

BUILDING SOCIETIES AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

THE PURPOSE OF THIS BILL IS TO IMPLEMENT CHANGES TO THE BUILDING SOCIETIES ACT, 1976 THAT ARE NECESSARY AS A CONSEQUENCE OF THE TRANSFER OF REGULATION OF PERMANENT BUILDING SOCIETIES TO THE COMMONWEALTH. THE DRAFTING INSTRUCTIONS FOR THE BILL CONTAINED AMENDMENTS TO THE ACT TO UPDATE THE LEGISLATION TO REFLECT ITS RESIDUAL PURPOSE OF REGULATING TERMINATING BUILDING SOCIETIES.

THE OBJECT OF THE BILL IS TO UPDATE THE BUILDING SOCIETIES ACT SO THAT ITS APPLICATION IS SOLELY FOR THE REGULATION OF TERMINATING BUILDING SOCIETIES.

THE FINANCIAL SECTOR REFORM BILL 1999 TRANSFERRED THE SUPERVISION OF PERMANENT BUILDING SOCIETIES (DEPOSIT TAKING INSTITUTIONS) FROM STATE TO COMMONWEALTH SUPERVISION. SUPERVISION OF THE TERMINATING BUILDING SOCIETIES REMAINED UNDER THE BUILDING SOCIETIES ACT 1976.

THE TRANSFER OF THE REGULATORY RESPONSIBILITY OF PERMANENT BUILDING SOCIETIES TO THE AUSTRALIAN PRUDENTIAL REGULATORY AUTHORITY, RESULTED SECTION 66 OF THE BANKING ACT 1959 BEING APPLIED. THIS SECTION QUARANTINED THE TERM "BUILDING SOCIETY" AND IS EXCLUSIVELY FOR USE BY PERMANENT BUILDING SOCIETIES UNDER.

THE AUSTRALIAN PRUDENTIAL REGULATORY AUTHORITY USED ITS AUTHORITY UNDER THE BANKING ACT TO ISSUE A TEMPORARY EXEMPTION TO THE TERMINATING BUILDING SOCIETIES, ALLOWING THEM TO USE THE TERM "BUILDING SOCIETY" IN THEIR TITLE UNTIL 1 JULY 2002.

TO OVERCOME LONG TERM ISSUE OF NAME UNDER THE BANKING ACT THE PREVIOUS GOVERNMENT ACTING ON ADVICE FROM INDUSTRY PROCEEDED TO DRAFT NECESSARY AMENDMENTS TO THE BUILDING SOCIETIES ACT 1976. THE FEDERATION OF BUILDING SOCIETIES THE REPRESENTATIVE BODY OF THE TERMINATING BUILDING SOCIETIES HAS BEEN CONSULTED ON THE PROPOSED AMENDMENT OF THE BUILDING SOCIETIES ACT 1976 AND ARE FULLY SUPPORTIVE OF THE CHANGES TO THE ACT AND THE CHANGE OF NAME TO "HOUSING SOCIETIES".

THE BUILDING SOCIETIES AMENDMENT BILL 2001 ALSO DELETES REFERENCE TO STARR BOWKETT SOCIETES. THESE SOCIETIES HAVE NOT BEEN OPERATING UNDER THE BUILDING SOCIETIES ACT 1976 FOR OVER 30 YEARS AS THEY DID NOT PROVIDE TIMELY ACCESS TO LOAN FUNDS FOR MEMBERS.

CLAUSE NOTES

PART 1 – PRELIMINARY

CLAUSE 1: THIS ACT MAY BE CITED AS THE BUILDING SOCIETIES AMENDMENT ACT 2001.

CLAUSE 2: THE ACT IS TO COME INTO OPERATION ON THE DAY OF WHICH IT RECEIVES ROYAL ASSENT.

PART 2 – AMENDMENTS TO THE BUILDING SOCIETIES ACT 1976

CLAUSE 3 4 & 5: THESE CLAUSES RENAME THE ACT TO THE HOUSING SOCIETIES ACT 1976.

CLAUSE 6: THIS CLAUSE AMENDS SECTION 5 OF THE BUILDING SOCIETIES ACT WHICH IS UPDATED BY DELETING DEFINITIONS THAT REFER TO PERMANENT BUILDING SOCIETIES AND DEFINITIONS SPECIFIC TO PERMANENT BUILDING SOCIETY OPERATIONS. STARR BOWKETT SOCIETIES (THAT NO LONGER OPERATE) AND TERMINATING SOCIETIES DEFINITIONS ARE ALSO DELETED. NEW DEFINITIONS ARE PUT IN PLACE, THAT DEFINE “SOCIETY”, “ADI” AND “SUBSIDIARY” FOR THE PURPOSES OF THE RENAMED HOUSING SOCIETIES ACT.

CLAUSE 7: THIS CLAUSE AMENDS SECTION 5A OF THE ACT AS PERMANENT BUILDING SOCIETIES ARE NOW REGULATED UNDER COMMONWEALTH LEGISLATION. THE NEW SECTION 5A DEFINES SUBSIDIARY FOR THE PURPOSES OF THE AMENDED ACT (THIS DEFINATION IS NECESSARY BECAUSE CLAUSE 9 PROHIBITS THE SOCIETIES HAVING SUBSIDIARIES). THE AMENDED SECTION 5B OF THE ACT LINKS THE PROVISIONS OF THE HOUSING SOCIETIES ACT TO SOCIETIES THAT ARE CURRENTLY REGISTERED UNDER THE PREVIOUSLY TITLED BUILDING SOCIETIES ACT.

- CLAUSE 8: THIS CLAUSE AMENDS SECTION 13 OF THE ACT BY DELETING “BY SUBSCRIPTION OR OTHERWISE”. THIS PART OF THE ACT ALLOWED PERMANENT BUILDING SOCIETIES TO RAISE FUNDS FROM THE PUBLIC. TERMINATING BUILDING SOCIETIES RULES ARE SUCH THAT THEY CAN ONLY RAISE FUNDS FOR ON LENDING TO MEMBERS BY WAY OF LOAN. THE SOCIETIES ARE NOT AUTHORISED TO TAKE DEPOSITS FROM THE PUBLIC. THE OBJECTS IN SECTION 13 OF THE ACT IS AMENDED TO REFERENCE SOCIETIES ACTING AS AGENTS FOR AUTHORITIES OR INSTITUTIONS WHOSE OBJECTS ARE SIMILAR TO THE SOCIETIES.
- CLAUSE 9: THIS CLAUSE ADDS THAT A SOCIETY MUST NOT HAVE A SUBSIDIARY. PERMANENT BUILDING SOCIETIES BECAUSE OF THEIR COMPLEX STRUCTURE AND OPERATIONS MAY HAVE A SUBSIDIARY. TERMINATING BUILDING SOCIETIES ACTIVITIES ARE SINGULAR WITH THEM PROVIDING AND MANAGING HOUSING LOANS FOR THEIR MEMBERS. THEY THEREFORE DO NOT REQUIRE SUBSIDIARY’S.
- CLAUSE 10: THIS CLAUSE AMENDS SECTION 14 OF THE ACT TO ALLOW ONLY A HOUSING SOCIETY TO BE FORMED UNDER THE ACT. THE SHARE HOLDING OF MEMBERS OF A NEWLY FORMED SOCIETY IS RESTRICTED TO ONE SHARE ONLY, WHICH IS CONSISTENT WITH THE RULES OF A SOCIETY REGISTERED UNDER THE ACT.
- CLAUSE 11: THIS CLAUSE AMENDS SECTION 15 OF THE ACT TO MAKE IT APPLICABLE TO THE REGISTRATION AND INCORPORATION OF HOUSING SOCIETIES ONLY.
- CLAUSE 12: THIS CLAUSE IS FOR TRANSITIONAL PURPOSES, WHICH ALLOWS A PERIOD OF 12 MONTHS AFTER THE DAY ON WHICH THE ACT COMMENCES FOR A SOCIETY TO CHANGE ITS NAME TO “HOUSING SOCIETY”.
- CLAUSE 13: THIS CLAUSE REPEALS SECTION 26 AND 27 OF THE ACT. THESE SECTIONS REFERRED TO VARIOUS OTHER INSTITUTIONS THAT COULD AMALGAMATE WITH PERMANENT BUILDING SOCIETIES. THIS IS REPLACED WITH CLAUSES THAT REFER TO THE AMALGAMATION ONLY OF SOCIETIES REGISTERED UNDER THE ACT.

- CLAUSE 14: THIS CLAUSE DELETES “AN INSITUTIONS” AND REPLACES IT WITH “A SOCIETY” FOR THE PURPOSES OF AMALGAMATIONS UNDER SECTION 29 OF THE ACT.
- CLAUSE 15: THE AMEMDMENT TO SECTION 29B(1) AND (2) OF THE ACT IS SIMILAR TO THE ABOVE CLAUSE.
- CLAUSE 16: THIS CLAUSE DELETES REFERENCE TO THE TRANSFER OF ENGAGEMENT BETWEEN TWO PERMANENT BUILDING SOCIETIES AND SIMILARLY THE TRANSFER BETWEEN TWO STARR BOWKETT BUILDING SOCIETIES. THE SECTION ALSO DELETES THE WORD TERMINATING WHERE IT OCCURS IN SECTION 29C.
- CLAUSE 17: THIS CLAUSE DELETES REFERENCE TO “FINANCIAL ACCOMMODATION” IN SECTION 31 OF THE ACT AND REPLACES THIS TERM WITH “ADVANCE MONEY”. THE REPLACING OF FINANCIAL ACCOMMODATION IS NECESSARY AS THE PROVISION OF FINANCIAL ACCOMMODATION INCLUDES THE PROVISION OF CREDIT ON A CONTINUING BASIS WHICH IS A PERMANENT BUILDING SOCIETY FUNCTION. TERMINATING BUILDING SOCIETIES ADVANCE MONIES FOR THE PURPOSES OF PURCHASING OR ERECTING HOMES ON SECURITY OF FREEHOLD PROPERTY.
- CLAUSE 18 & 19: THESE CLAUSES UPDATES REFERENCES FROM PROVISION OF “FINANCIAL ACCOMMODATION” TO “ADVANCE MONIES” IN SECTIONS 32 AND 33 OF THE ACT.
- CLAUSE 20: THIS CLAUSE DELETES REFERENCE TO PERMANENT BUILDING SOCIETIES IN SECTION 38 OF THE ACT.
- CLAUSE 21: THIS AMENDS SECTION 39 OF THE ACT, WHICH PROHIBITS THE BALLOTNG FOR LOANS BY SOCIETIES OTHER THAN STARR BOWKETT SOCIETIES. THE REFERENCE TO STARR BOWKETT SOCIETIES IS TO BE DELETED, AS THESE ENTITIES HAVE NOT OPERATED FOR OVER 30 YEARS.
- CLAUSE 22: THIS CLAUSE AMENDS SECTION 41 OF THE ACT BY DELETING REFERENCE TO PERMANENT BUILDING SOCIETIES AND MEMBERS DEPOSITS HELD WITH A SOCIETY. TERMINATING BUILDING SOCIETIES DO NOT HOLD DEPOSITS FROM THEIR MEMBERS.

- CLAUSE 23: THIS REPEALS SECTION 43 OF THE ACT AND REPLACES IT WITH A SECTION THAT IS CONSISTENT WITH THE TERMINATING BUILDING SOCIETIES RULES FOR DISTRIBUTION OF RESERVES.
- CLAUSE 24: THIS CLAUSE AMENDS SECTION 45 OF THE ACT, WHICH PROVIDES THE REGISTRAR WITH THE POWER TO PROHIBIT RAISING OF FUNDS IF HE BELIEVES IT IS IN THE INTERESTS OF PERSONS INTENDING TO INVEST IN A SOCIETY. IT IS A CLAUSE THAT IS MORE RELEVANT TO THE OPERATIONS OF PERMANENT BUILDING SOCIETIES THAN TERMINATING BUILDING SOCIETIES. HENCE THE DELETION OF REFERENCE TO INVESTMENTS OR DEPOSIT MONEY IN A SOCIETY. THE AMENDMENTS STILL INCORPORATE THE REGISTRAR PROHIBITING THE TERMINATING BUILDING SOCIETIES FROM BORROWING FUNDS IF THE REGISTRAR CONSIDERS IT NECESSARY TO PROTECT THE INTERESTS OF THE MEMBERS OF THE SOCIETY OR ENTITIES THAT MAY LOAN MONEY TO A SOCIETY.
- CLAUSE 25: CLAUSE 25 AMENDS SECTION 48 OF THE ACT, WHICH PREVIOUSLY ALLOWED FOR PERMANENT BUILDING SOCIETIES TO BORROW FUNDS FROM ITS MEMBERS OR OTHER PERSONS. THE SECTION INCLUDED PROVISION FOR THE PERMANENT BUILDING SOCIETIES TO ISSUE PROMISORY NOTES OR BILLS OF EXCHANGE. THE PERMANENT BUILDING SOCIETIES WITH THE TREASURERS APPROVAL COULD ALSO BORROW FUNDS IN CURRENCY OTHER THAN AUSTRALIAN. THE AMENDMENT REFLECTS THAT TERMINATING BUILDING SOCIETIES RULES PERMIT THEM TO ONLY RAISE FUNDS FOR ONLENDING TO MEMBERS BY WAY OF LOAN.
- CLAUSE 26: THIS AMENDS SECTION 50 OF THE ACT TO ONLY ALLOW A NATURAL PERSON TO BE A MEMBER OF A SOCIETY. THE CLAUSE ALSO DELETES REFERENCE TO THE CREDIT UNIONS ACT 1979.
- CLAUSE 27: REFERENCE TO A DEPOSITOR IN A SOCIETY IS DELETED FROM SECTION 51 OF THE ACT. TERMINATING BUILDING SOCIETIES DO NOT ACCEPT DEPOSITS FROM THE PUBLIC.

- CLAUSE 28: THIS CLAUSE AMENDS SECTION 53 OF THE ACT, AS IT INCLUDED THE DIFFERENT TYPES AND RIGHTS OF SHAREHOLDERS THAT MAY EXIST IN PERMANENT BUILDING SOCIETIES. THE AMENDMENTS TO THE SECTION REFLECT THAT TERMINATING BUILDING SOCIETIES MAY HAVE DIFFERENT CLASSES OF MEMBERS WHICH CONSISTS OF BORROWING MEMBERS WHO HAVE A NOMINAL ONE FULLY PAID UP SHARE AND DIRECTORS WHO ARE ALSO REQUIRED TO HAVE A NOMINAL ONE ORDINARY FULLY PAID UP SHARE.
- CLAUSE 29 & 30: THIS CLAUSE AMENDS SECTION 54 OF THE BY REFERENCING A SHARE IN A SOCIETY AS OPPOSED TO SHARES IN A SOCIETY. TERMINATING BUILDING SOCIETY MEMBERS DO NOT HAVE MULTIPLE SHARES IN A SOCIETY.
- CLAUSE 31: THIS CLAUSE AMENDS SECTION 57 OF THE ACT BY DELETING THE REQUIREMENT THAT BOARD'S OF PERMANENT BUILDING SOCIETIES MEET EVERY TWO MONTHS. TERMINATING BUILDING SOCIETY BOARDS ARE REQUIRED TO MEET AT THE MINIMUM EVERY THREE MONTHS.
- CLAUSE 32: THIS CLAUSE AMENDS SECTION 59 OF THE ACT BY DELETING REFERENCE TO CONDITIONS SPECIFIC FOR APPOINTMENT OF DIRECTORS OF PERMANENT BUILDING SOCIETIES.
- CLAUSE 33: THESE CLAUSE REPEALS PARTS OF SECTION 61 OF THE ACT. THE REPLACED PROVISION IS REMADE TO IMPART A CLEARER STYLE, IT IS NOT INTENDED TO IMPORT A DIFFERENT MEANING TO THE OLD PROVISION.
- CLAUSE 34: THIS CLAUSE AMENDS SECTION 65 OF THE ACT TO UPDATE REFERENCES FROM FINANCIAL ACCOMMODATION TO ADVANCE OF MONEY. IT ALSO DELETES REFERENCE TO LOANS TO THE SOCIETY FROM MEMBERS OR DEPOSITS FROM MEMBERS. THIS RELATES TO ACTIVITIES PERMANENT BUILDING SOCIETIES UNDERTAKE.
- CLAUSE 35: THIS CLAUSE DELETES REFERENCE IN SECTION 66 OF THE ACT TO PERMANENT BUILDING SOCIETIES. IT ALSO AMENDS THE SECTION BY NOT PERMITTING A MEMBER

OF THE SOCIETY TO BE APPOINTED AS AN AUDITOR OF THE SOCIETY.

- CLAUSE 36: THIS CLAUSE DELETES REFERENCE TO PERMANENT BUILDING SOCIETIES IN SECTION 71 OF THE ACT.
- CLAUSE 37: THIS CLAUSE AMENDS SECTION 75 OF THE ACT TO ACKNOWLEDGE THE CONTINUITY OF TERMINATING BUILDING SOCIETIES. IT ALSO INCLUDING PROVISIONS THAT RECOGNISE MEMBERS CONTINUING STATUS OF RIGHTS OR LIABILITIES UNDER THE AMENDED ACT.
- CLAUSE 38: THIS CLAUSE AMENDS SECTION 76 OF THE ACT BY RESTRICTING THE USE OF WORD “HOUSING SOCIETY” TO SOCIETIES REGISTERED UNDER THE ACT. THE WORD “HOUSING” REPLACES “BUILDING” IN SECTION 76 OF THE ACT.
- CLAUSE 39: SECTION 78 OF THE ACT IS AMENDED BY THIS CLAUSE WITH REFERENCE TO THE PROVISION OF FINANCIAL ACCOMMODATION BEING REPLACED BY ADVANCE.
- CLAUSE 40: THIS CLAUSE AMENDS SECTION 87 OF THE ACT. THE AMENDMENTS RELATE TO APPEALS AND REVIEWS OF DECISIONS OF THE REGISTRAR SPECIFICALLY TO DO WITH THE REGISTRAR CONSENTING OR REFUSING THE RESIGNATION OF AN AUDITOR OF A PERMANENT BUILDING SOCIETY.
- CLAUSE 41: THIS CLAUSE AMENDS SECTION 88 OF THE ACT BY, DELETING REFERENCE TO ADVERTISING FOR DEPOSITS (WHICH IS AN ACTIVITY PERMANENT BUILDING SOCIETIES UNDERTAKE).
- CLAUSE 42: THIS CLAUSE REPLACES REFERENCE TO PROVISION OF FINANCIAL ACCOMMODATION WITH ADVANCING MONEY IN SECTION 90 OF THE BUILDING SOCIETIES ACT.
- CLAUSE 43: THIS CLAUSE AMENDS REFERENCES TO “INSTITUTION” OR “INSTITUTIONS” AND REPLACES IT WITH “SOCIETY” OR “SOCIETIES” IN VARIOUS SECTIONS OF THE BUILDING SOCIETIES ACT.
- CLAUSE 44: THIS CLAUSE REPEALS VARIOUS PROVISIONS WITHIN THE BUILDING SOCIETIES ACT THAT ARE SPECIFIC TO

PERMANENT BUILDING SOCIETIES AND IN SOME INSTANCES STARR BOWKETT BUILDING SOCIETIES.

CLAUSE 45: THIS CLAUSE AMENDS VARIOUS PROVISIONS IN THE BUILDING SOCIETIES ACT THAT REFERS TO “MONEYS” AND REPLACES IT WITH “MONEY”.

PART 3 – AMENDMENTS TO OTHER ACTS

CLAUSE 46: THIS CLAUSE MAKES CONSEQUENTIAL AMENDMENTS TO THE COMPANIES (CO-OPERATIVE) ACT 1943. “BUILDING SOCIETY” IS REPLACED WITH “HOUSING SOCIETY” AND REFERENCE TO “BUILDING SOCIETIES ACT 1976” IS REPLACED WITH “HOUSING SOCIETIES ACT 1976”.

CLAUSE 47: THIS CLAUSE UPDATES SCHEDULE V PART 3 OF THE CONSTITUTIONS AMENDMENT ACT 1899 BY DELETING REFERENCE TO BUILDING SOCIETIES ADVISORY COMMITTEE. REFERENCE TO THIS COMMITTEE WAS DELETED BY AMENDMENTS TO THE BUILDING SOCIETIES ACT PASSED IN 1985.

CLAUSE 48: THIS CLAUSE AMENDS THE EQUAL OPPORTUNITY ACT 1984 BY REFERENCING A SOCIETY REGISTERED UNDER THE HOUSING SOCIETIES ACT.

CLAUSE 49: THE HOUSING ACT 1980 IS AMENDED BY THIS CLAUSE BY INCLUDING REFERENCE TO A “HOUSING SOCIETY”.

CLAUSE 50: THE CLAUSE AMENDS THE REAL ESTATE AND BUSINESS AGENTS SUPERVISORY ACT 1978 BY REFERENCING “HOUSING SOCIETIES”.

CLAUSE 51: MAKES AMENDMENTS TO OTHER ACTS AS A CONSEQUENCE OF THE CHANGING OF THE NAME OF THE “BUILDING SOCIETIES ACT 1976” TO THE “HOUSING SOCIETIES ACT 1976”.

IN CERTAIN PROVISIONS OF THE BUILDING SOCIETIES AMENDMENT BILL 2001 THE OPPORTUNITY HAS BEEN TAKEN TO MODERNISE THE LANGUAGE. THESE CHANGES ARE FOR THE PURPOSES OF USING A

CLEARER STYLE AND ARE NOT INTENDED TO IMPORT A DIFFERENT MEANING TO THAT IN THE OLD PROVISION.