

[AS REPORTED FROM THE COMMERCE AND ENERGY COMMITTEE]

House of Representatives, 21 July 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr McLay

MUTUAL INSURANCE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Mutual Insurance Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Mutual Insurance Amendment Act 1982, and shall be read together with and deemed part of the Mutual Insurance Act 1955* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 10, p. 615

Amendments: 1963, No. 103; 1964, No. 14; 1968, No. 96; 1971, No. 113; 1977, No. 74; 1978, No. 113

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting in the definition of the term “isolated property”, after the word “buildings”, the words “and property that is usually kept therein”.

3. Qualification for membership of association— 5
Section 3 (1) of the principal Act is hereby amended by repealing paragraph (f) (as inserted by section 2 of the Mutual Insurance Amendment Act 1964), and substituting the following paragraphs:

“(f) Any employee of any such body corporate or other 10
organisation:

“(g) The wife or husband of any member of the association and the widow or widower of any person who was a member of the association at his or her death.”

4. Powers of association in relation to land—The 15
principal Act is hereby amended by repealing section 11 and section 11A (as inserted by section 2 (1) of the Mutual Insurance Amendment Act 1963), and substituting the following section:

“11. An association may from time to time, either solely or 20
jointly with any other person or association,—

“(a) Acquire by purchase, lease, sublease, or otherwise any land or interest in land with or without any building, or any building or structure or any part of any building or structure, or any interest 25
therein:

“(b) Dispose of by sale, lease, sublease, or otherwise any land or interest in land, or any building or structure or any part of any building or structure, or any interest therein: 30

“(c) Erect, alter, or improve any building or structure on any land acquired by that association:

“(d) Enter into arrangements concerning the management and occupation of any land or any interest in land, or any building or structure or part of any building 35
or structure, or interest therein on such terms and conditions as shall be mutually agreed upon between the association and any other person or association:

“(e) Mortgage or otherwise charge any land or any interest 40
in land.”

5. Calls on premium notes—Section 19 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“**(4)** If the amount of any call is not paid within that period of 30 days, the association may sue for and recover the amount in any Court of competent jurisdiction, together with costs and with interest upon the sum payable as from the expiration of that period of 30 days at the prescribed rate within the meaning of section 87 of the Judicature Act 1908 in force as at the commencement of the period for which such interest is payable.”

6. Policies—The principal Act is hereby amended by repealing section 23, and substituting the following section:

“**23.** (1) All policies of insurance issued by the association shall be signed by such one or more persons (being directors or employees of the association) as may from time to time be ~~((appointed))~~ authorised for the purpose by the Board.”

Struck Out

“**(2)** Any policy issued by the association and signed by one or more persons (being directors or employees of the association) shall be valid in favour of any person acting in good faith, notwithstanding that any person who may have signed it may not have been appointed or authorised by the Board to do so.”

New

“**(2)** Any policy issued by the association and signed by one or more persons shall be valid in favour of any person acting in good faith, notwithstanding—

“**(a)** Any defect in the appointment of any person who purports to have signed it as a director or employee of the association; or

“**(b)** That any director or employee of the association who has signed it has not been authorised by the Board to do so.

“**(3)** The rights conferred by subsection (2) of this section on a person acting in good faith do not restrict any other rights of that person.”

New

6A. Proceedings at general meetings—(1) Section 28 (6) of the principal Act is hereby amended by inserting, after the words “in person”, the words “or by proxy”.

(2) Section 28 of the principal Act is hereby amended by adding the following subsection: 5

“(9) Any instrument appointing a proxy to vote at a meeting of an association shall also confer authority to demand or join in demanding a poll.”

6B. New sections inserted—The principal Act is hereby amended by inserting, after section 29, the following sections: 10

“**29A. Association may authorise proxy voting**—An association may, by special resolution passed in the manner prescribed by section 8 (2) of this Act, authorise proxy voting at meetings of the association. 15

“**29B. Provisions applying to proxy voting**—(1) This section applies where proxy voting at a meeting of the association is authorised by a special resolution passed under section 29A of this Act.

“(2) Any member of an association entitled to attend and vote at a meeting of the association shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote shall also have the same right as the member to speak at the meeting. 20 25

“(3) A member shall not be entitled to appoint more than one proxy to attend on the same occasion, but may appoint 2 or more alternative proxies.

“(4) A proxy shall not be entitled to vote except on a poll.

“(5) In every notice calling a meeting there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not also be a member; and every officer of the association who knowingly and wilfully authorises or permits default in complying with this subsection in respect of any meeting commits an offence and shall be liable on summary conviction to a fine not exceeding \$100. 30 35

“(6) Neither an instrument appointing a proxy nor any other document necessary to show the validity of or otherwise relating to the appointment of a proxy shall be required to be 40

New

received by the association or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

5 “(7) If for the purpose of any meeting of an association invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the association’s expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy,
10 every officer of the association who knowingly and wilfully authorises or permits their issue as aforesaid commits an offence and shall be liable on summary conviction to a fine not exceeding \$200:

15 “Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

20 “(8) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised.

25 “(9) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the principal place of business of the association or such other place within New Zealand as is specified for that
30 purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

35 “(10) An instrument appointing a proxy shall be in the form 1 set out in the Third Schedule to this Act or a form as near thereto as circumstances admit.

40 “(11) Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the form 2 set out in the Third Schedule to this Act or a form as near thereto as circumstances admit.

“(12) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the

New

previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, if no intimation in writing of such death, insanity, or revocation as aforesaid has been received by the association at the principal place of business of the association before the commencement of the meeting or adjourned meeting at which the proxy is used.” 5

7. Board of Directors—(*Section 30 (13) (a) of the principal Act is hereby repealed.*) 10

New

(1) Section 30 (10) of the principal Act is hereby amended by repealing paragraph (f), and substituting the following paragraph: 15
 “(f) Fails to declare, in accordance with section 30B of this Act, the nature of his interest in a contract or proposed contract with the association.”
 (2) Section 30 (11) of the principal Act is hereby repealed.
 (3) Section 30 (13) (a) of the principal Act is hereby repealed. 20

8. Regional representation on Board of Directors—Section 30A (1) of the principal Act (as inserted by section 5 of the Mutual Insurance Amendment Act 1977) is hereby amended by omitting the words “ordinary resolution”, and substituting the words “special resolution passed in the manner prescribed by section 8 (2) of this Act”. 25

New

8A. New sections inserted—The principal Act is hereby amended by inserting, after section 30A (as inserted by section 5 of the Mutual Insurance Amendment Act 1977), the following sections: 30

“30B. Disclosure by directors of interests in contracts—(1) Subject to the provisions of this section, it shall be the duty of a director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the association to declare the nature of his interest at a meeting of the directors of the association. 35

New

“(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

“(3) For the purposes of this section, a general notice given to the directors by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

“Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

“(4) Any director who fails to comply with the provisions of this section commits an offence and shall be liable on summary conviction to a fine not exceeding \$200.

“(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of an association from having any interests in contracts with the association.

Cf. 1955, No. 63, s. 199

“30C. Directors not to vote on contracts in which interested—A director shall not vote in respect of any contract or arrangement in which he is interested, and if he does so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

“(a) Any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the association; or

“(b) Any arrangement for the giving by the association of any security to a third party in respect of a debt or obligation of the association for which the director

New

himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

“(c) Any contract or arrangement with any company or other association in which he is interested only as an officer of the company or other association or as a holder of shares or other securities,— 5

and these prohibitions may at any time be suspended or relaxed to any extent in respect of any particular contract, arrangement, or transaction, by the association in general meeting. 10

Cf. 1955, No. 63, Third Schedule, Table A, r. 84 (2) (a), (b), (d)

“30D. **Interested directors may affix seal**—(1) Notwithstanding any rule of law, a director of an association who is interested in a contract or arrangement of or relating to the association may affix, or attest the affixing of, the common seal of the association to any document relating to the contract or arrangement to the same extent as if he were not so interested (whether or not he is entitled to vote in respect of that contract or arrangement at a meeting of directors of the association). 15 20

“(2) This section shall apply in respect of every affixing or attestation of the affixing, of the common seal of an association to a document, whether performed before or after the commencement of this section.” 25

Cf. 1955, No. 63, s. 199A; 1980, No. 43, s. 9

9. Powers and duties of the Board—Section 31 (5) of the principal Act is hereby amended by repealing paragraph (bb) (as inserted by section 2 (2) of the Mutual Insurance Amendment Act 1963), and substituting the following paragraph: 30

“(bb) To exercise any of the powers conferred on an association by section 11 of this Act:” 35

10. Proceedings of the Board—Section 32 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The quorum necessary for the transaction of the business of the Board shall be such number of the directors of 40

the Board (not being advisory directors appointed under section 30 (13) of this Act) as may be fixed by the Board, and unless so fixed shall be four of such directors.”

5 **11. Borrowing of money**—Section 36 of the principal Act is hereby amended by repealing subsection (2) (as amended by section 2 (3) of the Mutual Insurance Amendment Act 1963 and section 3 (3) of the Mutual Insurance Amendment Act 1968), and substituting the following subsection:

10 “(2) Money shall not be so borrowed except for the purpose of paying ascertained liabilities under policies or contracts of insurance and the ordinary expenses incidental to the running of the association’s business or for the purpose, either solely or jointly with any other person or association, of acquiring land or any interest in land or of erecting or altering
15 or improving a building or structure or part of a building or structure, or for the purpose of purchasing, taking up, subscribing for, or otherwise acquiring shares which the association is empowered to hold pursuant to section 11B of this Act; and the amount for the time being owing by an
20 association in respect of money borrowed by it for purposes other than acquiring such land or any interest in such land or erecting or altering or improving any such building or structure or any part thereof as aforesaid or purchasing, taking up, subscribing for, or otherwise acquiring any such
25 shares, shall not exceed half of the amount remaining unpaid upon the premium notes of the association:

30 “Provided that no person from whom the association proposes to borrow money shall be concerned to see that the provisions of this subsection are complied with, and the rights of any person lending money to the association without actual notice of any infringement of those provisions shall be determined without regard to those provisions.”

New

35 **11A. New Third Schedule added to principal Act**—The principal Act is hereby amended by adding the Third Schedule set out in the Schedule to this Act.

12. Repeals—The following enactments are hereby repealed:

- 40 (a) The Mutual Insurance Amendment Act 1963:
- (b) Section 2 of the Mutual Insurance Amendment Act 1964:

(c) Sections 2 and 3 (3) of the Mutual Insurance Amendment Act 1968.

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New

Section 11A

SCHEDULE

NEW THIRD SCHEDULE TO PRINCIPAL ACT

“THIRD SCHEDULE

FORMS OF PROXY

Form 1

General Form

[*Name of Association*]

I/We,, of,, being a member/members of the above-named association, hereby appoint, of,, or failing him,, of,, as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, *as the case may be*] general meeting of the association to be held on the day of 19..., and at any adjournment thereof.

Signed this day of 19....

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 Form 2

Form in relation to a Resolution

[*Name of Association*]

I/We,, of,, being a member/members of the above-named association, hereby appoint, of,, or failing him,, of,, as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, *as the case may be*] general meeting of the association to be held on the day of 19..., and at any adjournment thereof.

Signed this day of 19....

†in favour of

*This form is to be used _____ the resolution.

against

*Unless otherwise instructed, the proxy will vote as he thinks fit.

†Strike out whichever is not desired.