of the building society cease to hold office;
- (b) all contracts of employment with the building society are terminated;
- (c) all contracts for the provision of services for the building society are terminated;
- (d) the appointment of persons as auditors of the building society are terminated; and
- (e) the appointment of any person as receiver or receiver and manager of the property or any part of the property of the building society is terminated.

(5) An administrator of a building society has the powers and functions of the board of the building society and, except as provided by subsection (10), no appointment or election of a director of the building society may be made while the administrator is in office.

(6) An administrator shall hold office until his appointment is revoked or until a liquidator is appointed to wind up the building society, whichever is the first to occur.

(7) (a) Where in the performance of his duties as administrator of a building society, an administrator becomes aware of a prescribed matter he shall, as soon as practicable after becoming aware of that matter, furnish to the Registrar a written report on the matter.

(b) In this subsection "prescribed matter" means a matter that in the opinion of the administrator—

- (i) constitutes or may constitute a breach or non-observance of any of the provisions of this Act or the rules of the building society; or
- (ii) has adversely affected, is adversely affecting or may adversely affect the viability of the building society, or the interests of its members or creditors,

and that has not already been the subject of a report to the Registrar by an auditor of the building society in pursuance of section 110 (9) or (10).

(8) Forthwith upon the receipt of a request from the Registrar so to do, an administrator under this Act shall prepare and submit a report to the Registrar showing how the administration is being or was conducted by him and for that purpose an administrator has access to the books of the building society.

(9) Upon cessation of his appointment and completion of the report (if any) requested under subsection (8) and accounting fully in respect of his administration to the satisfaction of the Registrar, the administrator is, in the absence of fraud or dishonesty, released from any further liability to account in respect of his administration.

(10) Before revoking the appointment of an administrator of a building society the Registrar shall, except in the case of a revocation under section 128 (2)—

- (a) appoint another administrator;
- (b) ensure that directors of the building society have been elected in accordance with the rules of the building society at a meeting convened by the administrator in accordance with those rules;
- (c) appoint directors of the building society; or
- (d) appoint a liquidator under the provisions of section 130 (5).

A person shall not be appointed pursuant to paragraph (c) unless he consents to such appointment.

(11) Directors elected under subsection (10) (b) or appointed under subsection (10) (c)—

- (a) take office upon revocation of the appointment of the administrator; and

- (b) in the case of appointed directors, subject to section 125 hold office until the annual general meeting of the building society that next succeeds revocation of that appointment.

(12) The expenses of and incidental to the conduct of the affairs of a building society by an administrator shall be payable from the funds of the building society.

(13) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (12) and shall be fixed by the Registrar.

(14) Where an administrator appointed under this section is a servant of the Crown, the reimbursement of the Crown in respect of the remuneration of its servant in an amount certified by the Registrar is an expense referred to in subsection (12) and is recoverable as a debt due to the Crown.

(15) Without prejudice to his liability to account under subsections (8) and (9) an administrator of a building society is not liable for any loss or damage sustained by the building society or by any other person during the administrator's term of office in respect of any act done or omitted to be done by him as administrator if the act is done or omitted to be done in the course of the performance of his powers and functions as such administrator or, in good faith, in the purported performance of those powers and functions unless the loss or damage was due to his wilful misconduct or gross negligence or to his wilful failure to comply with the provisions of this Act or the rules of the building society in so far as those rules are not inconsistent with the provisions of this Part.

(16) The Minister and the Registrar are not liable for any loss or damage sustained by a building society or by any other person during the term of office of an administrator, in respect of any act done or omitted to be done by the administrator in, or purporting to be in, the management of the building society or otherwise in relation to his conduct, or purported conduct, as administrator, whether or not the administrator is so liable.

125. Additional powers of Registrar when appointing directors. (1) Notwithstanding any other provision of this Act or the rules of a building society the Registrar may exercise the powers and authorities conferred on him by this section.

(2) Where the Registrar appoints directors of a building society pursuant to section 124 (10) he may, with the approval of the Minister first had and obtained, by instrument in writing—

- (a) specify a time during which this section is to apply to and in respect of the building society;
- (b) specify the terms and conditions on which the directors so appointed, or any of them, shall hold office;
- (c) specify rules to be the rules of the building society or, as the Registrar specifies, part of the rules of the building society.

(3) For the time specified by the Registrar pursuant to subsection (2) or for that time as extended or reduced by him—

- (a) this section applies in respect of the building society of which he has appointed directors;
- (b) the Registrar may remove and appoint the directors of the building society from time to time;
- (c) the terms and conditions specified pursuant to subsection (2), or those terms and conditions as amended from time to time by the Registrar, are the terms and conditions on which the directors of the building society or any one or more of them, as specified by the Registrar, shall hold office for the time being;
- (d) the rules specified pursuant to subsection (2) or those rules as amended from time to time by the Registrar are the rules or, as specified by him, part of the rules of the building society.

(4) The Registrar may at any time, with the approval of the Minister first had and obtained, by instrument in writing—

- (a) extend or abridge the time for which this section is to apply in respect of a building society;
- (b) amend, by revoking, altering or adding to, the terms and conditions on which the director of a building society to which this section applies holds office or the rules of the building society whether specified by him under subsection (2) or made by the building society.

(5) A rule specified by the Registrar pursuant to this section as a rule of a building society so long as the rule continues to apply to the building society—

- (a) shall not be amended or revoked save as is prescribed by subsection (4);
- (b) shall, if it is inconsistent with any other rule of the building society, prevail and the other rule shall to the extent of the inconsistency be deemed to be invalid;
- (c) shall have and shall be given the same evidentiary value as is by this Act accorded to the rules of the building society and to copies thereof.

126. Stay of proceedings. (1) Where, pursuant to section 124, an administrator is appointed to conduct the affairs of a building society, no action or proceedings in any court shall, except with the leave of the Court and, if the Court grants leave, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the building society until the appointment of the administrator is revoked.

(2) A person intending to apply for the leave of the Court under subsection (1) shall give to the Registrar not less than 10 days' notice of his intention so to apply.

(3) On the hearing of an application under subsection (1) the Registrar may be represented and may oppose the granting of the application.

127. Documents of building society under an administrator to state fact. (1) Where the affairs of a building society are being conducted by an administrator pursuant to this Part, in every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of the building society there shall be set out after the name of the building society where it first appears the words "administrator appointed".

(2) If default is made in complying with subsection (1), the building society and any officer of the building society who is in default each commits an offence against this Act.

128. Advisory Committee to report to Minister. (1) Where an administrator of a building society is appointed under section 124, a majority of the directors who ceased to hold office upon the appointment of the administrator may, not later than 14 days after the appointment, make representations to the Advisory Committee with respect to the appointment and, where any such representations are so made, the Advisory Committee shall report thereon to the Minister.

(2) The Registrar shall, if the Minister so directs after considering a report under subsection (1) with respect to a building society, revoke the appointment of an administrator of the building society and a director who held office immediately before the appointment of the administrator resumes that office upon revocation of the appointment in pursuance of this section.

Division 3—Receivers and Managers

129. Application of Companies (Queensland) Code where receiver etc., appointed. (1) The provisions of Part X of the *Companies (Queensland) Code* shall, subject to this Part, *mutatis mutandis*, and with such modifications (if any) as may be prescribed, apply to a receiver and receiver and manager of the property or part of the property of a building society.

(2) In the application of the provisions of Part X of the *Companies (Queensland) Code* pursuant to subsection (1) unless a contrary intention appears any reference in those provisions to the Commission shall be construed as a reference to the Registrar.

(3) The provisions of section 538 of the *Companies (Queensland) Code* shall, *mutatis mutandis*, apply to any act, omission or decision of a receiver or receiver and manager of property of a building society.

Division 4—Winding Up

130. Winding up. (1) A building society may be wound up—

- (a) by the Court;
- (b) voluntarily; or
- (c) upon the certificate of the Registrar.

(2) Subject to this Part a building society may be wound up in the manner and circumstances in which a company may be wound up under the *Companies (Queensland) Code*.

(3) In the case of a winding up upon a certificate of the Registrar a building society may be wound up if the Registrar certifies—

- (a) that the number of members is reduced to less than 100 or such other number as is prescribed for the purposes of section 9;
- (b) that the building society has not commenced business within 6 months of registration or has not done any business for a period of more than 6 months;
- (c) that the period (if any) fixed for the duration of the building society by its rules has expired;
- (d) that any event has occurred upon the occurrence of which the rules of the building society provide that the building society is to be wound up;
- (e) that the registration of the building society whether under the repealed Act or under this Act has been obtained by mistake or fraud;
- (f) that the building society exists for an illegal purpose;
- (g) that the building society has, after notice by the Registrar of any breach of, or non-compliance with, this Act or the rules of the building society failed, within the time specified in the notice, to remedy the breach or non-compliance or has committed any further breach of a kind specified in the notice;
- (h) that there are and have been for a period of one month immediately before the date of the certificate insufficient directors of the building society to constitute a quorum as provided by the rules of the building society;
- (i) that, as a result of an inquiry pursuant to the provisions of Division 4 of Part X into the affairs of the building society or the working and financial condition of the building society, or a special audit pursuant to those provisions, it is in the interest of members, depositors or creditors of the building society that the building society be wound up;
- (j) that, as a result of an investigation pursuant to the provisions of Division 3 of Part X into all or any of the affairs of the building society it is in the interests of members, depositors

or creditors of the building society that the building society be wound up;

- (k) that the Advisory Committee or an administrator has recommended that the building society be wound up; or
- (l) that he considers it expedient to do so in the interests of members, depositors or creditors of the building society for the building society to be wound up.

(4) The Registrar shall not certify under subsection (3) unless the truth of the ground or matter to be certified has been proved to his satisfaction and unless, in the case of a matter specified in subsection (3) (e), (f), (g), (h), (i), (j), (k) or (l) the Minister consents to the issue of the certificate.

(5) Where the Registrar so certifies, he may appoint a person to be the liquidator of the building society and the liquidator shall give such security as is prescribed and be entitled to receive such fees as are fixed by the Registrar.

(6) Any vacancy occurring in the office of a liquidator appointed under subsection (5) shall be filled by a person appointed by the Registrar for the purpose.

(7) A winding up upon a certificate of the Registrar shall be deemed to commence at the date of the certificate of the Registrar and the liquidator shall within 14 days after his appointment give notice thereof in the Gazette and in a newspaper published and circulating in the State.

(8) The provisions of Part XII of the *Companies (Queensland) Code* shall, subject to this Part, *mutatis mutandis* and with such modifications (if any) as may be prescribed apply to the winding up or dissolution of a building society or to a defunct or dissolved building society.

(9) In the application of the provisions of Part XII of the *Companies (Queensland) Code* to the winding up or dissolution of a building society or a defunct or dissolved building society unless a contrary intention appears any reference in those provisions—

- (a) to a special resolution—shall be construed as a special resolution within the meaning of this Act;
- (b) to the Commission—shall be construed as a reference to the Registrar;
- (c) to a voluntary winding up—shall be construed as including a reference to a winding up of a building society upon a certificate of the Registrar;
- (d) to the Gazette—shall be construed as a reference to the Queensland Government Gazette.

(10) The provisions of section 538 of the *Companies (Queensland) Code* shall, *mutatis mutandis*, apply to any act, omission or decision of a liquidator of a building society.

131. Vacancy in office of liquidator. Where a building society is being wound up voluntarily and a vacancy occurs in the office of liquidator which in the opinion of the Registrar is unlikely to be filled in the manner provided by Part XII of the *Companies (Queensland) Code*, the Registrar may appoint a person qualified under that Part for such appointment.

132. Remuneration of liquidator. Notwithstanding anything contained in this Act, or in the *Companies (Queensland) Code*, the remuneration paid to the liquidator of a building society wound up voluntarily shall not exceed the amount fixed by the Registrar.

133. Cancellation. As soon as is practicable after a building society is dissolved or deemed to be dissolved, the Registrar shall register the dissolution and cancel the registration of the building society.

PART IX—CONTINGENCY FUND AND COMMITTEE

134. Contingency Fund. (1) There shall be established and kept in the Treasury a fund to be called the Permanent Building Societies Contingency Fund.

(2) The purpose of the Contingency Fund is to provide protection, to the extent prescribed, to all persons who—

- (a) subscribe, contribute or lend money to or deposit money with permanent building societies;
- (b) purchase or otherwise acquire shares in permanent building societies; or
- (c) give credit to permanent building societies in the ordinary course of business of the societies.

135. Moneys constituting the Contingency Fund. (1) The Contingency Fund shall consist of—

- (a) contributions by way of compulsory levy on permanent building societies;
- (b) loans from permanent building societies made either voluntarily or by proportionate precepted loan;
- (c) moneys borrowed by the Contingency Fund Committee from time to time from any bank, finance company or insurer authorized to carry on business in Queensland under the *Insurance Acts 1973* of the Commonwealth (as amended and in force for the time being) or under the *Insurance Act 1960-1976* or from any other source approved by the Treasurer of Queensland in writing;
- (d) interest accrued from time to time from the investment of moneys comprising the Contingency Fund;
- (e) all other moneys lawfully paid into the Contingency Fund.

(2) The terms and conditions of borrowing of moneys referred to in subsection (1) (c) shall be the best available terms established by negotiation by the Contingency Fund Committee at the time of borrowing.

136. Payment out of Contingency Fund. There shall be paid out of the Contingency Fund—

- (a) all moneys in payment of all claims (including costs incurred in relation thereto) established against the Fund and settled by the Contingency Fund Committee in accordance with this Act;
- (b) all moneys paid in accordance with this Act in repayment of voluntary and precepted loans and borrowings made for the purposes of the Fund and in payment in accordance with this Act of interest thereon;
- (c) all moneys paid in accordance with this Act in payment of expenses incurred in relation to—
 - (i) claims made against the Fund;
 - (ii) functioning of the Contingency Fund Committee;
 - (iii) the Fund;
- (d) all moneys paid in accordance with this Act in payment of expenses incurred or sustained in relation to any indemnification under section 145 (2);
- (e) all moneys paid in making loans pursuant to section 154 to permanent building societies.

137. Contributions and loans. (1) All permanent building societies shall—

- (a) pay to the Contingency Fund by way of compulsory contribution the amount prescribed by subsection (2);
- (b) pay to the Contingency Fund amounts by way of compulsory contribution as the Contingency Fund Committee from time to time determines; and
- (c) make to the Contingency Fund such precepted loans as the Contingency Fund Committee determines.

(2) Save where permitted by direction of the Contingency Fund Committee issued pursuant to this subsection, on or before the 14th day of each calendar month each permanent building society is required to pay to the Contingency Fund an amount calculated at a rate of 0.25 per centum per annum (or such other rate as is fixed by Order in Council) on the daily balances of the fund of the society that in the calendar month immediately preceding the calendar month in which falls the due date on which payment is required to be made is represented by the aggregate of—

- (a) payments, subscriptions and contributions made, or deemed to have been made, by its members in respect of shares issued by the society; and
- (b) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the society.

Upon representations made by a permanent building society to the Contingency Fund Committee, the Committee, if it considers the case

justifies it, may direct in writing that the society shall pay on or before the 14th day of each calendar month an amount estimated by the Committee in lieu of the amount prescribed by the preceding paragraph as the amount to be paid by the society to the Contingency Fund and may at any time, of its own motion, revoke a direction so given.

Payment by the permanent building society to the Contingency Fund on or before the 14th day of each calendar month of the amount estimated in respect of that society pursuant to the preceding paragraph shall, for as long as the Committee's direction subsists, be taken to be sufficient compliance with the provisions of such first paragraph until an adjustment is required to be made as prescribed by this subsection.

At a time selected by the Contingency Fund Committee in respect of each permanent building society in relation to which a direction of the Committee subsists an adjustment shall be made as respects the estimated amount paid by a society in accordance with the direction as follows:—

- (a) if the estimated amount so paid over the period concerned is less than the amount that would have been payable by the society pursuant to this subsection over that period had the Committee's direction not been given the Committee, by its precept directed to the society shall require the society to pay to the Contingency Fund within the time specified therein the difference between those amounts;
- (b) if the estimated amount so paid over the period concerned exceeds the amount that would have been payable by the society pursuant to this subsection over that period had the Committee's direction not been given the Committee shall repay to the society the difference between those amounts as soon as practicable.

Subsections (7), (11) and (12) shall apply in respect of payments required to be made under a precept issued pursuant to this subsection as they apply to contributions to be paid by permanent building societies under this section.

(3) From time to time, as the Contingency Fund Committee determines to be necessary, the Committee—

- (a) may fix an amount that is required by the Contingency Fund by way of compulsory contribution from all permanent building societies in addition to the amount paid or payable under subsection (1) (a);
- (b) shall reduce that amount to a percentage of the total amount of those funds of permanent building societies that is represented by the aggregate of—
 - (i) payments, subscriptions and contributions made, or deemed to have been made, by its members in respect of shares issued by the societies; and
 - (ii) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the societies,

at a date selected by the Committee; and

- (c) by its precept directed to each permanent building society require each permanent building society to pay to the Contingency Fund within the time specified therein that percentage, specified in the precept, of the fund of the society that is represented by the aggregate of—

- (i) payments, subscriptions and contributions made, or deemed to have been made, by its members in respect of shares issued by the society; and

- (ii) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the society,

at the date specified in the precept.

(4) The amount required to be paid under subsections (1) (a) and (b) by each permanent building society to the Contingency Fund in respect of every period of 12 months ending on 30 June shall not in the aggregate exceed the amount calculated at the rate of one per centum per annum on the daily balances of the fund of the society that in that period of 12 months is represented by the aggregate of—

- (i) payments, subscriptions and contributions made, or deemed to have been made, by its members in respect of shares issued by the society; and

- (ii) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the society.

(5) From time to time, as the Contingency Fund Committee determines to be necessary, the Committee—

- (a) shall fix an amount that is required by the Contingency Fund by way of precepted loan from all permanent building societies in addition to the amount paid or payable under subsection (1) (a) or (b);

- (b) shall reduce that amount to a percentage of the total amount of those funds of permanent building societies that is represented by the aggregate of—

- (i) payments, subscriptions and contributions made, or deemed to have been made by its members in respect of shares issued by the societies; and

- (ii) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the societies, at a date selected by the Committee; and

- (c) by its precept directed to each permanent building society require each permanent building society to pay to the Contingency Fund by way of loan within the time specified therein that percentage, specified in the precept, of the fund of the society that is represented by the aggregate of—

- (i) payments, subscriptions and contributions made, or deemed to have been made, by its members in respect of shares issued by the society; and

- (ii) deposits and loans (excluding such loans as are prescribed) permitted under section 53 and received by the society, at the date specified in the precept.

(6) In relation to each precept directed to a permanent building society pursuant to subsection (5) the Contingency Fund Committee shall determine the rate of interest to be paid in respect of the loan and may determine the other terms and conditions on which the loan shall be repaid and such interest shall be paid.

For the purpose of determining the rate of interest to be paid to each permanent building society in respect of precepted loans the Committee shall fix a rate of interest which shall be the standard rate and shall not exceed the maximum rate of interest (if any) fixed at the material time under section 51 (3).

In relation to each permanent building society that is at the material time paying interest in respect of shares issued by it at a rate less than the maximum rate of interest if any prescribed under section 51 (3) the Committee may vary the standard rate downwards so that any such variation made in relation to a particular permanent building society shall not exceed the difference between the maximum rate of interest prescribed at the material time under section 51 (3) and the rate of interest paid by that society at that time in respect of shares issued by it.

If during the currency of a precepted loan made by it a permanent building society varies the rate at which it ordinarily pays interest in respect of shares issued by it the Committee may vary (upwards or downwards) the rate of interest payable by it to the society in respect of the precepted loan but so that the rate of interest as so varied by the Committee shall not exceed the maximum rate of interest (if any) under section 51 (3) and in that event interest shall be payable to the society in respect of the precepted loan at the rate as last determined by the Committee.

The power conferred on the Committee by the preceding paragraph may be exercised and that paragraph shall apply in respect of every precepted loan.

(7) The Contingency Fund Committee may, in a special case, allow an extension of time, not exceeding 3 months, within which the contributions or loans referred to in subsection (1) or any part thereof may be paid.

(8) Where a liquidator or an administrator has been appointed pursuant to this Act to wind up a permanent building society or, as the case may be, conduct its affairs that society shall not be required to pay any contribution or precepted loan to the Contingency Fund during or in respect of the term of appointment of the liquidator or administrator.

(9) Payment of contributions and loans (both voluntary and precepted) under this Act shall be made by a permanent building society to the Registrar in the manner specified by the Contingency Fund

Committee by its precept directed to the society or, if not so specified, by notification in writing to the society.

(10) For the purposes of this section, every permanent building society shall—

- (a) file with the Registrar within one month after the last day of March, June, September and December in each year for use by the Contingency Fund Committee a statement of funds and dividends and interest paid or payable to its members and depositors (including details of relevant supporting information) in respect of the quarter ending on those respective days, as is prescribed from time to time by the Contingency Fund Committee, and that statement and those details shall be verified by the declaration of a director or the secretary of the society; and
- (b) maintain such records as will readily permit verification of the correctness of the particulars contained in the statement and details referred to in paragraph (a).

(11) If a permanent building society does not, within the time or the extended time, if any, specified or allowed, pay the whole of any contribution or precepted loan or, as the case may be, any part of such contribution or loan levied on and required to be paid by the society pursuant to this Act—

- (a) the society and every director of the society each commits an offence against this Act; and
- (b) the amount of any such payment (including costs) shall be recoverable by the Registrar from the society in the same manner as a debt due to the Crown may be recovered in any court of competent jurisdiction and such amount or amounts so recovered shall be paid into and applied for the purposes of the Contingency Fund.

(12) No action at law or in equity shall lie against a permanent building society or director for or on account of any matter or thing whatsoever done by it or him for the purpose of complying with the provisions relating to the payment of contributions or precepted loans required under this Act.

138. Contingency Fund Committee. (1) There shall be constituted from time to time as prescribed by this Act a committee called the Permanent Building Societies Contingency Fund Committee.

(2) The function of the Contingency Fund Committee is to administer the Contingency Fund established and kept pursuant to this Act.

(3) The Contingency Fund Committee shall consist of 6 members of whom—

- (a) one shall be the Registrar, who shall be its chairman;
- (b) 2 shall be persons nominated by the Minister;
- (c) 3 shall be persons selected by the Minister from a panel of 4 names at the least furnished to him by the Queensland Association of Permanent Building Societies Limited.

If within 7 days after the Minister has requested in writing that a panel referred to in subsection (3) (c) be furnished to him the panel is not furnished or a panel is furnished that is deficient in any respect the Minister may appoint a member or, as the case requires, 3 members of the Contingency Fund Committee without reference to the Association referred to in that paragraph or to the panel furnished.

(4) Every member of the Contingency Fund Committee other than the Registrar shall be appointed by the Minister by notification published in the Gazette.

No person shall be appointed as a member of the Contingency Fund Committee if he has attained the age of 70 years.

139. Allowances. (1) Subject to subsection (2), each member and deputy member shall be paid from the Contingency Fund such allowances as are from time to time prescribed.

(2) An allowance shall not be paid from the Contingency Fund to a member or deputy member who is an officer of the Public Service of Queensland for attendance at any meeting of the Contingency Fund Committee held during ordinary office working hours of that officer.

140. Holders of office not affected by restrictive employment provisions. A provision of any enactment requiring the holder of an office to devote the whole of his time to the duties of his office or prohibiting him from engaging in employment outside the duties of his office shall not operate to hinder his holding that office and also an appointment as chairman, member or deputy member or, subject to section 139 (2), his acceptance and retention of any allowances payable under this Act.

141. Term of office. (1) Subject to this Act, the term of appointment of a member of the Contingency Fund Committee other than the chairman, shall be 2 years.

(2) A member shall if he is otherwise qualified, be eligible for reappointment as a member.

142. Vacation of office. (1) The office of a member, other than the chairman, shall become vacant if the member—

- (a) dies;
- (b) resigns his office by writing signed by him furnished to the Minister;
- (c) is absent without prior leave granted by the Minister from 3 consecutive meetings of the Contingency Fund Committee of which due notice has been given to him;
- (d) ceases to be qualified to be a member;
- (e) is removed from office as a member by the Minister; or
- (f) is one who holds his office by reason of his being an officer of the Public Service of Queensland, and he ceases to be such an officer.

(2) The Minister may at any time remove a member other than the chairman, from office as member if—

- (a) he becomes incapable, in the opinion of the Minister, of discharging the duties of his office;
- (b) he is, in the opinion of the Minister, incompetent or unfit to hold office.

(3) In the case of the illness or absence of a member other than the chairman, or in the case of a vacancy in the office of a member other than the chairman, the Minister may in writing appoint a person, who is not a member, to act as deputy for such member during such illness or absence, or until such vacancy is filled, as the case may be, and such deputy may exercise the powers and perform the duties of such member accordingly.

143. Disqualification from office. A person who—

- (a) becomes an insolvent under administration;
- (b) has been convicted of any offence under this Act, or has been convicted in Queensland of an indictable offence or elsewhere than in Queensland of an offence that if committed by him in Queensland would have constituted an indictable offence, unless the Minister is satisfied that the circumstances of the offence do not warrant disqualification from office and certifies accordingly; or
- (c) is admitted into and detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the *Mental Health Act* 1974-1978 or becomes a Protected Person within the meaning of Part VI of the *Public Trustee Act* 1978-1981;
- (d) attains the age of 70 years.

shall not be qualified to be or continue as a member.

144. Proceedings of Contingency Fund Committee. (1) The chairman may give such directions as he thinks necessary in respect of the arrangement of business of the Contingency Fund Committee.

(2) The chairman shall, subject to this section, convene such meetings of the Contingency Fund Committee as he thinks necessary for the efficient performance of the functions of the Committee, which meetings shall be held at such times and places as the chairman determines.

(3) The Contingency Fund Committee shall exercise or perform a power or function by a majority of votes of members present at a meeting and voting on the business in question.

(4) The chairman shall preside at all meetings of the Contingency Fund Committee and subject to this Act and rules made by the Committee from time to time, he may give directions regarding the procedure to be followed at or in connexion with a meeting.

(5) The chairman and 3 other members shall be a quorum for the purposes of any meeting of the Contingency Fund Committee.

(6) A member present at a meeting who abstains from voting shall be taken to have voted for the negative.

(7) The chairman shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(8) The Contingency Fund Committee shall as soon as practicable after 30 June in each year make a report to the Minister of—

(a) its proceedings and the principal matters dealt with by it;

(b) the administration of the Contingency Fund and the permanent building society industry generally,

during the year immediately preceding that date.

145. Protection for acts and omissions under Act. (1) The chairman, a member or deputy member of the Contingency Fund Committee or a person acting under the direction or authority of the Committee shall not be liable for an act or omission that is done or made under this Act or purports to be done or made under this Act bona fide and for the purposes of this Act.

(2) The chairman, every member or deputy member and every person acting under the direction or authority of the Contingency Fund Committee shall be indemnified out of the Contingency Fund for all expenses incurred or sustained by him as the result of an act or omission referred to in subsection (1).

(3) In any proceedings brought with respect to an act or omission referred to in subsection (1) the burden of proof concerning bona fides shall lie upon him whose case depends on the absence of bona fides.

146. Powers of Committee. (1) The Contingency Fund Committee shall have and may exercise and perform the powers and functions conferred or imposed upon it by or under this Act.

(2) For the purposes of exercising and performing its powers and functions, the Contingency Fund Committee may, subject to this Act, from time to time make and amend by way of rescission, alteration or addition, rules for—

(a) prescribing with respect to payments by permanent building societies to the Contingency Fund by way of compulsory contribution or precepted loan;

(b) prescribing the form, content and details of any statement required to be furnished under this Act for use by the Committee;

(c) providing for the investment of moneys in the Contingency Fund that are surplus to the commitments of the Fund as

known to the Committee as at the date of investment of the Fund moneys;

- (d) prescribing the form, content and details of information to be lodged in support of notices of claims on the Contingency Fund and the time for lodgment of that information with the Committee;
- (e) prescribing the method of admitting and settling claims lodged against the Contingency Fund;
- (f) prescribing the procedures to be followed at meetings of the Committee or in the conduct of its affairs;
- (g) providing for such other matters as are considered necessary or expedient for the efficient performance of the functions of the Committee.

(3) The Contingency Fund Committee may, as and when it considers it necessary so to do, and shall, as required by this Act, advise the Minister on any matter relating to the administration of the permanent building society industry and the Contingency Fund.

147. Claims against the Contingency Fund. (1) Subject to the provisions of this section, the Contingency Fund Committee may receive and settle any claim against the Contingency Fund made by a liquidator or an administrator appointed pursuant to this Act.

(2) No person other than a liquidator or an administrator referred to in subsection (1) shall be entitled to make a claim against the Contingency Fund or to recover any amount by any action in relation to the Fund.

(3) A liquidator or an administrator referred to in subsection (1) shall not be entitled to recover from the Contingency Fund an amount in excess of—

- (a) any deficiency remaining after all assets of the permanent building society have been disposed of or realised and applied in settlement of all claims admitted or admissible to proof against the society; or
- (b) where it is not necessary to dispose of or realise on all the assets of the society, such amount as is determined by the Contingency Fund Committee on application made by the administrator.

(4) Notwithstanding the provisions of subsection (3), a liquidator or an administrator may be paid from the Contingency Fund the amount of the estimated deficiency that will remain after all claims against the funds of the permanent building society have been met by him out of such funds and if the amount so paid to him exceeds the amount he is entitled to recover under subsection (3) such excess amount shall be repaid by him to the Fund.

(5) The Governor in Council may from time to time by notification in the Gazette limit—

- (a) the amount that a liquidator or an administrator shall be entitled to recover from the Contingency Fund under subsection (3);
- (b) the amount that a liquidator or an administrator may apply in respect of moneys payable to him from the Contingency Fund in settlement of claims by members or other persons against the permanent building society relating to payments, subscriptions and contributions made, or deemed to have been made by members in respect of shares issued by the society to them and deposits and loans made under section 53;
- (c) the aggregate amount that may be applied during or in respect of a particular period or generally by reference to a particular date in settlement of all claims against the Contingency Fund pursuant to this section that have been made during, or in respect of, the period or before the date but not settled or which though made after the expiration of the period or date in question might have been made during that period or before that date and were in respect of the period, or a time prior to the date, in question.

(6) Where, in any case pursuant to subsection (5), the Governor in Council has limited an amount or an aggregate amount pursuant to that subsection, there shall not be paid out of the Contingency Fund, and no claimant shall be entitled to recover from the Fund, any amount in excess of the amount so limited.

(7) No amount shall be paid or be payable out of the Contingency Fund as interest on the amount of any claim made against the Fund.

(8) In the settlement of any claim the Contingency Fund Committee may, in its discretion, make payment in respect of a claim to such extent as in the Committee's opinion, will permit all actual and contingent payments out of the Contingency Fund pursuant to section 136 to be met proportionately, having regard to the moneys available in the Fund.

(9) Where claims against the Contingency Fund are not met in full those claims, if, in the opinion of the Contingency Fund Committee they have been made at or substantially at the same time, shall rank amongst themselves for payment from the Fund *pari passu* but, to the extent that they have not been met, shall rank in priority over all contingent payments to be paid out of the Fund pursuant to section 136.

(10) The amount of any claim admitted pursuant to this Part, shall, subject to this Part, be payable out of the Contingency Fund and not otherwise.

(11) The Contingency Fund Committee after disallowing, whether wholly or partly, a claim against the Contingency Fund shall serve notice

of the disallowance on the claimant in the prescribed form at the last address of the claimant known to the Committee.

(12) Where a claim against the Contingency Fund is maintainable under this Part, it is a function of a liquidator and an administrator to do all things necessary to prepare, make and pursue the claim in accordance with this Part and such a person shall have all the powers that are necessary to perform that function and the reasonable fees and expenses incurred by such a person in performance of that function shall be payable out of the Contingency Fund.

148. Application of fund moneys. (1) Where any moneys are paid out of the Contingency Fund to a liquidator or an administrator of a permanent building society which may lawfully be applied by him in settlement of claims by members or depositors of the building society admitted or admissible to proof against the building society, then notwithstanding anything to the contrary in the rules of the society, such moneys shall be applied by him so as to permit as nearly as possible all such claims to be met proportionately having regard to the amount of moneys received by him from the Fund which may be so applied.

(2) Where permanent building societies have invested moneys in the Contingency Fund pursuant to section 43 (5) the Contingency Fund Committee may repay to the investing societies the whole or part of such moneys and interest thereon, having regard to the commitments of the Fund as known to the Committee as at the date of payment, but in either case such repayment shall be made as follows:—

- (a) firstly to societies that have voluntarily so invested, if such repayment is desired by the societies;
- (b) secondly to societies that have invested by way of precepted loan; and
- (c) in a manner that permits all such investments to be repaid proportionately having regard to the moneys available in the Fund.

149. Admission of claims against the Contingency Fund. (1) All claims against the Contingency Fund, which shall be filed with the Registrar in the manner determined by the Contingency Fund Committee from time to time, shall be in the prescribed form and shall have attached a statement of affairs of the permanent building society showing, in the prescribed form—

- (a) the assets of the society, and the total amount realised or expected to be realised from the assets;
- (b) the liabilities current and contingent and whether existing or capable of arising at a future time, of the society;
- (c) the actual to date and estimated expenses incurred and likely to be incurred by the liquidator or, as the case may be, administrator of the society

made up to the latest practical date before the filing of the claim.

(2) The Contingency Fund Committee may, in its discretion, require such further particulars including such evidence of proof of any claim or any part thereof as it considers satisfactory and deems necessary, to be furnished to the Registrar in the manner and within the time specified by it and notified in writing.

(3) In any case where—

(a) a liquidator or an administrator—

(i) fails to file a statement of affairs as prescribed;

(ii) fails, within the time specified, to furnish such further particulars in respect of the claim as is required;

(b) the Contingency Fund Committee is not satisfied as to the accuracy of any claims or any aspect thereof,

the Contingency Fund Committee may request the Registrar to furnish to it a report on any of the matters referred to in subsections (1) and (2) and for that purpose the Registrar may undertake or cause to be undertaken—

(c) an examination of the affairs of the permanent building society permitted under this Act as he sees fit;

(d) a special audit pursuant to the provisions of section 181;

(e) an actuarial investigation pursuant to the provisions of section 182.

150. Subrogation. On payment out of the Contingency Fund of moneys in settlement in whole or in part of any claim against the Fund, the Contingency Fund Committee shall be subrogated, to the extent of such payment, to all rights and remedies of the claimant or any other person, and all moneys recovered by the Committee as a consequence shall be paid into the Fund.

151. Accounts and audit. (1) The Registrar shall keep and maintain accounts of all moneys received by him in relation to the Contingency Fund and those accounts shall be kept and maintained in such a manner as to disclose the true position in regard thereto and to enable the accounts to be conveniently and properly audited by the Auditor-General who is hereby authorized and required to audit such accounts at least once in each year.

(2) The Auditor-General shall, in respect of an audit of the accounts relating to the Contingency Fund, have the powers conferred on him by the *Financial Administration and Audit Act 1977-1981* in relation to the audit of the public accounts and departmental accounts.

152. Investment of Contingency Fund. (1) The Contingency Fund Committee may from time to time invest moneys standing to the credit of the Contingency Fund that are surplus to the commitments of the

Fund, as known to the Committee as at the date of investment, in the following manner:—

- (a) in any of the Government securities of the Commonwealth or of any of the States of the Commonwealth;
- (b) on any interest bearing term deposit in any bank;
- (c) on deposit in any savings bank;
- (d) on the security of a certificate of deposit issued by any bank;
- (e) with any dealer in the short term money market, approved by the Reserve Bank of Australia as an authorized dealer, who has established lines of credit with that bank as a lender of last resort;
- (f) on loan to the Treasurer of Queensland at such rate as may be negotiated by the Committee but not less than the prescribed minimum rate (if any);
- (g) in any other investment or class of investment approved by the Treasurer of Queensland in writing,

and may also from time to time vary any such investment.

(2) An investment made pursuant to subsection (1) shall be for a period not in excess of 3 months or such other period as may be authorized by the Treasurer of Queensland in writing.

(3) The amounts of interest accruing at any time and from time to time in respect of moneys invested by the Contingency Fund Committee pursuant to this section shall be paid to the credit of the Contingency Fund.

153. Contingency Fund Committee may enter into contracts of insurance or indemnity. (1) The Contingency Fund Committee may, in its discretion, enter into a contract with a person carrying on the appropriate insurance business either within or without the State whereby the Committee will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims against the Contingency Fund under this Act.

(2) Such a contract may be entered into in relation to permanent building societies generally, or in relation to particular permanent building societies named therein, or in relation to permanent building societies generally with the exclusion of particular permanent building societies named therein.

(3) An action does not lie against the Contingency Fund Committee or against the chairman, a member or deputy member of the Committee or any person acting under the direction or authority of the Committee for damage alleged to have been suffered by a permanent building society or by any other person by reason of the publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to that society.

(4) A claimant against the Contingency Fund or any other person does not have a right of action against a person with whom a contract

of insurance or indemnity is made under this section in respect of such a contract, or a right or claim with respect to any moneys paid by the insurer in accordance with such a contract.

154. Financial assistance to permanent building societies. (1) If a permanent building society is in financial difficulties it may make application to the Registrar for financial assistance from the Contingency Fund whereupon he may, with the consent in writing of the Minister, authorize the Contingency Fund Committee to lend money to the society.

(2) In giving his consent under subsection (1), the Minister may include therein such stipulations as he thinks fit as to the terms and the amount of the loan and as to the security to be taken for the loan.

(3) The Minister may withdraw a consent given under subsection (1) or vary any stipulation therein made pursuant to subsection (2).

(4) A permanent building society that fails to comply with a stipulation made pursuant to subsection (2) or with a variation thereof made pursuant to subsection (3) shall be deemed to have failed to comply with a provision of this Act.

(5) Where money is lent to a permanent building society pursuant to subsection (1) the Registrar may, with the consent in writing of the Minister—

- (a) direct that a director of the society vacate his office as such on and from the date specified by the Registrar; or
- (b) appoint a management advisory committee to advise the Registrar in relation to the manner in which the society should carry on its business.

(6) Where the Registrar gives a direction under subsection (5) (a) the director concerned is hereby declared to have vacated his office as such on and from the date specified in the direction and the permanent building society concerned shall appoint another person to fill the vacancy.

(7) On consideration of advice furnished to him pursuant to subsection (5) (b) the Registrar may give such directions to the permanent building society concerned as he thinks fit in relation to the manner in which the society should carry on its business.

The permanent building society shall comply with any direction given by the Registrar under this subsection.

PART X—ADMINISTRATION

Division 1—Administrative Staff and Office

155. Registrar. (1) The Registrar is hereby charged with the administration of this Act and shall have and may exercise such powers and functions as are conferred or imposed upon him by or under this Act.

(2) The Registrar shall, as and when required by the Minister, furnish reports with respect to the policy that he is pursuing, or proposes to pursue, in the exercise or discharge of any of his powers and functions under this Act.

(3) The Minister may issue directions to the Registrar on matters of policy and the Registrar shall observe and carry out the directions given.

156. Office and records of Registrar. (1) All certificates, rules and documents required to be registered by, or to be lodged with or furnished to, the Registrar, shall be kept in the office of the Registrar.

(2) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

(3) The Registrar shall have a seal of office.

157. Fees. (1) There shall be paid to the Registrar such fees as may be prescribed in respect of acts, matters or things to be done under or for the purposes of this Act.

(2) Where a fee is payable to the Registrar for or in respect of the lodging or furnishing of a document with the Registrar and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged or furnished until the fee is paid to the Registrar.

158. When documents deemed not to be lodged. When a document is lodged with or furnished to the Registrar and, in the opinion of the Registrar—

- (a) the document does not comply with the provisions of this Act; or
- (b) any information required to be furnished in or with the document has not been furnished or has not been fully furnished,

the document shall be deemed not to have been lodged or furnished until such time as, in the opinion of the Registrar, the document complies with those provisions or the information has been furnished or fully furnished, as the case may be.

159. Destruction etc. of old records. Subject to the *Libraries Act 1943-1979*, the Registrar may, if in the opinion of the Registrar it is no longer necessary or desirable to retain them, destroy or dispose of—

- (a) in the case of a building society—
 - (i) any document lodged pursuant to section 116 (1) or (2) that has been lodged for not less than 7 years or any document creating or evidencing a charge or the complete or partial satisfaction of a charge where a memorandum

of satisfaction of the charge has been registered for not less than 7 years; or

- (ii) any other document (other than the rules or any other document affecting them) which has been lodged or registered for not less than 15 years;
- (b) in the case of a building society that has been dissolved for not less than 15 years, any document lodged or registered; or
- (c) a document, a transparency of which has been incorporated with a register, kept by the Registrar.

160. Annual report by Registrar. (1) As soon as practicable after 30 June in each year, the Registrar shall furnish to the Minister a report on the administration of this Act by the Registrar in respect of the year ending on that date.

(2) The Minister shall lay a copy of every such report before the Legislative Assembly.

Division 2—General

161. Performance of Registrar's functions by authorized person. (1) Except as otherwise expressly provided by this Act, a power or function conferred or imposed by this Act on the Registrar may be exercised or performed by a person authorized by the Registrar to exercise or perform that power or function.

(2) Without limiting the generality of subsection (1), a reference to the Registrar in sections 162, 163, 185 and 223 includes a reference to any person who is or has been authorized by the Registrar to perform the relevant power or function conferred or imposed by this Act on the Registrar.

(3) The Registrar may revoke or vary any authorization under subsection (1) and whilst the authorization remains in force the person authorized may exercise or perform the power or function the subject of the authorization as fully and effectively as the Registrar but the existence of the authorization does not prevent the exercise or performance by the Registrar of any power or function.

162. Inspection of books, etc. (1) The Registrar may—

- (a) inspect and make copies of or take extracts from any—
 - (i) books kept by or by a person in respect of, a building society (whether or not the building society has been dissolved); and
 - (ii) banker's books kept by a bank that acts or has acted as a bank to a building society in so far as they relate to the building society (whether or not the building society has been dissolved); and
- (b) require an officer or former officer of a building society to answer any question relating to the affairs of the building

society (whether or not the building society has been dissolved).

(2) An officer of a building society, a person who keeps any books in respect of a building society or a bank may be required by the Registrar to produce, at the time and place (if any) specified in the requirement, any book to which the requirement relates.

(3) Any past or present officer of a building society shall not, when required under subsection (1) (b) to answer any question, give an answer that is false or misleading or, knowing or being in a position to know the answer, fail to answer that question.

(4) A person shall not be required under this section to answer any question tending to incriminate him.

(5) Where the Registrar or a person authorized by him requires another person to produce books and the books are not produced, the firstmentioned person may require the other person—

- (a) to state, to the best of his knowledge and belief, where the books may be found; and
- (b) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where the lastmentioned person may be found.

(6) The Registrar may require any bank with which funds have been deposited by a building society to furnish him with particulars of the amount of those funds and any dealing with or disposition of those funds by the building society.

(7) Where the Registrar or a person authorized by him requires production under subsection (1) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

163. Investigation of certain matters. Where the Registrar has reason to suspect that a person has committed an offence under a provision of this Act or has been guilty of fraud in relation to a building society, the Registrar may make such investigation as he thinks expedient for the due administration of this Act.

164. Inspection of documents in Registrar's office. (1) Any person may on payment of the prescribed fee—

- (a) inspect at the office of the Registrar the registration documents and rules of a building society;
- (b) obtain from the Registrar a certified copy of the certificate of the registration of a building society or a certified copy of the rules of a building society or of any part thereof;
- (c) inspect any document lodged pursuant to this Act or repealed Act by a building society other than a prescribed document;
- (d) obtain a copy of or extract from any document that he is entitled to inspect pursuant to paragraph (c) certified by the Registrar.

(2) If a transparency or a reproduction of a document is produced for inspection, a person is not entitled pursuant to subsection (1) to require the production of the original of that document.

(3) The reference in subsection (1) (b) or (d) to any document includes, where a reproduction or transparency of that document has been incorporated with the register kept by the Registrar, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated a person shall not be entitled pursuant to either of the said paragraphs to a copy of the original of that document.

165. Information and evidence. (1) On an application for registration of a building society, or of any rule or document under this Act, the Registrar may require from the applicant, such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from any building society such information and evidence as may be reasonable in order to show that the building society is bona fide carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a building society such evidence as he thinks proper of the doing of any act, matter or thing required to be done, or of the correctness of any entry in any document required to be lodged with or furnished to him, under this Act.

166. Secrecy. (1) Subject to this section the Registrar, a member of the Contingency Fund Committee or the Advisory Committee, or any other person appointed or employed for the purposes of this Act or authorized to exercise or perform any power or function of the Registrar under this Act or authorized by any such Committee to do any act or thing in relation to its functions shall not, except to the extent necessary to perform his official duties or exercise or perform such a power or function or do any such act or thing, either directly

or indirectly and whether before or after he ceases to be Registrar or a member or to be so appointed, employed or authorized—

- (a) make a record of or divulge to any person information acquired by him by reason of his being Registrar, or such a member or being so appointed, employed or authorized;
- (b) make use of any such information for any purpose other than the performance of his official duties or the exercise or performance of that power or function or the doing of the act or thing.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) Nothing in subsection (1) precludes a person from—

- (a) producing a document to a court in the course of criminal proceedings or proceedings under this Act or from divulging or communicating to a court in the course of such proceedings any matter or thing coming under his notice in the performance of his official duties or the exercise or performance by him of powers or functions referred to in that subsection; or
- (b) producing a document or communicating any information gained by or conveyed to him—
 - (i) to the Minister or the Treasurer of Queensland or any person acting on behalf of and with the authority of the Minister or, as the case may be, Treasurer;
 - (ii) to the Registrar, the Advisory Committee, the Contingency Fund Committee, any member, acting member or deputy member of any such committee, or an inspector appointed under this Act;
 - (iii) with the approval of the Minister or the Registrar first had and obtained, to any person appointed or engaged under the provisions of this Act for the purpose of that person discharging his duties under that appointment or engagement.

167. Registrar entitled to be present at meetings. The Registrar is entitled to attend any meeting of members of a building society.

168. Protection in respect of certain persons. No act, matter or thing done or undertaken or omitted to be done or undertaken by the Registrar, any person authorized by the Registrar pursuant to this Act, any Deputy Registrar, any inspector, the State Actuary or any other officer or person for the purposes of this Act or in good faith and purporting to be for the purposes of this Act shall subject any such person to any liability in respect thereof.

Division 3—Investigations

169. Interpretation. In this Division, unless the contrary intention appears—

“affairs” in relation to a building society, includes—

- (a) the promotion, formation, membership, control, transactions, dealings, business and property of the building society;
- (b) ownership of shares in, or deposits with, or loans to, the building society;
- (c) matters concerned with the ascertainment of the persons who are, or have been, financially interested in the success or failure, or apparent success or failure, of the building society or are or have been able to control or materially influence the policy of the building society;
- (d) the circumstances under which a person acquired or disposed of shares in, or made or withdrew or disposed of deposits with or loans to the building society;

“inspector” means an inspector appointed under this Division;

“prescribed person” means—

- (a) an officer within the meaning of section 4 (1);
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the building society;
- (c) a person who—
 - (i) has, or has at any time had, in his possession any property of the building society;
 - (ii) is indebted to the building society; or
 - (iii) is capable of giving information concerning the affairs of the building society; and
- (d) where an inspector has reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c) of this definition—that person.

170. Appointment of inspectors. (1) The Minister, where it appears to him that it is desirable for the protection of the public or of members, depositors or creditors of a building society, or in any case it is in the public interest to do so, by instrument in writing—

- (a) may appoint a person as an inspector to investigate the affairs of a building society, or, if he is of opinion that an investigation ought not to be made into all those affairs, such of the affairs as he is satisfied ought to be investigated and specifies in the instrument and to report on the investigation in such manner as the Minister directs; and

(b) may revoke any such appointment.

(2) The Minister shall, in an instrument appointing an inspector, specify—

- (a) full particulars of the terms and conditions to which the appointment is subject; and
- (b) the matters into which an investigation is to be made being all the affairs, or particular affairs, of a building society.

(3) Where 2 or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a building society each of those inspectors may exercise his powers or perform his functions under this Division independently of the other inspector or inspectors.

(4) The Minister may, at any time by notice in writing given to an inspector, vary particulars or matters specified in the instrument of appointment, being particulars or matters referred to in subsection (2).

171. Investigation of affairs of subsidiary. Where an inspector thinks it necessary for the purposes of the investigation of affairs of a building society to investigate affairs of a corporation that is or has at any relevant time been a subsidiary of the building society he may, with the consent in writing of the Minister, investigate affairs of that corporation and in investigating those affairs the inspector shall have all powers given him under this Act as if the corporation were a building society.

172. Powers of inspectors. (1) An inspector may, by notice in the prescribed form given in the prescribed manner, require a prescribed person—

- (a) to produce to the inspector such books relating to a matter to which his investigation relates as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connexion with the investigation; and
- (c) to appear before the inspector for examination on oath or affirmation and to answer questions put to him.

and may administer an oath or affirmation to that person.

(2) A notice given pursuant to subsection (1) (c) shall set out the provisions of subsections (7) and (8).

(3) Where an inspector has reasonable grounds for believing that books in the custody or under the control of a person may be relevant to any of the matters relating to affairs of a building society that are being investigated under this Division the inspector may, by notice in writing containing the prescribed matters given in the prescribed manner, require that person to produce those books to the inspector.

(4) An examination under this section shall, for the purposes of Chapter XVI of *The Criminal Code*, be deemed to be a judicial proceeding.

(5) Where books are produced to an inspector under this section the inspector may take possession of the books for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(6) A prescribed person shall not—

- (a) refuse or fail to comply with a requirement of an inspector under subsection (1) to the extent to which that person is able to comply with it;
- (b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
 - (i) make a statement that is false or misleading in a material particular; or
 - (ii) refuse or fail to take an oath or make an affirmation.

Penalty: For an offence against paragraph (a), (b) or (c) (i)—\$10 000 or imprisonment for 2 years, or both;

For an offence against paragraph (c) (ii)—\$1 000 or imprisonment for 3 months, or both.

(7) A solicitor or barrister-at-law acting for a prescribed person—

- (a) may attend an examination of that person; and
- (b) may, to the extent that the inspector permits—
 - (i) address the inspector; and
 - (ii) examine that person,
in relation to matters in respect of which the inspector has questioned him.

(8) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (6) or other proceedings in respect of the falsity of the answer.

(9) A person who complies with a requirement of an inspector under this section does not incur a liability to any person by reason only of that compliance.

(10) A person who is required to attend for examination under this section is entitled to such allowances and expenses as are approved by the Governor in Council.

(11) Where an inspector is satisfied that a prescribed person or any other person has failed without reasonable excuse to comply with a

requirement of the inspector made under this section to the extent to which the person is able to comply with it, the inspector may certify the failure by writing under his hand to the Court.

(12) Where an inspector gives a certificate under subsection (11), in relation to a prescribed person or other person, the Court may inquire into the case and—

- (a) order the prescribed person or other person, as the case may be, to comply with that requirement within such period as is fixed by the Court; or
- (b) if the Court is satisfied that the prescribed person or other person, as the case may be, failed, without reasonable excuse, to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of contempt of the Court and, if it sees fit, also make an order under paragraph (a).

(13) Where in the opinion of an inspector, a solicitor or barrister-at-law acting for a prescribed person is attempting to obstruct the examination of the prescribed person by the exercise of the rights conferred on him under subsection (7) to address the inspector or to examine the prescribed person, the inspector may require the solicitor or barrister-at-law to cease to address him or to cease to examine the prescribed person, as the case may be.

(14) Where an inspector makes a requirement of a solicitor or barrister-at-law under subsection (13), the solicitor or barrister-at-law shall not refuse or fail to comply with that requirement.

173. Notes of examination. (1) An inspector may cause notes of an examination made by him under this Division to be recorded in writing and to be read to or by the person examined, and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in legal proceedings against him.

(2) A copy of the notes signed by a prescribed person shall be furnished by the inspector, without charge, to that person on request made by that person in writing.

(3) Notes made pursuant to this section that relate to a question the answer to which a prescribed person has claimed might tend to incriminate him may not be used as evidence in criminal proceedings other than proceedings under section 172 (6) or other proceedings in respect of the falsity of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Minister may give a copy of notes made pursuant to this section to a solicitor or barrister-at-law who satisfies the Minister that he is acting for a person who is conducting, or is, in good faith,

contemplating legal proceedings in respect of any matters into which an investigation is made by an inspector under this Division.

(6) A solicitor or barrister-at-law to whom a copy of notes is given under subsection (5) shall not use the notes otherwise than in connexion with the institution or preparation of, and in the course of, legal proceedings referred to in that subsection, and shall not publish or communicate for any other purposes the notes or any part of the contents of them to any other person.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(7) Where a report is made under this Division, notes that are recorded pursuant to this section in relation to that report shall be furnished with the report.

174. Delegation of powers, etc., by inspector. (1) An inspector may, by instrument in writing—

(a) delegate all or any of his powers or functions under this Division (except this power of delegation, the power to administer oaths or affirmations, and the power to examine on oath or affirmation); and

(b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) Any act or thing done in the exercise of a power or the performance of a function by a person to whom that power or function has been delegated by an inspector under subsection (1) has the same force and effect as if it had been done by the inspector.

(4) A delegate shall, at the request of a prescribed person or other person, produce the instrument of delegation for inspection.

(5) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

175. Report of inspector. (1) Subject to subsection (2), the Minister shall, unless in his opinion there is a good reason for not divulging the contents of the report, give a copy of a report made to him under this Division to the building society to which the report relates and to each person to whom, in the opinion of the Minister, the report ought to be given by reason that it relates to the affairs of that person to a material extent.

(2) Subject to subsection (3), the Minister is not bound to furnish a building society or any other person with a copy of a report under this Division if the Minister is of opinion that there is good reason for not divulging the contents of the report.

(3) The court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Division may order that a copy of the report be given to that person.

(4) The Minister may, if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report under this Division to be printed and published.

(5) If from a report under this Division or from the notes of an examination under this Division, it appears to the Minister that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(6) Where it appears to the Minister that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (5), require a person whom he suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Minister, is likely to be a defendant in the proceedings or is or has been a solicitor or barrister-at-law acting for such a person) to give all assistance in connexion with the prosecution or proposed prosecution that he is reasonably able to give.

(7) Where a person to whom a notice has been given under subsection (6) fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(8) If from a report under this Division, or from the notes of an examination under this Division, the Minister is of the opinion that proceedings ought in the public interest to be brought by a building society, affairs of which were investigated by the inspector for the recovery of damages in respect of fraud, misfeasance or other misconduct in connexion with the affairs of the building society or for the recovery of property of the building society, the Minister may cause proceedings to be brought accordingly in the name of the building society.

176. Minister's powers in respect of books. An inspector may, when making a report to the Minister under this Division, give to the Minister books of which he has taken possession under section 172 and the Minister—

- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the investigation;
- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of legal proceedings instituted as a result of the investigation; and

- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

177. Privileged communications. Where in the exercise of his powers under section 172 an inspector requires a solicitor or barrister-at-law to disclose a privileged communication made by or on behalf of or to that solicitor or barrister-at-law in his capacity as a solicitor or barrister-at-law, the solicitor or barrister-at-law is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made agrees to the solicitor or barrister-at-law complying with the requirement.

Where the solicitor or barrister-at-law so refuses to comply with a requirement, he shall, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the inspector.

Penalty: \$1 000 or imprisonment for 3 months, or both.

178. Expenses of investigation. (1) Subject to this section, the expenses of and incidental to an investigation by an inspector appointed under section 170 (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a building society, under section 175 (8)) shall be defrayed out of moneys provided by Parliament for the purpose.

(2) An application may be made to a court by or on behalf of the Minister—

- (a) in the course of proceedings in that court instituted by the Minister in the name of a building society under section 175 (8); or
- (b) upon, or within 28 days after, a conviction or judgment by a court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation by an inspector appointed under this Division,

for one or more of the following orders:—

- (i) that a specified person pay the whole, or a specified part, of the expenses of and incidental to the investigation that led to the proceedings;
- (ii) where expenses have been paid under subsection (1), that a specified person pay the expenses or reimburse the Crown to the extent of the payment; or
- (iii) that a specified person pay, or reimburse the Crown in respect of, the remuneration of any servant of the Crown concerned with the investigation,

and the court may make such order with respect to the application and its subject matter as it thinks fit.

(3) Where the Minister is of the opinion that the whole or any part of the expenses of or incidental to an investigation into the affairs of a building society under this Division (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of the building society under section 175 (8)) should be paid by the building society, the Minister may by order direct that the expenses or part thereof be so paid or, if they have been paid under subsection (1), direct the building society to reimburse the Crown and may, in either case direct the building society to reimburse the Crown in respect of the remuneration of any servant of the Crown concerned in the investigation.

(4) Where a building society has failed to comply with an order of the Minister under subsection (3), proceedings may be taken in a court of competent jurisdiction to recover the amount in question as a debt due to the Crown.

Division 4—Inquiry by Registrar and Special Audit

179. Special meeting and inquiry by Registrar. (1) Subject to compliance with any requirement or direction of the Registrar pursuant to this section, the Registrar may on the application of a majority of the board, or of not less than one-tenth of the members, of a building society or on his own volition—

- (a) call a special meeting of the building society;
- (b) hold an inquiry into the affairs, including the working and financial condition, of the building society; or
- (c) both call such a meeting as is referred to in paragraph (a) and hold such an inquiry as is referred to in paragraph (b).

(2) An application under this section shall be supported by such evidence as the Registrar requires for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of an application under this section shall be given to a building society by such persons and in such manner as the Registrar directs.

(4) Security for the expenses of a meeting or inquiry pursuant to this section shall be given by such persons and in such amount and manner as the Registrar directs.

(5) The Registrar may direct at what time and place a meeting called under this section is to be held, and what matters are to be discussed and determined at the meeting and shall give such notice to members of the holding of the meeting as he deems fit, notwithstanding any other provision of this Act or any provision of the rules of the building society as to the giving of notice.

(6) A meeting called under this section shall have all the powers of a meeting called in accordance with the rules of a building society and shall have the power to appoint its own chairman, any rule of the building society to the contrary notwithstanding.

The Registrar or any person nominated by him may attend and address any such meeting.

(7) If a meeting called under this section fails to appoint a chairman, the Registrar or any person nominated by him to attend the meeting may act as chairman of the meeting or may appoint a chairman to conduct the meeting or any adjournment thereof.

(8) If the chairman of a meeting called under this section is not a member of the building society in respect of which it was so called, he may exercise a casting vote but shall not otherwise be entitled to vote.

(9) All expenses of and incidental to a meeting called, or inquiry held, under this section shall be defrayed, in such proportions as the Registrar directs, by the applicants, or out of the funds of the building society, or by any officer or member or former officer or member of the building society, and may be recovered as a debt due to the Crown in any court of competent jurisdiction.

180. Inquiry by Registrar or his deputy. (1) Where, pursuant to section 179, an inquiry is held into the affairs of a building society, or such of those affairs as the Registrar deems proper, the inquiry may be conducted by the Registrar or, as the Registrar may determine, by a person deputed by the Registrar by instrument in writing under his hand.

(2) Where the Registrar determines to depute the conduct of an inquiry to which subsection (1) relates, he may, by instrument in writing, depute for that purpose any person, including a person who is not an officer or employee subject to the *Public Service Act* 1922-1978, and where a person who is not such an officer or employee is deputed under this section the provisions of that Act do not apply to or with respect to that person.

(3) Any determination by the Registrar for the purposes of section 179 and this section may be varied or revoked by a subsequent determination.

(4) The Registrar or, where the Registrar has deputed a person under this section to conduct an inquiry, that person is hereinafter in this section in relation to the inquiry referred to as the inspector.

(5) An inspector may, by notice in the prescribed form given in the prescribed manner, require a prescribed person—

- (a) to produce to the inspector such books relating to the building society as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connexion with the inquiry;
- (c) to verify by statutory declaration any statement made by him to the inspector relating to the affairs of the building society; and

(d) to appear before the inspector for examination on oath or affirmation.

(6) An inspector may examine on oath or affirmation a prescribed person appearing before the inspector in pursuance of a requirement in that regard in pursuance of subsection (5) and may administer the oath or affirmation referred to in paragraph (d) of that subsection.

(7) A person appearing before an inspector for examination in pursuance of a requirement of the inspector under subsection (5) shall have the same protection and shall, in addition to any penalties provided by this Act, be subject to the same liabilities as a witness in any action or trial in the Court.

(8) Where books are produced to an inspector under this section the inspector may take possession of the books for such period as he considers necessary for the purposes of the inquiry, and during that period he shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(9) An inspector may by instrument in writing—

(a) delegate all or any of his powers or functions under this section and section 179 except this power of delegation, the power to administer an oath or affirmation and the power to examine on oath or affirmation; and

(b) vary or revoke a delegation given by him.

(10) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(11) Any act or thing done in the exercise of a power or the performance of a function by a person to whom that power or function has been delegated by an inspector under subsection (9) has the same force and effect as if it had been done by the inspector.

(12) A delegate shall on request of a prescribed person produce the instrument of delegation for inspection.

(13) A delegation under subsection (9) by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

(14) A prescribed person shall not—

(a) refuse or fail to comply with a requirement of an inspector under subsection (5) to the extent to which that person is able to comply with it;

(b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or

(c) when appearing before an inspector for examination in pursuance of such a requirement—

- (i) make a statement that is false or misleading in a material particular;
- (ii) refuse or fail to take an oath or affirmation.

Penalty: \$2 000 or imprisonment for one year, or both.

(15) Where an inquiry to which this section relates is conducted by a person other than the Registrar, that person shall report on the inquiry to the Registrar in such manner as the Registrar directs.

(16) A person who complies with a requirement of an inspector under subsection (5) does not incur a liability to any person by reason only of that compliance.

(17) For the purposes of this section “prescribed person” has the same meaning as is ascribed to that term by section 169.

181. Special audit. (1) Where—

- (a) a majority of members of a building society, present at a meeting called pursuant to section 179 resolves that a special audit be made of the accounts of the building society;
- (b) the Registrar has received from the auditor of a building society a report under section 110 (9) or (10);
- (c) the Registrar is not satisfied with any document, information, particulars or report lodged with or provided to him under this Act in relation to a building society;
- (d) a building society fails, within the time prescribed by, or specified in a direction under, this Act, to lodge with or furnish to the Registrar any document, information, particulars or report required by or under this Act to be so lodged or furnished; or
- (e) the Registrar is otherwise satisfied whether on his own volition or upon the application of any person or persons that it is in the interests of the members, depositors or creditors of a building society or the public generally, to do so,

the Registrar may, by instrument in writing—

- (f) appoint a registered company auditor to examine, audit and report either generally, or in relation to any particular matters, upon the books, accounts and records of the building society (hereinafter in this section referred to as a special audit); and
- (g) vary or revoke such an appointment.

(2) The Registrar shall in the instrument appointing a registered company auditor to make a special audit specify—

- (a) full particulars of the terms and conditions to which the appointment is subject; and

(b) the matters in relation to which the special audit is to be made.

(3) A person appointed under this section to make a special audit shall upon the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Registrar.

(4) The provisions of section 180 (5) to (14) (both inclusive) and section 180 (16) and (17) in relation to an inquiry pursuant to section 179 shall, subject to this section, apply *mutatis mutandis* to and with respect to a special audit under this section and for the purpose of such application the provisions referred to shall be construed as if—

(a) a reference to an inquiry were a reference to special audit under this section;

(b) a reference to an inspector were a reference to the person appointed under this section to make the special audit.

(5) The costs and expenses of and incidental to a special audit under this section shall be defrayed, in such proportions as the Registrar directs, by the applicants or out of the funds of the building society in question or by any officer or member, or former officer or member, of the building society, and may be recovered as a debt due to the Crown in any court of competent jurisdiction.

(6) A copy of the report on any special audit under this section shall be furnished to the building society in question together with such annotations, recommendations and directions as the Registrar deems fit to make and the building society shall comply with any such direction.

(7) If a building society fails to comply with a direction of the Registrar made under subsection (6) the building society and every officer thereof in default each commits an offence against this Act.

Penalty: \$2 000 or imprisonment for one year.

182. Actuarial investigation. The Registrar may direct a building society to submit its affairs to an actuarial investigation.

Such an investigation shall be carried out by the State Actuary of the Public Service of Queensland.

The costs and expenses of any such investigation shall be borne by the building society concerned and shall be recoverable by the Registrar from the building society as a debt due to the Crown in any court of competent jurisdiction.

Division 5—Advisory Committee

183. Advisory Committee. (1) The Housing and Building Societies Advisory Committee as constituted from time to time under section 57 of the *Co-operative Housing Societies Act 1958-1974* shall constitute, and be the Advisory Committee for the purposes of this Act.

(2) The Advisory Committee shall meet at such times and places and conduct its business under this Act in such manner as may be prescribed or, in so far as not prescribed, it deems fit.

(3) The functions of the Advisory Committee under this Act may be performed and discharged in conjunction with its functions under any other Act.

(4) Fees and allowances which may be payable to members of the Advisory Committee under section 57 (5) of the *Co-operative Housing Societies Act 1958-1974* may be fixed having regard to the functions of the committee under this Act.

184. Functions of Advisory Committee. The Advisory Committee as constituted under section 183 (1) shall have, under this Act, functions as follows:—

- (a) observing the progress of building societies;
- (b) when so directed by the Minister, to undertake reviews of the administration of building societies;
- (c) consideration of economic influences affecting the operations of building societies;
- (d) submission to the Minister from time to time, or as the Minister may direct, reports, and recommendations as the committee deems necessary or proper, with respect to matters specified in paragraphs (a), (b) and (c); and
- (e) the performance of such other duties as are imposed by this Act or as may be directed by the Minister and in such manner as the Minister may direct.

PART XI—EVIDENCE AND OFFENCES

Division 1—Evidence

185. Certificates, etc. (1) A certificate of incorporation or other document relating to a building society signed by or bearing the seal of the Registrar shall be received in evidence without further proof.

(2) Any document purporting to be a copy of a certificate of incorporation of a building society and certified as such by the Registrar, shall be received in evidence as if it were the original certificate.

(3) Judicial notice shall be taken of the signature and seal of any person who holds, or has held, the office of Registrar, or Deputy Registrar, and of the signature of any person authorized by the Registrar pursuant to section 161 if the signature or seal purports to be attached to any certificate or other official document.

(4) The provisions of this section extend to any copy of the rules of a building society certified by the Registrar to be a true copy of its registered rules.

(5) A copy of, or extract from, any document registered, furnished or lodged in or at the office of the Registrar, certified to be a true copy

or extract under the hand and seal of the Registrar, shall in any proceedings be admissible in evidence as of equal validity with the original document.

(6) In any proceedings a certificate purporting to be signed by the Registrar that a requirement of this Act specified in the certificate—

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with at a date specified in the certificate but not before that date,

shall be received as prima facie evidence of matters specified in the certificate.

186. Rules. A printed copy of the rules of a building society certified by the secretary of the building society to be a true copy of its registered rules shall be prima facie evidence of the rules.

187. Register. The registers kept in pursuance of section 114 shall be prima facie evidence of the particulars directed or authorized by or under this Act to be inserted therein and a copy of any entry in any such register shall, if certified by the secretary of the building society to be a true copy of the entry in question, be prima facie evidence of the particulars to which the entry refers.

188. Entries in books. A copy of an entry in a book of a building society regularly kept in the course of business shall, if certified by statutory declaration of the secretary to be a true copy of the entry, be received in evidence in any case where, and to the same extent as, the original entry itself is admissible.

189. Minutes' effect as evidence. (1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a building society or of its board, or of a committee of its board and to be signed by the chairman of the meeting at which the business was transacted, or by the chairman of the next succeeding meeting, shall be evidence that the business as therein recorded was transacted at the meeting first mentioned in this subsection and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a building society to the effect that a resolution was carried, or carried unanimously or was lost, shall be evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

190. Form and evidentiary value of books. (1) A book that is required by this Act to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or looseleaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in any other manner approved by the Registrar.

(2) Subsection (1) does not authorize a book to be kept or prepared by a mechanical, electronic or other device unless—

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
- (b) a reproduction of those matters is kept in a written form approved by the Registrar.

(3) A building society shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the building society.

(4) Where a building society records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) Where—

- (a) by virtue of a provision of this Act a book that is required by this Act to be kept or prepared is prima facie evidence of any matters; and
- (b) the book is kept or prepared by recording or storing the matters concerned by means of a mechanical, electronic or other device,

any writing that reproduces matters so recorded or stored is prima facie evidence of those matters.

(6) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of those matters.

191. Saving. The foregoing provisions of the Division are in addition to and not in substitution for any other Act or law under which such documents matters and things are admissible as evidence, have evidentiary value or are judicially noticed.

Division 2—Offences

192. Allotment of shares. A person who, before a building society is registered, takes any money in consideration of the allotment of any share or interest in, or grant of a loan by the building society, commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months, or both.

193. Commission. (1) An officer of a building society who accepts any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connexion with a transaction had, or to be had, by that person with the building society, commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) An officer who commits an offence against subsection (1) shall further, if so ordered by the court by which he was convicted, be liable to pay to the building society such amount not exceeding double the value or double the amount of such commission, fee or reward as is determined by the court.

(3) Any sum received in contravention of this section shall, upon conviction under subsection (1) be repaid by the person who received it to the person who made such payment and that sum may be recovered by the person who paid it from the person by whom it was received in an action as for debt in any court of competent jurisdiction.

194. False copies of rules. Any person—

- (a) who gives to any member of a building society or to any person intending or applying to become a member of a building society a copy of any rules or any alteration of the same other than those which have been duly registered representing that the same are binding on the members of the building society; or
- (b) who makes any alteration in any copy of the rules of the building society after they have been registered, and circulates the same representing that they have been duly registered, when they have not been so registered.

commits an offence against this Act.

195. Failure to comply with lawful requirements, etc. Except where provision is expressly otherwise made in this Act in relation to specific matters, a person who being required under this Act to supply any information, produce any book, or lodge or furnish any return or other document, fails without reasonable excuse, the proof whereof shall lie upon him, to supply that information, produce that book, or lodge or furnish that return or document, as the case may be, in accordance with that requirement commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months.

196. Obstruction. A person who obstructs any person in the exercise of his powers, or in the performance of his duties, under this Act or attempts to do so commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months.

197. Inducement to secure appointment, etc. A person who gives or agrees or offers to give to any officer, member or creditor of a building society any valuable consideration with a view to securing his own

appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the building society's director, auditor, liquidator, administrator, receiver or receiver and manager, or with a view to securing or preventing the exercise of any power, authority, duty or responsibility, or the doing of an act, authorized by this Act, commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 3 months, or both.

198. False or misleading statements. (1) A person who, in a document required by or for the purposes of this Act or lodged with or furnished to the Registrar, makes or authorizes the making of a statement that to his knowledge is false or misleading in a material particular, or omits or authorizes the omission of any matter or thing without which the document is to his knowledge misleading in a material respect, commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(2) A person who, in a document required by or for the purposes of this Act or lodged with or furnished to the Registrar—

- (a) makes or authorizes the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorizes the omission of any matter or thing without which the document is misleading in a material respect.

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, commits an offence against this Act.

Penalty: \$5 000 or imprisonment for one year, or both.

(3) For the purposes of subsections (1) and (2), where—

- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged with or furnished to the Registrar; and
- (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect.

the person shall be deemed to have authorized the making of the statement or the omission of the matter or thing.

199. False reports. (1) An officer of a building society who makes or furnishes, or authorizes or permits the making or furnishing of, a statement, report or representation relating to the affairs of the building

society knowing the statement, report or representation to be false or misleading in a material particular, to—

- (a) the Registrar or an inspector;
- (b) a registered company auditor carrying out a special audit under section 181;
- (c) the Contingency Fund Committee; or
- (d) any director, auditor, member, liquidator or administrator of the building society.

commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(2) An officer of a building society who makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report relating to the affairs of the building society that is false or misleading in a material particular to—

- (a) the Registrar or an inspector;
- (b) a registered company auditor carrying out a special audit under section 181;
- (c) the Contingency Fund Committee; or
- (d) any director, auditor, member, liquidator or administrator of the building society.

commits an offence against this Act.

Penalty: \$5 000 or imprisonment for 1 year, or both.

(3) The references in subsections (1) and (2) to making or furnishing, or authorizing or permitting the making or furnishing of, a false or misleading statement or report relating to the affairs of a building society includes a reference to making or furnishing, or authorizing or permitting the making or furnishing of, a false or misleading statement or report as to the state of knowledge with respect to those affairs of the person making or furnishing, or authorizing or permitting the making or furnishing of, the statement or report.

(4) Where a statement or report is made or furnished to a person or committee referred to in subsection (1) or (2) in response to a question asked by that person or committee the question, and the statement or report, shall be considered together in determining whether the statement or report was false or misleading.

200. Concealing, etc., of books. (1) A person who—

- (a) conceals, destroys, mutilates or alters a book of, or relating to, a building society's affairs which are the subject of—
 - (i) investigation under Division 3 of Part X;
 - (ii) inquiry or special audit under Division 4 of Part X;
- (b) where such book is in the State—sends the book out of the State; or

(c) where such book is outside the State but is within Australia—
sends the book out of Australia.

commits an offence against this Act.

Penalty: \$20 000 or imprisonment for 5 years, or both.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he did not act with intent to defeat the purposes of Division 3 or, as the case may be, Division 4 of Part X or to delay or obstruct the carrying out of an investigation under Division 3 or an inquiry or special audit under Division 4 of Part X, as the case may be.

201. Wrongful possession of books, etc. (1) Any person who—

(a) by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of a building society;

(b) has any of those things in his possession, withholds or misapplies them, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the building society and authorized by this Act.

commits an offence against this Act.

Penalty: \$5 000 or imprisonment for one year.

(2) Any person convicted under subsection (1) may be ordered to deliver up to a building society, or to any person named in the order, all such moneys, securities, books, papers or effects the subject of the conviction.

Any person who fails to so deliver up commits an offence against this Act.

Penalty: Imprisonment for one year.

202. Falsification of books. (1) Any past or present officer or member of a building society who conceals, destroys, mutilates or falsifies any securities of or belonging to the building society or any books affecting or relating to affairs of the building society commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(2) Where matter that is used or intended to be used in connexion with the keeping of any books affecting or relating to the affairs of a building society is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who—

(a) records or stores by means of that device matter that he knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in

compiling or recovering other matter to be recorded or stored, by means of that device; or

- (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter.

commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

(4) In this section, "officer", in relation to a building society, includes a receiver of the property or any part of the property of the building society who is not also a manager.

203. Frauds by officers. (1) A person who, while an officer of a building society—

- (a) has by false pretences or by means of any other fraud, induced any person to—

- (i) give credit to:

- (ii) make a loan to:

- (iii) deposit money with or otherwise subscribe money to:

- (iv) enter into any agreement or contractual arrangement relating to mortgage debts of:

- (v) enter into any agreement or contractual arrangement relating to a members' savings plan of:

- the building society or to a subsidiary of the building society:

- (b) with intent to defraud the building society or a subsidiary of the building society or creditors or members of the building society or of a subsidiary of the building society, makes or purports to make or causes to be made or to be purported to be made any gift or transfer of or charge on, or causes or connives at the levying of any execution against property of the building society or subsidiary:

- (c) with intent to defraud the building society or a subsidiary of the building society or creditors or members of the building society or of a subsidiary of the building society, conceals or removes any part of the property of the building society or subsidiary after or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the building society or subsidiary.

commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(2) If any business of a building society has been carried on with intent to defraud creditors or members of or depositors with the building

society or creditors or members of or depositors (if any) with any other person or for any fraudulent purpose. any person who was knowingly a party to the carrying on of the business in that manner commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

204. Offences by officers of certain building societies. (1) A person who, being a past or present officer of a building society to which this section applies—

- (a) does not, so far as he is capable of doing so, disclose to the appropriate officer all the property of the building society, and how and to whom and for what consideration and when any part of the property of the building society was disposed of within 5 years next before the relevant day, except such part as has been disposed of in the ordinary course of the business of the building society;
- (b) does not deliver up to, or in accordance with the directions of, the appropriate officer—
 - (i) all the property of the building society in his custody or under his control; or
 - (ii) all books in his custody or under his control belonging to the building society;
- (c) has, within 5 years next before the relevant day or at a time on or after that day—
 - (i) concealed or removed any part of the property of the building society to the value of \$100 or upwards;
 - (ii) concealed any debt due to or by the building society;
 - (iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making any omission in, any book affecting or relating to affairs of the building society;
 - (iv) by any false representation or other fraud, obtained on credit for or on behalf of the building society, any property that the building society has not subsequently paid for; or
 - (v) pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the building society, property of the building society that has been obtained on credit and has not been paid for;
- (d) makes any material omission in any statement or report relating to affairs of the building society;
- (e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;
- (f) prevents the production to the appropriate officer of any book affecting or relating to affairs of the building society;
- (g) has, within 5 years next before the relevant day or at a time on or after that day, attempted to account for any part of

the property of the building society by making entries in the books of the building society showing fictitious transactions, losses or expenses; or

- (h) has, within 5 years next before the relevant day or at a time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the building society or any of them to an agreement with reference to the affairs of the building society or to the winding up,

commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(2) It is a defence to a charge arising under subsection (1) (c) (i) in relation to the removal of property of a building society, or under subsection (1) (c) (v) in relation to property of a building society, if the defendant proves that he had no intent to defraud.

(3) It is a defence to a charge arising under subsection (1) (d) if the defendant proves that he had no intent to defraud.

(4) It is a defence to a charge arising under subsection (1) (f) if the defendant proves that he had no intent to conceal the state of affairs of the building society.

(5) Where a person pawns, pledges or disposes of any property in circumstances that amount to an offence under subsection (1) (c) (v), any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence against this Act.

Penalty: \$5 000 or imprisonment for 1 year, or both.

(6) A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in subsection (5) and with the knowledge mentioned in that subsection shall be deemed to hold the property as trustee for the building society concerned and is liable to account to the building society for the property.

205. Liability where proper accounts not kept. (1) If—

- (a) a provision of section 92 was not complied with, in respect of a building society to which this section applies, during the whole or any part of the period of 2 years immediately preceding the relevant day or the period between the incorporation of the building society and the relevant day, whichever period is the less; and
- (b) the building society was at any time during that period, or became at a later time, a building society to which this section applies,

a director of the building society who failed to take all reasonable steps to secure compliance by the building society with the provision throughout that period and any officer of the building society who is in default each commits an offence against this Act.

Penalty: \$5 000 or imprisonment for one year, or both.

(2) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a building society with a provision of section 92, it is a defence if the person proves that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

206. Offences relating to incurring of debts or fraudulent conduct.

(1) If—

- (a) a building society incurs a debt, whether within or outside the State;
- (b) immediately before the time when the debt is incurred—
 - (i) there are reasonable grounds to expect that the building society will not be able to pay all its debts as and when they become due; or
 - (ii) there are reasonable grounds to expect that, if the building society incurs the debt, it will not be able to pay all its debts as and when they become due; and
- (c) the building society is, at the time when the debt is incurred, or becomes at a later time, a building society to which this section applies.

any person who was a director of the building society, or took part in the management of the building society, at the time when the debt was incurred commits an offence against this Act and the building society and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

Penalty: \$5 000 or imprisonment for one year, or both.

(2) In any proceedings against a person under subsection (1), it is a defence if the defendant proves—

- (a) that the debt was incurred without his express or implied authority or consent; or
- (b) that at the time when the debt was incurred, he did not have reasonable cause to expect—
 - (i) that the building society would not be able to pay all its debts as and when they became due; or
 - (ii) that, if the building society incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of that debt.

(4) Where subsection (1) renders a person or persons liable to pay a debt incurred by a building society, the payment by that person or

either or any of those persons of the whole or any part of that debt does not render the building society liable to the person concerned in respect of the amount so paid.

(5) If—

- (a) a building society does any act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the building society or of any other person or for any other fraudulent purpose; and
- (b) the building society is at the time when it does the act, or becomes at a later time, a building society to which this section applies.

any person who was knowingly concerned in the doing of the act with that intent or for that purpose commits an offence against this Act.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(6) A certificate issued by the proper officer of a court stating that a person specified in the certificate—

- (a) was convicted of an offence under subsection (1) in relation to a debt specified in the certificate incurred by a building society so specified; or
- (b) was convicted of an offence under subsection (5) in relation to a building society specified in the certificate.

is, in any proceedings, prima facie evidence of the matters stated in the certificate.

(7) A document purporting to be a certificate issued under subsection (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

207. Powers of Court. (1) Where a person—

- (a) has been convicted of an offence under section 203 or 206 (1);
- (b) has been convicted under any other Act of an offence that involves fraudulent misappropriation or fraudulent embezzlement of any members' and depositors' funds or any other moneys, securities or the like or any other property of a building society, held in trust or otherwise; or
- (c) was a director of, or was concerned in the management of, a building society the manner in which the affairs of the building society had been managed was wholly or partly responsible for the building society's being wound up, ceasing to carry on business, being unable to satisfy a levy of execution (other than by reason of a direction pursuant to section 123), being subject to the appointment of an administrator or of a receiver or manager or entering into a compromise or scheme of arrangement with its creditors,

the Court on the application of the appropriate officer or, with the consent of the Minister, any creditor or member of or depositor with

the building society may, if it thinks proper to do so, declare that the person is personally responsible without any limitation of liability for the payment—

- (i) to the building society of the amount required to satisfy all or any of the debts of the building society as the Court directs; and
- (ii) to the Contingency Fund of an amount equal to the whole or such part, as the Court thinks fit, of the amount of claims (including costs) admitted against the Fund in respect of a conviction referred to in paragraph (a) or (b) or the manner referred to in paragraph (c).

(2) Where a person has been convicted of an offence under section 206 (5), the Court, on the application of the Registrar or of a prescribed person, may, if it thinks it proper to do so, declare that the first mentioned person shall be personally responsible without any limitation of liability for the payment to the building society of the amount required to satisfy so much of the debts of the building society as the Court thinks proper.

(3) In relation to a building society in respect of which a conviction referred to in subsection (2) relates—

- (a) the appropriate officer; and
- (b) a creditor of the building society authorized by the Registrar to make an application under that subsection,

are prescribed persons for the purposes of that subsection.

(4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(5) In particular, the Court may order that the liability of the person under the declaration shall be a charge—

- (a) on a debt or obligation due from the building society to him; or
- (b) on a right or interest under a charge on any property of the building society held by or vested in him or a person on his behalf, or a person claiming as assignee from or through the person liable or a person acting on his behalf.

(6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).

(7) For the purpose of subsection (5), “assignee” includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

(8) On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may himself give evidence or call witnesses.

208. Interpretation. (1) Sections 204 to 207 (both inclusive) apply to a building society—

- (a) that has been wound up or is in the course of being wound up;
- (b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 383 of the *Companies (Queensland) Code* as applied by Part VIII;
- (c) that has at any time been, or is under the management of an administrator;
- (d) affairs of which have been or are under investigation pursuant to Division 3 of Part X;
- (e) affairs of which have been or are being inquired into pursuant to sections 179 and 180;
- (f) in respect of the property or part of the property of which a receiver, or a receiver and manager, has at any time been appointed, whether by the Court or pursuant to the powers contained in any instrument, whether or not the appointment has been terminated; or
- (g) that has ceased to carry on business or is unable to pay its debts.

(2) For the purposes of this section, a building society—

- (a) shall be deemed to have ceased to carry on business if, and only if, the Registrar has—
 - (i) sent to the building society by post a letter pursuant to the provisions of section 459 (1) of the *Companies (Queensland) Code* as applied by Part VIII and has not, within the next succeeding period of one month from the date of the letter, received an answer to the effect that the building society is carrying on business; or
 - (ii) published in the Gazette a notice pursuant to the provisions of section 459 (3) of that Code as so applied; and
- (b) shall be deemed to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the building society is returned unsatisfied in whole or in part.

(3) In this section and in sections 204 to 207 (both inclusive)—

“appropriate officer” means—

- (a) in relation to a building society that has been, has been in the course of or is being wound up—the liquidator;
- (b) in relation to a building society that has been or is being managed by an administrator—the administrator;
- (c) in relation to a building society the affairs of which have been or are under investigation pursuant to Division 3 of Part X—the Registrar;
- (d) in relation to a building society the affairs of which have been or are being inquired into pursuant to sections 179 and 180—the Registrar;
- (e) in relation to a building society in respect of the property or any part of the property of which a receiver, or a receiver and manager, has been appointed—the receiver or the receiver and manager; and
- (f) in the case of a building society in respect of which a claim has been admitted against the Contingency Fund—the chairman of the Contingency Fund Committee;
- (g) in the case of a building society in respect of which any fraudulent misappropriation or fraudulent embezzlement has occurred—any director of the building society authorized in a particular case by the building society’s board;
- (h) in the case of a building society—
 - (i) that has ceased to carry on business;
 - (ii) that has been terminated or dissolved;
 - (iii) in respect of which the execution or other process of any judgment, decree or order of a court is or has been returned unsatisfied in whole or part.

the Registrar;

- (i) in the case of any other building society, the Registrar;

“relevant day” means—

- (a) in relation to a building society that has been, has been in the course of or is being wound up—the day upon which under the provisions of the *Companies (Queensland) Code* as applied by Part VIII or of a corresponding previous law of the State the winding up commenced or is deemed to have commenced;
- (b) in relation to a building society that has been or is under the management of an administrator—the day upon which the administrator was appointed;
- (c) in relation to a building society the affairs of which have been or are under investigation pursuant to Division 3

of Part X—the day upon which the inspector was appointed;

- (d) in relation to a building society the affairs of which have been or are being inquired into pursuant to sections 179 and 180—the day upon which the Registrar made the determination that the inquiry be held;
- (e) in relation to a building society in respect of the property or any part of the property of which a receiver, or a receiver and manager, had been appointed—the day upon which the receiver, or the receiver and manager, was appointed;
- (f) in relation to a building society that is unable to pay its debts—the day upon which the execution or other process was returned unsatisfied in whole or in part; or
- (g) in relation to a building society that has ceased to carry on business—the day on which a letter was first sent to the building society or a notice was first published in the Gazette in relation to the building society under section 459 of the *Companies (Queensland) Code* as applied by Part VIII.

209. Certain rights not affected. Except as provided by section 206 (4), nothing in section 206 (1) or 207 (1) or (2) affects any right of a person to indemnity, subrogation or contribution.

210. General penalty provisions. (1) A person who—

- (a) does any act or thing that he is forbidden to do by or under a provision of this Act;
- (b) does not do any act or thing that he is required or directed to do by or under a provision of this Act; or
- (c) otherwise contravenes or fails to comply with a provision of this Act,

unless that provision otherwise provides, commits an offence against this Act.

(2) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or party to the commission of an offence against this Act shall be deemed to have committed that offence and is punishable accordingly.

(3) A person who attempts to commit an offence against this Act is guilty of an offence against this Act and is punishable as if the attempted offence has been committed.

(4) Where a corporation (other than a building society) commits an offence against this Act any officer of the corporation who is in any way whether by any act or omission, directly or indirectly concerned in or party to the default, contravention or failure constituting the offence or, in the case of a continuing default, contravention or failure, is or at any time becomes so concerned in or party to the continuing

default, contravention or failure also commits the same offence and is liable to the penalty prescribed for that offence.

(5) A person who commits an offence against this Act is liable, unless otherwise prescribed, to a penalty of \$1 000.

(6) This Act is in addition to and not in substitution for the provisions of *The Criminal Code*.

211. Offences committed partly in and partly out of the State. If a person does or omits to do an act or thing outside the State and that person, if he had done or omitted to do that act or thing in the State, would, by reason of his also having done or omitted to do an act or thing in the State, have committed an offence against this Act, that person commits an offence against this Act.

212. Continuing offences. (1) Where—

- (a) by or under this Act any act or thing is required or directed to be done within a particular period or before a particular time;
- (b) failure to do that act or thing within the period or before the time referred to in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period or before the time referred to in paragraph (a).

the following provisions of this subsection have effect:—

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;
- (e) where a person is convicted of an offence that, by virtue of paragraph (d), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and
- (f) the penalty applicable to each such separate and further offence is \$50.

(2) Where—

- (a) by or under this Act any act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified;
- (b) failure to do that act or thing constitutes an offence; and
- (c) a person is convicted of an offence in respect of a failure to do that act or thing,

that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to do that

act or thing continues and the penalty applicable to each such separate and further offence is \$50.

(3) Charges against the same person for any number of offences under subsection (1) (e) or (2) may be joined in the same complaint if those offences relate to a failure to do the same act or thing.

(4) If a person is convicted of more than one offence under subsection (1) (e) or subsection (2), the court may impose one penalty in respect of all the offences of which the person is so convicted under that subsection, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

213. Officers and other persons in default. (1) Where a provision of this Act provides that an officer of a building society, or other person who is in default commits an offence against this Act, the reference to the officer or other person who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any officer of the building society (including a person who subsequently ceased to be an officer of the building society) or any person, as the case may be, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

(2) For the purposes of subsection (1), a secretary of a building society shall, unless the contrary is proved, be deemed to be knowingly concerned in and party to any failure by the building society to comply with a provision of this Act requiring the lodgment or furnishing of a document with or to the Registrar.

Division 3—Proceedings

214. Proceedings how and when taken. (1) Notwithstanding anything in any other Act, proceedings for any offence against this Act with a view to the summary conviction of the offender may be instituted within the period of 3 years after the act or omission alleged to constitute the offence or, with the consent of the Minister, at any later time.

(2) In any proceedings for an offence against this Act any complaint under the *Justices Act 1886-1982* may be made only—

- (a) by the Registrar; or
- (b) by a person authorized in writing by the Minister.

(3) The authority of a person to make a complaint referred to in subsection (2) shall be presumed until the contrary is proved.

215. Indictable offences and summary offences. (1) An offence against this Act that is not punishable by imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

(2) An offence against this Act that is punishable by imprisonment for a period exceeding 6 months is, subject to subsection (3), punishable on indictment.

(3) Where—

- (a) proceedings for an offence against this Act that is punishable by imprisonment for a period exceeding 6 months are brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceedings.

the offence is punishable summarily and the court shall hear and determine the proceedings.

(4) A court of summary jurisdiction may not—

- (a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding 2 years; or
- (b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in the aggregate, exceed 5 years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

216. Civil remedies. If a building society in making or raising any loan or making an advance or receiving any deposit or allotting any shares contravenes any provision of this Act or any rule of the building society, the civil rights and liabilities of the building society or any other person in respect of the recovery of the loan, advance or deposit or the moneys payable in respect of the shares shall not be affected or prejudiced by the contravention, save that the money shall become immediately payable, and the same remedies may be had for the recovery of the loan, advance or deposit or share capital and for the enforcement of any security therefor as if there had not been a contravention of this Act or the rules of the building society.

217. Examination of persons concerned with building societies. (1) In this section, a reference, in relation to a building society, to a prescribed person, shall be construed as a reference to any administrator or liquidator of the building society or to any other person authorized by the Registrar to make applications under this section or to make an application under this section in relation to that building society.

(2) Where it appears to the Registrar or to a prescribed person that—

- (a) a person who has taken part or been concerned in the formation, management, administration or winding up of, or has otherwise taken part or been concerned in the affairs of, a building society, has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that building society; or

- (b) a person may be capable of giving information in relation to the formation, management, administration or winding up of, or otherwise in relation to the affairs of, a building society.

the Registrar or prescribed person may apply to the Court for an order under this section in relation to the person.

(3) Where an application is made under subsection (2) in relation to a person, the Court may, if it thinks fit, order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath or affirmation on any matters relating to the formation, management, administration or winding up of, or otherwise relating to the affairs of, the building society concerned.

(4) An examination under this section shall be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

(5) The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in case of an examination in private, directions as to the persons who may be present), as it thinks fit.

(6) A person who is ordered under subsection (3) to attend before the Court shall not without reasonable excuse—

- (a) fail to attend as required by the order; or
- (b) fail to attend from day to day until the conclusion of the examination.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(7) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to take an oath or make an affirmation.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(8) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to answer a question that he is directed by the Court to answer.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(9) A person attending before the Court for examination pursuant to an order made under subsection (3), if directed by the Court to produce any books in his possession or under his control relevant to the matters on which he is to be, or is being, examined, shall not refuse or fail to comply with the direction.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

(11) A person attending before the Court for examination pursuant to an order made under subsection (3) shall not make a statement that is false or misleading in a material particular.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(12) A person is not excused from answering a question put to him at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, the answer is not admissible in evidence against him in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given by him at an examination under this section to be recorded in writing and may require him to sign that written record.

(14) Subject to subsection (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by *The Recording of Evidence Acts, 1962 to 1968*, may be used in evidence in any legal proceedings against the person.

(15) An examination under this section may, if the Court so directs and subject to the rules of Court, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

(16) A person ordered to attend before the Court or another court for examination under this section may, at his own expense, employ a solicitor or barrister-at-law and the solicitor or barrister-at-law, as the case may be, may put to him such questions as the Court, or the other court, as the case may be, considers just for the purpose of enabling him to explain or qualify any answers or evidence given by him.

(17) The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

(18) Where an order is made under subsection (3) and the Court is satisfied that it was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

218. Civil proceedings not to be stayed. No civil proceedings under this Act shall be stayed by reason only that the proceeding discloses, or arises out of, commission of an offence.

219. Orders against persons concerned with building societies. (1) In this section, a reference to a prescribed person, in relation to a building society, shall be construed as a reference to any administrator or liquidator of the building society or to any other person authorized

by the Registrar to make applications under this section or to make an application under this section in relation to that building society.

(2) Subject to subsection (3), where, on application by the Registrar or a prescribed person, the Court is satisfied that—

- (a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a building society; and
- (b) the building society has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

(3) The Court shall not make an order against a person under subsection (2) unless the Court has given the person the opportunity—

- (a) to give evidence himself;
- (b) to call witnesses to give evidence;
- (c) to adduce other evidence in relation to the matters to which the application relates; and
- (d) to employ, at his own expense, a solicitor or barrister-at-law to put to him, or to any other witness, such questions as the Court considers just for the purpose of enabling him to explain or qualify any answer or evidence given by him.

(4) The orders that may be made under subsection (2) against a person include—

- (a) an order directing the person to pay money or transfer property to the building society; and
- (b) an order directing the person to pay to the building society the amount of the loss or damage.

(5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

220. Power to grant relief. (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, it appears to the court before which the proceedings are taken that the person is, or may be, liable in respect of the negligence, default or breach but that he has acted honestly and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect

of any negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, he may apply to the Court for relief, and the Court has the same power to relieve him as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) Where a case to which subsection (1) applies is being tried by a Judge with a jury, the Judge after hearing the evidence may, if he is satisfied that the defendant ought, pursuant to that subsection, to be relieved either wholly or partly from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge thinks proper.

(4) This section applies to a person who is or has been—

- (a) an officer of a building society;
- (b) an auditor of a building society;
- (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise; or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a building society.

(5) For the purposes of this section, "officer" in relation to a building society, means—

- (a) a director, secretary, executive officer or employee of the building society;
- (b) a receiver, or receiver and manager, of the property or part of the property of the building society;
- (c) an administrator of the building society; and
- (d) a liquidator of the building society.

221. Irregularities. (1) In this section, unless the contrary intention appears—

- (a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and
- (b) a reference to a procedural irregularity includes a reference to—
 - (i) the absence of a quorum at a meeting of a building society, at a meeting of directors or creditors of a building society, or at a joint meeting of creditors and members of a building society; and
 - (ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot

be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act or the rules of a building society, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:—

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a building society, is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of the rules of the building society;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
- (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
- (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a building society (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding.

and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under subsection (4) (a) or (c) notwithstanding that the contravention or failure referred to in the subsection concerned resulted in the commission of an offence.

(6) The Court shall not make an order under this section unless it is satisfied—

- (a) in the case of an order referred to in subsection (4) (a)—
 - (i) that the act, matter or thing, or the proceeding, referred to in that subsection is essentially of a procedural nature;
 - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

- (iii) that it is in the public interest that the order be made;
- (b) in the case of an order referred to in subsection (4) (c), that the person subject to the civil liability concerned acted honestly; and
- (c) in every case, that no substantial injustice has been or is likely to be caused to any person.

PART XII—MISCELLANEOUS

222. Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to—

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing, and providing for the recovery of, fees to be paid in respect of matters or things to be done under or for the purposes of this Act;
- (c) the furnishing to the Registrar of information in addition to, or in variation of, the information contained in a prescribed form lodged with him;
- (d) the manner in which, the persons by whom, and the directions in accordance with which the prescribed forms, or any of them, shall or may be signed, prepared or completed, and the regulation generally of the signing, preparation and completion of those forms or any of them;
- (e) the times within which information required to be furnished to the Registrar pursuant to this Act shall be so furnished;
- (f) prescribing the manner in which a rate of interest is to be calculated for the purposes of this Act;
- (g) prescribing penalties not exceeding \$500 for any breach of the regulations and where the breach is a continuing breach an additional penalty not exceeding \$50 per day;
- (h) requiring the verification, including verification by statutory declaration, of a statement or return lodged with the Registrar;
- (i) prescribing accounting standards for the purpose of Division 3 of Part V;
- (j) requiring a director of a building society to give notice in writing to the building society of such particulars and other matters contained in any register kept by the building society as are specified in the regulations;
- (k) systems and procedures to be used by a building society in carrying on its business;
- (l) generally prescribing any matters or things authorized or required to be prescribed under this Act or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Except as otherwise expressly provided in this Act, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstances.

(3) For the purpose of subsection (1) (i) the regulations may adopt, wholly or in part or with such modifications (if any) as may be contained in the regulations and either by way of reference or by way of express specification therein, any of the accounting standards of the body known as the Accounting Standards Review Board or some other body identified in the regulations.

223. Advertising. (1) Subject to subsection (4), a building society shall not advertise or cause, permit or authorize any other person to advertise on its behalf unless it has obtained the prior approval in writing of the Registrar who is hereby authorized to approve of any advertisement by, or on behalf of, a building society on such terms and conditions as he thinks fit.

(2) Without derogating from the provisions of subsection (1), a building society or any other person that in any advertisement makes a reference to—

(a) the receipt of share capital or to the acceptance of loans or deposits; or

(b) the right and method of withdrawal of share capital or to the right and method of repayment of loans and deposits,

which reference is not in compliance with the building society's rules, commits an offence against this Act.

Penalty: \$5 000.

(3) A person shall not by advertisement in any form seek members, capital or deposits in or for a proposed permanent building society unless he has obtained the prior approval in writing of the Registrar who is hereby authorized to approve of any such advertisement on such terms and conditions as he thinks fit.

(4) The Minister may, if he thinks fit, exempt—

(a) a building society;

(b) building societies generally; or

(c) a particular class of building societies,

from complying with the provisions of subsection (1), which exemption may be made subject to such terms and conditions as the Minister thinks fit.

Any exemption granted under this subsection may at any time be revoked by the Minister.

(5) A building society or person that fails to comply with any term or condition imposed pursuant to this section commits an offence against this Act.

Penalty: \$5 000.

- (6) In this section "advertisement" includes—
- (a) any advertisement, circular or handbill in or by any medium inviting business or making known the activities of a building society or proposed permanent building society;
 - (b)—
 - (i) the promotion or sponsorship of any activity; or
 - (ii) the sponsorship of a person,
 - which has the effect of inviting business or making known the activities of a building society or proposed activities of a proposed permanent building society;
 - (c) matter that makes known the activities of the building society;
 - (d) matter that involves the employment of funds pursuant to section 32 or 33 that is not in writing but by reason of the form or context in which it appears conveys a message.

224. Publication etc., of Orders in Council. The provisions of section 28A of the *Acts Interpretation Act 1954-1977* apply with all necessary adaptations to and in relation to Orders in Council made under this Act and for the purposes of that application a reference in those provisions to a regulation shall be construed as a reference to an Order in Council made under this Act.

225. Rules of Court. (1) Where under this Act any power or jurisdiction is conferred on the Court, the power to make rules of court in respect of that court includes power to make rules with respect to proceedings and the practice and procedure of the court under this Act.

(2) Until such rules are made a Judge of the Court may, in any particular case, give such directions as he deems fit and such directions shall, according to their tenor, have the force and effect of rules made under this section.

226. Preservation and disposal of records, etc. A building society that is required by a provision of this Act to maintain, make or keep a register or any record (other than a record to which section 92 (2) relates) in relation to the business carried on by the building society shall preserve that register or record for a period of 5 years next after the day on which the last entry was made therein.

227. Building societies may be approved for purposes of Trusts Act. The Governor in Council may, on the recommendation of the Minister made after considering the written application of a permanent building society made in that regard, by Order in Council approve of the society for the purposes of section 21 (1) (k) of the *Trusts Act 1973-1985*.

The regulations may prescribe guidelines in accordance with which applications of permanent building societies for approval under this section will be determined.

228. Building societies may be registered issuers or packagers. A permanent building society may, notwithstanding its rules, be registered under the *Mortgages (Secondary Market) Act 1984* as a registered issuer or packager within the meaning of section 4 of that Act and carry on business as such in accordance with the provisions of that Act.

PART XIII—TRANSITIONAL, ETC.

229. Application of Divisions 3 and 4 of Part V—Transitional. (1) Divisions 3 and 4 of Part V do not apply, in relation to a building society that immediately before the commencement of this Act was registered under the repealed Act, to or in respect of the financial year of the building society that began before the commencement of this Act and ends after that commencement.

(2) To the extent to which, by virtue of subsection (1), Divisions 3 and 4 of Part V do not apply in relation to a building society to or in respect of the financial year of the building society that began before the commencement of this Act and ends after that commencement, the provisions (if any) of the repealed Act relating to matters in respect of which provision is made by or under Divisions 3 and 4 of Part V continue to apply as if this Act has not been enacted.

230. Acts of Registrar—Transitional. All acts, matters and things of a continuing nature done or commenced before the commencement of this Act by, on behalf of, or in relation to the Registrar under the repealed Act to or in respect of a building society to which section 16 relates shall not be affected and shall, under and subject to this Act, continue to have the same status, operation and effect as they would have had if this Act had not been enacted.

231. Winding up, etc.—Transitional. The provisions of this Act with respect to winding up or dissolution shall not apply to any building society in respect of which the winding up, cancelling, striking off, dissolution or termination has commenced before the commencement of this Act, and every such building society shall be wound up or, as the case may be, cancelled, struck off, dissolved or terminated in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up, cancelling, striking off, dissolution or termination the repealed Act shall be deemed to remain as in force immediately prior to the commencement of this Act.

232. Registrar to act as representative of all building societies. Any power under section 37A (7) of the repealed Act which the Registrar under that section could have exercised before the commencement of this Act as representing a dissolved or terminated building society or its liquidators may be exercised by the Registrar under this Act as representing the building society or liquidator notwithstanding that the building society had ceased to exist before the commencement of this Act.

233. Existing applications preserved. Any application for registration of a building society made under the repealed Act and not dealt with under that Act prior to the commencement of this Act shall be deemed to be an application for registration made under this Act and accordingly shall comply in all respects with the provisions of this Act and may be dealt with by the Registrar in accordance with and subject to those provisions.

234. Savings. Except as in this Act by necessary implication provided—

- (a) all persons, things and circumstances appointed done or vested by or under the repealed Act, or the rules of a building society registered under the repealed Act, or existing or continuing under that Act or those rules immediately before the commencement of this Act shall under and subject to this Act continue to have the same status, operation and effect as they would have had if that Act had not been repealed;
- (b) in particular and without affecting the generality of paragraph (a), the repeal of the repealed Act shall not disturb the continuity of status, operation or effect of any establishment, incorporation or registration of a building society or of any rule, regulation, direction, order, notice, registration, register, resolution, security, mortgage, conveyance, re-conveyance, certificate, receipt, deed, instrument, document, appointment, application, contract, agreement, compromise, arrangement, right or liability made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, kept, accrued, incurred, granted, fixed, acquired, existing or pending by or under the repealed Act before the commencement of this Act.

235. Validation of certain interest rates. Where a permanent building society, in respect of advances made by it prior to 17 September 1974, charged, in respect of the period commencing 1 August 1974 and concluding 8 November 1978, in purported exercise of authority conferred on it by Orders in Council made in accordance with section 23A of the repealed Act subsequent to that section's amendment by the *Building Societies Act Amendment Act 1974*, or, as the case may be, the *Building Societies Act Amendment Act (No. 2) 1976* rates of interest varying from 10.75 per centum per annum to 11.75 per centum per annum which it was not authorized to charge pursuant to those Orders, then, notwithstanding—

- (a) the provisions of this or the repealed Act or any other Act or law to the contrary;
- (b) any term or covenant of any mortgage or other instrument securing the repayment of moneys advanced by the society;
- (c) any form of mortgage or other instrument used by the society, whether prescribed or not;
- (d) the rules of the society as they stood at any time before or during that period.

it is hereby declared that the charging of those rates of interest was as valid as if it had been duly authorized.

236. Validation and operation of certain rules. (1) Where a permanent building society that was registered under the repealed Act and that was in existence immediately before the commencement of this Act, registered under the repealed Act a rule that was inconsistent with the provisions of the repealed Act then, notwithstanding the provisions of section 12 of the repealed Act, that rule, if the Minister prior to the commencement of this Act approved thereof, is hereby declared to be valid and shall be deemed always to have been valid.

(2) Where a rule is approved pursuant to subsection (1) and the permanent building society in question is registered under this Act by virtue of section 16 (1) that rule, together with the other rules of the society, shall be the rules referred to in that section in respect of that society.

(3) Any application for the alteration of a rule approved under subsection (1) shall be made in accordance with section 20 of this Act and that section shall apply thereto except to the extent that any approval or refusal of the application shall be made by the Minister.

(4) Any approval granted by the Minister pursuant to subsection (1) or (3) may be granted in such terms and made subject to such conditions as the Minister thinks fit.

(5) Notwithstanding the provisions of section 17 of this Act, where there is any inconsistency between any rule or alteration approved pursuant to subsection (1) or (3) and the provisions of this Act that rule shall prevail and it shall be deemed to conform with this Act.

FIRST SCHEDULE
Part I

[s. 5]

Enactment repealed	Extent of repeal
<i>Building Societies Act of 1886</i> , 50 Vic. No. 34	The Whole
<i>Building Societies Act Amendment Act of 1915</i> , 6 Geo. 5 No. 10	The Whole
<i>Building Societies Acts Amendment Act of 1942</i> , 6 Geo. 6 No. 15	The Whole
<i>Building Societies Acts Amendment Act of 1943</i> , 7 Geo. 6 No. 22	The Whole
<i>Building Societies Acts Amendment Act of 1952</i> , 1 Eliz. 2 No. 23	The Whole
<i>Building Societies Acts Amendment Act of 1956</i> , 5 Eliz. 2 No. 22	The Whole
<i>Building Societies Acts Amendment Act of 1958</i> , 7 Eliz. 2 No. 52	The Whole
<i>Building Societies Acts Amendment Act of 1967</i> , No. 7	The Whole
<i>Building Societies Acts Amendment Act of 1968</i> , No. 18	The Whole
<i>Building Societies Act and Another Act Amendment Act 1971</i> , No. 56	The Whole
<i>Building Societies Act Amendment Act 1972</i> , No. 25	The Whole
<i>Building Societies Act Amendment Act 1974</i> , No. 48	The Whole
<i>Building Societies Act Amendment Act 1975</i> , No. 77	The Whole
<i>Building Societies Act Amendment Act 1976</i> , No. 28	The Whole
<i>Building Societies Act Amendment Act 1976 (No. 2)</i> , No. 49	The Whole

Part II

Act and Amendment	New Collective Title
<p><i>Trusts Act 1973-1981</i></p> <p>In section 21, in subsection (1), inserting at the end of paragraph (j) the following expression and paragraph:—</p> <p style="padding-left: 40px;">“(k) in the purchase of shares in, or the deposit of moneys with, a permanent building society approved for that purpose under the <i>Building Societies Act 1985</i>”.</p>	<p><i>Trusts Act 1973-1985</i></p>

SECOND SCHEDULE

[s. 17]

(a) The name of the building society.

(b) The objects of the building society.

(c) The terms upon which paid up shares (if any) are to be issued and dealt with, and whether preferential shares are to be issued, and if so, within what limits (if any).

(d) The powers of the building society, in particular and without affecting the generality of this clause—

(i) the powers to borrow money;

(ii) the powers to raise money on deposit and the manner in which the board may regulate the withdrawal of such deposits, and any limitation on any of the powers of the building society.

(e) The purposes to which the funds of the building society are to be applied, and the manner in which they are to be invested.

(f) Whether shares may or may not be withdrawn, and if so, upon what terms, and the terms upon which mortgages may be redeemed.

(g) The manner in which the funds of the building society are to be managed and in particular the mode of drawing and signing drafts, bills of exchange, cheques, promissory notes and other negotiable instruments for and on behalf of the building society.

(h) The number of directors, the qualifications of directors and the manner of electing, appointing, remunerating and removing directors and filling a vacancy.

(i) The powers and duties of the board, the requisite notice of meetings, and the quorum for meetings.

(j) The intervals between general meetings of the building society, the manner of calling general and special meetings, the requisite notices of meetings, the quorum for meetings of the building society.

(k) The procedures for the conduct of meetings of the building society including the rights of members in voting at meetings, the manner of voting and the majority necessary for carrying resolutions.

(l) Provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the building society.

(m) The manner of appointing, remunerating and removing auditors, the powers and duties of auditors, and in particular their powers and duties with respect to the inspection of securities belonging to the building society.

(n) The manner of altering or rescinding the rules and of making additional rules.

(o) The device, custody and use of the seal of the building society.

(p) The manner in which the building society may be wound up or terminated.

(q) The manner of appointing, remunerating and removing officers of the building society (other than directors), the powers and duties of such officers.

(r) Whether disputes between the building society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to arbitration, or how otherwise.

(s) Provision for the custody of the mortgage deeds and other securities belonging to the building society.

(t) The fines and forfeitures to be imposed on members of the building society:

(u) The circumstances, including those relating to bankruptcy and death, in which membership ceases.