

WESTERN AUSTRALIA

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**FRIENDLY SOCIETIES  
(WESTERN AUSTRALIA) ACT 1999**

(No. 2 of 1999)

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ARRANGEMENT

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WESTERN AUSTRALIA

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**FRIENDLY SOCIETIES  
(WESTERN AUSTRALIA) ACT 1999**

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**No. 2 of 1999**

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**AN ACT to provide for the formation, registration, management and regulation of friendly societies, to repeal the *Friendly Societies Act 1894* and to make consequential amendments to other Acts, and for other purposes.**

*[Assented to 25 March 1999]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Friendly Societies (Western Australia) Act 1999*.

### **Commencement**

2. This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

### **Definitions**

3. (1) In this Act unless the contrary intention appears —

“**AFIC**” means the Australian Financial Institutions Commission established by the AFIC Act;

“**AFIC Act**” means the *Australian Financial Institutions Commission Act 1992* of Queensland;

“**friendly societies legislation of Western Australia**” means —

(a) this Act;

(b) the *Friendly Societies (Western Australia) Code*;

(c) the *Friendly Societies (Western Australia) Regulations*;

(d) the *AFIC (Western Australia) Code*, the *AFIC (Western Australia) Regulations*, the *Financial Institutions (Western Australia) Code* and the *Financial Institutions (Western Australia) Regulations* as applying to the Code and Regulations referred to in paragraphs (b) and (c);

**“Friendly Societies (Western Australia) Code”** means the Code set out in the Appendix;

**“Friendly Societies (Western Australia) Regulations”** means the Regulations in force for the time being under Part 4 of this Act;

**“Ministerial Council”** means the Ministerial Council established under the financial institutions agreement within the meaning of the *Financial Institutions (Western Australia) Act 1992*;

(2) Words and expressions used in the *Friendly Societies (Western Australia) Code* and this Act have the same respective meanings in this Act as they have in that Code.

(3) Subsection (2) does not apply to the extent that the content or subject matter otherwise indicates or requires.

#### **Crown to be bound**

**4.** (1) This Act binds the Crown in right of Western Australia and, so far as the legislative power of Parliament permits, the Crown in all its capacities.

(2) Nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

**PART 2 — FRIENDLY SOCIETIES (WESTERN AUSTRALIA) CODE**

***Friendly Societies (Western Australia) Code* enacted**

5. The ***Friendly Societies (Western Australia) Code*** has effect.

**Interpretation of expressions in the *Friendly Societies (Western Australia) Code* and the *Friendly Societies (Western Australia) Regulations***

6. (1) In the *Friendly Societies (Western Australia) Code* and the *Friendly Societies (Western Australia) Regulations* —

“**continuing society**” means a friendly society to which the *Friendly Societies Act 1894* applied immediately before the commencement of this section;

“**Legislature of this State**” means the Legislature of Western Australia;

“**pharmacy law of this State**” means the *Pharmacy Act 1964*;

“**the Code**” or “**this Code**” means the *Friendly Societies (Western Australia) Code*;

“**the previous law**” means the *Friendly Societies Act 1894*.

(2) The *Corporations (Western Australia) Act 1990* and the applicable provisions of Western Australia within the meaning of that Act, are prescribed for the purpose of section 19 (4) of the *Friendly Societies (Western Australia) Code*.

**PART 3 — CONFERRAL OF FUNCTIONS AND POWERS**

**Conferral of functions and powers on AFIC**

7. AFIC has the functions and powers conferred or expressed to be conferred on it by or under the friendly societies legislation of Western Australia.

**Conferral of functions and powers on Tribunal**

8. The Australian Financial Institutions Appeals Tribunal established under the AFIC Act has the functions and powers conferred or expressed to be conferred on it by or under the friendly societies legislation of Western Australia.

**State supervisory authority**

9. The Western Australian Financial Institutions Authority established by the *Western Australian Financial Institutions Authority Act 1992* is the State supervisory authority for Western Australia.

**PART 4 — FRIENDLY SOCIETIES (WESTERN  
AUSTRALIA) REGULATIONS**

**Definition**

**10.** In this Part —

“**the Code**” means the Code set out in the Appendix, as in force for the time being.

**General regulation-making power for the Code**

**11.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act or the Code to be prescribed or are necessary or convenient for giving effect to the purposes of this Act or the Code.

(2) A regulation under this Part may only be made on the recommendation of the Ministerial Council.

(3) A regulation under this Part may create an offence punishable by a penalty not exceeding \$5 000.

**Savings and transitional regulations for Code**

**12.** (1) A regulation under this Part may make provision of a savings or transitional nature consequent on the enactment of the Code or a provision of the Code.

(2) If the regulation so provides, it has effect despite any provision of this Act or the Code.

(3) A provision of a regulation made under this section may, if the regulation so provides, take effect from the day this Act receives the Royal Assent or from a later day.

(4) To the extent to which a provision takes effect from a day earlier than the day of the regulation's publication in the *Gazette*, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by —

- (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.



**PART 5 — LEVIES, FEES AND OTHER AMOUNTS**

**Fees**

**13.** This section imposes the fees that the *Friendly Societies (Western Australia) Regulations* or the *AFIC (Western Australia) Regulations* prescribe, except to the extent that they are taxes.

**Levies**

**14.** (1) Except to the extent that they are taxes, this section imposes —

- (a) the levy payable under sections 119 and 120 of the *AFIC (Western Australia) Code* by a society; and
- (b) the supervision levy payable under section 51 of the *Friendly Societies (Western Australia) Code* by a society.

(2) An expression has in subsection (1) the meaning it would have if this section were in the *AFIC (Western Australia) Code* or the *Friendly Societies (Western Australia) Code*, as the case requires.

**Fees, fines and penalties**

**15.** All fees, fines, penalties and other money which, under or by virtue of the friendly societies legislation of Western Australia are authorized or directed to be imposed on any person and are not, under that legislation, fees, levies or other amounts payable to a specified person are to be paid to the Treasurer of the State and credited to the Consolidated Fund.

**PART 6 — MISCELLANEOUS**

**Crimes**

**16.** An offence under the *Friendly Societies (Western Australia) Code* that is punishable by imprisonment for a period exceeding 2 years is a crime.

**PART 7 — CONSEQUENTIAL AMENDMENTS**

**Repeal of *Friendly Societies Act 1894***

17. The *Friendly Societies Act 1894* is repealed.

***Co-operative and Provident Societies Act 1903* amended**

18. The *Co-operative and Provident Societies Act 1903*\* is amended —

- (a) in section 2 by deleting the definition of “The Registrar” and substituting the following definition —

“

“**The Registrar**” means the person appointed under and subject to Part 3 of the *Public Sector Management Act 1994* to the office of Registrar of Co-operative and Financial Institutions.

”;

- (b) in the Fourth Schedule —

(i) by deleting “of Friendly Societies” in both places where it occurs; and

(ii) by deleting “Friendly Societies Office, Perth” in both places where it occurs and substituting in each place the following —

“

Registry of Co-operative and Financial Institutions, Perth

”.

[\* Reprinted as authorized 30 September 1969.  
For subsequent amendments see 1997 Index to  
Legislation of Western Australia, Table 1, p. 52.]

***Equal Opportunity Act 1984* amended**

**19.** The *Equal Opportunity Act 1984*\* is amended —

(a) in section 35N (1) (c) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”;

(b) in section 66ZS (1) (a) (iii) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”;

and

(c) in section 69 (1) (b) (iii) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”.

[\* Reprinted as at 16 April 1996.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 76-7.]

***Financial Institutions (Western Australia) Act 1992* amended**

**20.** The *Financial Institutions (Western Australia) Act 1992*\* is amended —

(a) in section 7 (1) by inserting in the appropriate alphabetical position the following definition —

“ **“Friendly Societies Code”** means the *Friendly Societies (Western Australia) Code* set out in the Appendix to the *Friendly Societies (Western Australia) Act 1999*;

and

- (b) in section 10 (1) by inserting in the appropriate alphabetical position the following definition —

“ **“Friendly Societies Code”** means the *Friendly Societies (Western Australia) Code* set out in the Appendix to the *Friendly Societies (Western Australia) Act 1999*;

[\* *Act No. 30 of 1992.*  
*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 85.*]

### ***Housing Loan Guarantee Act 1957 amended***

**21.** Section 5 of the *Housing Loan Guarantee Act 1957\** is amended by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”.

[\* *Reprinted as authorized 20 May 1974.*  
*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 109.*]

### ***Pharmacy Act 1964 amended***

**22.** The *Pharmacy Act 1964\** is amended —

- (a) in section 23 (1) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”;

- (b) in section 36 (1) (b) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”;

and

- (c) in section 36B (3) (b) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”.

[\* Reprinted as authorized 18 April 1983.  
For subsequent amendments see 1997 Index to Legislation of  
Western Australia, Table 1, pp. 178-9]

**Stamp Act 1921 amended**

23. The Third Schedule to the *Stamp Act 1921*\* is amended in item (4) (a) by deleting “*Friendly Societies Act 1894*” and substituting the following —

“ *Friendly Societies (Western Australia) Code 1999* ”.

[\* Reprinted as at 23 January 1996.  
For subsequent amendments see 1997 Index to  
Legislation of Western Australia, Table 1, pp. 217-20.]

**Western Australian Financial Institutions Authority  
Act 1992 amended**

24. The *Western Australian Financial Institutions Authority Act 1992*\* is amended —

- (a) in section 3 by inserting in the appropriate alphabetical positions the following definitions —

“ **“Friendly Societies (Western Australia) Code”** means the Code set out in the Appendix to the *Friendly Societies (Western Australia) Act 1999*;

**“friendly societies legislation of Western Australia”** has meaning given to that expression by the *Friendly Societies (Western Australia) Act 1999*;

”;

- (b) by repealing section 4 and substituting the following section —

“  
**Interpretation**

**4.** Unless the contrary intention appears, words and expressions used in this Act that are defined in —

- (a) the scheme legislation of Western Australia; or  
(b) the friendly societies legislation of Western Australia,

have the respective meanings given by those definitions.

”;

- (c) in section 6 by inserting after “Australia” the following —

“  
, the friendly societies legislation of Western Australia

”;

- (d) in section 7 (2) by inserting after “Australia” the following —

“  
and the friendly societies legislation of Western Australia

”;

- (e) in section 9 by inserting after “Australia” the following —

“  
, the friendly societies legislation of Western Australia

”;

- (f) in section 45 (4) by deleting “or the scheme legislation” and substituting the following —  
“ , the scheme legislation of Western Australia or the friendly societies legislation ”;
- (g) in section 45 (5) by deleting “or the scheme legislation” and substituting the following —  
“ , the scheme legislation of Western Australia or the friendly societies legislation ”;
- (h) in section 50 (2) —
- (i) by deleting “or” after paragraph (a);
- (ii) in paragraph (b) by deleting “Subdivision,” and substituting the following —  
“ Subdivision; or ”; and
- (iii) by inserting after paragraph (b) the following paragraph —  
“ (c) a supervision levy under Part 5 of the *Friendly Societies (Western Australia) Act 1999*, ”;
- (i) in section 51 by inserting after subsection (2) the following subsection —  
“ (2a) The powers under section 51 of the *Friendly Societies (Western Australia) Code* are not to be delegated. ”;
- and



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**s. 24** *Act 1999*

- (j) in section 52 by inserting after “legislation” the following —

“  
or the friendly societies legislation of Western  
Australia  
”.

[\* *Act No. 29 of 1992.*]

**APPENDIX**

[Section 5]

***FRIENDLY SOCIETIES (WESTERN AUSTRALIA) CODE***

**PART 1 — PRELIMINARY**

***Division 1 — Introductory***

**Citation**

1. This Code may be cited as the *Friendly Societies (Western Australia) Code*.

NOTE: The sections of this Code have been numbered to correspond with the numbering in the *Friendly Societies Code* set out in Schedule 1 to the *Friendly Societies (Victoria) Act 1996* which is in force in other States.

**Commencement**

2. This Code comes into operation as provided in section 2 of the *Friendly Societies (Western Australia) Act 1999*.

***Division 2 — Interpretation***

**Definitions**

3. In this Code —

“**accounting records**” include —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) documents and records that record such entries; and
- (c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“**accounting standard**” has the meaning given by section 9 of the Corporations Law;

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

“**advertisement**” includes matter that is not in writing but because of the form or context in which it appears conveys a message;

“**affairs**”, in relation to a body corporate, has the meaning given by section 53 of the Corporations Law;

“**AFIC**” means the Australian Financial Institutions Commission;

“**AFIC Code**” means the Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland;

“**applicable accounting standard**” means an accounting standard as applying under section 334;

“**Appeals Tribunal**” means the Australian Financial Institutions Appeals Tribunal established under the *Australian Financial Institutions Commission Act 1992* of Queensland;

“**association**” means a body registered as an association under Part 12;

“**bank**” means —

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted under a law of a State;

“**benefit**”, in relation to a society, means an interest in a benefit fund of the society in accordance with the rules of the society relating to that fund;

“**benefit fund**” in relation to a society, means a fund established by the society in accordance with Part 4A;

“**board**”, in relation to a society, means the board of directors of the society;

“**body**” includes an entity;

**“body corporate”** means any body corporate whether formed or incorporated within or outside this 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;

**“borrow”** means to obtain financial accommodation;

**“building society”** means a building society within the meaning of the *Financial Institutions (Western Australia) Code* or a law of another State that corresponds to that Code;

**“certificate of confirmation”** has the meaning given by section 362;

**“company”** means a company incorporated, or taken to be incorporated, under the Corporations Law;

**“consolidated accounts”**, in relation to a society, means all of the following —

- (a) a consolidated profit and loss account that section 331 requires to be made out in relation to a financial year of the society;
- (b) a consolidated balance sheet that section 331 requires to be made out in relation to the financial year of the society;
- (c) statements, reports and notes (other than a directors' report) attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;

**“Court”** means the Supreme Court or a Supreme Court Judge of this State;

**“credit union”** means a credit union within the meaning of the *Financial Institutions (Western Australia) Code* or a law of another State that corresponds to that Code;

**“debenture”** has the meaning given by section 9 of the Corporations Law;

**“director”** has the meaning given by section 5;

**“disclosure document”** means a document lodged with the SSA under Part 4B and that complies, or ought to comply, with the requirement for disclosure documents under that Part;

“**economic entity**” means an economic entity for the purposes of Part 3.6 of the Corporations Law;

“**employee**”, in relation to the SSA, includes —

- (a) an officer of the SSA; and
- (b) a person whose services are made available to the SSA; and
- (c) a person engaged by the SSA on a contract for services;

“**entity**” means an entity for the purposes of Part 3.6 of the Corporations Law, and includes a society;

“**executive officer**”, in relation to a society or entity, means a person (by whatever name called) who is concerned, or takes part, in the management of the society or entity;

“**expert**”, in relation to a matter, means an independent person whose profession or reputation gives authority to a statement made by the person in relation to the matter;

“**Financial Institutions Code**” means the Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992* of Queensland;

“**financial institutions scheme**” means the scheme established and implemented by the financial institutions agreement and the financial institutions legislation within the meaning of the AFIC Code;

“**foreign society**” means a body registered as a foreign society under Part 11;

“**friendly societies legislation**” means —

- (a) the friendly societies legislation of Western Australia, namely —
  - (i) the *Friendly Societies (Western Australia) Act 1999* and the *Friendly Societies (Western Australia) Code* set out in the Appendix to the Act; and
  - (ii) regulations made under that Act; and

- (b) the friendly societies legislation of Victoria, namely —
  - (i) the *Friendly Societies (Victoria) Act 1996* of Victoria and the *Friendly Societies Code* set out in Schedule 1 to the Act; and
  - (ii) regulations made under that Act; and
- (c) the friendly societies legislation of the other participating States, namely —
  - (i) the Acts and regulations of the other participating States that apply, complement or otherwise give effect to any part of the friendly societies legislation of Victoria; and
  - (ii) the friendly societies legislation of Victoria as applying in those States; and
- (d) the financial institutions legislation within the meaning of the AFIC Code so far as it applies or is otherwise relevant to the legislation mentioned in paragraph (a), (b) or (c);

**“fund”**, in relation to a society, means —

- (a) a benefit fund of the society; or
- (b) the management fund of the society;

**“group”** means an economic entity of which a society is a part;

**“group accounts”**, in relation to a holding society, means a set of consolidated accounts for the group in relation to which the society is the holding society;

**“holding body corporate”** has the meaning given by section 6;

**“holding society”** has the meaning given by section 7;

**“inspector”** means a person authorized under section 33;

**“issue”** includes circulate, distribute and disseminate;

**“management fund”**, in relation to a society, means the fund of the society consisting of the assets and liabilities of the society that do not form part of a benefit fund of the society;

**“member”** —

- (a) in relation to a society, means a person who is a member of the society under Division 5 of Part 3; and

- (b) in relation to a benefit fund of a society, means a person entitled to a benefit from that fund in accordance with the rules of the society;

**“national business names register”** has the meaning given by the Corporations Law;

**“officer”** has the meaning given by section 9;

**“participating State”** means —

- (a) Western Australia;
- (b) Victoria
- (c) any other State in which there is in force a law corresponding to Part 2 of the *Friendly Societies (Victoria) Act 1996* of Victoria;

**“permanent share”**, in relation to a society, means a share in the society other than a redeemable preference share;

**“profit or loss”** means —

- (a) in relation to an entity, the profit or loss resulting from operations of the entity; and
- (b) in relation to 2 or more entities or an economic entity constituted by 2 or more entities, the profit or loss resulting from the operations of those entities;

**“publish”** —

- (a) in relation to a notice under Part 4B, means publish by any means, including in a newspaper or periodical, by broadcasting or televising or in a cinematograph film; and
- (b) in any case, includes issue;

**“redeemable preference share”** means a preference share in a society that is, or at the society’s option is, liable to be redeemed;

**“registered company auditor”** means a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law;

**“relevant agreement”** means an agreement, arrangement or understanding —

- (a) whether formal or informal or partly formal and partly informal;

- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

**“rules”**, in relation to a society, means rules of the society under this Code as in force from time to time;

**“securities”** has the meaning given by section 92 of the Corporations Law;

**“services corporation”** means a body corporate declared to be a services corporation under section 30;

**“share”** means a share in the share capital of a body corporate;

**“society”** means a body registered under this Code as a society;

**“SSA”**, in relation to a State, means the person or body declared by the friendly societies legislation of the State to be the State supervisory authority for the State;

**“standard”** means a standard in force under section 28 of the AFIC Code;

**“State”** means a State or Territory;

**“subsidiary”** has the meaning given by section 11;

**“transferee society”** has the meaning given by section 362;

**“transferor society”** has the meaning given by section 362.

#### **Associate**

**4.** (1) For the purposes of this Code, except Division 4 of Part 5 and section 295, a person is an “associate” of another, or is associated with another, if —

- (a) they are partners; or
- (b) one is a spouse, parent or child of the other; or
- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body or entity; or



- (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body or entity; or
- (f) they are related bodies corporate within the meaning of section 10; or
- (g) a relationship of a prescribed kind exists between them; or
- (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(2) For the purposes of Part 4B, a person is an “**associate**” of another, or is associated with another, if —

- (a) the person is such an associate, or is so associated, under subsection (1); or
- (b) the other person is a director of a body corporate of which the first-mentioned person is also a director and which carries on a business of dealing in benefits.

### **Director**

5. (1) Subject to subsection (2), for the purposes of this Code, “**director**”, in relation to a body corporate, includes a reference to —

- (a) a person occupying or acting in the position of director of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; and
- (b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; and
- (c) in the case of a body corporate incorporated outside Australia —
  - (i) a member of the body’s board; and
  - (ii) a person occupying or acting in the position of member of the body’s board, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; and
  - (iii) a person in accordance with whose directions or instructions the members of the body’s board are accustomed to act.

(2) A person is not to be regarded as a person in accordance with whose directions or instructions —

- (a) a body corporate's directors; or
- (b) the members of the board of a body corporate incorporated outside Australia,

are accustomed to act merely because the directors or members act on advice given by the person in the proper performance of the functions attaching to —

- (c) the person's professional capacity; or
- (d) the person's business relationship with the directors, the members of the board or the body.

### **Holding body corporate**

**6.** A reference in this Code to the holding body corporate of another body corporate is a reference to a body corporate of which the other body corporate is a subsidiary.

### **Holding society**

**7.** A society is a holding society in respect of a financial year of the society if the society controls another entity during all or part of the financial year.

### **Making a decision**

**8.** A reference in this Code to the making of a decision includes a reference to —

- (a) making, suspending, revoking or refusing to make an order or determination; or
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or
- (d) imposing a condition or restriction; or
- (e) making a declaration, demand or requirement; or
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do anything else.

**Officer**

**9.** (1) Subject to subsection (2), for the purposes of this Code, “**officer**”, in relation to a body corporate or entity, includes —

- (a) a director, secretary, executive officer or employee of the body or entity; and
- (b) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity; and
- (c) a liquidator of the body or entity appointed in a voluntary winding-up of the body or entity; and
- (d) a trustee or other person administering a compromise or arrangement made between the body or entity and other persons.

(2) None of the following is an officer of the body corporate or entity —

- (a) a receiver who is not also a manager;
- (b) a receiver and manager appointed by a court;
- (c) a liquidator appointed by a court.

**Related body corporate**

**10.** If a body corporate is —

- (a) the holding body corporate of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of the holding body corporate of another body corporate,

the first body corporate and the other body corporate are related to each other.

**Subsidiary**

**11.** (1) Subject to subsection (5), a body corporate is a subsidiary of a society if —

- (a) the society —
  - (i) controls the composition of the body corporate’s board of directors; or

- (ii) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the body corporate; or
  - (iii) holds more than 50% of the issued share capital of the body corporate (other than 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) the body corporate is a subsidiary of a body corporate that is a subsidiary of the society (including a body corporate that is a subsidiary of the society by another application of this paragraph).
- (2) The composition of a body corporate's board of directors is controlled by a society if the society can appoint or remove all or a majority of the directors by the exercise of a power exercisable with or without the consent or concurrence of another person.
- (3) For the purposes of subsection (2), a society is taken to have power to make an appointment of directors if —
- (a) a person cannot be appointed as director without the exercise of such a power by the society in the person's favour; or
  - (b) a person's appointment as a director follows necessarily from the person being a director or other officer of the society.
- (4) Subsection (2) does not limit by implication the circumstances in which the composition of a body corporate's board of directors is taken to be controlled by a society.
- (5) In determining whether a body corporate is a subsidiary of a society —
- (a) any shares held or power exercisable by the society in a fiduciary capacity must be treated as not held or exercisable by it; and
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable —
    - (i) by any person as a nominee for the society; or
    - (ii) by, or by a nominee for, a subsidiary of the society (other than a subsidiary that is concerned only in a fiduciary capacity),must be treated as held or exercisable by the society; and

- (c) any shares held or power exercisable by a person under a debenture, or a trust deed for securing the issue of debentures, must be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the society or a subsidiary of a society merely by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing financial accommodation must be disregarded.

(6) If it is relevant to determine for the purposes of this Code whether a body corporate is a subsidiary of another body corporate that is not a society and subsection (1) does not apply, the first body corporate is a subsidiary of the other body corporate if it would be such a subsidiary under the Corporations Law.

### **Qualified privilege**

**12.** (1) Where this Code provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing —

- (a) has qualified privilege in proceedings for defamation; or
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person.

(2) In subsection (1) —

“**malice**” includes ill-will to the person concerned or any other improper motive.

(3) Neither this section nor a provision of this Code that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

### **Carrying on business: otherwise than for profit**

**13.** A reference in this Code to a person carrying on business, carrying on a business, or carrying on a business of a particular kind, includes a reference to the person carrying on business, carrying on a business, or carrying on a business of that kind, as the case may be —

- (a) in any case, otherwise than for profit; or
- (b) in the case of a body corporate, otherwise than for the profit of the members or corporators of the body.

**Businesses of a particular kind**

14. A reference in this Code to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

**Carrying on a business: alone or together with others**

15. A reference in this Code to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.

**Interpretation generally**

16. Schedule A contains miscellaneous provisions relating to the interpretation of this Code.

***Division 3 — Operation of Friendly Societies Legislation***

**Extraterritorial operation of legislation**

17. The friendly societies legislation applies —

- (a) throughout Australia; and
- (b) both within and outside Australia.

***Division 4 — Application and Adoption of Corporations Law***

**Definitions**

18. In this Division —

“Corporations Law” includes the Corporations Regulations.

**Corporations Law applying under its own force**

19. (1) The provisions of the Corporations Law (other than the provisions of the Corporations Law mentioned in subsection (2)) are excluded from applying under their own force to and with respect to societies.

(2) However, the following provisions of the Corporations Law are not excluded from applying under their own force —

- (a) provisions applying to, or about, the following —
  - (i) bodies;
  - (ii) bodies corporate;
  - (iii) disclosing entities;
  - (iv) eligible bodies;
  - (v) persons;
  - (vi) securities, including securities of a particular type;
  - (vii) securities, including securities of a particular type of a body corporate;
- (b) provisions applying to or about bodies or bodies corporate included in the official list of a securities exchange (including provisions of Chapter 6 applying to or about a company as defined for that Chapter);
- (c) Part 7.11;
- (d) Part 7.12;
- (e) provisions —
  - (i) about the interpretation of a provision mentioned in paragraphs (a) to (d) (“**non-excluded Corporations Law provision**”), including a provision defining a word used in the non-excluded Corporations Law provision; or
  - (ii) vesting power in the Australian Securities Commission, but only to the extent that they vest power for the purposes of a non-excluded Corporations Law provision; or
  - (iii) empowering a court to make an order (including an order curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Law provision; or
  - (iv) otherwise about the administration of a non-excluded Corporations Law provision.

(3) Subsection (2) does not apply provisions of the Corporations Law that would not otherwise apply to societies or the securities of societies.

(4) Subsections (1) to (3) have effect despite any law of this State prescribed for the purposes of this subsection.

(5) The expressions used in subsection (2) (a), (b) and (e) have the meanings given by the Corporations Law.

(6) Subsections (1) to (3) are not intended to affect the operation, as intended under the Corporations Law, of a provision of the Corporations Law expressly excluding a provision of the Corporations Law from having application to societies.

### **Corporations Law adopted under a regulation**

**20.** (1) A regulation may adopt, with or without modification, a provision of the Corporations Law for application to societies or the securities of societies.

(2) However, a regulation may not adopt a provision of the Corporations Law to the extent that the provision as adopted would be inconsistent with a provision of the friendly societies legislation.

(3) A regulation made as permitted by this section may create an offence with a maximum penalty of not more than the maximum penalty for the equivalent offence under the Corporations Law.

### **Adopted provisions of Corporations Law**

**21.** (1) This section applies if a provision of the Corporations Law (the “**adopted provision**”) is adopted for application to societies or the securities of societies with or without modification, under a provision (the “**adopting provision**”) of this Code (including a regulation permitted by section 20).

(2) Unless the adopting provision otherwise provides, definitions and other interpretation provisions of the Corporations Law relevant to the adopted provision are taken also to be adopted.

(3) “*Gazette*” and “**Minister**” in an adopted provision has the meaning given in this Code.

(4) Neither the adopting provision nor the adopted provision gives power to the Australian Securities Commission to administer the adopted provision for this Code.



**PART 2 — FUNCTIONS AND POWERS OF SSA**

***Division 1 — General***

**Functions of SSA**

- 22.** The functions of the SSA under this Code are to —
- (a) register, supervise and regulate societies; and
  - (b) supervise and enforce compliance by societies with this Code and with standards; and
  - (c) ensure that an effective and efficient system of prudential supervision is applied to societies; and
  - (d) protect the interests of members of societies; and
  - (e) facilitate or direct the transfer of engagements of, or the conversion or merger of, societies; and
  - (f) otherwise undertake the administration and enforcement of the financial institutions scheme so far as it relates to societies; and
  - (g) provide information and statistics to AFIC relating to —
    - (i) societies; and
    - (ii) the operation, administration and enforcement of the financial institutions scheme so far as it relates to societies; and
  - (h) advise, and make recommendations to, AFIC; and
  - (i) carry out such other functions as are conferred on it by or under the friendly societies legislation.

**General powers**

- 23.** (1) The SSA has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under this Code.
- (2) Without limiting subsection (1), the SSA has such powers as are conferred on it by or under the friendly societies legislation.

**SSA to comply with standards**

**24.** In performing its functions, and exercising its powers, the SSA must comply with all applicable standards.

**Application of variation under standards**

**25.** (1) If a standard provides that the operation of the standard in relation to a particular society may be varied by a SSA by temporarily changing a requirement of the standard, the SSA may temporarily change the requirement as allowed under the standard.

(2) Subsection (1) does not limit section 23.

**SSA to keep Minister informed**

**26.** (1) The SSA must keep the Minister informed of —

- (a) the operations of the SSA in relation to this Code; and
- (b) the operation, administration and enforcement of this Code.

(2) The SSA must give the Minister such reports and information in relation to those matters as the Minister requires.

**Inspection of documents at public office**

**27.** (1) The SSA must keep registers of documents and rules of societies at its public office.

(2) A person may, on payment of the prescribed fee —

- (a) inspect at the public office of the SSA during ordinary business hours of the SSA at the office —
  - (i) the rules of a society; and
  - (ii) any other document of a prescribed class lodged with, created by or otherwise held by the SSA; and
- (b) obtain from the SSA —
  - (i) a certified copy of the certificate of incorporation of a society and a certified copy of, or of part of, the rules of a society; or
  - (ii) a certified copy of, or extract from, another document that the person is entitled to inspect under paragraph (a).

**Power of SSA to reject documents**

**28.** (1) If the SSA is of opinion that a document submitted to the SSA —

- (a) contains matter contrary to law; or
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
- (c) because of an omission or misdescription, has not been duly completed; or
- (d) does not comply with the requirements of this Code; or
- (e) contains an error, alteration or erasure,

the SSA may refuse to register, or may reject, the document and may request —

- (f) that the document be appropriately amended or completed and resubmitted; or
- (g) that a fresh document be submitted in its place; or
- (h) if the document has not been duly completed, that a supplementary document be submitted.

(2) The SSA may require a person who submits a document to the SSA to also produce another document, or to give any information, that the SSA considers necessary in order to form an opinion whether it should refuse to register or should reject the document.

**Extension or abridgment of time**

**29.** (1) The SSA may, on receipt of written application by a society accompanied by the prescribed fee or of its own initiative, extend or abridge the time within which anything is required to be done under this Code or the society's rules.

(2) An application under subsection (1) may be made to the SSA even though the time sought to be extended has ended.

***Division 2 — Specific Powers***

*Subdivision 1 — Services corporations*

**Services corporation**

**30.** (1) The SSA may, by *Gazette* notice, declare a body corporate, that provides or proposes to provide financial or other services to societies to enable them to further their objects, to be a services corporation.

(2) Subject to this section, a society may subscribe for or otherwise acquire shares in a services corporation.

(3) A society must not, without the written approval of the SSA, apply funds in excess of the prescribed amount or an amount calculated as prescribed, whichever is greater, in subscribing for or otherwise acquiring shares in any one services corporation.

Maximum penalty: \$25 000.

(4) On an application for approval under subsection (3), the SSA may —

- (a) give the approval; or
- (b) refuse to give the approval.

(5) The SSA may —

- (a) subject an approval to conditions; and
- (b) at any time vary or revoke a condition imposed on an approval.

(6) If a condition (including a prescribed condition) to which an approval is subject has been contravened, the SSA may revoke the approval.

(7) The SSA must not —

- (a) refuse to give an approval; or
- (b) subject an approval to conditions,

without first giving the society an opportunity to make written submissions to it in relation to the matter.

(8) The SSA must not —

- (a) vary a condition imposed on an approval; or

- (b) revoke an approval,

without first giving the society an opportunity to be heard or, if the society prefers, an opportunity to make written submissions to it in relation to the matter.

(9) The variation or revocation of a condition imposed on an approval or the revocation of an approval takes effect on —

- (a) the day that written notice is given to the society; or  
(b) a day specified in that notice,

whichever is later.

(10) A society must not contravene any condition imposed on an approval.

Maximum penalty: \$25 000.

(11) The application by a society of funds in contravention of subsection (3) is not invalid as regards a person transacting business with the society unless the person —

- (a) has actual knowledge of the contravention at the time when the funds were applied; or  
(b) has a connection or relationship with the society that is such that the person should have known of the contravention.

*Subdivision 2 — Enforcement powers*

**Obtaining information**

**31.** (1) The SSA may, if it is reasonably necessary for the purposes of its functions under the friendly societies legislation, by written notice given to a society, or a body corporate related to a society, require the society, or body corporate —

- (a) to give to it, within a reasonable period and in a reasonable way specified in the notice, specified information and reports; and  
(b) to give to it, at the reasonable times and in a reasonable way specified in the notice, periodic reports on specific matters; and  
(c) to notify it, within the reasonable time and in a reasonable way specified in the notice, if —  
(i) a specified event or change of circumstances happens;  
or

- (ii) the society or body corporate becomes aware that a specified event or change of circumstances is likely to happen.

(2) The SSA may, if it is reasonably necessary for the purposes of its functions under the friendly societies legislation, by written notice given to a services corporation, or a body corporate related to a services corporation, require the services corporation or body corporate to give to it, within a reasonable time and in a reasonable way specified in the notice, specified information.

(3) A society, body corporate or services corporation that, without reasonable excuse, fails to comply with a requirement under subsection (1) or (2) to the extent that it is capable of doing so commits an offence.

Maximum penalty: \$25 000.

(4) It is not a reasonable excuse for a society, or body corporate or services corporation to fail to comply with a requirement under subsection (1) or (2) that complying with the requirement might tend to incriminate the society, body corporate or services corporation.

(5) The fact that information or a report or notification was given by a society, body corporate or services corporation under subsection (1) or (2) is not admissible in evidence against the society, body corporate or services corporation in a criminal proceeding (other than a proceeding in relation to the falsity of the information, report or notification) if —

- (a) the society, body corporate or services corporation, before giving the information, report or notification (the “**relevant action**”) claimed that the relevant action might tend to incriminate the society, body corporate or services corporation; and
- (b) the relevant action might in fact tend to incriminate the society, body corporate or services corporation.

### **Obtaining evidence**

**32.** (1) The SSA may, if it is reasonably necessary for the purposes of the friendly societies legislation, by written notice given to a person, require the person —

- (a) to attend before an employee of the SSA authorized for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (b) to produce to an employee of the SSA authorized for the purpose, at a reasonable time and place specified in the notice, documents in the custody or under the control of the person.

(2) An employee before whom a person attends under subsection (1) (a) may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the employee may administer an oath or affirmation.

(3) An employee to whom documents are produced under subsection (1) —

- (a) may keep the documents for 60 days or, if a prosecution for an offence against the friendly societies legislation of which the document may afford evidence is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding; and
- (b) while the employee has possession of the document, may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the employee's possession.

(4) The regulations must prescribe scales of allowances and expenses to be allowed to persons required to attend under this section.

(5) The SSA may authorize an employee for the purpose of subsection (1) (a) only if the person has, in the SSA's opinion, the appropriate expertise for the purpose (whether because of training or otherwise).

(6) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) to the extent that the person is capable of doing so commits an offence.

Maximum penalty: \$25 000.

(7) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

(8) An answer given by a person under subsection (1) is not admissible against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if —

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(9) The fact that a document was produced by a person under subsection (1) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the document) if —

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

### **Inspectors**

**33.** (1) The SSA may authorize a person, or a class of persons, to exercise all or any of the powers conferred by this Code on an inspector.

(2) The SSA may cause an identity card to be issued to an inspector.

(3) The identity card must —

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the SSA.

(4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the SSA.

Maximum penalty: \$5 000.

### **Inspector to produce identity card**

**34.** An inspector is not entitled to exercise powers under this Division in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

### **Entry and search — monitoring compliance**

**35.** (1) An inspector may, for the purpose of finding out whether the requirements of this Code are being complied with —

- (a) enter any place; and
- (b) exercise the powers set out in section 37.



(2) An inspector must not enter a place, or exercise a power under subsection (1), unless —

- (a) the place is premises occupied by a society or services corporation, or a body corporate related to a society or services corporation and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (b) the place is premises occupied by a banker or liquidator of a society, or a body corporate related to a society, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (c) the place is premises that are not occupied for residential purposes, the inspector believes on reasonable grounds that accounting records or other prescribed documents of, or any auditor's or actuary's working papers relating to, a society, or a body corporate related to a society, are kept or are to be found on the premises and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (d) the occupier of the place consents to the entry or exercise of the power; or
- (e) a warrant under section 38 authorizes the entry or exercise of the power.

#### **Entry and search — evidence of offences**

**36.** (1) Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Code, the inspector may —

- (a) enter the place; and
- (b) exercise the powers set out in section 37.

(2) If an inspector enters the place and finds the evidence, the following provisions have effect —

- (a) the inspector may seize the evidence;
- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Code in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding;

- (c) if the evidence is a document, while the inspector has possession of the document, the inspector may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.
- (3) An inspector must not enter the place or exercise a power under subsection (1) unless —
- (a) the occupier of the place consents to the entry or exercise of the power; or
  - (b) a warrant under section 39 that was issued in relation to the evidence authorizes the entry or exercise of the power.
- (4) If, while searching the place under subsection (1) under a warrant under section 39 —
- (a) an inspector finds a thing that the inspector believes, on reasonable grounds, to be —
    - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
    - (ii) a thing that will afford evidence of the commission of another offence against this Code; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent —
    - (i) its concealment, loss or destruction; or
    - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or another offence, as the case may be,
- subsection (2) applies to the thing as if it were the evidence.
- (5) An inspector who seizes or damages anything under this section must give written notice of particulars of the thing or damage.
- (6) The notice must be given to —
- (a) if anything is seized, the person from whom the thing was seized; or
  - (b) if damage is caused to anything, the person who appears to the inspector to be the owner.

**General powers of inspector in relation to places**

**37.** (1) The powers an inspector may exercise under section 35 (1) (b) or 36 (1) (b) in relation to a place are as follows —

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;
- (c) to take extracts from, and make copies of, any documents in the place;
- (d) to take into the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place;
- (e) to require the occupier or any person in the place to give to the inspector reasonable assistance in relation to the exercise of an inspector's powers mentioned in paragraphs (a) to (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1) (e).

Maximum penalty: \$5 000.

(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) (e) on the ground of the privilege against self-incrimination.

(4) If, under a requirement under subsection (1) (e), a person is required to answer a question or produce a document, the contents of the answer, or the fact of production of the document, is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer or document).

(5) For the purposes of the application of subsection (4) to the production of a document, the contents of the document are to be disregarded.

**Monitoring warrants**

**38.** (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Code are being complied with.

(3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the inspector or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(4) The warrant must —

- (a) authorize the inspector, with such assistance and by such force as is necessary and reasonable —
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 37; and
- (b) state whether the entry is authorized to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

#### **Offence related warrants**

**39.** (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Code.

(3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the inspector or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(4) The warrant must —

- (a) authorize the inspector, with such assistance and by such force as is necessary and reasonable —
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 37; and
  - (iii) to seize the evidence; and

- (b) state whether the entry is authorized to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

**Offence related warrant may be granted by telephone**

**40.** (1) If, because of urgent circumstances, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 39.

(2) Before applying for the warrant, the inspector must prepare information of the kind mentioned in section 39 (2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, the inspector may apply for the warrant before the information has been sworn.

(4) If the magistrate is satisfied —

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought,

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 39, complete and sign such a warrant as the magistrate would issue under that section if the application had been made under that section.

(5) If the magistrate completes and signs the warrant —

- (a) the magistrate must —
  - (i) tell the inspector what the terms of the warrant are; and
  - (ii) tell the inspector the date on which and the time at which the warrant was signed; and
  - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the inspector must —
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

- (ii) write on the form of warrant the name of the magistrate and the date on which and the time at which the magistrate signed the warrant.

(6) The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the magistrate —

- (a) the form of warrant completed by the inspector; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must —

- (a) attach them to the warrant that the magistrate completed and signed; and
- (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 39.

(8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorizes.

(9) If —

- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorized by this section; and
- (b) the warrant completed and signed by the magistrate authorizing the exercise of power is not produced in evidence,

the court must assume, unless the contrary is proved, that the exercise of power was not authorized by such a warrant.

#### **Obstruction of inspectors**

**41.** A person must not, without reasonable excuse, assault, obstruct, hinder or resist an inspector in the exercise of a power under this Code.

Maximum penalty: \$50 000 or imprisonment for 7 years, or both.

**False or misleading statements**

42. (1) In this section —

“**relevant person**” means a person exercising powers under this Code, and includes an inspector.

(2) A person must not —

- (a) make a statement to the SSA or a relevant person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the SSA or a relevant person anything without which the statement is, to the person’s knowledge, misleading in a material particular; or
- (c) give to the SSA or a relevant person a document containing information that the person knows is false, misleading or incomplete in a material particular without, at the same time —
  - (i) indicating that the document is false, misleading or incomplete and the respect in which it is false, misleading or incomplete; and
  - (ii) giving correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

*Subdivision 3 — Special meeting and inquiry*

**Special meeting and inquiry**

43. (1) The SSA, on the written application of a majority of the directors, or not less than 10% of the members of a society or not less than 10% of the members of a benefit fund of a society (as the case requires) or on its own initiative —

- (a) may call a special meeting of the society or of the members of the benefit fund; or
- (b) may hold an inquiry into affairs (including the working and financial conditions) of the society or the benefit fund.

(2) The SSA, on its own initiative, may hold an inquiry into affairs (including the working and financial conditions) of —

- (a) a body corporate related to a society; or
- (b) a services corporation.

(3) An application under subsection (1) must be supported by such evidence as the SSA directs 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.

(4) Notice of the application must be given to the society if the SSA directs.

(5) Security for the expenses of a meeting or inquiry must be given —

- (a) if the meeting is called or inquiry is held on an application under subsection (1), by the applicants; or
- (b) in any other case, by such persons and in such way as the SSA directs.

(6) The SSA may —

- (a) direct the time and place the meeting or inquiry is to be held; and
- (b) direct what matters are to be discussed or determined; and
- (c) despite the rules of the society, give notice to members of the holding of the meeting or inquiry as it considers appropriate.

(7) The SSA may, by written notice, direct the directors and such other persons as it requires to attend the meeting or inquiry.

(8) A person to whom a direction is given under subsection (7) must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(9) A meeting held under this section has all the powers of a meeting called under the rules of a society and has power to appoint a person to preside at the meeting, despite any rule of the society to the contrary.

(10) The SSA, or any person nominated by it, may attend and address a meeting held under this section.

(11) All expenses of and incidental to the meeting or inquiry may be defrayed —

- (a) if the meeting is called or inquiry is held under subsection (1) —
  - (i) by the applicants, or any officer or member, or former officer or member of the society; or



- (ii) by the society out of the management fund of the society or, with the prior written approval of the SSA, out of a benefit fund of the society,

in such proportions as may be agreed between the SSA and those persons; or

- (b) if the inquiry is held under subsection (2) —

- (i) in the case of a related body corporate, out of the funds of the society to which the body corporate is related; or

- (ii) in the case of a services corporation, out of the funds of the services corporation or, if the society has shares in the services corporation, out of the management fund of the society,

in such proportions as the SSA directs,

and may be recovered as a debt in a court having jurisdiction for the recovery of debts up to the amount concerned.

(12) In default of agreement under subsection (11) (a), the expenses must be defrayed by such persons, and in such proportions, as the Court, on the application of the SSA, directs.

*Subdivision 4 — Special power of intervention*

**Intervention by SSA**

- 44.** (1) If the SSA is of the opinion that —

- (a) a society has contravened the friendly societies legislation and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation; or
- (b) the management fund of a society has an accumulated deficit; or
- (c) the affairs of a society or a fund of a society are being managed or conducted in an improper or financially unsound way,

the SSA may, by written notice given to the society, place it under direction.

- (2) The SSA may, by written notice given to the society, revoke the notice.

(3) While the society is under direction, the SSA may do all things that it considers necessary to ensure that the principal objects of the friendly societies scheme for friendly societies established by the friendly societies legislation are achieved in relation to the society.

(4) Without limiting subsection (3), the SSA may,

- (a) order an audit of the affairs of the society or a fund of the society by an auditor chosen by the SSA at the expense of the society; or
- (b) order an actuarial investigation of the affairs of the society or a fund of the society by an actuary chosen by the SSA at the expense of the society; or
- (c) direct the society to change any practices that in the SSA's opinion are undesirable or unsound; or
- (d) direct the society to cease or limit the raising of funds or the exercise of other powers; or
- (e) remove a director, or all the directors, of the society from office and appoint another director or other directors; or
- (f) remove any auditor of the society from office and appoint another auditor; or
- (g) remove the actuary of the society from office and appoint another actuary; or
- (h) give any other directions as to the way in which the affairs of the society are to be conducted or not conducted.

(5) If the society —

- (a) fails, without reasonable excuse, to comply with a direction given or requirement made under this section to the extent that the society is capable of doing so; or
- (b) without reasonable excuse, obstructs, hinders or resists the exercise of the SSA's powers under this section,

the society and any officer of the society who is in default each commit an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(6) A director, auditor or actuary appointed under this section holds office for such term as the SSA directs.

*Subdivision 5 — Power to suspend operations of society*

**Power to suspend operations**

45. (1) If the SSA considers that it is necessary to do so —

- (a) in the interests of members, or persons who may become members, of a society; or
- (b) because a society has failed to comply with a standard,

the SSA may, by written notice given to the society, direct the society not to do any of the following —

- (c) borrow any amount;
- (d) accept any new member;
- (e) without the approval of the SSA, accept any contribution or pay to a member any benefit or otherwise dispose of or deal with the assets of the society or a fund of the society;
- (f) accept any payment on account of share capital except calls that fell due before the notice was given;
- (g) repay any amount paid on shares;
- (h) repay any money on loan;
- (i) pay or transfer an amount to any person, or create an obligation to do so.

(2) A notice under subsection (1) continues in force until it expires, or is withdrawn by the SSA.

(3) The SSA may, by a further written notice given to the society —

- (a) extend the period for which a notice under subsection (1) is to have force; or
- (b) amend the terms of the notice; or
- (c) withdraw the notice.

(4) If a society fails to comply with a notice under this section, the society and any officer of the society who is in default each commit an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(5) Subsection (4) does not apply if the failure to comply happens with the written permission of the SSA.

*Subdivision 6 — Administrators*

**Appointment of administrator**

**46.** (1) The SSA may, by written notice, appoint an administrator to conduct the affairs of a society and may, by written notice, revoke the appointment.

(2) A notice of appointment must specify —

- (a) the date of appointment; and
- (b) the appointee's name; and
- (c) the appointee's business address.

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the SSA.

(4) The SSA must not appoint an administrator unless —

- (a) the SSA is of the opinion that —
  - (i) the society has contravened the friendly societies legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
  - (ii) the management fund of the society has an accumulated deficit; or
  - (iii) the affairs of the society or a fund of the society are being managed or conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to the society as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members or creditors that the society's affairs be conducted by an administrator; or
- (c) the SSA has certified that any of the events mentioned in section 402 (1) (a), (b), (c) or (g) has happened.

(5) On the appointment of an administrator of a society —

- (a) the directors of the society cease to hold office; and
- (b) all contracts of employment with, or for provision of administrative or secretarial services to, the society are terminated; and
- (c) the administrator may terminate any contract for provision of other services to the society.

(6) An administrator of a society has the powers and functions of the board of the society, including the board's powers of delegation.

(7) A director of a society must not be appointed or elected while the administrator is in office except in the circumstances mentioned in subsection (11).

(8) An administrator holds office until the administrator's appointment is revoked.

(9) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the SSA showing how the administration was carried out, and for that purpose an administrator has access to the society's records and documents.

(10) On providing the report and accounting fully in relation to the administration of the society to the satisfaction of the SSA, the administrator is released from any further duty to account in relation to the administration of the society other than on account of fraud, dishonesty, negligence or wilful failure to comply with the friendly societies legislation.

(11) Before revoking an administrator's appointment, the SSA must —

- (a) appoint another administrator; or
- (b) appoint a liquidator; or
- (c) ensure that directors have been elected under the society's rules at a meeting called by the administrator under the rules; or
- (d) appoint directors of the society.

(12) Directors elected or appointed under subsection (11) —

- (a) take office on the revocation of the administrator's appointment; and

- (b) in the case of directors appointed under subsection (11) (d), hold office, subject to section 47, until the society's next annual general meeting.

(13) The expenses of an administrator in conducting a society's affairs are payable —

- (a) from the management fund of the society; or
- (b) from a benefit fund of the society in accordance with the prior written approval of the SSA; or
- (c) partly from the management fund and partly from a benefit fund in accordance with the prior written approval of the SSA.

(14) The expenses of conducting a society's affairs include —

- (a) if the administrator is not an employee of the SSA, remuneration of the administrator at a rate approved by the SSA; or
- (b) if the administrator is an employee of the SSA, the amount that the SSA certifies should be paid to it as repayment of the administrator's remuneration.

(15) An amount certified under subsection (14) (b) is a debt due to the SSA and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(16) An administrator has, in relation to the expenses specified in subsection (13), the same priority on the winding-up of a society as the liquidator of the society has.

(17) If a society incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with the friendly societies legislation or the society's rules by an administrator, the administrator is personally liable for the loss.

(18) An administrator is not liable for any loss that is not a loss to which subsection (17) applies but must account for the loss in a report given under this section.

#### **Additional powers of SSA**

**47.** (1) If the SSA appoints directors of a society under section 46 (11) (d), the SSA may, by written notice given to the society, specify —

- (a) a time during which this section is to apply in relation to the society; and

- (b) the terms and conditions on which all or any of the directors hold office; and
  - (c) the rules that are to be the society's rules.
- (2) While this section applies to a society, the SSA may —
- (a) from time to time remove and appoint directors; and
  - (b) from time to time vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1); and
  - (c) amend all or any of the rules specified under subsection (1).
- (3) The SSA may, by written notice given to the society, extend the time for which this section is to apply in relation to a society.
- (4) A rule specified by the SSA under this section as a rule of the society —
- (a) is not to be amended or revoked except in the way set out in this section; and
  - (b) if it is inconsistent with any other rule of the society, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and
  - (c) has the same evidentiary value as is by this Code accorded to the society's rules and to copies of them.

#### **Stay of proceedings**

**48.** (1) If the SSA appoints an administrator to conduct a society's affairs, a person must not begin or continue any proceeding in a court against the society until the administrator's appointment is revoked except with the leave of the Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.

(2) A person intending to apply for leave of the Court under subsection (1) must give to the SSA not less than 10 days' notice of intention to apply.

(3) On the hearing of an application under subsection (1), the SSA may be represented and may oppose the granting of the application.

#### **Administrator to report to SSA**

**49.** On the receipt of a request from the SSA, the administrator of a society must, without delay, prepare and give to the SSA a report showing how the administration is being carried out.

*Subdivision 7 — Levies*

**Supervision Fund**

**50.** The SSA must pay into the Supervision Fund established under section 94 of the Financial Institutions Code all amounts received as supervision levy under this Division.

**Supervision levy**

**51.** (1) The SSA may determine that an amount is to be paid to it by societies as a supervision levy.

(2) The amount of the levy may be fixed by the SSA as —

- (a) a specified amount; or
- (b) a specified percentage of an amount to be determined, on a specified day, by reference to specified factors relating to societies (including, for example, factors such as paid-up capital, reserves, obligations and debts and total assets including assets of each fund of the society); or
- (c) both a specified amount and such a specified percentage.

(3) If the levy is fixed, wholly or partly, as mentioned in subsection (2) (b), the SSA may include in the determination directions as to the way in which the levy is to be determined.

(4) The SSA may —

- (a) fix the amount of the levy differently for different societies; and
- (b) determine that the levy is not payable by specified societies.

(5) The SSA may, in the determination, require the levy to be paid in one amount by a specified time or permit the levy to be paid by specified instalments.

(6) If the SSA permits the levy to be paid by instalments, it may, in the determination, allow a discount for payment in one amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

(7) The SSA may, in the determination, require the payment of amounts, by way of late payment charge, interest or both, in relation to amounts of levy that are not paid as required by the determination.



(8) The SSA may include in the determination directions as to the way in which amounts of late payment charge and interest are to be determined.

(9) Amounts of levy are, when they are due and payable, debts due and payable by the society concerned to the SSA, and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(10) The SSA may, on the application of a society, vary —

- (a) an amount of levy payable by the society; or
- (b) the time within which an amount of levy is payable by the society.

(11) An amount paid by a society as levy is treated as an expense in the accounts of the society.

(12) In subsections (9), (10) and (11) —

“levy” includes late payment charge and interest in relation to levy.

### **Consultation**

**52.** In determining the amount to be paid as supervision levy under section 51, the SSA may, where it is appropriate and practicable to do so, consult with industry bodies and societies.

### **Failure to make payment an offence**

**53.** If a society defaults in making any payment required to be made under section 51, the society and any officer of the society who is in default each commit an offence.

Maximum penalty: \$25 000.

### *Subdivision 8 — Control of advertising*

### **Restriction on initial advertisements**

**54.** (1) A person who does not have the written permission of the SSA to do so, must not issue, or cause to be issued, an advertisement relating to —

- (a) a proposed society or proposed benefit fund of a society or proposed society; or

- (b) a body corporate that proposes to become a foreign society.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(2) The permission granted by the SSA under subsection (1) applies for the purposes of this section only and must not be construed as permission in respect of any other matter or thing for which permission under this Code is required.

**Power to control advertising**

**55.** (1) The SSA may, by written notice given to a society or foreign society, direct it —

- (a) not to issue an advertisement; or
- (b) not to issue an advertisement of a specified kind; or
- (c) not to issue an advertisement that is substantially in the same form as an advertisement that has been issued before; or
- (d) to include in an advertisement of a specified kind, or in an invitation to invest in the society, information relating to the society or foreign society that is required by the SSA to be included.

(2) Directions under subsection (1) may be varied or revoked by further written notice given to the society, or foreign society, by the SSA.

(3) A society or foreign society that fails to comply with a direction under this section commits an offence.

Maximum penalty: \$75 000.

**PART 3 — SOCIETIES**

***Division 1 — Objects***

**Primary objects**

**56.** For the purposes of this Code, primary objects, in relation to a society, are such of the following as are specified in the rules of the society as objects of the society —

- (a) to provide health and welfare benefits, services and facilities for members or their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical, physiotherapy and speech therapy benefits, services and facilities;
- (b) to provide benefits, services and facilities for the relief and maintenance of members or their dependants in the case of birth, death, sickness, disability, accident, retirement, old age and unemployment;
- (c) to provide benefits, services and facilities for the education of members or their dependants;
- (d) to provide financial and investment benefits, services and facilities for members or their dependants including, but not limited to, benefits, services and facilities relating to annuities, life insurance and superannuation;
- (e) to sell or supply medical requisites and therapeutic goods and dispense or sell medicines to members of the public.

**Objects of society must include primary objects**

**57.** The objects of a society must include one or more of the objects referred to in section 56.

**Dominant activities**

**58.** The dominant activities of a society must be within the scope of the primary objects of the society.

***Division 2 — Formation and Registration***

**Formation of societies**

**59.** (1) A body proposed to be a society may be formed by any 25 or more adults.

(2) A proposed society may be formed only if there has been a meeting for the purpose of forming the society at which there were present 25 or more adults.

(3) At the formation meeting, there must be presented —

(a) a written statement showing —

- (i) the primary objects and other objects of the society; and
- (ii) the reasons for believing that an application for registration of the society should be granted; and
- (iii) the reasons for believing that, if registered, the society will be able to carry out its objects successfully; and

(b) a copy of the proposed rules of the society.

(4) If, at the formation meeting or any subsequent or adjourned meeting, 25 or more adults, after considering the statement and the rules, approve the rules (with or without amendment), and sign an application for membership and shares (if any), they may proceed to elect the first directors of the society under the rules as so approved.

(5) An application for shares in a proposed society, made before the registration of the society, may not be withdrawn, and a person who makes such an application is, on the registration of the society, liable to pay the society —

- (a) the value of the shares for which the person applied; or
- (b) the value of the minimum number of shares for which a member is entitled to subscribe,

whichever is greater.

(6) The expenses of, and incidental to, the formation of the society may be paid out of the capital or income of the society.

(7) A person must not, before a society is registered —

- (a) issue an invitation to acquire an interest in the proposed society or to contribute to a benefit fund of the proposed society; or
- (b) take an amount in consideration of the allotment of a share, or the acquisition of an interest in, the proposed society or take a contribution to a benefit fund of the proposed society.

(8) A person who contravenes subsection (7) commits an offence and is liable on conviction to a maximum penalty of \$100 000 or imprisonment for 15 years, or both.

### **Registration**

**60.** (1) A proposed society formed under this Part may apply to the SSA, in accordance with the regulations, to be registered under this Code as a society.

(2) An application for registration must —

- (a) be made within 2 months after the meeting at which the first directors of the society were elected; and
- (b) be accompanied by —
  - (i) a statutory declaration by the person presiding at that meeting and a person elected as a director at that meeting stating that the requirements of section 59 have been complied with; and
  - (ii) a copy of the statement presented to the meeting, signed by the person presiding and a director; and
  - (iii) 2 copies of the proposed rules of the society, certified by the person presiding and a director to be the rules approved at the meeting; and
  - (iv) a list containing the full name, date and place of birth, residential address and business occupation of each director; and
  - (v) a list containing the full name, address and occupation of each of 25 or more adults who attended the meeting and applied for membership; and
  - (vi) written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society; and
  - (vii) the prescribed fee; and

- (c) be accompanied by such evidence as the SSA requires —
  - (i) that the society is eligible for registration; and
  - (ii) that the society, if registered, will be able to comply with the friendly societies legislation and all applicable standards; and
  - (iii) that the dominant activities of the society, if registered, will be within the scope of at least one of the primary objects specified in section 56;
  - (iv) that the society, if registered, will be able to carry out its objects successfully; and
  - (v) that the society, if registered, will operate at least one benefit fund.

(3) The SSA may, for the purposes of this section, accept a statutory declaration as sufficient evidence of matters mentioned in the declaration.

(4) If the SSA is satisfied that the society is eligible for registration, the SSA must register the society and its proposed rules.

- (5) A society is eligible for registration only if —
  - (a) the society's application for registration complies with this Code; and
  - (b) the proposed rules of the society comply with this Code and the standards; and
  - (c) there are reasonable grounds for believing that the society will, within a reasonable time after registration, if registered —
    - (i) be able to comply with the friendly societies legislation and all applicable standards; and
    - (ii) have, as its dominant activities, activities that are within the scope of the primary objects of the society; and
    - (iii) be able to carry out its objects successfully; and
    - (iv) unless exempted by the SSA, operate at least one benefit fund; and
  - (d) there is no good reason why the society and its rules should not be registered.

(6) The SSA may, by written notice given to the society, exempt a society from complying with the requirement to operate at least one benefit fund.

### **Certificate of incorporation**

**61.** (1) On registering a society, the SSA must issue to the society a certificate of incorporation.

(2) A certificate of incorporation issued to a society is conclusive evidence that all requirements of this Code in relation to registration and matters precedent or incidental to registration have been complied with.

### **Effect of incorporation**

**62.** On the issue of a certificate of incorporation to a society, the society is a body corporate with perpetual succession and —

- (a) has the legal capacity of a natural person; and
- (b) may acquire, hold and dispose of real and personal property; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

### **Powers of societies**

**63.** (1) Without limiting section 62, but subject to the friendly societies legislation and the society's rules, a society may —

- (a) acquire shares in an association by purchase or otherwise;
- (b) hold a subsidiary but only if approved by the SSA;
- (c) obtain registration as a foreign society under the friendly societies legislation of another participating State;
- (d) carry on a pharmacy practice and employ a pharmacist who is registered under the pharmacy law of this State;
- (e) do anything else that it is authorized to do by the friendly societies legislation or the society's rules.

(2) The powers of a subsidiary formed or acquired by a society are not limited by the society's objects or limitations on the society's powers.

(3) Except as permitted by the standards, a society must not carry on business outside Australia.

(4) In this section —

**“carry on business”** means —

- (a) establish or use an office for receiving amounts in consideration of the acquisition of an interest in a society or contributions to a benefit fund of a society; or
- (b) advertise in relation to raising share capital or invite contributions to a benefit fund of a society,

but does not include —

- (c) maintain an account at a bank, building society or credit union; or
- (d) create evidence of a debt or create a charge on property; or
- (e) secure or collect any debts or enforce rights in respect of such debts; or
- (f) conduct an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (g) invest funds or hold property; or
- (h) continue to provide benefits to, and accept contributions from, a member who, at the time of applying to contribute to a benefit fund, was resident in Australia and has subsequently moved to a place outside Australia; or
- (i) continue to receive amounts in consideration of an interest in a society from a member who, at the time of acquiring the interest, was resident in Australia and has subsequently moved to a place outside Australia.

#### **Prohibition on issuing debenture**

**64.** A society must not issue debentures.



**Restriction on reinsurance arrangements**

**65.** A society must not enter into a reinsurance arrangement unless the society's actuary has given the society written advice as to the likely consequences of the proposed arrangement.

**Restriction on acting as trustee**

**66.** A society must not act as a trustee or representative for the purpose of an approved deed in relation to the issue of prescribed interests under Part 7.12 of the Corporations Law.

**Control of certain financial arrangements**

**67.** Except as permitted by the standards, a society must not enter into an arrangement —

- (a) establishing rights and obligations to receive or deliver property the value of which, or to receive or make a payment in an amount which, or the value of which —
  - (i) depends on, or is derived from, the value or price at a particular future time or during a particular future period of particular property, rights or liabilities; or
  - (ii) depends on, or is derived by reference to, a particular rate, index or other factor at a particular future time or during a particular future period; or
- (b) specified in the standards to be a prohibited financial arrangement for the purposes of this section.

Maximum penalty: \$75 000.

**Control of foreign currency transactions**

**68.** Except as permitted by the standards, a society must not —

- (a) invest any of its assets in foreign currency; or
- (b) carry out any of its activities in foreign currency.

Maximum penalty: \$75 000.

***Division 3 — Rules***

*Subdivision 1 — General*

**Rules**

- 69.** (1) The rules of a society must set out —
- (a) the primary objects of the society; and
  - (b) any other objects of the society.

(2) The rules of a society must provide for the matters specified in the standards.

(3) Subject to subsection (4), the rules of a society may also provide for any matter that is necessary, expedient or desirable for the society's objects.

(4) If there is any inconsistency between a rule of a society and the friendly societies legislation or a standard, the friendly societies legislation or standard prevails and the rule is invalid to the extent of the inconsistency.

**Copies of rules**

**70.** A society must give a copy of its rules, or part of its rules, to a member or proposed member who requests it and has paid the fee (if any) payable under the society's rules.

Maximum penalty: \$5 000.

**Society and members to be bound by rules**

**71.** The rules of a society have effect as a contract between its members, and between each member and the society.

*Subdivision 2 — Amendment of rules*

**Amendment of rules by special resolution**

**72.** Subject to sections 73 and 75, the rules of a society may be amended only if the amendment has been approved by special resolution of the members under section 307.

**Amendment of rules by board of directors**

**73.** (1) A society's rules may be amended by a resolution of its board —

- (a) if the amendment is authorized or required by or under any Act or law or the standards; or
- (b) if the SSA is satisfied that approval of the amendment by the members of the society is not necessary and amendment by a resolution of the board is appropriate; or
- (c) to correct a patent error.

(2) The society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice setting out the text or a summary of an amendment of the society's rules under this section.

Maximum penalty: \$5 000.

(3) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally —

- (a) in the area of the State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

(4) The SSA may require a society that has amended its rules under this section to obtain approval of the amendment by the members of the society.

**Registration of amendment of rules**

**74.** (1) If the SSA is satisfied —

- (a) that an amendment of the rules of a society would not cause the society's dominant activities to cease to be within its primary objects; and
- (b) that the rules, as proposed to be amended, would comply with the friendly societies legislation; and
- (c) that there is no good reason why the amendment should not be registered,

the SSA must register the amendment.

(2) The amendment takes effect when it is registered.

(3) The rules of the society must be read subject to any registered amendment.

**Power of SSA to require modification of rules**

75. (1) If, in the SSA's opinion, the rules of a society should be amended —

- (a) to comply with the friendly societies legislation; or
- (b) to give effect to a standard,

the SSA may, by written notice given to the society, require it, within a reasonable period specified in the notice, to amend its rules in a way specified in the notice or otherwise in a way approved by the SSA.

(2) If the society fails to amend its rules as required by the notice, the SSA may amend the society's rules by notation on the registered copy of the rules.

(3) The SSA must immediately give written notice to a society of —

- (a) an amendment of the society's rules made under this section; and
- (b) the day on which the amendment takes effect.

(4) The society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice setting out the text of each amendment of the rules of the society taking effect under this section.

Maximum penalty: \$5 000.

(5) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally —

- (a) in the area of the State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

*Subdivision 3 — Societies conducting health benefit funds*

**Definitions**

**76.** In this Subdivision —

“**Commonwealth Act**” means the *National Health Act 1953* of the Commonwealth;

“**registered society**” means a society that is registered under Part VI of the Commonwealth Act.

**Health benefit fund rules**

**77.** (1) The rules of a registered society include the terms, conditions, directions and Council’s rules (within the meaning of the Commonwealth Act) that apply to the society as a registered organisation under Part VI of the Commonwealth Act.

(2) Except as provided in section 78, this Code does not apply to the rules referred to in subsection (1).

**Registered society to give notice of rule changes**

**78.** If an amendment of the rules of a registered society is made under this Code —

- (a) where, under section 78 of the Commonwealth Act, the society receives acknowledgement of its notification of the amendment, the society must, within 7 days after that receipt give written notice to the SSA of the date on which the amendment takes effect;
- (b) where, under section 78 of the Commonwealth Act, the Commonwealth Minister declares that the amendment is not to be taken to have come into operation, the society must, within 7 days after the declaration is made, give written notice of the declaration to the SSA.

***Division 4 — Standards***

**Societies to comply with standards**

**79.** A society must comply with all applicable standards.

Maximum penalty: \$25 000.

***Division 5 — Membership***

**Members**

- 80.** (1) A person is a member of a society if the person —
- (a) signs the application for membership on the formation of the society and has not ceased to be a member; or
  - (b) is entitled to a benefit from a benefit fund of the society; or
  - (c) holds a share in the society; or
  - (d) is admitted to membership under the society's rules and has not ceased to be a member.
- (2) The members of a merged society are the persons who, on the day of the merger, are members of a society that is a party to the merger, and any other persons who are admitted to membership under the merged society's rules.
- (3) The members of a society to which another society has transferred the whole of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society.
- (4) The members of a society to which another society has transferred part of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society and are specified, for the purposes of this subsection, in an agreement between the societies.
- (5) A person may exercise the rights of membership of a society only if the person has complied with any requirements for membership under the society's rules, including, for example —
- (a) the payment of an amount;
  - (b) the acquisition of shares or interests.

**Members who are minors**

- 81.** (1) Subject to a society's rules, a minor may be a member of the society or a benefit fund of the society.
- (2) A member of a society who is a minor cannot hold office in a society and cannot vote at a meeting of the society or of members of a benefit fund of the society.

(3) A person who has not reached 16 may, with the written consent of a parent or a person who stands in the place of a parent —

- (a) apply for membership of a benefit fund of a society; or
- (b) take an assignment of such benefits.

(4) A person who has reached 16 but has not reached 18 has the same capacity to exercise rights or powers in relation to benefits to which he or she is entitled as a person who has reached 18.

### **Joint members**

**82.** (1) Two or more persons may be joint members of a society or a benefit fund of a society if the society's rules so provide.

(2) If a society or a benefit fund of a society has joint members, the following provisions apply —

- (a) in the case of a society, the register of members of the society must indicate that a person is a joint member of the society;
- (b) in the case of a benefit fund of a society, the register of members of the benefit fund must indicate that a person is a joint member of the benefit fund;
- (c) the joint members are entitled to choose the order in which they are named in a register of members, but failing any such choice the society may enter the names in the order it considers appropriate;
- (d) the joint member who is named first in a register of members is the primary joint member;
- (e) subject to the society's rules, but without affecting the right of a member to obtain a copy of the balance sheet from the society on demand, a notice or other document may be given or sent only to the primary joint member;
- (f) for the purpose of determining —
  - (i) who is qualified to vote on a resolution at a meeting of the society or of a benefit fund of the society; and
  - (ii) the number or proportion of members required to give effect to any provision of the friendly societies legislation or the society's rules,

membership is taken to be solely that of the primary joint member.

### **Corporate membership**

**83.** (1) Subject to a society's rules, a body corporate may be a member of the society or a benefit fund of the society.

(2) A body corporate that is a member of a society or a benefit fund of a society may, by written notice given to the society, appoint an individual to represent it —

- (a) in the case of a body corporate that is a member of a society, at meetings of members of the society; or
- (b) in the case of a body corporate that is a member of a benefit fund of a society, at meetings of the benefit fund.

(3) A person appointed under subsection (2) —

- (a) is entitled —
  - (i) to receive notice of all meetings that the body corporate is entitled to receive; and
  - (ii) to exercise on behalf of the body corporate the same voting rights as the body corporate could, if it were a natural person, exercise as a member of the society; and
- (b) is eligible to be elected as a director of the society if —
  - (i) the body corporate holds the qualifications required for holding office as a director (other than qualifications about age and being an individual); and
  - (ii) a person has not been appointed as liquidator of the body corporate.

### **Cessation of membership**

**84.** A person ceases to be a member of a society or a benefit fund of a society as provided by the society's rules.

### **Expulsion of member**

**85.** A member of a society may be expelled, or have the member's membership rescinded, under the society's rules.



**Limitation of liability of members**

**86.** Subject to the friendly societies legislation, a member of a society is not liable, because of the membership, to contribute towards the payment of the debts and liabilities of the society or the costs, charges and expenses of a winding-up of the society.

***Division 6 — Name and Office***

**Name**

**87.** (1) The registered name of a society is its name as specified in the society's rules for the time being registered under this Code.

(2) The SSA may register a proposed society's rules, or an amendment of rules affecting a society's name, only if AFIC has reserved the name for the proposed society or society under Part 6A of the AFIC Code.

(3) If the SSA registers an amendment of the rules of a society changing the name of the society, the SSA may, on application by the society accompanied by the prescribed fee, amend its certificate of incorporation or issue a new certificate.

(4) A society must publish a change of its name as directed by the SSA.

Maximum penalty: \$5 000.

(5) )  
(6) ) *See note to section 1.*  
(7) )

(8) A society must not use a name other than —

(a) its registered name; or

(b) a name approved for its use under Part 6A of the AFIC Code.

(9) A society does not contravene subsection (8) by using a name in a way mentioned in section 88.

(10) *See note to section 1.*

(11) A society that contravenes subsection (8) commits an offence and is liable on conviction to a maximum penalty of \$75 000.

**Abbreviations of society's name**

**88.** (1) A description of a society is not inadequate or incorrect merely because the society's name is given using —

- (a) the abbreviation "Ltd." for the word "Limited"; or
- (b) the abbreviation "Aust." for the word "Australian"; or
- (c) the abbreviation "No." for the word "Number"; or
- (d) the symbol "&" for the word "and"; or
- (e) any of those words instead of the corresponding abbreviation or symbol.

(2) In this section —

**"name"** of a society means —

- (a) its registered name; or
- (b) a name approved for its use under Part 6A of the AFIC Code.

**Change of name does not affect identity**

**89.** (1) A change of name of a society does not —

- (a) affect the identity of the society; or
- (b) affect a right or obligation of the society or of a member or other person; or
- (c) render defective legal proceedings by or against the society.

(2) A legal proceeding that might have been continued or started by or against the society by its former name may be continued or started by or against it by its new name.

**Use of "friendly society"**

**90.** (1) Subject to this section —

- (a) a person or body, other than a society, foreign society or services corporation, must not carry on business, under a name or title of which the words "friendly society", or any other words, abbreviations or symbols with a similar meaning, form part; and

(b) a person or body, other than a society or foreign society, must not hold out that its business is that of a society.

(2) A person or body may apply to the SSA for exemption from subsection (1).

(3) The SSA may, by written notice given to the person or body, grant an exemption for such time and on such conditions as the SSA determines.

(4) The SSA may, at any time —

- (a) revoke an exemption; or
- (b) vary or revoke a condition of an exemption.

(5) A person who contravenes subsection (1) or a condition of an exemption under subsection (3), and every director or other person having the control and management of an incorporated or unincorporated body contravening the subsection or condition, commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(6) This section does not apply to an unregistered society within the meaning of section 91.

#### **Unregistered society not to carry on business**

**91.** (1) An unregistered society must not carry on business in this State.

(2) An unregistered society may apply to the SSA for an exemption from subsection (1).

(3) The SSA may, by written notice given to the unregistered society, grant an exemption for such time and on such conditions as the SSA determines.

(4) The SSA may, at any time —

- (a) revoke an exemption; or
- (b) vary or revoke a condition of an exemption.

(5) An unregistered society that contravenes subsection (1) or a condition of an exemption under subsection (3), and every other person having the control and management of the society contravening the subsection, commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(6) In this section —

**“unregistered society”** means a body registered as a friendly society in a participating State but not registered as a foreign society in this State.

**Publication of name**

**92.** (1) Except as otherwise provided in this section, a society must set out its registered name in legible letters on every public document (within the meaning of subsection (7)) of the society.

(2) A society must ensure that its registered name or a name approved in relation to the society under Part 6A of the AFIC Code is used on any advertisement published, or authorized to be published, by the society.

(3) A society must ensure that its registered name and the words “Registered Office” are displayed in a conspicuous place and in legible letters on the outside of its registered office.

(4) A society must ensure that its registered name is displayed in a conspicuous place and in legible letters on the outside of every other office or place in which its business is carried on.

(5) A society that contravenes this section commits an offence and is liable on conviction to a penalty of \$25 000.

(6) Nothing in this section prohibits a society from using, in addition to its registered name, a name approved in relation to the society under Part 6A of the AFIC Code.

(7) For the purpose of subsection (1) —

**“public document”** means —

- (a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the society that —
  - (i) when signed, issued or published, is intended to be lodged or is required by or under this Code to be lodged; or
  - (ii) is signed, issued or published under or for the purposes of this Code or any other law of the Commonwealth or of a State; or
- (b) an instrument of, or purporting to be signed or issued by or on behalf of, the society that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or

- (c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods or services, or official notice of, or purporting to be signed or issued by or on behalf of, the society.

#### **Common seal**

**93.** (1) A society must ensure its registered name appears in legible letters on its common seal.

(2) An officer of a society, or any person acting on its behalf, must not use any seal, purporting to be the common seal of the society, on which its registered name does not appear in legible letters.

Maximum penalty: \$25 000.

#### **Society may have duplicate common seal**

**94.** A society may, if authorized by its rules, have a duplicate common seal, which must be a facsimile of the common seal of the society with the addition on its face of the words "Share Seal" or "Document Seal" and a document of title referring to or relating to shares of the society sealed with that duplicate seal is taken to be sealed with the common seal of the society.

#### **Registered office**

**95.** (1) A society must have a registered office in this State.

(2) The first registered office of a society is the address that appears in the society's rules at the time of registration.

(3) A society must give written notice of any proposed change of address to the SSA.

Maximum penalty: \$5 000.

(4) At the end of the day of registration by the SSA of the new address or at the end of such later day as the society specifies in the notice, the new address becomes the registered office of the society.

**PART 4A — BENEFIT FUNDS**

***Division 1 — Provision of Benefits and Establishment  
of Benefit Funds***

**Provision of benefits**

**96.** (1) A society must not pay, or provide for the payment of, amounts to which a member of the society or any other person may be, or become, entitled because of contributions, or payments made to the society (whether by that member or person or by another person) unless the society —

- (a) maintains a benefit fund for the receipt of such contributions and payments; and
- (b) pays those amounts as benefits from the benefit fund.

(2) Subsection (1) does not apply to amounts payable by a society —

- (a) in respect of shares in the society; or
- (b) as trustee for a superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**Establishment of benefit fund**

**97.** (1) A society may, under its rules, establish a benefit fund in accordance with this Code and the standards.

(2) A benefit fund of the society is established when the rules of the society providing for the benefit fund are registered by the SSA.

**Approval to establish benefit fund**

**98.** (1) The SSA must not register rules providing for a benefit fund of a society unless the SSA has approved the establishment of the benefit fund.

(2) A society that proposes to establish a benefit fund must apply in writing to the SSA for approval to establish the benefit fund.

(3) An application under subsection (2) must be accompanied by a copy of the rules the society proposes to make in relation to the proposed benefit fund.

(4) If the SSA receives an application under this section and is satisfied that —

- (a) the proposed rules of the society are in accordance with the standards applicable to the proposed benefit fund; and
- (b) the establishment of the proposed benefit fund is in accordance with the standards; and
- (c) there is no good reason why the proposed rules should not be registered,

the SSA must, in writing given to the society, approve the application.

### ***Division 2 — Management of Benefit Funds***

#### **Assets of benefit funds**

**99.** (1) A society must keep the assets of each benefit fund distinct and separate from the assets of any other benefit fund and from any other assets of the society, except as otherwise provided or permitted under this Code.

(2) Except as provided in subsection (3), a society must maintain a separate account at a bank, building society or credit union for each benefit fund.

(3) A society may maintain a single account at a bank, building society or credit union for 2 or more benefit funds if permitted to do so by this Code or the standards.

(4) Nothing in this Code constitutes a society or a director of a society a trustee of the assets of a benefit fund of the society.

#### **Payments to benefit funds**

**100.** A society must credit to each benefit fund, in accordance with this Division —

- (a) all contributions received by or on behalf of the society in respect of the benefit fund; and
- (b) all income from investment of assets of the benefit fund and the proceeds of disposal of any such investment; and
- (c) any other amounts received by or on behalf of the society in respect of the benefit fund.

### **Application of benefit fund assets**

**101.** (1) A society must not, directly or indirectly, apply or deal with assets of a benefit fund otherwise than in accordance with this Code.

- (2) The assets of a benefit fund may only be applied —
- (a) for the purposes of paying any benefit payable to a person entitled to a benefit from the benefit fund; or
  - (b) as otherwise permitted by this Code or the society's rules.

### **Mortgaging assets of benefit fund**

**102.** (1) A society must not mortgage or otherwise charge or encumber an asset of a benefit fund.

(2) If a society's rules and the standards so permit, the society may, despite subsection (1), mortgage or otherwise charge or encumber an asset of a benefit fund for the advantage of the benefit fund in accordance with those rules and standards.

### **Investment of benefit funds**

**103.** (1) A society must not invest assets of a benefit fund otherwise than in accordance with this Code, the society's rules and the standards.

(2) If the rules of the society and the standards so provide, a society may, in accordance with this Code, the rules and the standards, invest assets of 2 or more of its benefit funds in a combined investment.

(3) A society, in investing assets of a benefit fund, must exercise the care, diligence and skill that a prudent person, whose profession, business or employment is or includes investing assets on behalf of other persons, would exercise in managing the affairs of other persons.

### **Payment of money into account**

**104.** A society must, as soon as practicable after it receives any money for a benefit fund, pay the money —

- (a) into an account maintained for the benefit fund under section 99; or
- (b) into a funds inward clearing account established under section 105.



**Funds inward clearing account**

**105.** (1) A society may open at a bank, building society or credit union an account to be known as a funds inward clearing account.

(2) If, under section 104, money received for a benefit fund is paid into the funds inward clearing account kept by a society, the society must ensure that the money is paid out of that account and into an account maintained under section 99 for the benefit fund as soon as practicable.

(3) If money of a benefit fund is paid into a funds inward clearing account —

- (a) the money is money of that benefit fund while it is held in that account; and
- (b) interest earned on the money while held in that account, less account fees and taxes, belongs to the benefit fund in like proportion to the entitlement of the benefit fund to the money in that account.

**Funds outward clearing account**

**106.** (1) A society may open at a bank, building society or credit union an account to be known as a funds outward clearing account.

(2) If a society withdraws an amount from an account maintained under section 99 for a benefit fund and does not pay the amount forthwith to the person entitled to that amount or apply the amount in accordance with section 101 (2), the society must —

- (a) pay the amount into the funds outward clearing account forthwith; and
- (b) pay the amount from the funds outward clearing account to the person as soon as practicable.

(3) If an amount in a funds outward clearing account has not been paid to the person entitled to it within 3 months after the amount was paid into the account, the amount must, at the expiration of that period, be paid back to the account from which it was withdrawn.

(4) If money of a benefit fund is paid into a funds outward clearing account —

- (a) the money is money of the benefit fund while it is held in that account; and

- (b) interest earned on the money while held in that account, less account fees and taxes, belongs to the benefit fund in like proportion to the entitlement of the benefit fund to the money in that account.

**Transfer of an asset between funds**

**107.** (1) A society must not, except in accordance with subsection (2), transfer an asset —

- (a) from one benefit fund of the society to another benefit fund of the society; or
- (b) from a benefit fund of the society to the management fund of the society.

(2) A society may transfer an asset from a benefit fund (the “**transferor fund**”) to another benefit fund or the management fund (the “**transferee fund**”) if —

- (a) the society transfers from the transferee fund to the transferor fund an amount equal to the fair value of the asset determined in accordance with section 109; and
- (b) in the case of a transfer referred to in subsection (1) (a), the transfer is fair and reasonable in all the circumstances for the members of the transferor fund and the transferee fund;
- (c) in the case of a transfer referred to in subsection (1) (b), the transfer is fair and reasonable in all the circumstances for the members of the society.

(3) This section does not apply to —

- (a) a transfer of assets in accordance with a restructure of one or more benefit funds under Division 3; or
- (b) the distribution of assets in accordance with section 119 on termination of a benefit fund; or
- (c) anything that a liquidator is required to do by or under this Code or any other law of this or any other State or of the Commonwealth; or
- (d) any application of assets of a benefit fund permitted by this Code or the standards.

**Distribution of surplus in benefit fund**

**108.** (1) If the actuary of a society advises the society that there is a surplus in a benefit fund, the society, subject to this Code, the rules of the society and the standards —

- (a) if the rules of the society so provide, may pay, apply or allocate all or part of the surplus to the members of the benefit fund; or
- (b) if the rules of the society so provide, may transfer all or part of the surplus to another benefit fund of the society; or
- (c) if the rules of the society so provide, may transfer all or part of the surplus to the management fund of the society.

(2) For the purposes of subsection (1), if any part of a surplus in a benefit fund comprises an asset other than money, the value of the asset is the fair value of the asset determined in accordance with section 109.

**Fair value of assets**

**109.** For the purpose of sections 107 and 108, the fair value of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.

***Division 3 — Restructure of Benefit Funds***

**Definitions**

**110.** In this Division —

**“existing fund”** means a benefit fund existing before a restructure under this Division takes effect, other than a benefit fund of a society that has commenced to be wound up under Part 9;

**“new fund”** means a benefit fund that is or is to be established under Division 1 for the purposes of a restructure under this Division.

**Approval of restructure of benefit funds**

**111.** (1) A society may restructure one or more of its benefit funds in accordance with this Division by doing any of the following —

- (a) transferring the whole or part of one or more existing funds to another existing fund; or

- (b) transferring the whole or part of one or more existing funds to a new fund.

(2) A society that proposes to restructure one or more of its existing funds must lodge with the SSA for approval a restructure statement in accordance with subsection (3).

(3) Except so far as the SSA otherwise determines in relation to a society, a restructure statement must specify —

- (a) the name of each existing fund that is to be involved in the restructure, any proposed change in the name of any such existing fund and the proposed name of any new fund;
- (b) the date on which it is proposed that the restructure will take effect;
- (c) the reasons for the proposed restructure;
- (d) the effect of the proposed restructure on the interests of the members of each existing fund that is to be involved in the restructure;
- (e) the assets and undertakings of, and liabilities referable to, each existing fund that is to be involved in the restructure that will become assets and undertakings of and liabilities referable to another such existing fund or a new fund;
- (f) the category or categories of members of each existing fund that, under the restructure, will become members of another existing fund or of a new fund;
- (g) any interest that any officer of the society has in the proposed restructure;
- (h) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society in relation to the proposed restructure;
- (i) if applicable, an estimate of the rate of any bonuses payable from each existing fund up to the date on which it is proposed that the restructure will take effect;
- (j) in the case of a transfer of part of an existing fund, details of any reserves that the society proposes to retain in the existing fund in accordance with the recommendations of the society's actuary;

- (k) the financial position of each existing fund that is to be involved in the restructure as at a date that is not more than 6 months before the date of the restructure statement;
- (l) such other information as the SSA requires.

(4) Except in so far as the SSA otherwise determines in relation to a society, the restructure statement must be accompanied by —

- (a) a certificate signed by the society's actuary certifying that, having regard to all matters relevant to the proposed restructure, the actuary considers that the restructure would be in the interests of the members of each existing fund that is to be involved in the restructure;
- (b) a copy of the proposed amendment of the society's rules to recognize the restructure;
- (c) a copy of the notice proposed to be issued by the society to notify members of each such existing fund of the restructure.

(5) A restructure statement must be signed by the directors of the society and must include a certificate that, having regard to all matters relevant to the proposed restructure, the directors consider that the restructure would be in the interests of the members of each existing fund that is to be involved in the restructure.

(6) The SSA may approve a restructure statement if the SSA is satisfied that —

- (a) the society has complied with the requirements of this section;
- (b) there is no good reason why the restructure should not be approved.

(7) If the SSA approves the restructure statement, the proposed restructure in accordance with the statement must be approved, in relation to each existing fund that is involved in the restructure, by —

- (a) a special resolution of the members of the existing fund; or
- (b) if the SSA so determines, a resolution of the society's board.

(8) A society, at least 21 days before a meeting of members of an existing fund to approve a special resolution under subsection (7) (a), must give personally or by post to each member of the fund a copy of the restructure statement approved by the SSA, or a summary of that statement approved by the SSA, together with a notice of the meeting and the proposed special resolution.

### **Rules**

**112.** If a proposed restructure is approved in accordance with section 111 (7), the society's board must, by a resolution, amend the society's rules to the extent necessary to recognize the restructure of an existing fund in accordance with this Division.

### **Lodgement of information with SSA**

**113.** (1) A society must lodge with the SSA within one month after a proposed restructure is approved in accordance with section 111 (7) —

- (a) a copy of the resolutions made under sections 111 (7) and 112; and
- (b) an application to register the amendment of the society's rules to establish a new fund (if any) and to recognize the restructure of each existing fund involved in the restructure.

(2) A society must lodge with the SSA within 3 months, or such other period as the SSA determines, after a restructure takes effect —

- (a) audited accounts, or accounts in a form approved by the SSA, for each existing fund involved in the restructure up to the date that the restructure takes effect; and
- (b) such other information as the SSA may require.

(3) The accounts in subsection (2) must include, if applicable —

- (a) details of any bonuses paid by the society from the fund and of any reserves retained by the society in the fund during the period to which the accounts relate; and
- (b) a statement of the manner in which the units of the fund were converted to units of another existing fund or of a new fund.

### **When a restructure takes effect**

**114.** A restructure takes effect on the day on which the SSA registers the amendment of the rules on an application under section 113 (1).

### **Effect of restructure**

**115.** (1) This section applies on a restructure under this Division taking effect.

(2) If the whole or part of an existing fund is transferred to another existing fund or to a new fund under this Division —

- (a) a member of the existing fund who is in a category specified in the restructure statement approved by the SSA under this Division becomes a member of the other existing fund or of the new fund; and
- (b) the assets and undertakings of and liabilities referable to the existing fund become, to the extent specified in the restructure statement approved by the SSA under this Division, assets and undertakings of and liabilities referable to the other existing fund or the new fund.

#### **Notification of members**

**116.** (1) A society must, within one month after a restructure taking effect, give written notice of the restructure to each member of a benefit fund affected by the restructure.

(2) Except so far as the SSA otherwise determines in relation to a society, a notice under subsection (1) must include —

- (a) the name of each existing fund affected by the restructure, any change in the name of any such existing fund and the name of any new fund;
- (b) a statement, in relation to each such existing fund, whether the restructure affects the whole or part of the fund;
- (c) the reasons for the restructure;
- (d) details of the restructure;
- (e) a summary of how the restructure affects the interests of members of each such existing fund;
- (f) details of the amendment of the rules to establish a new fund (if any) and recognize the restructure of an existing fund.

(3) The SSA may grant an exemption from any of the requirements of this section, subject to any conditions it considers appropriate.

***Division 4 — Termination of Benefit Funds***

**Application of Division**

**117.** A society, other than a society that has commenced to be wound-up under Part 9, may terminate a benefit fund in accordance with this Division.

**Approval of termination proposal**

**118.** (1) A society that proposes to terminate a benefit fund in accordance with this Division must lodge with the SSA for approval a termination statement in accordance with this section.

(2) Except so far as the SSA otherwise determines in relation to a society, a termination statement must specify —

- (a) the name of the benefit fund proposed to be terminated;
- (b) the date on which it is proposed that the termination will take effect;
- (c) the reasons for the proposed termination;
- (d) the manner in which the society proposes to distribute the assets of the benefit fund;
- (e) the effect of the proposed termination on the interests of the members of the benefit fund;
- (f) any interest that any officer of the society has in the proposed termination;
- (g) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society in relation to the proposed termination;
- (h) the financial position of the benefit fund as at a date that is not more than 6 months before the date of the termination statement;
- (i) such other information as the SSA may require.

(3) Except in so far as the SSA otherwise determines in relation to a society, a termination statement must be accompanied by —

- (a) a certificate signed by the society's actuary certifying that, having regard to all matters relevant to the proposed termination of the benefit fund, the actuary considers that



the termination would be in the interests of the members of the fund;

- (b) a copy of the proposed amendment of the society's rules to recognize the termination of the benefit fund;
- (c) a copy of the notice proposed to be issued by the society to notify members of the benefit fund of the termination of the benefit fund.

(4) A termination statement must be signed by the directors of the society and must include a certificate that, having regard to all matters relevant to the proposed termination, the directors consider that the termination would be in the interests of the members of the benefit fund.

(5) The SSA may approve a termination statement if the SSA is satisfied that —

- (a) the society has complied with the requirements of this section;
- (b) there is no good reason why the termination should not be approved.

(6) If the SSA approves the termination statement, the proposed termination in accordance with the statement must be approved by —

- (a) a special resolution of the members of the benefit fund; or
- (b) if the SSA so determines, a resolution of the society's board.

(7) A society, at least 21 days before a meeting of members of a benefit fund to approve a special resolution under subsection (6) (a), must give personally or by post to each member of the fund a copy of the termination statement approved by the SSA, or a summary of that statement approved by the SSA, together with a notice of the meeting and the proposed special resolution.

(8) If the proposed termination is approved in accordance with subsection (6) —

- (a) the society must cease to accept new members and any contributions from existing members in respect of the benefit fund; and
- (b) the society must distribute the assets of the benefit fund in accordance with section 119.

### **Distribution of assets of benefit fund**

**119.** (1) If the termination of a benefit fund is approved under section 118 (6), the assets of the benefit fund must be distributed in accordance with this section within 12 months after that approval.

(2) The assets of a benefit fund must first be applied in accordance with section 101 (2).

(3) If any assets remain after the application of subsection (2), the assets must be applied as follows —

- (a) first —
  - (i) where the rules of the society provide for the application of assets on the termination of the benefit fund, in accordance with the rules;
  - (ii) where the rules of the society do not provide for the application of assets on the termination of the benefit fund, in satisfaction of any entitlements of members of the fund as determined by the society's actuary;
- (b) secondly, if any assets remain after the application of paragraph (a), by way of transfer to the management fund of the society.

(4) For the purpose of making a fair and reasonable determination of the entitlements to be paid under subsection (3) (a) (ii), a society's actuary must take into account all the circumstances of the benefit fund, including —

- (a) the rules and standards applicable to the benefit fund; and
- (b) the history, performance and financial position of the benefit fund during its existence, whether before or after the coming into operation of this Code.

### **Notification of members**

**120.** (1) A society must, not later than the date of distribution of the assets of a benefit fund under section 119, give written notice of the termination of the benefit fund to each member of the fund.

(2) Except so far as the SSA otherwise determines in relation to a society, a notice under subsection (1) must include —

- (a) the name of the benefit fund that is being terminated;
- (b) the reasons for the termination of the benefit fund;
- (c) details of the termination of the benefit fund;

- (d) a summary of how the termination affects the interests of members of the fund;
- (e) details of the proposed amendment of the rules to recognize the termination of the benefit fund.

(3) The SSA may grant an exemption from any of the requirements under this section, subject to any conditions it considers appropriate.

### **Rules**

**121.** After a society has distributed the assets of a benefit fund in accordance with section 119, the society's board must, by a resolution, amend the society's rules to the extent necessary to recognize the termination of the benefit fund in accordance with this Division.

### **Lodgement of information with SSA**

**122.** (1) A society must lodge with the SSA within one month after the assets of the benefit fund have been distributed in accordance with section 119 —

- (a) a copy of the resolutions made under sections 118 (6) and 121; and
- (b) an application to register the amendment of the society's rules to recognize the termination.

(2) A society must lodge with the SSA within 3 months, or such other period as the SSA determines, after the termination takes effect —

- (a) audited accounts or accounts in a form approved by the SSA for the terminated benefit fund up to the date on which the termination takes effect;
- (b) such other information as the SSA may require.

(3) The accounts in subsection (2) must include, if applicable —

- (a) a statement of the distribution of the assets of the benefit fund;
- (b) details of any bonuses paid by the society from the benefit fund during the period to which the accounts relate.

**When termination takes effect**

**123.** A termination of a benefit fund takes effect on the day on which the SSA registers the amendment of the rules on an application under section 122.

***Division 5 — Assignment of Benefits***

**Assignment of benefits**

**124.** (1) An assignment of an entitlement to benefits in a benefit fund of a society may only be made in accordance with this section.

(2) An assignment must be made by memorandum of assignment in the form prescribed by the society's rules and signed by the assignor and the assignee.

(3) An assignment is not valid until it is registered in accordance with this section by the society.

(4) The assignor must serve on the society 2 signed copies of the memorandum of assignment and must pay any fee prescribed by the society's rules.

(5) The society must register the memorandum, and an officer of the society who is authorized to do so must insert the date of registration in both copies of the memorandum, sign them, and send one copy to the assignee.

(6) A copy of the memorandum that is signed and dated in accordance with this section is —

- (a) conclusive evidence of the registration of the assignment and of the date of registration; and
- (b) as between the society and any person claiming an entitlement to benefits, conclusive evidence that the assignee was at the time of registration absolutely entitled to the benefits, free from all interests (except any lien or charge that the society has in respect of the benefits), and was legally entitled to receive those benefits and give a discharge in respect of them.

(7) Except as provided in subsection (8), the assignee under a registered memorandum —

- (a) has all the powers of the assignor in respect of the benefits; and

- (b) is subject to all the liabilities of the assignor in respect of the benefits; and
- (c) may sue in relation to the benefits in the assignee's own name.

(8) The assignee is not, by the operation of this section, admitted as a member of the society, and the assignor is not deprived of membership, unless the rules of the society so provide.

(9) The receipt of the assignee is a discharge to the society for all money paid by the society in respect of the benefits.

(10) A discharge, surrender of or security over the benefits that is given to the society by the assignee is valid in spite of the existence of any interest of any other person.

(11) The society taking a discharge, surrender or security —

- (a) need not inquire into the circumstances of the assignment or the consideration of it; and
- (b) is not affected by express, implied or constructive notice of the existence of any interest of any other person in the benefits.

#### **Payment to nominee of deceased member**

**125.** (1) A member of a society who is at least 16 years old may nominate a person to whom any benefits from a benefit fund of the society payable on the death of the member are to be paid.

(2) A member of a society may not nominate an officer of that society unless the officer is a dependant of the member.

(3) A nomination has no effect unless it is —

- (a) in writing and signed by the member; and
- (b) served on the society.

(4) A nomination may be revoked or varied in the same way that it is made and is revoked on the death of the nominee.

(5) The society, on receiving evidence of the death of the member, must pay to the nominee any benefits that are payable on that death.

**PART 4B — OFFERING AND MARKETING OF BENEFITS**

***Division 1 — Application and Interpretation***

**Definitions**

**126.** In this Part —

**“application period”**, in relation to a disclosure document issued by a society relating to the provision of benefits, means —

- (a) if, under the terms of the disclosure document, applications for contributions to a benefit fund must be made before a particular time (which may, for example, be a specified time or a time to be determined by the society, but which must not be more than 12 months after the issue of the disclosure document or such longer period as the SSA allows), the period starting when the disclosure document is issued and ending at that time; or
- (b) in any other case, the period of 12 months starting when the disclosure document is issued;

**“exempt person”** means a person who is an exempt dealer or an exempt investment adviser under section 68 of the Corporations Law, and any person who is acting as a representative of the exempt dealer or exempt investment adviser in connection with the business of dealing in benefits or the benefits advisory business;

**“licensed adviser”** means a person who holds an investment advisers licence granted under Part 7.3 of the Corporations Law;

**“licensed dealer”** means a person who holds a dealers licence granted under Part 7.3 of the Corporations Law;

**“proper authority”** —

- (a) of a licensed dealer is a proper authority granted under Division 3 of Part 7.3 of the Corporations Law;
- (b) of a licensed adviser is a proper authority granted under Division 3 of Part 7.3 of the Corporations Law;
- (c) of a society is a proper authority granted by the society under Subdivision 3 of Division 4 of this Part.

**Benefits advisory business**

**127.** A reference in this Part to a benefits advisory business, in relation to a person, is a reference to —

- (a) a business of advising other persons about benefits; or
- (b) a business in the course of which the person publishes reports relating to benefits.

**Application of this Part**

**128.** This Part applies to benefits from a benefit fund, other than —

- (a) a benefit fund that is a health benefits fund under the *National Health Act 1953* of the Commonwealth; or
- (b) a benefit fund that is a superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**Actuarial advice**

**129.** A society must not provide benefits of a kind specified in the standards as requiring actuarial advice unless the society's actuary has given the society written advice about —

- (a) the proposed terms and conditions on which benefits of that kind are to be provided; and
- (b) in the case of benefits with a surrender value, the proposed basis on which the surrender value is to be determined; and
- (c) if the benefits are to be calculated by reference to units, the proposed means by which the unit values are to be determined; and
- (d) any other matters about which the standards require a society to obtain actuarial advice before providing benefits of that kind.

**Representatives**

**130.** (1) Subject to subsection (2), a person is a representative of another person if the first-mentioned person —

- (a) is employed by; or

(b) acts for or by arrangement with,

the other person in connection with a business of dealing in benefits or a benefits advisory business carried on by the other person.

(2) Except for the purposes of section 184 (b), a person who holds a proper authority from another person is a representative of the other person.

(3) Subject to subsection (4), a person does an act, or engages in conduct, as a representative of another person if the first-mentioned person does the act or engages in the conduct —

- (a) in connection with a business of dealing in benefits or a benefits advisory business carried on by the other person; and
- (b) while the first-mentioned person is a representative of the other person; and
- (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

(4) Except for the purposes of Subdivision 4 of Division 4, a person who holds himself or herself out to be a representative of another person does an act as a representative of the other person.

#### **Involvement in contraventions**

**131.** Subject to section 163, a person is involved in a contravention if the person —

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.



**Conduct**

**132.** (1) A reference in this Part to engaging in conduct is a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement.

(2) A reference in this Part to conduct, when that expression is used as a noun otherwise than as mentioned in subsection (1), is a reference to the doing of, or the refusing to do, any act, including the making of, or the giving effect to a provision of, an agreement.

(3) Where, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, servant or agent of the body, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a body corporate —

- (a) by a director, servant or agent of the body within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

is deemed to have been engaged in also by the body corporate.

(5) Where, in a proceeding under this Part in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

(6) Conduct engaged in on behalf of a person other than a body corporate —

- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

is deemed to have been engaged in also by the first-mentioned person.

(7) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

### **References to doing acts**

**133.** In this Part, unless the contrary intention appears, a reference to doing any act or thing includes a reference to causing, permitting or authorizing the act or thing to be done.

### **Misleading representation**

**134.** (1) When a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation is to be taken to be misleading.

(2) For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person is, unless the person adduces evidence to the contrary, deemed not to have had reasonable grounds for making the representation.

(3) Subsection (1) is deemed not to limit by implication the meaning of a reference to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

## ***Division 2 — Disclosure Documents and Application Forms***

### **Disclosure document to be lodged**

**135.** (1) A person must not issue, or cause to be issued, an invitation to contribute, or accept a contribution, to a benefit fund of a society unless a disclosure document relating to that benefit fund and that complies with this Division has been lodged with the SSA within the last preceding 12 months.

(2) A person must not issue, or cause to be issued, an invitation to contribute, or accept a contribution, to a benefit fund of a foreign society unless a disclosure document relating to that benefit fund and that complies with the corresponding Division to this Division in the friendly societies legislation of the participating State in which the foreign society is incorporated has been lodged, within the last preceding 12 months, with the SSA of that participating State.

Penalty applying to this section: \$20 000 or imprisonment for 5 years or both.

**Application form**

**136.** A person must not issue a form of application for benefits or for making contributions to a benefit fund of a society unless —

- (a) the form is attached to a disclosure document; and
- (b) a copy of the form and disclosure document have been lodged with the SSA.

Maximum penalty: \$20 000 or imprisonment for 5 years or both.

**Form of disclosure document and date of issue**

**137.** (1) A disclosure document —

- (a) must be printed in type of a size not less than the type known as 8 point unless the standards otherwise provide;
- (b) must be dated;
- (c) must be signed by each director of the society and by each person named in the document as a proposed director of the society or by a person authorized in writing by the director or proposed director to sign on his or her behalf;
- (d) must contain a statement that an arrangement for the provision of a benefit to which the document relates will not be entered into later than 12 months after the date of issue of the document;
- (e) must contain any other information required by the standards to be included in the document;
- (f) must comply with any requirements of the standards applicable to disclosure documents.

(2) The date of issue of a disclosure document is the date inserted in it under subsection (1) (b), unless the contrary is proved.

(3) Each copy of a disclosure document —

- (a) must state that the document has been lodged with the SSA of the State in which the society, or foreign society, is registered as a society;
- (b) must specify the date of lodgment;
- (c) must state that the SSA with which it is lodged takes no responsibility as to the contents of the document.

### **Disclosure of interests**

**138.** A disclosure document must specify the nature and extent of any interest that a director or proposed director of a society or an expert has in respect of —

- (a) the assets of the benefit fund to which the document relates;
- (b) benefits of the kind to which the document relates and in respect of which an entitlement, other than an entitlement available on the same terms and conditions to other members of the benefit fund, is available.

### **Liability in respect of disclosure document and interests**

**139.** (1) If a requirement of section 137 or 138 is contravened, a director or other person responsible for, or involved in the preparation of, the disclosure document does not incur any liability by reason of the contravention if it is proved that —

- (a) as regards any matter omitted, the person had no knowledge of the matter; or
- (b) the contravention arose from an honest mistake on the part of the person concerning the facts; or
- (c) the contravention was —
  - (i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial; or
  - (ii) otherwise such as, in the opinion of the court, having regard to all the circumstances of the case, ought reasonably to be excused.

(2) If there is a failure to include in a disclosure document a statement with respect to matters referred to in section 138, a director or other person does not have any liability in respect of the failure unless it is proved that the director or other person had knowledge of the matters not included.

(3) Nothing in this section limits or diminishes any liability that a person might incur under any rule of law or any enactment or under this Code apart from this section.

### **Content of disclosure document**

**140.** (1) A disclosure document must contain such information as persons and their professional advisers would reasonably require, and reasonably expect to find in the document, for the purpose of making an

informed assessment of benefits of the kind to which the document relates including —

- (a) the assets and liabilities, financial position, profits and losses, and prospects of, or referable to, the benefit fund from which the benefits would derive;
- (b) the rights attaching to the benefits to which the disclosure document relates.

(2) In determining what information is required to be included in a disclosure document, regard must be had to —

- (a) the nature of the benefits and the society;
- (b) the kinds of persons likely to consider applying to contribute to the benefit fund from which the benefits would derive;
- (c) the fact that certain matters may reasonably be expected to be known to professional advisers of any kind whom those persons may reasonably be expected to consult;
- (d) whether the persons to whom the invitation is to be issued are members of the society and, if they are, the extent to which relevant information has previously been given to them by the society;
- (e) any information known to the persons to whom the invitation is to be issued or their professional advisers under any Act of the Commonwealth or a State.

#### **Conditions requiring waiver of requirements void**

**141.** A condition is void if it —

- (a) requires or binds a person applying to contribute to a benefit fund to waive compliance with any requirement of section 137, 138, 139 or 140; or
- (b) purports to affect that person with notice of any contract, document or matter not specifically referred to in the disclosure document.

#### **Obligation to notify society of false etc. statements**

**142.** (1) If a disclosure document has been lodged and a person (other than the society) who —

- (a) is referred to in section 163 (2); or

(b) authorized or caused the issue of the disclosure document, becomes aware of a relevant matter during the application period in relation to the disclosure document, the person must, as soon as practicable after becoming so aware, give the society written notice of the matter.

Maximum penalty: \$5 000 or imprisonment for 12 months, or both.

(2) In subsection (1) —

**“relevant matter”** in relation to a disclosure document means —

- (a) a material statement in the disclosure document that is false or misleading; or
- (b) a material omission from the disclosure document; or
- (c) a significant change affecting a matter included in the disclosure document; or
- (d) a significant new matter about which information would have been required by this Division to be included in the disclosure document if the matter had arisen when the disclosure document was prepared.

**Correction of false or misleading statements etc. by a supplementary or replacement disclosure document**

**143.** (1) This section applies if a disclosure document has been lodged and the society becomes aware, during the application period in relation to the disclosure document, that the disclosure document is deficient because —

- (a) it contains a material statement that is false or misleading; or
- (b) there is a material omission from the disclosure document.

(2) As soon as practicable after becoming so aware, the society must lodge a supplementary disclosure document or a replacement disclosure document that corrects the deficiency and that complies with whichever of sections 145 and 146 applies.

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

**Changes or new matters requiring the issue of a supplementary or replacement disclosure document**

**144.** (1) This section applies if a disclosure document has been lodged and the society becomes aware, during the application period in relation to the disclosure document, that —

- (a) there has been a significant change affecting a matter included in the disclosure document; or

- (b) a significant new matter has arisen the inclusion in the disclosure document of information about which would have been required by this Division if the matter had arisen when the disclosure document was prepared.

(2) As soon as practicable after becoming so aware, the society must lodge a supplementary or a replacement disclosure document that contains particulars of the change or new matter and that complies with whichever of sections 145 and 146 applies.

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

### **General provisions about supplementary disclosure documents**

**145.** (1) A supplementary disclosure document is a document the purpose of which is to do either or both of the following in relation to a disclosure document (the “**original disclosure document**”) —

- (a) correct a deficiency in the disclosure document;
- (b) provide particulars about something that has occurred since the disclosure document was prepared.

(2) On each page of a supplementary disclosure document there must be a clear statement in bold type that states that the document is a supplementary disclosure document that is to be read in conjunction with —

- (a) the original disclosure document; and
- (b) if other supplementary disclosure documents have already been issued in relation to the original disclosure document, those supplementary disclosure documents.

(3) The statement must clearly identify —

- (a) the original disclosure document; and
- (b) if subsection (2) (b) applies, the supplementary disclosure documents to which that subsection refers.

(4) Unless the context otherwise requires, a reference to a disclosure document in any of the provisions referred to in the following provisions includes a reference to a supplementary disclosure document —

- (a) sections 159, 160 and 161;
- (b) sections 163 to 170;
- (c) sections 137 (1) (a), (b) and (c), (2) and (3) and 139;
- (d) sections 142, 150, 155, 156 and 157.

(5) In this section —

“**deficiency**”, in relation to a disclosure document, includes, but is not limited to —

- (a) a material statement in the disclosure document that is false or misleading; or
- (b) a material omission from the disclosure document.

#### **General provisions about replacement disclosure documents**

**146.** (1) A replacement disclosure document is a document the purpose of which is to replace a disclosure document (the “**original disclosure document**”) and which may also do either or both of the following —

- (a) correct a deficiency in the original disclosure document;
- (b) provide particulars about something that has occurred since the original disclosure document was prepared.

(2) On each page of a replacement disclosure document there must be a clear statement in bold type that identifies the original disclosure document and states that the document is a replacement disclosure document that replaces the original disclosure document.

(3) Subject to subsection (2), a replacement disclosure document must have the same wording as the original disclosure document, except to the extent that it —

- (a) corrects a deficiency in the original disclosure document; or
- (b) provides particulars about something that has occurred since the original disclosure document was issued.

(4) In this section —

“**deficiency**” in relation to a disclosure document, includes, but is not limited to —

- (a) a material statement in the disclosure document that is false or misleading; or
- (b) a material omission from the disclosure document.

#### **Consequences of lodging a supplementary disclosure document**

**147.** (1) This section applies if a supplementary disclosure document has been lodged.



(2) Subject to subsection (4), for the purposes of this Code, the information in the supplementary disclosure document is taken, except in relation to things that happened before it was lodged, to be included in the original disclosure document.

(3) Every copy of the original disclosure document issued after lodgment of the supplementary disclosure document must be attached to, or accompanied by, a copy of the supplementary disclosure document.

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

(4) If subsection (3) is contravened in relation to a copy of the original disclosure document, subsection (2) does not apply for the purposes of an action under section 162 in relation to that copy.

(5) In this section —

**“original disclosure document”** means the disclosure document identified in the supplementary disclosure document as required by section 145 (3) (a).

#### **Consequences of lodging a replacement disclosure document**

**148.** (1) This section applies if a replacement disclosure document has been lodged.

(2) A copy of the original disclosure document must not be issued after lodgment of the replacement disclosure document.

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

(3) The replacement disclosure document is a disclosure document in its own right for the purposes of this Code, but it is taken to have been issued when the original disclosure document was issued.

(4) The parts of the replacement disclosure document that are the same as the original disclosure document are taken to comply with the requirements of this Division, but only to the extent to which those parts of the original disclosure document in fact complied with those requirements.

(5) In this section —

**“original disclosure document”** means the disclosure document identified in the replacement disclosure document as required by section 146 (2).

**Application made on out of date application form**

**149.** (1) For the purposes of this section, an application form is current unless —

- (a) since the form was issued, a supplementary disclosure document or a replacement disclosure document that relates to the disclosure document to which the form relates has been issued; or
- (b) because of section 151 (2), the form is no longer current for the purposes of section 151.

(2) This section applies if —

- (a) a person applies to contribute to a benefit fund of a society pursuant to a disclosure document (the “**original disclosure document**”) during the application period in relation to the disclosure document; and
- (b) the application form used to make the application is not current when it is received by the society.

(3) As soon as practicable after receiving the application, the society must give the person a written notice —

- (a) that advises the person that the application form used was not current; and
- (b) that states which of options 1 and 2 specified in subsections (4) and (5) the society is going to follow, and explains that option; and
- (c) that is accompanied by —
  - (i) if a replacement disclosure document has been issued, a copy of the most recently issued replacement disclosure document, a copy of each issued supplementary disclosure document (if any) that relates to it, and a current application form that relates to it; or
  - (ii) if sub-paragraph (i) does not apply, a copy of each supplementary disclosure document (if any) that relates to the original disclosure document and that was issued after the application form was issued, and a current application form that relates to the original disclosure document.

(4) Option 1 requires the society —

- (a) to treat the application as having been withdrawn; and

- (b) at the same time as it gives the person the notice, or as soon as practicable afterwards, to pay to the person, in accordance with the requirements (if any) of the standards —
  - (i) any money the person has paid to the society on account of the provision of the benefits; and
  - (ii) any interest that has accrued in respect of that money.

(5) Option 2 requires the society —

- (a) at the same time as it gives the person the notice, or as soon as practicable afterwards, to provide the benefits to the person pursuant to the application and pay any money received into the relevant benefit fund; and
- (b) if, since the application form used to make the application was issued, a material adverse change (as defined in subsection (6)) has occurred in relation to the provision of benefits, to give the person a reasonable opportunity to surrender the benefits and obtain a payment as mentioned in paragraph (c); and
- (c) if paragraph (b) applies and the person takes advantage of that opportunity and surrenders the benefits, to pay to the person, in accordance with the requirements (if any) of the standards —
  - (i) any money the person has paid to the society on account of the provision of the benefits; and
  - (ii) any interest that has accrued in respect of that money.

(6) For the purposes of subsection (5), a material adverse change occurs in relation to the provision of benefits if a change occurs, or a new matter arises, that is likely to have a material adverse effect on the ability of the society to meet the obligations to provide the benefits.

(7) The society must act in accordance with the option specified in the notice.

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

(8) In this section —

“**application form**” means a form of application to contribute to a benefit fund;

**“disclosure document to which the form relates”**, in relation to an application form that has been issued, means the disclosure document to which the form is or was attached.

**Inclusion of documents in disclosure documents by reference**

**150.** (1) For the purposes of this Code, other than sections 137, 138 and 139, a disclosure document is taken to include a document, or part of a document, as the case requires, if the disclosure document —

- (a) refers to a document lodged under this Code or a corresponding previous law, being a document in existence at or before the lodgment of the disclosure document; and
- (b) includes a summary of the document or of a part of it; and
- (c) includes a statement to the effect that the society will provide a copy of the document, or of the part, as the case requires, free of charge, to a person who asks for it during the application period in relation to the disclosure document.

(2) The society must comply with a statement included in the disclosure document in accordance with subsection (1) (c).

**Disclosure document referring to information set out in current application form**

**151.** (1) This section applies if —

- (a) a disclosure document has been lodged; and
- (b) the disclosure document states that specified information (the **“incorporated information”**) is to be set out in an application form; and
- (c) a copy of such a form (the **“relevant form”**) has also been lodged.

(2) For the purposes of this section, the relevant form is current from the time when the copy was lodged until the next time (if any) when a copy of a form of the kind referred to in subsection (1) (b) is lodged.

(3) Subject to subsection (5), for the purposes of this Code, the incorporated information, as set out in the relevant form, is taken to be included in the disclosure document while the relevant form is current.

(4) Each copy of the disclosure document that is issued while the relevant form is current must have attached to it the relevant form or a copy of it.

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

(5) If subsection (4) is contravened in relation to a copy of the disclosure document, subsection (3) does not apply for the purposes of an action under section 162 in relation to that copy.

(6) Unless the context otherwise requires, a reference to a disclosure document in any of the provisions referred to in the following provisions includes a reference to the relevant form while it is or was current —

- (a) sections 159, 160 and 161;
- (b) sections 163 to 170;
- (c) sections 137 (1) (a) and (b) and (2) and 139 (1);
- (d) sections 142, 150, 155, 156 and 157.

(7) The relevant form, or a copy of it, must not be issued when the relevant form is no longer current.

Maximum penalty applying to subsection (7): \$20 000 or imprisonment for 5 years, or both.

#### **Certain notices etc. not to be published**

**152.** (1) In this section —

“**notice**” does not include a disclosure document that has been lodged or a report, statement or notice the publication of which is permitted under section 153.

(2) Nothing in this Part prohibits the publishing of a notice that —

- (a) is published by the person who issued the disclosure document concerned, or by a licensed adviser or licensed dealer or an exempt person within the meaning of section 126; and
- (b) states that a disclosure document has been lodged; and
- (c) specifies the date of the disclosure document; and
- (d) states where a copy of the disclosure document can be obtained; and

- (e) states that benefits to which the disclosure document relates will be provided only on receipt of a form of application referred to in and attached to a copy of the disclosure document.

(3) Except as provided by subsection (2), a person must not publish a notice that —

- (a) invites any person to apply to contribute to a benefit fund;
- (b) refers or calls attention, whether directly or indirectly —
  - (i) to a disclosure document relating to a benefit fund; or
  - (ii) to an invitation or proposed invitation to apply to contribute to a benefit fund; or
  - (iii) to another notice that refers or calls attention to a disclosure document relating to a benefit fund or an invitation or proposed invitation to apply to contribute to a benefit fund, not being a notice referred to in subsection (2).

Maximum penalty applying to subsection (3): \$2 500 or imprisonment for 6 months, or both.

**Certain reports referring to disclosure documents not to be published**

**153.** (1) In this section, unless the contrary intention appears —

“**report**” includes a statement or notice, whether or not in writing, but does not include a notice the publication of which is permitted under section 152.

(2) Nothing in this Part prohibits the publishing of —

- (a) a report by a society or any of its officers or agents that —
  - (i) is required by law; or
  - (ii) is permitted by the SSA; or
- (b) a report that is a news report (whether or not with other comment), or is genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising relating to —
  - (i) a disclosure document that has been lodged or information contained in such a disclosure document; or

- (ii) a report referred to in paragraph (a) —  
if none of the following —
- (iii) that person;
- (iv) an agent or employee of that person;
- (v) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; or
- (vi) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published,

receives or is entitled to receive any consideration or other advantage from a person who has an interest in the success of the invitation to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment; or

- (c) a report where the report is not published —
  - (i) by or on behalf of a society to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the society or its directors; or
  - (ii) by or on behalf of a person who has an interest in the success of the invitation to which the report relates,

and the person publishing the report does not receive and is not entitled to receive any consideration or other advantage from the society or any of its directors, or from a person mentioned in sub-paragraph (ii), as an inducement to publish, or as the result of the publication of, the report.

(3) Except as provided by subsection (2), a person who is aware that a disclosure document —

- (a) is in the course of preparation by or on behalf of a society; or
- (b) has been issued by or on behalf of a society,

must not publish a report that is reasonably likely to induce persons to apply to contribute to a benefit fund of the kind to which the disclosure document relates.

Maximum penalty applying to subsection (3): \$2 500 or imprisonment for 6 months, or both.

**Evidentiary provisions etc.**

**154.** (1) In this section —

“**notice**” means a notice within the meaning of section 152;

“**report**” means a report within the meaning of section 153.

(2) A person who publishes a notice or report relating to a society after receiving a certificate that —

- (a) specifies the names of 2 directors of the society and is signed by those directors; and
- (b) is to the effect that, because of sections 152 (2) or 153 (2), sections 152 (3) or 153 (3), as the case requires, do not apply to the notice or report,

does not contravene subsection 152 (3) or 153 (3), as the case requires.

(3) Where a notice or report to which a certificate under subsection (2) relates is published, each director who signed that certificate, for the purposes of sections 152 and 153, is deemed to have published the notice or report.

(4) A person who publishes a notice or report to which a certificate under subsection (2) relates must, if the SSA requires the person to do so, deliver the certificate to the SSA as soon as practicable.

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

(5) In proceedings for a contravention of section 152 or 153 a certificate relating to a notice or report that purports to be a certificate under this section is evidence, unless evidence to the contrary is adduced, that —

- (a) when the certificate was issued, the persons named in the certificate as directors of the society were the directors; and
- (b) the signatures in the certificate purporting to be the signatures of the directors are those signatures; and
- (c) the publication of the notice was authorized by those directors.

(6) Nothing in section 152 or 153 or this section limits or diminishes the liability that a person may incur, otherwise than under section 152 or 153 or this section, under any rule of law or under any other enactment.



**Documents to be kept**

**155.** A society that has lodged, or caused to be lodged, a disclosure document with the SSA must cause —

- (a) a true copy, verified by a statement in writing, of any consent required by section 156 to the issue of the disclosure document; and
- (b) a true copy, verified by a statement in writing, of every material contract referred to in the disclosure document or, in the case of such a contract that is not reduced to writing, a memorandum, verified by a statement in writing, giving full particulars of the contract,

to be deposited, within 7 days after lodgment of the disclosure document, at the registered office of the society and must keep each such copy for a period of at least 12 months after the lodgment of the disclosure document for inspection by any person without charge.

**Expert's consent to issue of disclosure document containing statement by the expert**

**156.** A person must not issue a disclosure document that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless —

- (a) the expert has given, and has not, before lodgment of the disclosure document, withdrawn, the expert's written consent to the issue of the disclosure document with the statement included in the form and context in which it is included; and
- (b) there appears in the disclosure document a statement that the expert has given, and has not withdrawn, the expert's consent.

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

**Direction not to accept contributions**

**157.** (1) Where it appears to the SSA with which a disclosure document is lodged that any of the circumstances referred to in subsection (2) exist in respect of the disclosure document, the SSA may, by order in writing served on the person by whom the disclosure document was lodged, direct the society not to —

- (a) issue an invitation to contribute to the benefit fund to which the disclosure document relates;
- (b) accept a contribution to that benefit fund.

(2) The circumstances are —

- (a) the disclosure document contravenes in a substantial respect any of the requirements of this Division;
- (b) the disclosure document contains a statement, promise, estimate or forecast that is false, misleading or deceptive;
- (c) the disclosure document contains a material misrepresentation.

(3) Subject to this section, the SSA must not make an order under subsection (1) unless the SSA has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the SSA on the question whether such an order should be made.

(4) If the SSA considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, the SSA may make an interim order or interim orders under that subsection without holding a hearing.

(5) Subject to subsection (6), an interim order, unless sooner revoked, has effect until the end of 21 days after the day on which it is made.

(6) At any time during the hearing, the SSA may make an interim order under subsection (1) that is expressed to have effect until the SSA makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.

(7) While an order is in force under this section —

- (a) this Division applies as if the disclosure document had not been lodged; and
- (b) a person is not entitled to lodge a further disclosure document in relation to the relevant benefit fund, other than a supplementary disclosure document or a replacement disclosure document.

(8) If, while an order is in force under this section, the SSA becomes satisfied that, whether because of the lodgment of a supplementary disclosure document or replacement disclosure document or otherwise, the circumstances that resulted in the making of the order no longer exist, the SSA may, by further order in writing, revoke the first-mentioned order.

### **Exemptions and modifications**

**158.** (1) The SSA with which a disclosure document is lodged or, but for this section, would have been lodged, may, subject to and in accordance with the standards, by writing, exempt a particular person or persons or a particular class of persons, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of —

- (a) this Division;
- (b) *See note to section 1.*

(2) Without limiting the generality of subsection (1), an exemption under that subsection may relate to particular benefits or to a particular class of benefits.

(3) A person must not contravene a condition to which an exemption under subsection (1) is subject.

(4) Where a person has contravened a condition to which an exemption under subsection (1) is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, subject to and in accordance with the standards, by writing, declare that this Division has effect in its application to a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the declaration as if a specific provision or provisions of this Division were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, this Division has effect accordingly.

(6) Without limiting the generality of subsection (5), a declaration under that subsection may relate to particular benefits or a particular class of benefits.

(7) The SSA must cause to be published in the *Gazette* a statement to the effect that an exemption has been granted or a declaration made under this section in relation to a particular class of persons or a particular class of benefit funds.

### ***Division 3 — Prohibited Conduct and Civil Liability***

#### **Statement in a disclosure document**

**159.** For the purposes of this Division, a statement is taken to be in a disclosure document if it is —

- (a) contained in a report or memorandum that appears on the face of the disclosure document; or

- (b) contained in a report or memorandum that is issued with the disclosure document with the consent or knowledge of a person who authorized or caused the issue of the disclosure document; or
- (c) incorporated by reference in the disclosure document, whether the reference occurs in the disclosure document or in any other document.

### **Misleading or deceptive conduct**

**160.** (1) A person must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive, being conduct in or in connection with —

- (a) any dealing in benefits; or
- (b) without limiting the generality of paragraph (a), any disclosure document issued, or notice published, in relation to benefits.

(2) A person who contravenes this section is not guilty of an offence.

(3) Nothing in this Division or Division 2 is to be taken as limiting by implication the generality of subsection (2).

### **Mis-statements and omissions in disclosure documents**

**161.** (1) A person must not authorize or cause the issue of a disclosure document in relation to benefits if —

- (a) the disclosure document has been, or is required to be, lodged under Division 2; and
- (b) either —
  - (i) a material statement in the disclosure document is false or misleading; or
  - (ii) there is a material omission from the disclosure document.

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

(2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved —

- (a) that the defendant, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the disclosure document

believe, that the statement was true and not misleading or the omission was not material; or

- (b) where there was an omission from the disclosure document, that the omission was inadvertent.

(3) A person does not contravene this section merely because the person gave a consent required by this Part to the inclusion in the disclosure document of a statement purporting to be made by the person as an expert.

#### **Civil liability for contravention of this Division or Division 2**

**162.** (1) Subject to the following sections of this Division, a person who suffers loss or damage by conduct of another person that was engaged in in contravention of a provision of this Division or Division 2 may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

(2) An action under subsection (1) may be begun at any time within 6 years after the day on which the cause of action arose.

(3) This Division does not affect any liability that a person has under any other law.

(4) In a proceeding under this Division in relation to a contravention of this Division or Division 2 committed by the publication of an advertisement, it is a defence if it is proved that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Division or Division 2.

#### **Civil liability for false or misleading statement in, or omission from, a disclosure document**

**163.** (1) This section applies for the purposes of an action under section 162 in respect of conduct being the issue of a disclosure document in relation to benefits —

- (a) in which there is a material statement that is false or misleading; or
- (b) from which there is a material omission.

(2) The reference in section 162 (1) to any person involved in the contravention includes a reference to all or any of the following persons —

- (a) the society;
- (b) a person who was a director of the society at the time of the issue of the disclosure document;
- (c) a person who authorized or caused himself or herself to be named, and is named, in the disclosure document as a director of the society or as having agreed to become a director of the society either immediately or after an interval of time;
- (d) if the disclosure document includes a statement that purports to be, or to be based on, a statement made by an expert and the expert gave consent under section 156 to the issue of the disclosure document, that expert;
- (e) a person named, with the consent of the person, in the disclosure document as an auditor, actuary, banker or solicitor of the society or for or in relation to benefits or proposed benefits;
- (f) a person named, with the consent of the person, in the disclosure document as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (d) or (e) for the society or for or in relation to benefits or proposed benefits.

**No liability to person with knowledge of relevant matter**

**164.** A person referred to in section 163 (2), or a person who authorized or caused the issue of the disclosure document, is not liable in an action under section 162 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the disclosure document if it is proved that, when the last-mentioned person applied for benefits to which the disclosure document relates, that person knew that the statement was false or misleading or was aware of the omitted matter.

**Non-consenting directors not liable**

**165.** (1) A person referred to in section 163 (2) (b) or (c) is not, in the circumstances set out in this section, liable in an action under section 162 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the disclosure document.

(2) If the person is a person referred to in section 163 (2) (c), the person is not liable if it is proved that, having consented to become a director of the society, the person withdrew the consent before the issue of the disclosure document, and that it was issued without the person's authority or consent.

(3) The person is not liable if it is proved that the disclosure document was issued without the person's knowledge or consent and —

- (a) as soon as practicable after the person became aware of the issue of the disclosure document, the person gave reasonable public notice that it was issued without the person's knowledge; or
- (b) as soon as practicable after the disclosure document was issued, the person gave reasonable public notice that the disclosure document was issued without the person's consent,

as the case requires.

(4) The person is not liable if it is proved that, after the issue of the disclosure document and before receiving any contributions in relation to benefits under the disclosure document, the person, on becoming aware of any false or misleading statement in, or omission from, the disclosure document, withdrew the person's consent to the issue of the disclosure document and gave reasonable public notice of the withdrawal and of the reason for the withdrawal.

**Directors not liable where they have reasonable grounds for believing disclosure document to be correct**

**166.** (1) A person referred to in section 163 (2) (b) or (c) is not, in the circumstances set out in this section, liable in an action under section 162 to a person who suffered loss or damage as a result of —

- (a) a false or misleading statement (in this section called the "**defective statement**") in the disclosure document; or
- (b) an omission from a statement (in this section also called the "**defective statement**") in the disclosure document.

(2) If the defective statement —

- (a) purports to be, or to be based on, a statement made by an expert; or

- (b) is contained in what purports to be a copy of, or extract from, a report or valuation of an expert,

the person is not liable if it is proved that —

- (c) the defective statement fairly represented the statement referred to in paragraph (a), or the purported copy or extract was a correct and fair copy of, or extract from, the report or valuation, as the case requires; and
- (d) the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the provision of the benefits, that the person who made the statement referred to in paragraph (a), or who made the report or valuation, as the case requires —
  - (i) was competent to make it; and
  - (ii) had given the consent required by section 156 to the issue of the disclosure document; and
  - (iii) had not withdrawn that consent.

(3) If the defective statement —

- (a) purports to be a statement made by an official person; or
- (b) is contained in what purports to be a copy of, or extract from, a public official document,

the person is not liable if it is proved that the defective statement fairly represented the statement referred to in paragraph (a), or that the purported copy or extract was a correct and fair copy of, or extract from, the document, as the case requires.

(4) If none of subsections (2) (a) and (b) and (3) (a) and (b) applies in relation to the defective statement, the person is not liable if it is proved that he or she, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the issue of the benefits —

- (a) if subsection (1) (a) applies, that the defective statement was true and not misleading; or
- (b) if subsection (1) (b) applies, that there were no material omissions from the defective statement.



**Liability of experts, auditors etc.**

**167.** (1) A person referred to in section 163 (2) (d), (e) or (f) is liable in an action under section 162 only in respect of —

- (a) a false or misleading statement in the disclosure document purporting to be made by the person as a person referred to in section 163 (2) (d), (e) or (f), or to be based on a statement made by the person as a person referred to in section 163 (2) (d), (e) or (f); or
- (b) in the case of a person referred to in section 163 (2) (d), an omission of any material matter from a statement in the disclosure document purporting to be made by the person as a person referred to in section 163 (2) (d) or to be based on a statement made by the person as such a person; or
- (c) in the case of a person referred to in section 163 (2) (e) or (f), an omission from the disclosure document of any material matter for which the person is responsible in the person's capacity or purported capacity as a person referred to in section 163 (2) (e) or (f).

(2) A person referred to in section 163 (2) (d) is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved —

- (a) that, having given consent under section 156 to the issue of the disclosure document, the person withdrew it in writing before the disclosure document was lodged;
- (b) that, after the disclosure document was lodged and before the provision of any benefits under the disclosure document, the person, on becoming aware of the false or misleading statement, or of the omission, as the case requires, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (c) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable ground to believe, and did until the time of the provision of any benefits believe, that —
  - (i) if the action is in respect of a false or misleading statement, the statement was true and not misleading; or
  - (ii) if the action is in respect of an omission from a statement, there were no material omissions from the statement.

(3) A person referred to in section 163 (2) (e) or (f) is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved —

- (a) that, after the disclosure document was lodged and before the provision of any benefits under the disclosure document the person, on becoming aware of the false or misleading statement or of the omission, as the case requires, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (b) in the case of a statement, that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the provision of any benefits believe, that the statement was true and not misleading; or
- (c) in the case of an omission, that the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the provision of any benefits believe, that there were no omissions from the disclosure document of material matters for which the person was responsible in the person's capacity as a person referred to in section 163 (2) (e) or (f) as the case requires, and that the person was competent to act in that capacity.

#### **Liability of persons named in disclosure document**

**168.** (1) A person referred to in section 163 (2) (e) or (f) who is named in part only of the disclosure document is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved that —

- (a) the statement was not included in, or the matter was not omitted from, that part of the disclosure document; or
- (b) in the case of a statement, the statement was not included in, or substantially in, the form and context that the person had agreed to.

(2) For the purposes of subsection (1), a person referred to in section 163 (2) (e) or (f) shall not be taken to be named in part only of the disclosure document unless the disclosure document includes an express statement that the person was involved only in the preparation of that part.

(3) A person who has authorized or caused the issue of part only of a disclosure document is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved that —

- (a) the statement was not included in, or the matter was not omitted from, that part of the disclosure document; or
- (b) in the case of a statement, the statement was not included in, or substantially in, the form and context that the person had agreed to.

(4) For the purposes of subsection (3), a person is not taken to have authorized or caused the issue of part only of a disclosure document unless the disclosure document includes an express statement that the person authorized or caused the issue of that part only.

**No liability for mistake etc. if reasonable precautions taken**

**169.** (1) The society or a person who authorized or caused the issue of the disclosure document is not liable in an action under section 162 if it is proved that the false or misleading statement or the omission —

- (a) was due to a reasonable mistake; or
- (b) was due to reasonable reliance on information supplied by another person; or
- (c) was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control,

and, in a case to which paragraph (c) applies, that the defendant took reasonable precautions and exercised due diligence to ensure that all statements to be included in the disclosure document were true and not misleading and that there were no material omissions from the disclosure document.

(2) In subsection (1) (b) and (c) —

**“another person”** does not include a person who, when the disclosure document was issued, was —

- (a) a servant or agent of the defendant; or
- (b) if the defendant was the society or another body corporate, a director, servant or agent of the defendant.

## **Indemnity**

**170.** Where —

- (a) a disclosure document in relation to benefits contains the name of a person as a director of the society, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn the consent before the issue of the disclosure document, and has not authorized or consented to the issue of the disclosure document; or
- (b) the consent of a person is required under section 156 to the issue of the disclosure document and the person either has not given that consent or has withdrawn it before the issue of the disclosure document,

the directors of the society, except any without whose knowledge or consent the disclosure document was issued, and any other person who authorized or caused the issue of the disclosure document are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which the person may be made liable —

- (c) because of the person's name being so contained in the disclosure document;
- (d) because of the inclusion in the disclosure document of a statement purporting to be made by the person as an expert; or
- (e) in defending any action or other legal proceeding brought against the person because of the person's name being so contained in the disclosure document or the inclusion in the disclosure document of such a statement.

### ***Division 4 — Regulation of Industry Participants***

#### *Subdivision 1 — Conduct in relation to benefits*

## **Dealing**

**171.** (1) A person must not carry on a business of dealing in benefits, or hold out that the person carries on such a business, unless the person is —

- (a) a society; or
- (b) a licensed dealer; or
- (c) an exempt person.

(2) For the purpose of determining —

- (a) whether a person carries on, or holds himself, herself or itself out as carrying on, a business of dealing in benefits; and
- (b) whether or not a person deals in benefits,

an act done on behalf of, or as a representative of, a society, a licensed dealer or an exempt person is to be disregarded.

### **Advising**

**172.** (1) A person must not carry on a benefits advisory business, or hold out that the person carries on such a business, unless the person is —

- (a) a society; or
- (b) a licensed dealer; or
- (c) a licensed adviser; or
- (d) an exempt person.

(2) The following subsections apply for the purposes of determining —

- (a) whether a person carries on a benefits advisory business; and
- (b) whether a person holds himself, herself, or itself out to be carrying on such a business.

(3) If the person is a body corporate authorized by a law of a State to take in its own name a grant of probate of the will, or a grant of letters of administration of the estate, of a dead person, an act done by the first-mentioned person is to be disregarded.

(4) If the person is a solicitor, an accountant or actuary in public practice as such, an act that the person does is to be disregarded if it is merely incidental to the practice of his or her profession.

(5) The fact that the person advises other persons about benefits or publishes reports relating to benefits, in some or all of the following circumstances is to be disregarded —

- (a) in a newspaper or periodical —
  - (i) of which the person is the proprietor or publisher; and

- (ii) that is generally available to the public otherwise than only on subscription;
- (b) in the course of, or by means of, transmissions that —
  - (i) the person makes by means of an information service; or
  - (ii) are made by means of an information service that the person owns, operates or makes available,and are generally available to the public;
- (c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways —
  - (i) by supplying copies of them to the public; or
  - (ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case requires.

(6) Subsection (5) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, as the case requires, whose sole or principal purpose is to advise other persons about benefits or to publish reports relating to benefits.

(7) The fact that the person holds himself, herself or itself out as advising other persons, or publishing reports relating to benefits, as mentioned in subsection (5), is to be disregarded.

(8) An act that the person does as a representative of a society, a licensed dealer, a licensed adviser or an exempt person is to be disregarded.

*Subdivision 2 — Agreements with unlicensed persons*

**Certain persons not clients**

**173.** A reference in this Subdivision to a client does not include a reference to a person who is —

- (a) a licensed dealer; or
- (b) a licensed adviser; or
- (c) one of 2 or more persons who together constitute a licensed dealer or a licensed adviser.

**Agreements with unlicensed persons**

**174.** (1) Sections 175 to 183 apply where, during a period when a person (in this Subdivision called the “**non-licensee**”) is unlicensed, the non-licensee and a client of the non-licensee enter into an agreement that —

- (a) constitutes, or relates to, a dealing or proposed dealing in benefits; or
- (b) relates to advising the client about benefits, or giving the client reports relating to benefits.

(2) Sections 175 to 183 apply to an agreement mentioned in subsection (1) whether or not anyone else is a party to the agreement.

(3) A person is unlicensed during a period when the person —

- (a) in contravention of section 171, carries on, or holds out that the person carries on, a business of dealing in benefits; or
- (b) in contravention of section 172, carries on a benefits advisory business or holds out that the person carries on such a business.

**Client may give notice of rescission**

**175.** (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

(3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that the non-licensee was unlicensed.

(5) If, at a time when a securities licence (as defined in subsection (8)) held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee was unlicensed.

(6) Nothing in subsections (2), (3) and (4) limits the generality of any of the others.

(7) Subject to this section, the client may give a notice under this section whether or not —

- (a) the notice will result under section 176 in rescission of the agreement; or
- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 178.

(8) In this section —

**“securities licence”** means an investment advisers licence granted under Part 7.3 of the Corporations Law or a dealers licence granted under that Part.

#### **Effect of notice under section 175**

**176.** A notice given under section 175 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

#### **Client may apply to Court for partial rescission**

**177.** (1) If the client gives a notice under section 175 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 176, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

(2) The Court may extend the period for making an application under subsection (1).

(3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 176 and the application were for orders under section 178.

(4) On an application under subsection (1), the Court may make an order —

- (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and



- (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

(5) If the Court makes an order under subsection (4), the agreement is to be taken for the purposes of section 178 to have been rescinded under section 176.

(6) An order under subsection (4) does not affect the application of section 180 or 182 in relation to the agreement as originally made or as varied by the order.

#### **Court may make consequential orders**

**178.** (1) Subject to subsection (2), on rescission of the agreement under section 176, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

(2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

#### **Agreement unenforceable against client**

**179.** (1) This section —

- (a) applies while both of the following are the case —

- (i) the client is entitled to give a notice under section 175;
- (ii) a notice so given will result under section 176 in rescission of the agreement; and

- (b) applies after the agreement is rescinded under section 176,

but does not otherwise apply.

(2) The non-licensee is not entitled, as against the client —

- (a) to enforce the agreement, whether directly or indirectly; or
- (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

**Non-licensee not entitled to recover commission**

**180.** (1) Without limiting the generality of section 179, this section —

- (a) applies while the client is entitled to give a notice under section 175; and
- (b) applies after the client so gives a notice, even if the notice does not result under section 176 in rescission of the agreement,

but does not otherwise apply.

(2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a quantum meruit) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

**Onus of establishing non-application of section 179 or 180**

**181.** For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in section 179 (2) or 180 (2), it must be presumed, unless the contrary is proved, that section 179 or 180, as the case requires, applies, or applied at that time, as the case requires.

**Client may recover commission paid to non-licensee**

**182.** (1) Without limiting the generality of section 178, if the client gives a notice under section 175, the client may, even if the notice does not result under section 176 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

(2) The SSA may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

**Remedies under this Subdivision**

**183.** The client's rights under this Subdivision are additional to, and do not prejudice, any right or remedy of the client.

*Subdivision 3 — Representatives*

**Proper authority from society**

**184.** A reference, in relation to a person (in this section called the “**representative**”) to a proper authority from a society registered under this Code or the Code of a participating State (in this section called the “**principal**”) is a reference to a document in the prescribed form or a copy of the society’s certificate of incorporation on which are endorsed —

- (a) a statement —
  - (i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and
  - (ii) signed by the principal; and
- (b) in relation to each person (if any), other than the principal, of whom the representative is a representative, a statement that —
  - (i) sets out the name of the person; and
  - (ii) states that the representative is employed by, or acts for or by arrangement with, that person; and
  - (iii) states that the person consents to the representative being employed by, or acting for or by arrangement with, the principal; and
  - (iv) is signed by the person.

**Representatives of dealers**

**185.** A person must not, in relation to benefits, do an act as a representative of a licensed dealer unless the person holds a proper authority from the dealer.

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

**Representatives of investment advisers**

**186.** A person must not, in relation to benefits, do an act as a representative of a licensed adviser unless the person holds a proper authority from the licensed adviser.

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

### **Representatives of societies**

**187.** A person must not, in relation to benefits, do an act as a representative of a society unless the person holds a proper authority from the society.

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

### **Body corporate not to act as representative**

**188.** A body corporate must not do an act as a representative of a dealer, an investment adviser or a society.

Maximum penalty: \$5 000 or imprisonment for 12 months, or both.

### **Defence**

**189.** (1) A person does not contravene section 171, 172, 185, 186 or 187 by an act done by that person as a representative of another person if —

- (a) but for the other person ceasing to be a society or for the revocation or suspension of a securities licence held by the other person, the act would not have been such a contravention;
- (b) when he or she did the act, the first-mentioned person —
  - (i) believed in good faith that the other person was a society or held the securities licence, as the case requires; and
  - (ii) was unaware of the cessation, revocation or suspension.

(2) A person does not contravene section 171, 172, 185, 186 or 187 by an act done by that person as a representative of another person if the person holds what he or she believes in good faith to be a proper authority from that other person, and in all the circumstances it was reasonable for the first-mentioned person to so believe.

(3) In this section —

**“securities licence”** means an investment advisers licence granted under Part 7.3 of the Corporations Law or a dealers licence granted under that Part.

**Banned person not to act as representative**

**190.** A person must not do an act as a representative of a society, a licensed dealer or a licensed adviser if the person is the subject of a banning order made by the Australian Securities Commission under section 829 of the Corporations Law.

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

**Society to keep register of holders of proper authorities**

**191.** (1) A society must establish a register of the persons who hold proper authorities from the society and must keep it in accordance with this section.

(2) The register must be in writing or in such other form as the SSA approves.

(3) The register must contain, in relation to each person (if any) who holds a proper authority from the society —

- (a) a copy of the proper authority;
- (b) the person's name;
- (c) the person's current residential address;
- (d) unless the person's current business address is the same as the society's, the person's current business address; and
- (e) any other prescribed information.

(4) A copy of a proper authority of a person from the society that subsection (3) provides for the register to contain must be included in the register within 2 business days after the person begins to hold that proper authority.

(5) Information that subsection (3) provides for the register to contain in relation to a person must be entered in the register within 2 business days after —

- (a) the person begins to hold a proper authority from the society; or
- (b) the society receives the information,

whichever happens later.

(6) Within 2 business days after a person ceases to hold a proper authority from the society, the society must —

(a) in any case —

(i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and

(ii) remove from the last-mentioned part,

the copy of the proper authority that was included in the last-mentioned part; and

(b) unless, at the end of those 2 business days, the person again holds a proper authority from the society —

(i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and

(ii) remove from the last-mentioned part,

the information that has been entered in the last-mentioned part in relation to the person.

(7) Information that has been entered under subsection (6) (b) in a separate part of the register is deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.

(8) Where a society that subsection (1) requires to establish a register already keeps one under this section or a corresponding previous law, the society need not establish a new register but must keep the existing one in accordance with this section.

### **Society to notify SSA of location and contents of register**

**192.** (1) In this section —

“**register**”, in relation to a society, means a register that the society keeps for the purposes of section 191.

(2) Within 14 days after establishing a register, the society must lodge with the SSA written notice of where the register is kept.

(3) As soon as practicable after changing the place where a register is kept, the society must lodge with the SSA written notice of the new place where the register is kept.

(4) Within 2 business days after the day on which a person begins to hold a particular proper authority from a society, the society must, whether or not the person has previously held a proper authority from the society, lodge with the SSA —

- (a) a copy of the first-mentioned proper authority; and
- (b) a written notice stating that the person began to hold that proper authority on that day.

(5) The society must lodge with the SSA a written notice, within the period provided by subsection (6) —

- (a) setting out the information that the register is required to contain by section 191 (3) (b), (c), (d) or (e); and
- (b) stating that the information has been, or is to be, entered in the register.

(6) A notice under subsection (5) must be lodged with the SSA within the period within which subsection 191 (5) requires the information to be entered in the register.

(7) Within 2 business days after a person ceases to hold a proper authority from a society, the society must, unless at the end of those 2 business days the person again holds a proper authority from the society, lodge with the SSA a written notice stating that the person has ceased to hold such a proper authority.

### **Inspection and copying of register**

**193.** (1) In this section —

“**register**” in relation to a society, means a register that the society keeps for the purposes of section 191.

(2) A society must ensure that a register is open for inspection without charge.

(3) Where a person requests a society in writing to give to the person a copy of the whole, or of a specified part, of a register, the society must comply with the request within 2 business days after —

- (a) if the society’s rules require the person to pay for the copy, an amount (if any) prescribed by the society’s rules, receiving the amount from the person; or
- (b) in any other case, receiving the request.

**SSA may require production of authority**

**194.** (1) Where the SSA has reason to believe that a person —

- (a) holds a proper authority from a society; or
- (b) has done an act as a representative of another person,

then, whether or not the SSA knows who the society or other person is, it may require the first-mentioned person to produce any proper authority or purported proper authority from the society that the first-mentioned person holds.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

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

**SSA may give society information about representative**

**195.** (1) Where the SSA believes on reasonable grounds that —

- (a) a person (in this section called the “**holder**”) holds, or will hold, a proper authority from a society;
- (b) having regard to that fact, the SSA should give to the society particular information that the SSA has about the person; and
- (c) the information is true,

the SSA may give the information to the society.

(2) Where the SSA gives information under subsection (1), the SSA or an officer of the SSA may, for a purpose connected with —

- (a) the SSA making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
- (b) the SSA taking action pursuant to such a decision,

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

(3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.



(4) Subject to subsections (2) and (3), a person must not give to another person, make use of, or make a record of, information given by the SSA under subsection (1).

Maximum penalty: \$5 000 or imprisonment for 12 months, or both.

(5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).

(6) A person to whom information is given in accordance with this section must not —

- (a) give any of the information to a court; or
- (b) produce in a court a document that sets out some or all of the information,

except —

- (c) for a purpose connected with —
  - (i) the society making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information; or
  - (ii) the society taking action pursuant to such a decision; or
  - (iii) proving in a proceeding in that court that particular action taken by the society in relation to the holder was so taken pursuant to such a decision,or for 2 or more such purposes, and for no other purpose; or
- (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section; or
- (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
- (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

(7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person —

- (a) taking action by way of making, terminating or varying the terms and conditions of a relevant agreement; or

- (b) otherwise taking action in relation to a relevant agreement,

in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a business of dealing in benefits or a benefits advisory business carried on by the first-mentioned person.

**Holder of authority may be required to return it**

**196.** (1) Where a person holds a proper authority from a society but is neither employed by, nor authorized to act for or by arrangement with, the society, the society may, by writing given to the person, require the person to give the proper authority to the society within a specified period of not less than 2 business days.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1).

*Subdivision 3A — Exemptions and modifications relating to representatives*

**Exemptions and modifications under Subdivision 3**

**196A.** (1) The SSA may, subject to and in accordance with the standards, by writing, exempt a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the exemption, and either unconditionally or subject to conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of Subdivision 3.

(2) Without limiting the generality of subsection (1), an exemption under that subsection may relate to particular benefits or to a particular class of benefits.

(3) A person must not contravene a condition to which an exemption under subsection (1) is subject.

(4) Where a person has contravened a condition to which an exemption under subsection (1) is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, subject to and in accordance with the standards, by writing, declare that Subdivision 3 has effect in its application to a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the declaration as if a specific provision or provisions of that Subdivision were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Subdivision has effect accordingly.

(6) Without limiting the generality of subsection (5), a declaration under that subsection may relate to particular benefits or to a particular class of benefits.

(7) The SSA must cause to be published in the *Gazette* a statement to the effect that an exemption has been granted or a declaration made under this Subdivision in relation to a particular class of persons or a particular class of benefit funds.

*Subdivision 4 — Liability of principals for representatives' conduct*

**Conduct engaged in as a representative**

**197.** Where a person engages in conduct in relation to benefits as a representative of another person (in this section called the “**principal**”), then, as between the principal and a third person (other than the SSA), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

**Liability where identity of principal unknown**

**198.** (1) This section applies for the purposes of a proceeding in a court where —

- (a) whether within or outside this State, a person (in this section called the “**representative**”) engages in particular conduct in relation to benefits while the person is a representative of 2 or more persons (in this section called the “**indemnifying principals**”); and
- (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the “**unknown principal**”) but it is not proved for those purposes who the unknown principal is.

(2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

(3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those 2 or more is liable in respect of that conduct as if he, she or it were the unknown principal.

**Liability of principals where act done in reliance on representative's conduct**

**199.** (1) This section applies where —

- (a) at a time when a person (in this section called the “**representative**”) is a representative of only one person (in this section called the “**indemnifying principal**”) or of 2 or more persons (in this section called the “**indemnifying principals**”), the representative, whether within or outside this State —
  - (i) engages in particular conduct in relation to benefits;
  - (ii) proposes, or represents that the representative proposes, to engage in particular conduct in relation to benefits;
- (b) another person (in this section called the “**client**”) does, or omits to do, a particular act, whether within or outside this State, because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case requires, that conduct —
  - (i) on behalf of some person (in this section called the “**assumed principal**”) whether or not identified, or identifiable, at that time by the client; and
  - (ii) in connection with a business dealing in benefits or a benefits advisory business carried on by the assumed principal; and
- (c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case requires, that act because of that belief,

whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.

(2) If —

- (a) subsection (1) (a) (i) applies; or
- (b) subsection (1) (a) (ii) applies and the representative engages in that conduct,

then, for the purposes of a proceeding in a court —

- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or

- (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable,

as the case requires, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

(3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case requires, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case requires, the act referred to in subsection (1) (b).

(4) Subsection (3) does not apply unless —

- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this State; or
- (b) the act referred to in subsection (1) (b) was done, or would have been done, as the case requires, in this State; or
- (c) some or all of the loss or damage was suffered in this State.

(5) If —

- (a) there are 2 or more indemnifying principals;
- (b) 2 or more of them are parties (in this subsection called the “**indemnifying parties**”) to a proceeding in a court;
- (c) it is proved for the purposes of the proceeding —
- (i) that the representative engaged in that conduct as a representative of some person; and
- (ii) who that person is; and
- (d) that person is among the indemnifying parties,

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

#### **Presumptions about certain matters**

**200.** (1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the “**representative**”) engaged in particular conduct in relation to benefits, whether within or outside this State, while the person was a representative of —

- (a) only one person (in this subsection called the “**indemnifying principal**”); or

- (b) 2 or more persons (in this subsection called the “**indemnifying principals**”),

then, unless the contrary is proved for the purposes of the proceeding, it must be presumed for those purposes that the representative engaged in the conduct as a representative of —

- (c) the indemnifying principal; or  
(d) as a representative of some person among the indemnifying principals,

as the case requires.

(2) Where, for the purposes of establishing in a proceeding in a court that section 199 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it must be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case requires, that act because of that belief.

#### **No contracting out of liability for representative's conduct**

**201.** (1) For the purposes of this section, a liability of a person —

- (a) in respect of conduct in relation to benefits engaged in by another person as a representative of the first-mentioned person; or  
(b) arising under section 199 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct in relation to benefits,

is a liability of the first-mentioned person in respect of the other person.

(2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

(3) Subsection (2) does not apply in relation to an agreement in so far as it —

- (a) is a contract of insurance;  
(b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or

- (c) provides for a licensed adviser, licensed dealer or society from whom a person holds a proper authority to indemnify another such adviser, dealer or society in respect of a liability of the other authorized person in respect of the person.

(4) A person must not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

#### **Effect of Subdivision**

**202.** (1) Where 2 or more persons are liable under this Subdivision in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

(2) Nothing in section 197, 198 or 199 —

- (a) affects a liability arising otherwise than by virtue of this Subdivision; or
- (b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or
- (c) makes a person guilty of an offence.

*Subdivision 5 — Excluding persons from dealing with benefits*

#### **Power to make banning order**

**203.** Subject to section 210, the SSA may make a banning order against a person —

- (a) if the person is a natural person and the person —
  - (i) becomes an insolvent under administration; or
  - (ii) is convicted of serious fraud within the meaning of section 9 of the Corporations Law; or
  - (iii) becomes incapable, through mental or physical incapacity, of managing his or her affairs;
- (b) if the person is a body corporate and the person —
  - (i) ceases to carry on business; or
  - (ii) becomes an externally administered body corporate;

- (c) if the person contravenes a provision of Chapter 6 or Chapter 7 of the Corporations Law or of this Part;
- (d) if the SSA has reason to believe that the person (in the case of a natural person) or an officer of the person (in the case of a body corporate) is not of good fame and character; or
- (e) if the SSA has reason to believe that the person has not, or will not, perform efficiently, honestly and fairly the duties of a licensed dealer, a licensed adviser or the holder of a proper authority from a licensed dealer, a licensed adviser or a society, as the case requires, in relation to the conduct of a business of dealing in benefits or a benefits advisory business.

#### **Nature of banning order**

**204.** (1) Where this Subdivision empowers the SSA to make a banning order against a person, the SSA may, by written order, prohibit the person, permanently or for a specified period, from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business.

(2) The SSA must not vary or revoke a banning order except under section 205, 206 or 207.

#### **Exceptions to banning order**

**205.** (1) An order made against a person under section 204 (1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

(2) Subject to section 210 the SSA may, at any time, by written order, vary a banning order against a person —

- (a) by adding a provision that permits the person as mentioned in subsection (1);
- (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
- (c) by omitting such a provision and substituting another such provision; or
- (d) by omitting such a provision.



**Variation or revocation of banning order on application**

**206.** (1) Subject to section 207 and 210, this section has effect where a person applies to the SSA to vary or revoke a banning order relating to the person.

(2) If —

- (a) the person is not an insolvent under administration or an externally administered body corporate; and
- (b) the SSA has no reason to believe that the person, or an officer of the person, is not of good fame and character; and
- (c) the SSA has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of a licensed dealer, a licensed adviser or the holder of a proper authority from a licensed dealer, a licensed adviser or a society, as the case requires,

the SSA must by written order —

- (d) if paragraph (c) applies, vary the banning order so that it no longer prohibits the person from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business;
- (e) in any other case, revoke the banning order.

(3) Otherwise, the SSA must refuse the application.

(4) In determining whether or not it has reason to believe as mentioned in subsection (2) (b) or (c), the SSA must have regard to any conviction of any relevant person, during the 10 years ending on the day of the application, of serious fraud within the meaning of section 9 of the Corporations Law.

(5) Nothing in subsection (4) limits the matters to which the SSA may have regard —

- (a) in deciding the application; or
- (b) in connection with performing or exercising any other function or power under this Part.

**Revocation of banning order in certain cases**

**207.** Where —

- (a) section 206 requires the SSA to vary a banning order so that it no longer has a particular operation; and

- (b) the order has no other operation,

the SSA must, by written order, instead revoke the banning order.

### **Effect and publication of orders under this Subdivision**

**208.** (1) An order by the SSA under this Subdivision takes effect when served on the person to whom the order relates.

(2) As soon as practicable on or after the day on which an order by the SSA under this Subdivision takes effect, the SSA must publish in the *Gazette* a notice that sets out a copy of —

- (a) if the order is made under section 204 or revokes a banning order, the first-mentioned order; or
- (b) if the order varies a banning order, the banning order as in force immediately after the first-mentioned order takes effect,

and states that the first-mentioned order, or the banning order as so in force, as the case requires, took effect on that day.

(3) Where —

- (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;
- (b) the banning order as so in force includes a provision that permits a person as mentioned in section 205 (1); and
- (c) in the SSA's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision,

the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

### **Contravention of banning order**

**209.** A person must not contravene a banning order relating to the person.

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

### **Opportunity for hearing**

**210.** (1) The SSA must not —

- (a) make, otherwise than by virtue of section 203 (a), (b) or (c), an order under section 204 against a person;

- (b) make under section 205 (2) an order varying a banning order against a person; or
- (c) refuse an application by a person under section 206,

unless the SSA complies with subsection (2) of this section.

- (2) The SSA must give the person an opportunity —
  - (a) to appear at a hearing before the SSA that takes place in private; and
  - (b) to make submissions and give evidence to the SSA in relation to the matter.

### **Disqualification by the Court**

**211.** (1) Where the SSA makes under section 204 against a person an order that is to operate otherwise than only for a specified period, the SSA may apply to the Court for an order or orders under this section in relation to the person.

(2) On an application under subsection (1), the Court may make one or more of the following —

- (a) an order prohibiting the person, permanently or for a specified period, from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business;
- (b) such other order as it thinks fit,

or may refuse the application.

(3) The Court may revoke or vary an order in force under subsection (2).

### *Subdivision 6 — Recommendations about benefits*

#### **Definition of adviser**

**212.** In this Subdivision —

“**adviser**” means —

- (a) a licensed dealer;
- (b) a licensed adviser;
- (c) a person holding a proper authority from a licensed dealer, a licensed adviser or a society.

**Recommendation made by partner or officer**

**213.** For the purposes of this Subdivision (other than section 216) —

- (a) a recommendation made by a partner is deemed to have been made by each partner in the partnership; and
- (b) a recommendation made by a director, executive officer or secretary of a body corporate is deemed to have also been made by the body corporate.

**Client to be told if adviser's interests may influence recommendation**

**214.** (1) This section applies where an adviser makes a recommendation with respect to benefits, whether express or implied, to a person (in this section called the “**client**”) who may reasonably be expected to rely on it.

(2) The adviser must —

- (a) if the recommendation is made orally, when making the recommendation, disclose to the client orally; or
- (b) if the recommendation is made in writing, set out in that writing, in such a way as to be no less legible than the other material in that writing,

particulars of —

- (c) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the adviser or an associate of the adviser (other than a society) has received, or will or may receive, in connection with the making of the recommendation or an application by the client for benefits or a contribution by the client to a benefit fund, as a result of the recommendation; and
- (d) any other pecuniary or other interest, whether direct or indirect, of the adviser or an associate of the adviser, (other than a society) that may reasonably be expected to be capable of influencing the adviser in making the recommendation.

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

(3) Subsection (2) does not apply in relation to a commission or fee that the adviser has received, or will or may receive, from the client.

(4) If, by making the recommendation, the adviser does an act as a representative of another person (other than a society), then —

- (a) without limiting the generality of section 4 (2), the other person is an associate for the purposes of subsection (2) of this section; and
- (b) subsection (2) does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.

(5) For the purposes of section 4 (2), the making of recommendations with respect to benefits, whether express or implied, is the matter to which a reference to an associate in subsection (2) of this section relates.

(6) Despite section 4 (2) and subsection (5) of this section, a person (in this subsection called the “**alleged associate**”) is not an associate for the purposes of subsection (2) of this section merely because of being —

- (a) a partner of the adviser otherwise than because of carrying on a business of dealing in benefits in partnership with the adviser; or
- (b) a director of a body corporate of which the adviser is also a director, whether or not the body carries on a business of dealing in benefits,

unless the adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making recommendations, whether express or implied, with respect to benefits.

#### **Defences to alleged breach of section 214 (2)**

**215.** (1) Where —

- (a) a person —
  - (i) when making a recommendation orally, fails to disclose; or
  - (ii) when making a recommendation in writing, fails to set out in that writing,

as required by section 214 (2), particulars of a matter; and

- (b) it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation,

the failure is not a contravention of section 214 (2).

- (2) Where —
- (a) an adviser —
    - (i) when making a recommendation orally, fails to disclose; or
    - (ii) when making a recommendation in writing, fails to set out in that writing,  
as required by section 214 (2), particulars of a matter;
  - (b) in the case of a person holding a proper authority from a licensed dealer, a licensed adviser or a society, by making the recommendation, the representative does an act as a representative of the licensed dealer, licensed adviser or a society;
  - (c) it is proved that the licensed dealer, licensed adviser or society, had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that —
    - (i) the natural person who made the decision knew nothing about that matter before the end of that period; and
    - (ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about that matter; and
  - (d) it is also proved that —
    - (i) the person in fact knew nothing about that matter before the end of that period; and
    - (ii) no such advice was so given,

the failure is not a contravention of section 214 (2).

(3) Neither of subsections (1) and (2) limits the generality of the other.

**Adviser must have reasonable basis for recommendation**

- 216.** (1) An adviser who —
- (a) makes a recommendation, whether express or implied, with respect to benefits to a person who may reasonably be expected to rely on it; and

- (b) does not have a reasonable basis for making the recommendation to the person,

contravenes this section.

(2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless —

- (a) in order to ascertain that the recommendation is appropriate having regard to the information the adviser has about the person's investment objectives, financial situation and particular needs, the adviser has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and
- (b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes subsection (1) is not guilty of an offence.

**Adviser who breaches this Subdivision liable to compensate client**

**217.** (1) This section applies where —

- (a) an adviser contravenes section 214 or 216 in relation to a recommendation (whether express or implied) with respect to benefits to a person (in this section called the “**client**”);
- (b) the client, in reliance on the recommendation, does, or omits to do, a particular act;
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case requires, that act in reliance on the recommendation; and
- (d) the client suffers loss or damage as a result of that act or omission.

(2) Subject to subsections (3) and (4), the adviser is liable to pay damages to the client in respect of that loss or damage.

(3) In the case of a contravention of section 214, the adviser is not so liable if it is proved that a reasonable person in the client's circumstances could be expected to have done, or omitted to do, as the case requires, that act in reliance on the recommendation even if the adviser had complied with that section in relation to the recommendation.

(4) In the case of a contravention of section 216, the adviser is not so liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the adviser had about the client's investment objectives, financial situation and particular needs.

**Qualified privilege for adviser when complying with this Subdivision**

**218.** An adviser who —

- (a) makes a recommendation in relation to benefits to a person who may reasonably be expected to rely on it; and
- (b) in so making the recommendation, contravenes neither of sections 214 (2) and 216 (1),

has qualified privilege in respect of a statement the adviser makes to the person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.



**PART 5 — SHARES AND CHARGES**

***Division 1 — Shares Generally***

**Share capital**

**219.** A society may issue permanent shares or redeemable preference shares in accordance with this Part.

**Classes of shares, rights etc.**

**220.** (1) The rules of a society may provide for the division of the society's share capital into classes of shares.

(2) All shares in a class of shares must have the same nominal value.

(3) The rights attaching and terms and conditions of issue applying to a class of shares are as provided in the society's rules or determined by the board under the rules, but no such rules may be registered unless the provisions in relation to those rights, terms and conditions comply with the requirements of this Code and are, in the SSA's opinion, otherwise appropriate.

**Determination of share capital**

**221.** The amount of the share capital of a society is the aggregate of the nominal values of the shares that have been issued by the society.

**Liability of shareholders**

**222.** The liability of a shareholder in a society in relation to a share is limited to the amount (if any) unpaid in relation to the share.

**Board to approve sale or transfer unless rules provide otherwise**

**223.** Unless a society's rules otherwise provide, a share in the society may be transferred only with the consent of the society.

**Restriction on application of capital**

**224.** (1) Except as provided by section 225, a society must not apply any of its shares or capital money either directly or indirectly in —

- (a) making a payment to a person in consideration of the person's subscribing or agreeing to subscribe (whether absolutely or conditionally); or

- (b) procuring or agreeing to procure subscriptions (whether absolute or conditional),

for any permanent shares in the society (whether the shares are or the money is so applied by being added to the purchase price of property acquired by the society or to the contract price of work to be executed for the society or the money is paid out of the nominal purchase price or contract price or otherwise).

- (2) If a society contravenes subsection (1), any officer of the society who is in default commits an offence.

Maximum penalty: \$25 000.

- (3) If —

- (a) a person is convicted of an offence against subsection (2) in relation to a society; and
- (b) the court by which the person is convicted is satisfied that the society has suffered loss or damage because of the act that constituted the offence,

the court may, in addition to imposing a penalty, order the convicted person to pay a specified amount of compensation to the society.

- (4) The order may be enforced as if it were a judgment of that court.

- (5) If a contravention of subsection (1) takes place and —

- (a) a person (other than the society concerned) who was, at the time of the contravention, aware of the matters constituting the contravention, made a profit because of the contravention, the society may (whether or not the person or another person has been convicted of an offence against subsection (2) in relation to the contravention) recover the profit from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned; and
- (b) the society concerned has suffered loss or damage because of the contravention, the society may recover the loss or damage from a person who is in default (whether or not the person or another person has been convicted of an offence against subsection (2) in relation to the contravention) as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned.

**Power to make certain payments**

**225.** (1) Subject to subsection (2), a society may make a payment by way of brokerage or commission to a person in consideration of —

- (a) the person's subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the society; or
- (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the society,

only if —

- (c) the payment is not prohibited by the society's rules; and
- (d) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in a prospectus issued in relation to the shares or, if there is no such prospectus, in a statement lodged with the SSA before the society becomes liable to make the payment; and
- (e) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in the prospectus or statement.

(2) The total amount of payments by a society by way of brokerage or commission for shares must not be more than the lesser of the following amounts —

- (a) 10% of the total amount payable on allotment of the shares;
- (b) if the society's rules specify an amount, or a rate for calculating an amount, for the purpose, the amount specified or calculated in accordance with the specified rate.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a society may apply any part of the money or shares in making a payment that would, if it were made directly by the society, be lawful under this section.

**Validation of shares improperly issued**

**226.** (1) If a society has purported to issue shares and —

- (a) the creation or issue of the shares is invalid under this Code or the society's rules or for any other reason; or
- (b) the terms of the purported issue are inconsistent with or are not authorized by this Code or the rules,

the Court may, on application made by the society, a holder or mortgagee of any of the shares, or a creditor of the society, and, on

being satisfied that in all the circumstances it is just and equitable to do so, make an order under this section.

(2) An order under this section may —

- (a) validate the purported issue of the shares; or
- (b) confirm the terms of the purported issue of the shares; or
- (c) do both those things.

(3) On an office copy of an order made under this section being lodged with the SSA, the shares to which the order relates are taken to have been validly issued on the terms of the issue of the shares.

### ***Division 2 — Permanent Shares***

#### **Issue of permanent shares**

**227.** (1) Permanent shares in a society may be issued as fully paid-up shares or shares to be paid for by periodical or other subscription or at call.

(2) If the rules of a society provide for the issue of permanent shares of different classes, the rules must provide that each class of permanent shares ranks equally with the other classes of permanent shares in relation to the return of capital and any distribution of surplus assets and profits in the winding-up of the society.

#### **Issue of preference shares**

**228.** (1) Without limiting section 220, a society may issue preference shares as a class of permanent shares.

(2) The SSA may, by *Gazette* notice, declare that specified preference shares issued by a society are a class of permanent shares.

(3) A declaration has effect for the purposes of the application of this Code to the shares to which the declaration relates.

#### **Rights of holders of preference shares to be set out in rules**

**229.** A society must not allot a preference share, or convert an issued share into a preference share, unless its rules set out the rights of the holder of the share in relation to —

- (a) repayment of capital; and
- (b) participation in surplus assets and profits; and

- (c) cumulative or non-cumulative dividends; and
- (d) voting; and
- (e) priority of payment of capital and dividend,

in relation to other shares or other classes of preference shares.

#### **Cancellation of permanent shares**

**230.** (1) Subject to section 237, issued or unissued permanent shares in a society may not be cancelled by the society except —

- (a) under its rules and with the approval of the SSA; or
- (b) under a provision of this Code other than this section.

(2) If the SSA gives approval to the cancellation of permanent shares in a society, the SSA may attach conditions to the approval and may, on non-compliance with a condition of the approval, revoke the approval.

(3) Without limiting subsection (2), the SSA may impose conditions on the cancellation of permanent shares in a society to the effect of the permitted buy-back procedures set out in Division 4B of Part 2.4 of the Corporations Law as if —

- (a) a reference in that Division to a company were a reference to the society; and
- (b) a permitted buy-back in accordance with that Division were the procedure leading to cancellation of the permanent shares under subsection (1).

(4) Subject to subsection (5), a society must not cancel a permanent share if the result of taking such action would be that the society fails to satisfy, or is in breach of, a standard.

(5) Despite any other provision of this Code, a society must cancel any permanent share that is forfeited to the society under this Code or its rules and is not required by this Code to be sold.

#### **Dividends in relation to permanent shares**

**231.** (1) In this section —

“**dividend**” includes a payment by way of bonus share issue.

(2) A society may, if authorized by its rules and the board so determines, in relation to a particular class of permanent shares, distribute profits by way of dividends or bonus shares (whether fully or partly paid-up) to the holders of the permanent shares.

(3) Dividends or bonus share issues in relation to permanent shares may vary in value proportionately according to the extent to which each permanent share in relation to which the payment or issue is made is paid up.

(4) A society commits an offence if dividends are paid otherwise than —

- (a) out of profits of the management fund of the society; or
- (b) out of a share premium account maintained by the society under this Division.

Maximum penalty: \$75 000.

(5) If dividends are paid in contravention of subsection (4), the creditors of the society are entitled to recover from any officer of the society who knowingly caused or permitted the payment to be made the amount of the debts owed by the society to those creditors respectively to the extent that the dividends so paid have exceeded profits.

(6) If the whole amount is recovered from one officer, that officer may recover contribution from any other officer similarly liable.

(7) A liability imposed on an officer under this section is extinguished on the person's death.

#### **Requirements for issue of permanent shares**

**232.** (1) A society must not issue permanent shares unless expressly authorized by its rules.

(2) If a society proposes to adopt rules that authorize the issue of permanent shares, the society must first submit the rules to the SSA for approval under this section.

(3) The SSA may approve rules for the issue by a society of permanent shares if the SSA is satisfied that —

- (a) the rules make appropriate provision for the reasonable apportionment of reserves and profits of the society among different classes of members or shareholders; and
- (b) there would be, on winding-up of the society, a reasonable apportionment of reserves and profits among different classes of members or shareholders.

(4) A society, in issuing permanent shares in accordance with its rules, must comply with this Code and the standards.

**Allotment of permanent shares otherwise than for cash**

**233.** (1) For the purposes of this section, the issue of permanent shares under a dividend reinvestment plan, or the issue of bonus shares paid for out of the share premium account under section 240, is not an issue of permanent shares otherwise than in consideration of payment in cash.

(2) A society must not allot permanent shares as fully or partly paid-up otherwise than in consideration of payment in cash unless the society has obtained a report from an expert, signed by the expert and stating —

- (a) what, in the expert's opinion, is the money value, at the time of the signing of the report, of the consideration given in relation to the shares; and
- (b) whether or not, in the expert's opinion, the consideration is fair and reasonable as at that time and the reasons for the opinion; and
- (c) particulars of any relationship that the expert has with the society or an associate of the society; and
- (d) particulars of any pecuniary or other interest that the expert has that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased report; and
- (e) particulars of any fee or pecuniary or other benefit, whether direct or indirect, that the expert has received, or will or may receive, for or in connection with the making of the report.

(3) A copy of a report under subsection (2) must be lodged with the SSA by the society not less than 7 days before the shares are allotted.

(4) The society must, if it has obtained the opinions of more than one expert for the purposes of this section, attach to any report that is dealt with under subsection (3) a statement setting out, in relation to each of the experts (other than the one who signed the report) —

- (a) the name of the expert; and
- (b) particulars of the opinion (if any) expressed by the expert on the matters on which an expert's opinion is required for the purposes of this section.

(5) A society that contravenes this section commits an offence and is liable on conviction to a maximum penalty of \$25 000.

**Power to exempt in relation to non-cash consideration**

**234.** (1) The SSA may, by written notice, exempt a society, conditionally or unconditionally, from a requirement of section 233.

(2) The SSA may, on non-compliance with a condition of an exemption under this section, by written notice, revoke the exemption.

**Differences in calls, reserve liability etc.**

**235.** (1) A society may, if authorized by its rules —

- (a) make arrangements on the issue of permanent shares for varying the amounts and times of payment of calls as among shareholders; and
- (b) accept from a shareholder the whole or a part of the amount remaining unpaid on any permanent shares although no part of that amount has been called-up.

(2) A society may, by special resolution, determine that any proportion of its permanent share capital that has not been already called-up is not capable of being called-up except in the event and for the purposes of the society being wound-up, but the resolution does not prejudice any rights acquired by a person before the passing of the resolution.

**Calls and effect of non-compliance with calls on permanent shares**

**236.** (1) Calls on permanent shares in a society must be so made that they are payable not less than 14 days from the day on which the call is made, and no subsequent call may be made within 7 days from the day on which the call was made immediately before it is payable.

(2) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment must, not less than 7 days before the day, be sent by post to the holder of shares on which the call is made.

(3) If a call on a share is not paid on or before the day for its payment, the shareholder is not entitled —

- (a) to any dividend declared on the share after the day for payment and before the day the call is paid; or



- (b) while the call remains unpaid, to a vote for the share in any meeting of members of the society.

(4) If a call on a share is unpaid at the end of 14 days after the day for its payment, the share may be forfeited by resolution of the board.

**Sale of permanent shares forfeited for non-payment of call**

**237.** (1) Permanent shares forfeited to a society for non-payment of a call must be offered for sale not more than 6 weeks after their forfeiture —

- (a) by auction; or
- (b) on a stock market lawfully operated by a stock exchange (within the meaning of paragraph (c) of the definition of “stock exchange” in section 9 of the Corporations Law).

(2) The rules of a society must provide for —

- (a) the procedure to be followed in the conduct of the auction; and
- (b) the application of the proceeds of sale of the forfeited shares.

**Prohibition of allotment unless minimum subscription received**

**238.** (1) A society must not make an allotment of permanent shares in the society that have been offered for subscription or in relation to which an invitation to subscribe has been issued unless —

- (a) the minimum subscription (if any) has been subscribed; and
- (b) the sum payable on application for the subscribed shares has been received by the society.

(2) For the purposes of subsection (1), if a society has received a cheque or payment order for the sum payable on application for an allotment of shares in the society, the sum is not taken to have been received by the society until the cheque is paid by the bank on which it is drawn or payment is made in accordance with the order.

(3) In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, an amount equal to the sum of —

- (a) the nominal value of each share; and

- (b) if the share is, or is to be, issued at a premium, the amount of the premium payable on each share,

less any amount payable otherwise than in cash is taken to have been subscribed in relation to each share for the allotment of which an application has been made.

(4) If the conditions mentioned in subsection (1) have not been satisfied within 4 months after the issue of the prospectus, the society must repay, under this section, all money received from applicants for shares.

(5) If a society is liable, under subsection (4), to repay money received from applicants for shares —

- (a) the money must be repaid without interest within 7 days after the society becomes liable; and
- (b) if the money is not repaid within the period —
- (i) the directors of the society are, subject to subsection (6), jointly and severally liable to repay the money with interest at the prescribed rate calculated from the end of the period; and
- (ii) each director of the society commits an offence for which the director is liable on conviction to a maximum penalty of \$5 000.

(6) A director of a society is not liable under subsection (5) (b) (i), and does not commit an offence against subsection (5) (b) (ii), if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on the director's part.

(7) An allotment made by a society to an applicant in contravention of this section is voidable at the option of the applicant and is voidable even if the society is being wound-up.

(8) An option mentioned in subsection (7) is exercisable by written notice served on the society within one month after the date of the allotment.

(9) A director of a society who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of this section (other than subsection (5)) commits an offence and is liable, in addition to the penalty for the offence, to compensate the society and any person to whom an allotment has been made in contravention of this section respectively for any loss, damages or expenses that the society or the person has sustained or incurred because of the allotment.

Maximum penalty: \$5 000.

(10) A proceeding for the recovery of compensation under subsection (9) must be started within 2 years after the date of the allotment.

(11) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section, or purporting to do so, is void.

#### **Return as to allotments**

**239.** (1) If a society makes an allotment of its permanent shares, the society must, within one month after the allotment is made, lodge with the SSA a return, in accordance with the regulations, stating —

- (a) the number and nominal values of the shares comprised in the allotment; and
- (b) the amount (if any) paid or due and payable on the allotment of each share; and
- (c) if the capital of the society is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
- (d) subject to subsection (3), the full name, or the surname and at least one given name and initials, and the address of each of the allottees and the number and class of shares allotted to the person.

(2) A society that —

- (a) has more than 500 members; and
- (b) keeps its register of holders of permanent shares at a place within 25 kilometres of an office of the SSA; and
- (c) provides at that office reasonable accommodation and facilities for persons to inspect and take copies of its register of holders of permanent shares,

is not required to comply with the provisions of this Part and of the regulations made for the purposes of this Part in so far as they relate to the inclusion in the annual return of a list of members and particulars of shares.

(3) The particulars mentioned in subsection (1) (d) need not be included in a return in relation to shares that have been allotted in consideration of the payment of money.

(4) If shares in a society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made under a written contract, the society must lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of any such contract.

(5) If a certified copy of a contract is lodged under subsection (4), the original contract duly stamped must be produced at the same time to the SSA.

(6) If shares in a society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made —

- (a) under a contract not reduced to writing; or
- (b) under the society's rules; or
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or
- (d) under the application of money held by the society in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled,

the society must lodge with the return a statement containing such particulars as are prescribed.

(7) For the purposes of this section, any shares in a society applied for prior to the registration of the society are taken to have been allotted on the date of registration of the society.

#### **Issue of permanent shares at premium**

**240.** (1) If a society issues permanent shares for which a premium is received by the society (whether in money or in the form of other valuable consideration) the aggregate amount or value of the premiums on the permanent shares must be transferred to an account called the "share premium account", and the provisions of this Part relating to the reduction of the share capital of a society apply, subject to this section, as if the share premium account were paid-up share capital of the society.

(2) The share premium account may be applied —

- (a) in paying-up shares to be issued to members of the society as fully paid bonus shares; or
- (b) in paying-up, in whole or in part, the balance unpaid on shares previously issued to members of the society; or

- (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the society; or
- (d) in writing-off the preliminary expenses of the society; or
- (e) in writing-off the expenses of, or the payment made in relation to, any issue of shares in the society; or
- (f) in providing for the premium payable on redemption of redeemable preference shares.

**Special resolution for reduction of permanent share capital**

**241.** (1) Subject to confirmation by the Court, a society may, if authorized by its rules, by special resolution reduce its permanent share capital in any way and, in particular, may do all or any of the following —

- (a) extinguish or reduce the liability on any of its permanent shares in relation to share capital not paid-up;
- (b) cancel any paid-up share capital that is lost or is not represented by available assets;
- (c) pay off any paid-up share capital that is in excess of the society's needs.

(2) If the proposed reduction of permanent share capital involves either diminution of liability in relation to unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs —

- (a) every creditor of the society who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of starting the winding-up of the society, would be admissible in evidence against the society, is entitled to object to the reduction; and
- (b) the Court, unless satisfied on affidavit that there are no such creditors, must settle a list of the names of creditors entitled to object and, for that purpose, must ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and
- (c) if a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not been determined, does not consent to the reduction, the Court may dispense with the consent of the creditor on the society

securing payment of the creditor's debt or claim by appropriating as the Court directs —

- (i) if the society admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or
- (ii) if the society does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after inquiry and adjudication of the kind required where a society is wound-up by the Court.

(3) The Court may, having regard to any special circumstances of a case, direct that all or any of the provisions of subsection (2) do not apply in relation to creditors included in a particular class of creditors.

(4) The Court may, if satisfied that in relation to each creditor who under subsection (2) is entitled to object —

- (a) the creditor's consent to the reduction has been obtained; or
- (b) the creditor's debt has been discharged or secured; or
- (c) the creditor's claim has been determined or has been secured,

make an order confirming the reduction on such terms and conditions as it considers appropriate.

(5) A society must not act on a resolution for the reduction of permanent share capital before application is made to the SSA for registration of the resolution and an office copy of the order of the Court is lodged with the SSA, but a resolution may specify an earlier date (not earlier than the date of the resolution) as the date from which the reduction of capital is to have effect.

(6) A certificate of the SSA stating that the resolution and an office copy of the order made under subsection (4) have been registered by the SSA is conclusive evidence that all the requirements of this Code relating to the reduction of permanent share capital have been complied with in relation to the society.

(7) A shareholder or former shareholder in a society is not liable, in relation to any share in the society, to any call or contribution of more than the difference (if any) between the amount of the share as fixed by an order made under subsection (4) and the amount paid, or the reduced amount (if any) that is taken to have been paid, on the share.

(8) Despite any other provision of this Code, if the name of a creditor who is entitled under subsection (2) to object to a reduction is, because of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, not entered on the list of creditors and, after the reduction, the society is unable, within the meaning of the provisions relating to winding-up by the Court, to pay the amount of the creditor's debt or claim —

- (a) every person who was a shareholder of the society at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of the debt or claim an amount not more than the amount that the person would have been liable to contribute if the society had started to be wound-up on the day before that date; and
- (b) if the society is wound-up, the Court, on the application of any such creditor and proof of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, may settle accordingly a list of the names of persons liable to contribute because of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding-up,

but nothing in this subsection affects the rights of the contributories among themselves.

(9) An officer of a society who —

- (a) knowingly conceals the name of a creditor entitled to object to a reduction in the permanent share capital of the society; or
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor of the society,

commits an offence.

Maximum penalty: \$5 000.

(10) The granting, under the rules of a society, of a lease, licence or other right to occupy or use land or a building, or a part of land or a building, in favour of a shareholder of the society by force of the person's membership does not constitute a reduction of the permanent share capital of the society.

**Society financing dealings in its permanent shares etc.**

**242.** (1) Except as otherwise expressly provided by this Code, a society must not —

- (a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —
  - (i) the acquisition by a person, whether before, or at the same time as, the giving of financial assistance, of permanent shares in the society; or
  - (ii) the proposed acquisition by a person of permanent shares in the society; or
- (b) whether directly or indirectly, in any way, acquire permanent shares in the society; or
- (c) whether directly or indirectly, in any way, lend money on the security of permanent shares in the society.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the providing of security, the releasing of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a society is taken to have given financial assistance for the purpose of an acquisition or proposed acquisition (the “**relevant purpose**”) if —

- (a) the society gave the financial assistance for purposes that included the relevant purpose; and
- (b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

(4) For the purposes of this section, a society is taken to have given financial assistance in connection with an acquisition or proposed acquisition if, when the financial assistance was given to a person, the society was aware that the financial assistance would financially assist —

- (a) the acquisition by a person of permanent shares in the society; or
- (b) if permanent shares in the society had already been acquired, the payment by a person of any unpaid amount of the subscription payable for the permanent shares or any premium payable in relation to the permanent shares, or the payment of any calls on the permanent shares.



(5) If a society contravenes subsection (1), any officer of the society who is in default commits an offence.

Maximum penalty: \$5 000.

(6) If —

- (a) a person is convicted of an offence against subsection (5); and
- (b) the court by which the person is convicted is satisfied that the society or another person has suffered loss or damage because of the contravention that constituted the offence,

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the society or other person of an amount specified by the court.

(7) The order may be enforced as if it were a judgment of that court.

(8) The power of a court under section 476 to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (6) from the liability to have such an order made against the person.

(9) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition, whether by way of purchase, subscription or otherwise.

### **Exceptions**

**243.** (1) Section 242 (1) does not prohibit —

- (a) the payment of a dividend by a society in good faith and in the ordinary course of commercial dealing; or
- (b) a payment made by a society under a reduction of capital in accordance with this Part; or
- (c) the discharge by a society of a liability of the society that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms; or
- (d) an acquisition by a society of an interest (other than a legal interest) in fully paid permanent shares in the society if no consideration is provided by the society, or by any related body corporate, for the acquisition; or
- (e) the purchase by a society of permanent shares in the society under an order of a court; or

- (f) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a society of a lien on permanent shares in the society (other than fully paid permanent shares) for any amount payable to the society in relation to the permanent shares; or
  - (g) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a society with a subscriber for permanent shares in the society permitting the subscriber to make payments for the permanent shares (including payments in relation to any premium) by instalments.
- (2) Subsection (1) does not —
- (a) imply that a particular act of a society would, but for that subsection, be prohibited by section 242 (1); or
  - (b) limit the operation of any rule of law permitting the giving of financial assistance by a society, the acquisition of permanent shares by a society or the lending of money by a society on the security of permanent shares.
- (3) Section 242 (1) does not prohibit —
- (a) the making of a loan, the giving of a guarantee or the providing of security by a society in the ordinary course of business if the loan that is made by the society, or in relation to which the guarantee or security is given or provided, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or
  - (b) the giving by a society of financial assistance to acquire fully paid permanent shares in the society, if —
    - (i) the assistance is given under a scheme approved —
      - (I) if the scheme is conducted only for employees of the society, by the society at a general meeting; or
      - (II) in any other case, by the SSA in accordance with a standard; and
    - (ii) the permanent shares are to be held by or for the benefit of a person taking part in the scheme.
- (4) Section 242 (1) does not prohibit the giving by a society of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of permanent shares in the society if —
- (a) the society does so under a special resolution passed by the society; and

- (b) the notice of the proposed special resolution given to members of the society sets out —
  - (i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and
  - (ii) the effect that the giving of the financial assistance would have on the financial position of the society and any group for which the society is the holding society,

and is accompanied by a copy of a statement made under a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not fewer than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the society (including future liabilities and contingent liabilities), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the society or any class of those creditors or members; and

- (c) not later than the day after the day when the notice mentioned in paragraph (b) is given to members of the society, there is lodged with the SSA, a copy of that notice and a copy of the statement that accompanied the notice; and
- (d) within 21 days after the general meeting of the society at which the special resolution is passed a notice —
  - (i) setting out the terms of the special resolution; and
  - (ii) stating that any persons specified in subsection (6) may, within the period specified in that subsection, make an application to the Court opposing the giving of the financial assistance,

is published, in each State in which the society is carrying on business in a newspaper circulating generally in the State; and

- (e) no application opposing the giving of the financial assistance is made within the period specified in subsection (6) or, if such an application is made, the application is withdrawn or the Court approves the giving of the financial assistance.

(5) If, on application to the Court by a society, the Court is satisfied that subsection (4) has been substantially complied with by the society in relation to proposed financial assistance of the kind mentioned in that subsection, the Court may, by order, declare that the subsection has been complied with in relation to the proposed financial assistance.

(6) If a special resolution is passed by a society, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice mentioned in subsection (4) (d) by —

- (a) a member or creditor of the society; or
- (b) a member or creditor of a subsidiary of the society; or
- (c) the SSA.

(7) On an application under subsection (6), the Court —

- (a) is to, in determining what orders to make in relation to the application, have regard to the rights and interests of the members of the society or of any class of them as well as to the rights and interests of the creditors of the society or of any class of them; and
- (b) may not make an order approving the giving of the financial assistance unless the Court is satisfied that —
  - (i) the society has disclosed to the members of the society all material matters relating to the proposed financial assistance; and
  - (ii) the proposed financial assistance would not, after taking into account the financial position of the society (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the society or of any class of those creditors or members; and
- (c) may do all or any of the following —
  - (i) make an order for the purchase by the society of the interests of dissentient members of the society;
  - (ii) adjourn the proceeding in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the society or by a subsidiary of the society) of the interests of dissentient members;
  - (iii) give such ancillary or consequential directions and make such ancillary or consequential orders as it considers appropriate;
  - (iv) make an order disapproving the giving of the financial assistance or, subject to this section, an order approving the giving of the financial assistance.

(8) If the Court makes an order under this section in relation to a society, the society must, within 14 days after the making of the order, lodge with the SSA an office copy of the order.

(9) The passing of a special resolution by a society relating to financial assistance, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the society of any duty to the society under this Code or otherwise (whether or not of a fiduciary nature) in connection with the giving of the financial assistance.

(10) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

**Consequences of society financing dealings in its permanent shares etc.**

**244.** (1) Except as provided by this section —

- (a) the validity of a contract or transaction is not affected by a contravention of section 242 (1) (a); and
- (b) the validity of a contract or transaction is not affected by a contravention of section 242 (1) (b) unless the contract or transaction effects the acquisition that constitutes the contravention; and
- (c) the validity of a contract or transaction is not affected by a contravention of section 242 (1) (c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) If a society makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid because —

- (a) the contract was made or performed, or the transaction was engaged in, in contravention of section 242; or
- (b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section,

the first contract or transaction is, subject to this section, voidable at the option of the society by written notice given to each of the other parties to the contract or transaction.

(3) The Court may, on the application of a member, officer or creditor of a society, by order, authorize the person to give a notice under subsection (2) in the name of the society.

- (4) If —
- (a) a society makes or performs a contract, or engages in a transaction; and
  - (b) the contract is made or performed, or the transaction is engaged in, in contravention of section 242 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section; and
  - (c) the Court is satisfied, on the application of the society or of another person, that the society or that other person has suffered, or is likely to suffer, loss or damage because of —
    - (i) the making or performance of the contract or the engaging in of the transaction; or
    - (ii) the making or performance of a related contract or the engaging in of a related transaction; or
    - (iii) the contract or transaction being void because of section 242 or having become void, or becoming void, under this section; or
    - (iv) a related contract or transaction being void because of section 242 or having become void, or becoming void, under this section,

the Court may make such orders as it considers just and equitable (including, for example, any of the orders mentioned in subsection (5)) against a party to the contract or transaction or to the related contract or transaction, or against the society or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

- (5) The orders that may be made under subsection (4) include —
- (a) an order directing a person to refund money or return property to the society or another person; and
  - (b) an order directing a person to pay to the society or another person a specified amount not more than the amount of the loss or damage suffered by the society or other person; and
  - (c) an order directing a person to indemnify the society or another person against any loss or damage that the society or other person may suffer because of the contract or transaction or because of the contract or transaction being or having become void.

(6) If a certificate signed by at least 2 directors, or by a director and a secretary, of a society stating that the requirements of section 243 (4) have been complied with in relation to the proposed

giving by the society of financial assistance for the purpose of an acquisition or proposed acquisition by a person of permanent shares in the society is given to a person —

- (a) the person to whom the certificate is given is not under any liability to have an order made against the person under subsection (4) because of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate; and
- (b) any such contract or transaction is not invalid, and is not voidable under subsection (2), because the contract is made or performed, or the transaction is engaged in, in contravention of section 242 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section.

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the society concerned or another person who has suffered, or is likely to suffer, loss or damage because of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 243 (4) had not been complied with in relation to the financial assistance to which the certificate related.

(8) For the purpose of subsection (7), a person is, in the absence of evidence to the contrary, taken to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In a proceeding, a document purporting to be a certificate given under subsection (6) is, in the absence of evidence to the contrary, taken to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) is, in the absence of evidence to the contrary, taken to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 243 (4) have been complied with in relation to the proposed giving by a society of financial assistance and any of those requirements had not been complied with in relation to the proposed giving of that assistance at the time when the certificate was signed by that person, the person commits an offence.

Maximum penalty: \$25 000.

(12) If a society makes a contract or engages in a transaction under which it gives financial assistance as mentioned in

section 242 (1) (a) or lends money as mentioned in section 242 (1) (c), any contract or transaction made or engaged in because of, or by means of, or in relation to, the financial assistance or money is to be taken, for the purposes of this section, to be related to the first contract or transaction.

(13) The power of a court under section 476 to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against the person.

(14) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, if there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of the person apart from this section, the provisions of this section or of the order made by the Court prevail.

**Prohibition on subsidiary acquiring permanent shares of holding society**

**245.** (1) A body corporate must not be a holder of permanent shares of a society that is its holding society, and any allotment or transfer of permanent shares in a society to its subsidiary is void.

(2) This section does not prevent a subsidiary from continuing to be a holder of permanent shares of its holding society if, at the time when it becomes a subsidiary of the holding society, it already holds permanent shares in the holding society, but the subsidiary must, within one year or such longer period as the Court may allow after becoming the subsidiary of its holding society, dispose of all of its shares in the holding society.

(3) Subsections (1) and (2) apply in relation to a nominee of a body corporate that is a subsidiary as if references in this section to that body corporate included references to a nominee for it.

(4) Subsection (1) does not apply if —

- (a) the subsidiary is concerned as personal representative; or
- (b) the subsidiary is concerned as a trustee and —
  - (i) the holding society or a subsidiary of the holding society is not beneficially interested under the trust; or
  - (ii) the holding society or a subsidiary of the holding society is beneficially interested under the trust only



by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, other than a transaction entered into with an associate of the holding society or a subsidiary of the holding society.

**Options over permanent shares**

**246.** An option granted by a society that enables a person to take up permanent shares in the society after the end of 5 years from the date on which the option was granted is void.

***Division 3 — Redeemable Preference Shares***

**Application of certain provisions of this Code to redeemable preference shares**

**247.** (1) The following provisions apply to redeemable preference shares to which this Division relates with all necessary modifications and any prescribed modifications —

- (a) section 227 (2);
- (b) section 229;
- (c) section 231;
- (d) section 232;
- (e) section 238;
- (f) section 239;
- (g) section 240;
- (h) section 242;
- (i) section 243;
- (j) section 244;
- (k) section 245;
- (l) section 246;
- (m) section 320;
- (n) section 321;
- (o) section 322.

(2) Without limiting subsection (1), those provisions apply to redeemable preference shares as if those shares were permanent shares of the society that are preference shares.

### **Issue of redeemable preference shares**

**248.** (1) Subject to this section, a society that has permanent share capital may, if authorized by its rules, issue redeemable preference shares.

(2) The society must not redeem the shares —

- (a) except on such terms, and in such way, as are provided by the society's rules; and
- (b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of permanent shares or redeemable preference shares made for the purposes of the redemption.

(3) The premium (if any) payable on redemption is to be provided for out of profits of the management fund of the society or out of the share premium account.

(4) If redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of permanent shares there must, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the "capital redemption reserve" the nominal amount of the shares redeemed, and section 241 applies as if the capital redemption reserve were paid-up permanent share capital of the society.

(5) If, under this section, a society has redeemed or is about to redeem preference shares, it may issue permanent shares or new redeemable preference shares up to the sum of the nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

(6) The capital redemption reserve may be applied in paying up unissued permanent shares or redeemable preference shares of the society to be issued to members of the society as fully-paid bonus shares.

(7) If a society redeems any redeemable preference shares, it must, within 14 days after so doing, lodge with the SSA a notice in accordance with the regulations relating to the shares redeemed.

(8) Shares are taken to have been redeemed even if a cheque given in payment of the amount payable on redemption of the shares has not been presented for payment.

(9) If a society contravenes this section, the society commits an offence.

Maximum penalty: \$5 000.

#### ***Division 4 — Shareholding Restrictions***

##### *Subdivision 1 — Interpretative provisions*

#### **Application of Division**

**249.** This Division applies to shares issued by a society under this Code.

#### **Extraterritorial operation of Division**

**250.** Without limiting the generality of section 17 —

- (a) the obligation to comply with this Division extends to all individuals, whether or not resident in this State or in Australia and whether or not Australian citizens, and to all bodies, whether or not incorporated or carrying on business in this State or in Australia; and
- (b) this Division extends to acts done or omitted to be done outside this State, whether or not in Australia.

#### **What constitutes an “entitlement” to shares**

**251.** For the purposes of this Division, the shares in a society to which a person (including the society or any society) is entitled include —

- (a) shares in which the person has a relevant interest; and
- (b) except if the person is a nominee body corporate in relation to which a certificate by the SSA is in force under section 253 (4), shares in which a person who is an associate of the person has a relevant interest.

#### **What constitutes a “relevant interest” in shares**

**252.** (1) For the purposes of this Division, a person has a “relevant interest” in a share in a society if —

- (a) the person or an associate of the person has power to dispose of or to exercise control over the disposal of the share; or

- (b) the person or an associate of the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) It is immaterial for the purposes of this section whether a power that a person has —

- (a) is express or implied or formal or informal; or
- (b) is exercisable alone or jointly with other persons; or
- (c) cannot be related to a particular share; or
- (d) is, or is capable of being, exercised, subject to restraint or restriction,

and any such power exercisable jointly with other persons is taken to be exercisable by any of the persons.

(3) A reference in this section to power or control includes a reference to power or control that —

- (a) is direct or indirect; or
- (b) is, or is capable of being, exercised because of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them (whether or not they are enforceable),

and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Without limiting subsections (1) to (3), if a body corporate has, or is by force of this section taken to have, a power and —

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or
- (b) a person has a controlling interest in the body corporate,

the person is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has or is taken to have.

(5) If a body corporate has, or is by force of this section (other than this subsection) taken to have, a power, a person (the “**relevant person**”) is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has, or is taken to have, if —

- (a) the relevant person has; or

- (b) a person associated with the relevant person has; or
- (c) persons associated with the relevant person together have;  
or
- (d) the relevant person and a person or persons associated with  
the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than 10% or such other proportion as may be prescribed, of the voting shares in the body corporate.

(6) If a person —

- (a) has entered into an agreement in relation to an issued share; or
- (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or
- (c) has an option in relation to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, the person would have a relevant interest in the share, the person is, for the purposes of this section, taken to have that relevant interest in the share.

(7) For the purposes of this section, if a body corporate is, under subsection (6), taken to have a relevant interest in a share and —

- (a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of, or the control of the exercise of, any right to vote conferred on the holder of the share, or in relation to the disposal of, or the exercise of control over the disposal of, that share; or
- (b) a person has a controlling interest in the body corporate; or
- (c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 10%, or such other proportion as may be prescribed, of the voting shares in the body corporate,

the person is taken to have a relevant interest in that share.

(8) A body corporate may be taken, for the purposes of this Division, to have a relevant interest in a share in the body corporate itself.

(9) A relevant interest in a share is not to be disregarded only because of —

- (a) its remoteness; or
- (b) the way in which it arose.

(10) A director of a society is not taken to have a relevant interest in a share in the society merely because the board is entitled to withhold consent to a transfer of the share.

(11) A regulation may provide that relevant interests in shares in societies are, in such circumstances and subject to such conditions (if any) as are specified in the regulation, to be disregarded for the purposes of this section.

### **Meaning of “associate”**

**253.** (1) A reference in this Division to an associate of a person is a reference to —

- (a) if the person is a body corporate —
  - (i) a director or secretary of the body corporate; or
  - (ii) a body corporate that is related to that person; or
  - (iii) a director or secretary of such a related body corporate; or
- (b) if the matter to which the reference relates is shares in a body corporate (including, in a case where the first person is a body corporate, the first person), a person (the “**relevant associate**”) that is the body corporate or another person with whom the first person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied —
  - (i) because of which the relevant associate, or the first person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power in the body corporate; or
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
  - (iii) under which the relevant associate may acquire from the first person, or the first person may acquire from the relevant associate, shares in the body corporate; or

- (iv) under which the relevant associate, or the first person, may be required to dispose of shares in the body corporate in accordance with the directions of the first person or the relevant associate, as the case may be; or
  - (c) a person in concert with whom the first person is acting, or proposes to act, in relation to the matter to which the reference relates; or
  - (d) a person with whom the first person is, by force of the regulations, taken to be associated in relation to the matter to which the reference relates; or
  - (e) a person with whom the first person is, or proposes to become, associated whether formally or informally, in another way in relation to the matter to which the reference relates; or
  - (f) if the first person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, another thing, with a view to becoming associated with a person as mentioned in paragraphs (b) to (e), the last person.
- (2) A person is not taken to be an associate of another person under subsection (1) (b) to (f) merely because —
- (a) one of the persons gives advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to the person's professional capacity or the person's business relationship with the other person; or
  - (b) without limiting paragraph (a), if the ordinary business of one of those persons includes dealing in securities, specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of the business.
- (3) For the purposes of subsection (1) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.
- (4) The SSA may issue to a nominee body corporate a certificate declaring the nominee body corporate to be an approved nominee body corporate for the purposes of section 251 and may, at any time, by written notice given to the nominee body corporate, revoke the certificate.
- (5) The SSA may issue to a person a certificate declaring that specified shares in which the person has a relevant interest are to be disregarded for the purposes of ascertaining the shares to which another person specified in the certificate is entitled and may, at any time, by written notice given to the first person, revoke the certificate.

### **Meaning of voting power or right to vote**

**254.** For the purposes of this Division, a reference to voting power or a right to vote attached to a share in a body corporate is, if the body corporate is a society, to be read as a reference to the right to vote conferred on the holder of a share in the society.

### **Inadvertence or mistake**

**255.** In determining, for the purposes of a provision of this Division, whether or not a person's contravention of such a provision was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or happening, a person's ignorance of, or a mistake on the person's part concerning, a matter of law is to be disregarded.

### *Subdivision 2 — Maximum shareholdings*

### **Maximum permissible shareholding**

**256.** (1) For the purposes of this Subdivision, a person has more than the maximum permissible shareholding in a society if the person has an entitlement —

- (a) if a society has issued one class of either permanent shares or redeemable preference shares, to permanent shares or redeemable preference shares in the society, as the case may be, of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares or redeemable preference shares issued by the society; or
- (b) if a society has issued one class of permanent shares and one class of redeemable preference shares —
  - (i) to permanent shares in the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares issued by the society; or
  - (ii) to redeemable preference shares in the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all redeemable preference shares issued by the society; or
- (c) if a society has issued more than one class of permanent shares or more than one class of redeemable preference shares, to shares in any class of shares of the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all shares of that class issued by the society.



(2) A percentage applicable under subsection (1) may be varied in its application to a particular society by being decreased by the rules of the society.

### **Consequences of exceeding maximum permissible shareholding**

**257.** (1) If a person has more than the maximum permissible shareholding in a society, the society must forfeit and sell the excess shares.

(2) Section 237 applies to the offering and sale of shares forfeited as if the shares had been forfeited for non-payment of a call.

(3) If a person has more than the maximum permissible shareholding in a society and a society is required to forfeit and sell the excess shares, the person is not entitled to a vote in any meeting of members of the society until the excess shares are forfeited and sold.

### **Exceptions**

**258.** Section 257 does not apply to a person —

- (a) who acquired the relevant interests concerned in accordance with an approval given under Part 7; or
- (b) who has the relevant interests concerned because of a share issue and the relevant interests represent a proportion of the issued shares of the society concerned that is no more than the proportion which the person had before the share issue; or
- (c) if the person had, before acquiring the excess shares, reported the proposal to acquire them to the SSA and obtained approval under section 262 and the total nominal value of the shares held by the person is not more than the limit approved under that section in relation to the person.

### *Subdivision 3 — Substantial shareholdings*

### **Substantial shareholding and substantial shareholders**

**259.** (1) Part 6.7 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 6.7 of the Corporations Law are to be applied as if —

- (a) a reference to a company were a reference to a society; and

- (b) a reference to the Commission were a reference to the SSA;  
and
- (c) a reference to a shareholder were a reference to a member;  
and
- (d) a reference to a voting share were a reference to a share;  
and
- (e) the expressions “**entitlement**”, “**relevant interest**” and “**associate**” had the meanings given in this Division rather than the meaning given in that Law.

(3) The purpose of subsections (1) and (2) is to apply Part 6.7 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 of the Corporations Law.

(4) However, the application of Part 6.7 of the Corporations Law under subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

*Subdivision 4 — Power to obtain information*

**Power to obtain information**

**260.** (1) Part 6.8 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 6.8 of the Corporations Law are to be applied as if —

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA;  
and
- (c) the expressions “**entitlement**”, “**relevant interest**” and “**associate**” had the meanings given in this Division rather than the meaning given in that Law.

(3) The purpose of subsections (1) and (2) is to apply Part 6.8 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 of the Corporations Law.

(4) However, the application of Part 6.8 of the Corporations Law under subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

*Subdivision 5 — Enforcement*

**Court orders — substantial shareholdings**

**261.** (1) For the purposes of this Part, sections 741 to 744 of the Corporations Law apply to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), those sections of the Corporations Law are to be applied as if —

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA.

**Power of SSA to exempt etc. from Division**

**262.** (1) The SSA may, subject to the standards, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with all or any of the provisions of this Division or any regulation made for the purpose of this Division.

(2) A person must not contravene a condition to which an exemption is subject.

Maximum penalty: \$25 000.

(3) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(4) The SSA may, subject to the standards, by written notice, declare that a provision of this Division or a regulation made for the purposes of this Division, has effect in its application to a particular person or particular persons —

- (a) in a particular case; or
- (b) in relation to particular shares, or shares included in a particular class of shares,

as if the provision or regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the provision or regulation has effect accordingly.

(5) The SSA must cause a notification of the making of an exemption or declaration to be published in the *Gazette*, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

- (6) A notification mentioned in subsection (5) must name —
- (a) the persons to whom the exemption or declaration relates; and
  - (b) the provisions to which the exemption or declaration relates; and
  - (c) if the exemption or declaration relates to a particular society or class of society, the society or class.

***Division 5 — Issue of Shares***

**Issuing of shares at a discount prohibited**

**263.** A society must not issue —

- (a) permanent shares at a discount; or
- (b) redeemable preference shares at a discount unless they are of a prescribed class.

**Issuing of shares as partly paid up etc.**

**264.** (1) A society must not issue redeemable preference shares as partly paid up.

(2) A society must not issue redeemable preference shares otherwise than in consideration of the payment of cash.

**Power of SSA to exempt etc. from Division**

**265.** (1) The SSA may, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with a regulation made for the purposes of this Division.

(2) An exemption may relate to any particular shares or to shares included in a class of shares.

(3) A person must not contravene a condition to which an exemption is subject.

Maximum penalty: \$25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a regulation made for the purposes of or under this Division, has effect in its application to or in relation to a particular person or particular persons —

- (a) in a particular case; or
- (b) in relation to particular shares or shares included in a particular class of shares,

as if the regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the *Gazette*, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

### ***Division 6 — Title to and Transfer of Shares***

#### **Restricted application of this Division**

**266.** This Division does not apply to the extent that its application would be inconsistent with the application under its own force of Division 3 of Part 7.13 of the Corporations Law.

#### **Document of title to be evidence of title**

**267.** (1) A document of title issued by a society specifying any shares held by a member of a society is evidence of the member's title to the shares.

(2) A document of title must be under the common seal of the society and must state —

- (a) the name of the society; and
- (b) the class of the shares; and
- (c) if appropriate, the nominal value of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of shares in a society.

**Loss or destruction of documents**

**268.** (1) Subject to subsection (2), where a document of title to shares is lost or destroyed, the society must, on application by the owner of the shares issue a duplicate document of title to the owner —

- (a) if the society requires the payment of an amount of not more than the prescribed amount, within 21 days after the payment is received by the society or within such longer period as the SSA approves; or
- (b) in any other case, within 21 days after the application is made or within such longer period as the SSA approves.

(2) The application must be accompanied by —

- (a) a written statement that the document of title has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and
- (b) a written undertaking that if it is found or received by the owner it will be returned to the society.

(3) The directors of a society may, before accepting an application for the issue of a duplicate document of title, require the applicant to —

- (a) cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the document of title has been lost or destroyed and that the owner intends, after the expiration of 14 days after the publication of the advertisement, to apply to the society for a duplicate document of title; or
- (b) give a bond for an amount equal to at least the current market value of the shares indemnifying the society against loss following the production of the original document of title; or
- (c) do both those things.

(4) If —

- (a) a document of title to shares is cancelled under the SCH certificate cancellation provisions; and
- (b) having regard to the provisions, the document of title should not have been cancelled,

this section applies to the document of title as though it were destroyed on its cancellation.

(5) For the purpose of subsection (4) —

“**SCH certificate cancellation provisions**” has the meaning given by section 9 of the Corporations Law.

#### **Instrument of transfer**

**269.** (1) Despite anything in its rules or in a deed relating to permanent shares, a society must not register a transfer of permanent shares unless an instrument of transfer has been delivered to the society.

(2) The instrument of transfer must —

- (a) be in writing in any usual or common form or in any other form that the directors of the society approve; and
- (b) be executed by or on behalf of both the transferor and the transferee.

(3) Subsection (1) does not prejudice the power of the society to register as the holder of shares a person to whom the right to those shares has devolved by will or by operation of law.

(4) A transfer of shares of a deceased holder made by the holder's personal representative is, although the personal representative is not registered as the holder of those shares, as valid as it would be if the personal representative had been so registered at the time of the execution of the instrument of transfer.

(5) If the personal representative of a deceased holder duly constituted as such under the law in force in another participating State —

- (a) executes an instrument of transfer of shares of the deceased holder to the personal representative or to another person; and
- (b) delivers the instrument to the society, together with a written statement to the effect that, to the best of the personal representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in this State and no application for such a grant will be made, being a statement made within 3 months immediately before the date of delivery of the statement to the society,

the society must register the transfer and pay to the personal representative any dividends or other money accrued in relation to the shares up to the time of the execution of the instrument, but this subsection does not operate so as to require the society to do anything that it would not have been required to do if the personal

representative were the personal representative of the deceased holder duly constituted under the law of this State.

(6) A transfer or payment made under subsection (5) and a receipt or acknowledgment of that payment is, for all purposes, as valid and effectual as it would be if the personal representative were the personal representative of the deceased holder duly constituted under the law of this State.

(7) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of shares in place of the deceased person is taken to be an instrument of transfer effecting a transfer of those shares to the personal representative.

(8) The production to a society of a document that is, under the law of this State or under the law in force in another participating State, sufficient evidence of a grant of probate of the will, or letters of administration of the estate, of a deceased person must be accepted by the society, despite anything in its rules or in a deed relating to its shares, as sufficient evidence of that grant.

#### **Registration of transfer at request of transferor**

**270.** (1) On the written request of the transferor of a permanent share issued by a society, the society must enter in the appropriate register the name of the transferee in the same way and subject to the same conditions as it would if the application for the entry were made by the transferee.

(2) On the written request of the transferor of a permanent share issued by a society, the society must, by written notice, require the person having the possession, custody or control of any documents evidencing title to the share or the instrument of transfer affecting any such share or both such documents and instrument to deliver the documents or instrument to the registered office of the society within a specified period (not less than 7 and not more than 28 days after the date of the notice) to have the documents cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to the Court to issue a summons for the person to appear before the Court and show cause why the documents or instrument mentioned in the notice should not be delivered up or produced as required by the notice.

(4) On the appearance of a person so summoned, the Court may examine the person on oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person's absence and, in either case, the Court may order the person to deliver up the documents or instrument mentioned in the notice to the society on such



terms or conditions as the Court considers appropriate, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

(5) Lists of documents called in under this section and not brought in must be displayed in a conspicuous place at the registered office of the society and must be advertised in the *Gazette* and in such newspapers and at such times as the society considers appropriate.

#### **Notice of refusal to register transfer**

**271.** If a society refuses to register a transfer of permanent shares issued by the society, it must, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

#### **Remedy for refusal to register transfer or transmission**

**272.** (1) If a society fails to register, or the board of a society fails to give its approval to, a transfer or transmission of permanent shares issued by the society, the transferee or transmittee may apply to the Court for an order under this section.

(2) If the Court is satisfied that the failure was without just cause, the Court may —

- (a) order that the transfer or transmission be registered; or
- (b) make such other order as it considers proper, including an order providing for the purchase of the shares by a specified member of the society or by the society.

#### **Certification of transfers**

**273.** (1) The certification by a society of an instrument of transfer of permanent shares issued by the society is taken to be a representation by the society to any person acting on the faith of the certification that there have been produced to the society such documents as on the face of them show title to those shares in the transferor named in the instrument of transfer but is not taken to be a representation that the transferor has any title to those shares.

(2) If a person acts on the faith of a false certification by a society made negligently, the society is under the same liability to the person as if the certification had been made fraudulently.

(3) If a certification is expressed to be limited to 42 days or any longer period from the date of certification, the society and its officers are not, in the absence of fraud, liable in relation to the registration of any transfer of permanent shares comprised in the certification after

the end of that period or any extension of that period given by the society if the instrument of transfer has not, within that period, been lodged with the society for registration.

- (4) For the purposes of this section —
- (a) an instrument of transfer is taken to be certificated if it bears the words “document lodged” or words to similar effect; and
  - (b) the certification of an instrument of transfer is taken to be made by a society if —
    - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on behalf of the society; and
    - (ii) the certification is signed by a person authorized to certificate transfers on behalf of the society or by an officer of the society or of a corporation so authorized; and
  - (c) a certification that purports to be authenticated by a person’s signature or initials (whether or not handwritten) is to be taken to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorized to use the signature or initials for the purpose of certificating transfers on behalf of the society.

#### **Duties of society in relation to issue of certificates**

**274.** (1) Within 2 months after the issue to a person of permanent shares of a society, the society must —

- (a) complete and have ready for delivery to the person all the appropriate documents in connection with the shares unless the conditions of the issue otherwise provide; and
- (b) unless otherwise instructed by the person, send or deliver the completed documents to the person or, if the person has instructed the society in writing to send them to a nominated person, to the nominated person.

(2) Within one month after a transfer of permanent shares is lodged with a society (other than a transfer that the society is for any reason entitled to refuse to register and does not register), the society must —

- (a) complete and have ready for delivery to the transferee all the appropriate documents in connection with the transfer; and

- (b) unless otherwise instructed by the transferee, send or deliver the completed documents to the transferee or, if the transferee has instructed the society in writing to send them to a nominated person, to the nominated person.

(3) If a society on which a notice has been served requiring the society to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to take delivery of the documents, make an order directing the society and any officer of the society to make good the default within a specified time.

(4) An order under subsection (3) may provide that all costs of and incidental to the application are to be borne by the society or by any officer of the society in default in such proportions as the Court considers appropriate.

### **Exemption**

**275.** (1) The power of the SSA to grant an exemption or make a declaration under this section may be exercised in relation to shares or a class of shares only if the SSA is satisfied that —

- (a) if the exemption were granted or the declaration were made, the interests of the holders of the shares or of shares in the class would continue to have adequate protection; and
- (b) the granting of the exemption or the making of the declaration would make transfer of the shares, or shares in the class, more efficient.

(2) The SSA may, by written notice, exempt particular shares, or a particular class of shares, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of —

- (a) this Division; and
- (b) a regulation made for the purposes of this Division.

(3) A person must not contravene a condition to which an exemption under subsection (2) is subject.

Maximum penalty: \$25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a provision of this Division or a regulation made for the purposes of this Division has effect in its application to particular shares, or a particular class of shares, either generally or otherwise as provided in the declaration, as if the provision or regulation were omitted or modified or varied in a way specified in the declaration and, if such declaration is made, the provision or regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the *Gazette*, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

### ***Division 7 — Registration of Charges***

#### **Registration of charges**

**276.** (1) Subject to this Division, Part 3.5 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 3.5 of the Corporations Law are to be applied as if —

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA.

#### **Directions by AFIC and SSA**

**277.** (1) AFIC may, from time to time, issue directions to societies in relation to standards, principles, practices and procedures to be observed in or in connection with the creation and registration of charges and may, from time to time, amend, vary or cancel a direction so issued.

(2) The SSA may, from time to time, issue directions, not inconsistent with directions issued by AFIC under subsection (1), in relation to the matters mentioned in that subsection and may, from time to time, amend, vary or cancel a direction so issued by the SSA.

(3) A provision of a direction issued under this section may —

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

- (c) authorize any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body; or
- (d) do any combination of those things.

(4) A regulation may make provision with respect to the creation and registration of charges and, in particular, a regulation may be made with respect to the following —

- (a) the issue of directions by AFIC or SSA under this section;
- (b) the enforcement of directions issued under this section.

**SSA approval of charges necessary in certain circumstances**

**278.** (1) The prior approval of the SSA to the creation of a charge on the property of a society is required except in prescribed circumstances.

(2) The SSA may decline to register a charge that has been created without the prior approval of the SSA.

(3) In determining whether or not to approve or whether to register a charge, the SSA must have regard to the effects that the charge may have on compliance by the society with the standards.

**PART 6 — MANAGEMENT**

***Division 1 — Interpretation***

**Definition**

**279.** In Division 2 of this Part —

“**employee**”, in relation to a society, includes a person, or an employee of a person, who provides the society with services under a management contract as defined in section 297.

**When one entity controls another**

**280.** (1) For the purposes of Divisions 6 and 7, an entity controls another entity if the entity is a subsidiary of the first entity.

(2) Despite subsection (1), a regulation may make provision for determining, for the purposes of those Divisions as they apply in relation to a society in relation to prescribed financial years, whether or not an entity controls another entity.

(3) Subject to subsection (2), if because of a provision of an applicable accounting standard that —

(a) deals with the making out of consolidated accounts; and

(b) applies to a financial year,

an entity is taken for the purposes of the accounting standard to control another entity, the first entity is also taken to control the other entity for the purposes of those Divisions as they apply in relation to a society in relation to the financial year.

***Division 2 — Directors and Officers***

**Board of directors**

**281.** (1) The business and operations of a society are to be managed and controlled by a board of directors.

(2) Subject to this section, the board may exercise all the powers of the society.

(3) The powers of the board are subject to any restrictions imposed by the friendly societies legislation, applicable standards and the society's rules.

(4) Every director acting in the society's business or operations under a resolution duly passed by the board is taken to be acting as the society's duly authorized agent.

(5) Anything done by or in relation to a director is not invalid merely because of a defect or irregularity in the director's election or appointment.

#### **Meetings of directors**

**282.** (1) Meetings of a society's board must be held as often as is necessary for properly conducting the society's business.

(2) Meetings of the board must be held at intervals of not longer than 3 months.

(3) A quorum at a meeting of the board is the number of directors prescribed by the society's rules, but must not be less than half the total number of directors.

(4) Subject to this section, a meeting of the board may be conducted in any way prescribed by the society's rules.

#### **Minutes**

**283.** A society must cause full and accurate minutes to be kept of every meeting of its board.

Maximum penalty: \$25 000.

#### **Number of directors**

**284.** The number of directors of a society must not be less than 5.

#### **Election of directors**

**285.** (1) Subject to the friendly societies legislation, the directors of a society are elected, hold and vacate office, and retire or are removed from office, as prescribed by the society's rules.

(2) A director holds office for a term (not longer than 3 years) as is prescribed by the society's rules.

(3) Despite subsection (2), in relation to a director elected at an annual general meeting of a society, the society's rules may specify a term of office ending —

- (a) immediately before the election of directors at the third annual general meeting of the society after the director's election; or
- (b) at the end of that third annual general meeting.

(4) A director is eligible for re-election at the end of the director's term.

(5) The directors must be elected —

- (a) at the annual general meeting of the society; or
- (b) by postal voting under the society's rules; or
- (c) in such other way as is prescribed by the society's rules.

(6) If the directors are elected by postal voting, the society must cause the results of the election to be announced at the society's next annual general meeting.

(7) Nothing in this section prevents a person nominated as a director from being appointed as a director if the number of directors nominated is less than or equal to the number of places to be filled.

### **Employee directors**

**286.** The members of a society may, under the society's rules, elect not more than 2 employees of the society nominated by the directors to be directors of the society.

### **Alternate directors**

**287.** (1) If authorized by a society's rules, a director may appoint a person, who is eligible to be a director of the society, to be the alternate director in place of that director.

(2) The alternate director may act as a director in the absence of the director who appointed him or her.

(3) Only a director who is an employee of the society may appoint an employee of the society to be his or her alternate director.



**Chairperson**

**288.** (1) A society's board must elect one of its members as chairperson.

(2) An employee of the society is not eligible to be the chairperson.

(3) The chairperson —

- (a) must hold office; and
- (b) must retire; and
- (c) may be removed from office,

as prescribed by the society's rules.

**Qualifications of directors**

**289.** Subject to sections 286 and 287, a person is not eligible to be a director of a society if the person —

- (a) is a minor; or
- (b) is not —
  - (i) a member of the society; or
  - (ii) the representative, appointed under section 83, of a body corporate member of the society; or
- (c) is a joint member other than the primary joint member under section 82; or
- (d) is an employee of the society; or
- (e) is an insolvent under administration within the meaning of section 9 of the Corporations Law; or
- (f) is prohibited from being a director of a body corporate by the Corporations Law for a reason other than the person's age; or
- (g) has been convicted in the last 10 years —
  - (i) of an indictable offence in relation to the promotion, formation or management of a body corporate; or
  - (ii) of an offence involving fraud or dishonesty; or
  - (iii) of any prescribed offence.

### **Vacation of office**

- 290.** (1) The office of a director becomes vacant if the director —
- (a) dies; or
  - (b) becomes a person who, under section 289, is not eligible to be a director; or
  - (c) for a director who is the representative, appointed under section 83, of a body corporate member of the society and whose eligibility for election to the office was based on being that representative, ceases to be eligible under section 83; or
  - (d) for a director elected under section 286, ceases to be an employee of the society; or
  - (e) is absent from 3 consecutive ordinary meetings of the board without its leave; or
  - (f) resigns by written notice of resignation given to the board; or
  - (g) is 3 months in arrears for an amount payable to the society and has failed to make arrangements for payment satisfactory to the society; or
  - (h) is removed from office by a resolution under section 291.
- (2) If there is a casual vacancy in the office of a director, the board may appoint a person who is qualified under section 289 to fill the vacancy.
- (2A) The term of office of a director appointed to fill a casual vacancy ends as provided by the society's rules either —
- (a) immediately before the election of directors at the next annual general meeting of the society after the appointment; or
  - (b) at the end of that annual general meeting.
- (3) A director may not be removed from office, and the office of a director does not become vacant, except as provided by the friendly societies legislation.

### **Removal of directors**

- 291.** (1) A society may, by resolution, remove a director before the end of the director's term of office, despite anything in its rules or in any agreement between it and the director.

(2) The resolution may be passed only if the society has given notice to members specifying the proposed resolution and the day and time of the meeting when it is proposed the resolution will be made (the “**relevant meeting**”).

(3) The society must also give a copy of the notice to the director.

(4) A society’s rules may provide for —

- (a) the period of notice; and
- (b) the way notice may be given to members; and
- (c) any other relevant matter.

(5) The director may make written representations to the society (of a reasonable length) before the relevant meeting.

(6) The society must promptly send to each member a copy of any written representations made by the director if —

- (a) the director asks the society to do so; and
- (b) there is enough time for the copies to be received by the members at least 2 days before the relevant meeting.

(7) At the relevant meeting, the director —

- (a) is entitled to be heard on the resolution to remove the director; and
- (b) if the director has made written representations under subsection (5) and a copy has not been sent to members under subsection (6), may require that the representations be read out.

#### **Declaration of interest**

**292.** (1) A director of a society who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract, with the society must declare the nature and extent of the interest to the society’s board under this section.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

(2) Subsection (1) does not apply to a contract to provide financial accommodation if the provision of the financial accommodation does not contravene section 295.

(3) In the case of a proposed contract, the declaration must be made —

- (a) at the meeting of the board at which the question of entering into the contract is first considered; or
- (b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.

(4) If a director becomes interested in a contract with the society after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract or, if the director is absent from that meeting, the next meeting of the board at which the director is present.

(5) For the purposes of this section, a general written notice given to the board by a director to the effect that the director —

- (a) is a member or an officer of a specified entity; and
- (b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity,

is a sufficient declaration.

(6) A director of a society who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (7), declare at a meeting of the society's board the fact and the nature, character and extent of the conflict.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

(7) A declaration required by subsection (6) in relation to holding an office or having an interest must be made by a person —

- (a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after —
  - (i) the person becomes a director; or
  - (ii) the relevant facts as to holding the office or having the interest come to the person's knowledge,

whichever is the later; or

- (b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.

(8) A declaration under this section must be recorded in the minutes of the meeting at which it was made and, unless the board otherwise determines, the director must not —

- (a) be present during any deliberation of the board in relation to the matter; or
- (b) take part in any decision of the board in relation to the matter.

(9) For the purposes of the making of a determination of the board under subsection (8) in relation to a director who has made a declaration under this section, the director must not —

- (a) be present during any deliberation of the board for the purpose of making the determination; or
- (b) take part in the making by the board of the determination.

(10) Subsection (9) does not apply to a director of a society who is interested in a contract or proposed contract with the society if —

- (a) the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a wholly owned subsidiary of the society; and
- (b) the director is a director of that subsidiary.

(11) Every declaration must be reported by the board —

- (a) to the SSA immediately after the making of the declaration; and
- (b) to the members at the next annual general meeting after the making of the declaration.

(12) A society must, within 3 months after the end of its financial year, lodge with the SSA a return specifying —

- (a) all declarations made to the board during that financial year; and
- (b) all declarations in force at the end of the financial year.

Maximum penalty: \$50 000.

(13) This section is in addition to any rule of law or any provision in a society's rules restricting a director from having an interest in contracts with the society or from holding offices or having interests involving duties or interests in conflict with the director's duties or interests as a director.

**General duty to make disclosure**

**293.** (1) A director of a society must give written notice to the society —

- (a) of such particulars relating to securities, rights, options and contracts or an interest in a benefit fund of the society as are necessary to enable the society to comply with section 317; and
- (b) of particulars of any change relating to the particulars mentioned in paragraph (a), including the consideration (if any) received because of the event giving rise to the change.

(2) A notice under subsection (1) must be given —

- (a) if the notice is under subsection (1) (a), within 14 days after the person —
  - (i) became a director; or
  - (ii) became aware that the person has acquired the securities, a relevant interest in the securities or the rights or options; or
  - (iii) entered into the contracts; or
  - (iv) acquired the interest in the benefit fund of the society,

whichever happens last; and

- (b) if the notice is under subsection (1) (b), within 14 days after the person becomes aware of the happening of the event giving rise to the change.

(3) A society must, within 7 days after receiving a notice, send a copy to each of the other directors of the society.

(4) A director or society who contravenes this section commits an offence and is liable on conviction to a maximum penalty of \$25 000.

(5) In any proceeding under this section, a person is, in the absence of evidence to the contrary, to be taken to have been aware at a particular time of a fact or happening of which an employee or agent of the person, being an employee or agent having duties of acting in

relation to his or her employer's or principal's interests in a security issued by the society concerned, was aware at that time.

**Certain financial accommodation to officers prohibited**

**294.** (1) An officer of a society who is not a director of the society must not obtain financial accommodation from the society other than —

- (a) with the approval of a majority of the directors; or
- (b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Maximum penalty: \$50 000 or imprisonment for 7 years.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a society if it is obtained by —

- (a) a proprietary company in which the officer is a shareholder or director; or
- (b) a trust of which the officer is a trustee or beneficiary; or
- (c) a trust of which a body corporate is a trustee if the officer is a director or other officer of the body corporate.

(3) A society must not give financial accommodation to an officer of the society if —

- (a) by giving the financial accommodation, the officer would contravene this section; and
- (b) the society knows or should reasonably know of the contravention.

Maximum penalty: \$50 000.

**Financial accommodation to directors and associates**

**295.** (1) In this section —

“**associate**” of a director means —

- (a) the director's spouse; or

- (b) a person when acting in the capacity of trustee of a trust under which —
  - (i) the director or director's spouse has a beneficial interest; or
  - (ii) a body corporate mentioned in paragraph (c) has a beneficial interest; or
- (c) a body corporate if —
  - (i) the director or director's spouse has a material interest in shares in the body corporate; and
  - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) For the purposes of this section, a person has a “**material interest**” in a share in a body corporate if —

- (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or
- (b) the person has power to dispose of or to exercise control over the disposal of the share; or
- (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(3) A society must not provide financial accommodation to a director, or to a person the society knows or should reasonably know is an associate of a director, unless —

- (a) the accommodation is —
  - (i) approved under subsection (4); or
  - (ii) given under a scheme approved under subsection (4); or
  - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the society would give if dealing with the director or associate at arm's length in the same circumstances; and
- (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Maximum penalty: \$50 000.



(4) For the purposes of subsection (3) (a) (i) and (ii), financial accommodation or a scheme is approved if —

- (a) it is approved by a resolution passed at a general meeting; and
- (b) full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) commits an offence.

Maximum penalty: \$50 000 or imprisonment for 7 years, or both.

(6) If a director of a society or an associate of a director accepts in payment of a debt owed by a member of the society to the director or associate, any proceeds of financial accommodation provided to the member by the society as referred to in subsection (3) (a) (iii), this section has effect as if the financial accommodation had been provided to the director or associate.

(7) In this section, a reference to —

- (a) the provision of financial accommodation to a director or an associate of a director; or
- (b) the obtaining of financial accommodation by a director or an associate of a director; or
- (c) a debt owed to a director or an associate of a director,

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

#### **Director's remuneration**

**296.** A director of a society (other than a director who is an employee of the society) must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the society.

#### **Management contracts**

**297.** (1) In this section —

“**management contract**” means a contract or other arrangement under which —

- (a) a person who is not an officer of the society agrees to perform the whole, or a substantial part, of the functions of the society; or

- (b) a society agrees to perform the whole or a substantial part of its functions —
  - (i) in a particular way; or
  - (ii) in accordance with the directions of any person; or
  - (iii) subject to specified restrictions or conditions.

(2) A society must not enter into a management contract without the prior written approval of the SSA.

Maximum penalty: \$75 000.

(3) The SSA may subject its approval under subsection (2) to conditions.

(4) A management contract entered into in contravention of subsection (2) is void.

(5) A management contract entered into before the commencement of this section becomes void 6 months after that commencement unless the SSA directs that it continue in operation.

#### **Duties of directors and officers**

**298.** (1) An officer of a society must at all times act honestly in the exercise of the powers and the discharge of the functions of his or her office.

(2) If an officer contravenes subsection (1), the officer commits an offence for which the maximum penalty is —

- (a) if because of the contravention —
  - (i) the society is, or its members are, deceived or defrauded; or
  - (ii) a creditor of the society, or a creditor of any other person, is deceived or defrauded,\$100 000 or imprisonment for 15 years, or both; or
- (b) if the contravention was committed —
  - (i) with the intention of deceiving or defrauding the society or its members, a creditor of the society or a creditor of any other person; or

(ii) for any other fraudulent purpose,

but paragraph (a) does not apply, \$100 000 or imprisonment for 15 years, or both; or

(c) in any other case, \$50 000 or imprisonment for 7 years, or both.

(3) An officer of a society must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the functions of his or her office and in the protection of the interests of members.

Maximum penalty: \$25 000.

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

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(5) An officer or employee of a society must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

(6) If —

(a) a person is convicted of an offence against this section; and

(b) the court by which the person is convicted is satisfied that the society has suffered loss or damage as a result of the act or omission that constituted the offence,

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the society of an amount specified by the court.

(7) The order may be enforced as if it were a judgment of that court.

(8) If a person contravenes this section, the society may, whether or not the person has been convicted of an offence against this section in relation to that contravention, recover from the person as a debt due

to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned —

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

(9) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors, officers and employees of a society.

(10) Section 9 applies in relation to subsection (3), as if, in subsection (1) (a) of the section, the words “; executive officer or employee” were omitted and the words “or executive officer” were substituted.

### **Prohibition on transfer of money**

**299.** (1) Where —

- (a) an investigation is being carried out under Part 10 in relation to an act or omission by a person, being an act or omission that constitutes or may constitute —
  - (i) a contravention of, or an offence against, this Code; or
  - (ii) an offence involving fraud or dishonesty or concerning the management of affairs of a society; or
- (b) a prosecution has been instituted against a person for an offence against this Code; or
- (c) a civil proceeding has been instituted against a person under this Code,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an “**aggrieved person**”) to whom the person mentioned in paragraph (a), (b) or (c), as the case may be, (in this section called the “**relevant person**”), is liable, or may be or become liable, to pay money, whether in relation to a debt, by way of damages or compensation or otherwise, or to account for securities or other property, the Court may, on application by the SSA or by an aggrieved person, make one or more of the following orders —

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

- (e) an order prohibiting a person holding money, securities or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities or other property, is or are held;
  - (f) an order prohibiting the taking or sending out of Australia by a person of money of the relevant person or of an associate of the relevant person;
  - (g) an order prohibiting the taking, sending or transfer by a person of securities or other property of the relevant person, or of an associate of the relevant person —
    - (i) from a place in this State to a place outside this State (including the transfer of securities from a register in this State to a register outside this State); or
    - (ii) from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);
  - (h) an order appointing —
    - (i) if the relevant person is an individual, a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
    - (ii) if the relevant person is a body corporate, a receiver having such powers as the Court orders, of the property or of part of the property of that person;
  - (i) if the relevant person is an individual, an order requiring that person to deliver up to the Court his or her passport and any other documents the Court considers appropriate;
  - (j) if the relevant person is an individual, an order prohibiting that person from leaving Australia without the consent of the Court.
- (2) A reference in subsection (1) (g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example —
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
  - (b) in a fiduciary capacity.
- (3) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(4) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(5) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(6) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

(7) An order under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(8) This section has effect subject to the *Bankruptcy Act 1966* of the Commonwealth.

(9) A person must not contravene an order by the Court under this section that is applicable to the person.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

#### **Unlawfully acting as director**

**300.** (1) A person, who is not the director of a society, or the alternate director of such a director, must not purport to act as a director of a society.

(2) A director of a society must not permit a person who is not a director of the society, or the alternate director of such a director, to purport to act as a director of the society.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### ***Division 3 — Meetings of Members of a Society***

#### **Annual general meeting**

**301.** (1) The first annual general meeting of a society must be held within 18 months after it is registered under this Code.

(2) The second and every subsequent annual general meeting of a society must be held within 5 months after the close of its financial year, or within any further time allowed by the SSA or prescribed.

(3) A society that fails to hold an annual general meeting as required by this section commits an offence.

Maximum penalty applying to subsection (3): \$5 000.

### **Special general meeting**

**302.** (1) The board of a society may convene a special general meeting of the society.

(2) The board of a society must immediately proceed to convene a special general meeting of the society if required to do so by not less than the number of members prescribed for that purpose by the society's rules.

### **Quorum**

**303.** (1) A general meeting of a society must not deal with an item of business unless a quorum is present.

(2) Subsection (1) does not apply to an item of business that may be dealt with by postal voting under the society's rules.

(3) A quorum is as prescribed by the society's rules.

### **Notice of meeting**

**304.** (1) Subject to subsection (2) —

(a) written notice of an annual general meeting must be given personally or by post to each member of the society at least 14 days before the date of the meeting; and

(b) written notice of a special general meeting must be given personally or by post to each member of the society at least 7 days before the date of the meeting.

(2) If the society's rules so provide, notice of an annual general meeting or special general meeting may be given to the members of the society by advertisement published in a newspaper circulating generally —

(a) in the area of this State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

(3) Notice of a general meeting of a society must be displayed in a conspicuous place at the registered office and each other office of the society over a period of at least —

- (a) in the case of an annual general meeting, 14 days immediately before the date of the meeting; and
- (b) in the case of a special general meeting, 7 days immediately before the date of the meeting.

(4) The failure by a member of a society to receive notice of a general meeting required to be given to the member by this Code does not invalidate the meeting.

(5) A society that fails to give notice of an annual general meeting, or a special general meeting, or to display notice of a general meeting in accordance with this section commits an offence and is liable on conviction to a maximum penalty of \$5 000.

### **Voting**

**305.** (1) Subject to this section, a member of a society is entitled to exercise one vote on any question arising for determination by the society's members.

(2) A society's rules may provide that a member's entitlement to vote as a member may not be exercised unless the member satisfies one or more of the following —

- (a) the member has an interest in a benefit fund of the society;
- (b) the member has been a member of a benefit fund for not less than the minimum period prescribed by the society's rules;
- (c) the member has, or had at a certain time, or has had for a certain period, a specified minimum interest in a benefit fund as prescribed by the society's rules;
- (d) the member has made contributions to a benefit fund in accordance with the society's rules and complied with any terms and conditions for the provision of benefits from that fund;
- (e) the member holds at a certain time, or has held for a certain period, a specified minimum amount of paid-up share capital.



(3) Subject to subsection (2) (e) and section 236 (3) (b), a member of a society who has permanent shares in the society has —

- (a) one vote; or
- (b) if the rules so provide, 2 or more votes determined by the number of permanent shares, or parcels of paid-up share capital held by the member (but in any case not more votes than the number of permanent shares held by the member),

whichever is the greater.

(4) The SSA must not register rules referred to in subsection (2) unless it approves —

- (a) in the case of subsections (2) (b) and (2) (c), the minimum period or the minimum interest in a benefit fund (as the case requires); or
- (b) in the case of subsection (2) (d), the terms and conditions for provision of benefits; or
- (c) in the case of subsection (2) (e), the minimum amount of paid-up share capital.

(5) A member of a society appointed to represent a corporate member of the society may vote both as a member and as such a representative.

### **Proxy votes**

**306.** (1) The rules of a society may provide —

- (a) that proxy voting is allowed at a meeting of the society;
- (b) that a proxy may specify the way in which the member giving the proxy wishes the vote to be exercised;
- (c) that a person who is not a member may be appointed as proxy for a member.

(2) A person appointed as a proxy —

- (a) may not act as a proxy for more than 10 members who do not specify the way the vote is to be exercised;
- (b) may act as a proxy for an unlimited number of members who specify the way the vote is to be exercised.

### **Special resolutions of societies**

**307.** (1) For the purposes of this Code, a special resolution of members of a society is a resolution passed by a majority of not less than two-thirds of those members of the society who, being entitled to vote —

- (a) in any case, vote, either personally or by proxy, at a meeting of the society at which a motion for the passing of the resolution is moved and vote on the resolution; or
- (b) in the case of a merger of societies or transfer of engagements under Part 7, vote on the resolution by a postal ballot conducted in accordance with the regulations.

(2) In the case of a special resolution passed at a meeting of a society, unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Subject to subsection (4), written notice of a proposed special resolution, containing the text or a summary of the resolution, must be given personally or by post to each member of the society who is entitled to vote on the resolution at least 21 days before the date of the meeting or close of the postal ballot.

(4) If the rules of the society so provide, notice of a proposed special resolution, containing the text or a summary of the resolution, may be given to the members of the society entitled to vote on the resolution by advertisement published in a newspaper circulating generally —

- (a) in the area of this State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

(5) A purported special resolution of members of a society in relation to which notice has not been given in accordance with subsection (3) or (4) is of no effect.

(6) However, the failure by a member of a society to receive notice of a proposed special resolution does not invalidate the passing of the resolution.

(7) A society must, within one month after a special resolution has been passed, submit the resolution to the SSA for registration.

(8) A special resolution of members of a society is of no effect until registered.

(9) The SSA must register a special resolution of a society if satisfied that —

- (a) the special resolution is not contrary to —
  - (i) the friendly societies legislation; or
  - (ii) the standards; and
- (b) there is no good reason why the special resolution should not be registered.

(10) This section applies in relation only to those matters that are required by this Code or a society's rules to be passed or approved by a special resolution of members of a society.

### **Minutes**

**308.** A society must cause full and accurate minutes to be kept of every meeting of its members.

Maximum penalty: \$25 000.

### ***Division 4 — Meetings of Members of a Benefit Fund***

#### **Application of Division**

**309.** This Division applies to meetings of members of a benefit fund of a society for the purpose of —

- (a) approving a restructure of a benefit fund under Division 3 of Part 4A;
- (b) approving the termination of a benefit fund under Division 4 of Part 4A;
- (c) a special meeting under section 43;
- (d) a meeting of members of a benefit fund held pursuant to the society's rules.

### **Quorum**

**310.** (1) A meeting of members of a benefit fund must not deal with an item of business unless a quorum is present.

- (2) A quorum is as prescribed by the society's rules.

### **Notice of meeting**

**311.** (1) Subject to subsection (2), written notice of a meeting of members of a benefit fund must be given personally or by post to each member of the benefit fund at least 7 days before the date of the meeting.

(2) If the society's rules so provide, notice of a meeting of members of a benefit fund may be given to the members of the benefit fund by advertisement published in a newspaper circulating generally —

- (a) in the area of this State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

(3) Notice of a meeting of members of a benefit fund must be displayed in a conspicuous place at the registered office and each other office of the society over a period of at least 7 days immediately before the date of the meeting.

(4) The failure by a member of a benefit fund to receive notice of a meeting required to be given to the member by this Code does not invalidate the meeting.

(5) A society that fails to give notice of a meeting of members of a benefit fund, or to display notice of such a meeting, in accordance with this section commits an offence and is liable on conviction to a maximum penalty of \$5 000.

### **Voting**

**312.** (1) Subject to this section, a member of a benefit fund is entitled to exercise one vote on any question arising for determination by the members of the benefit fund.

(2) A society's rules may provide that a member's entitlement to vote as a member of a benefit fund may not be exercised unless the member satisfies one or more of the following —

- (a) the member has been a member of the benefit fund for not less than the minimum period prescribed by the society's rules;
- (b) the member has, or had at a certain time, or has had for a certain period, a specified minimum interest in the benefit fund prescribed by the society's rules;
- (c) the member has made contributions to the benefit fund in accordance with the society's rules and complied with any terms and conditions for the provision of benefits from that fund.

(3) The SSA must not register rules referred to in subsection (2) unless it approves the minimum period or interest specified in the rules.

(4) A member of a benefit fund appointed to represent a corporate member of the benefit fund may vote both as a member and as such a representative.

### **Proxy votes**

**313.** (1) The rules of a society may provide —

- (a) that proxy voting is allowed at a meeting of the members of a benefit fund;
- (b) that a proxy may specify the way in which the member of the benefit fund giving the proxy wishes the vote to be exercised;
- (c) that a person who is not a member of the benefit fund may be appointed as proxy for a member.

(2) A person appointed as a proxy —

- (a) may not act as a proxy for more than 10 members of a benefit fund who do not specify the way the vote is to be exercised;
- (b) may act as a proxy for an unlimited number of members of a benefit fund who specify the way the vote is to be exercised.

### **Special resolutions of benefit funds**

**314.** (1) For the purposes of this Code, a special resolution of members of a benefit fund is a resolution passed by a majority of not less than two-thirds of those members of the benefit fund who, being entitled to vote, vote, either personally or by proxy, at a meeting of members of the benefit fund at which a motion for the passing of the resolution is moved and vote on the resolution.

(2) Unless a poll is demanded, a declaration by the person presiding at a meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Subject to subsection (4), written notice of a proposed special resolution, containing the text or a summary of the resolution, must be given personally or by post to each member of the benefit fund who is entitled to vote on the resolution at least 21 days before the date of the meeting.

(4) If the rules of the society so provide, notice of a proposed special resolution, containing the text or a summary of the resolution, may be given to members of the benefit fund entitled to vote on the resolution by advertisement published in a newspaper circulating generally —

- (a) in the area of the State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

(5) A purported special resolution of members of a benefit fund in relation to which notice has not been given in accordance with subsection (3) or (4) is of no effect.

(6) However, the failure by a member of a benefit fund to receive notice of a proposed special resolution does not invalidate the passing of the resolution.

(7) This section applies in relation only to those matters that are required by this Code or a society's rules to be passed or approved by a special resolution of members of a benefit fund.

### **Minutes**

**315.** A society must cause full and accurate minutes to be kept of every meeting of members of its benefit funds.

Maximum penalty: \$25 000.

### ***Division 5 — Registers and Inspection***

#### **Registers**

**316.** (1) A society must keep such registers as are prescribed.

Maximum penalty: \$25 000.

(2) Subject to this section, all registers required to be kept by a society (whether under this section or any other provision of this Code) must be kept at the registered office of the society and be kept in such way, and contain such particulars, as may be prescribed.

Maximum penalty: \$5 000.

(3) With the written consent of the SSA, all or any of the registers may be kept at an office of the society other than its registered office.

(4) A society may, as authorized by its rules, make an entry in any of its registers or accounts to indicate that money received by it is held in trust, but is not to be regarded as being affected by notice of any trust in relation to the money whether or not any such entry is made.

**Register of directors etc.**

**317.** (1) In determining for the purposes of this section whether a person has a relevant interest in a security issued by a body corporate, section 252 applies as if a reference in that section to a share were a reference to a security.

(2) A society must keep a register of its directors and secretaries in accordance with subsections (3) and (4).

Maximum penalty: \$25 000.

(3) The register must show in relation to each director of the society —

- (a) the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any) of the director; and
- (b) particulars of directorships held by the director in bodies corporate (other than related bodies corporate) —
  - (i) that are public companies or subsidiaries of public companies; or
  - (ii) that are other societies or foreign societies; or
  - (iii) that are financial institutions within the meaning of the *Financial Institutions Code* of a State; and
- (c) securities issued by the society in which the director has a relevant interest, and the nature and extent of the interest; and
- (d) securities issued by a body corporate that is related to the society, being securities in which the director has a relevant interest, and the nature and extent of that interest; and
- (e) particulars of rights or options of the director, or of the director and another person, in relation to the acquisition or disposal of securities issued by the society or a body corporate that is related to the society; and
- (f) particulars of contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of securities issued by the society or a body corporate that is related to the society; and
- (g) whether the director is entitled to an interest in a benefit fund of the society and, if so, the name of that benefit fund.

(4) The register must show in relation to each secretary the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any), of the secretary.

(5) A society need not show in its register in relation to a director particulars of securities issued by a body corporate that is related to the society and is a wholly owned subsidiary of the society.

(6) A society must, within 7 days after receiving notice from a director under section 293 (1) (a), enter in its register, in relation to the director, the particulars specified in subsection (3) of this section, including the number and description of securities, rights, options and contracts and any entitlement to an interest in a benefit fund of the society to which the notice relates and, in relation to securities, rights or options acquired or contracts entered into after he or she became a director —

- (a) the price or other consideration for the transaction (if any) because of which an entry is required to be made in the register; and
- (b) the date of —
  - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
  - (ii) if there was no transaction, the happening of the event because of which an entry is required to be made in the register.

Maximum penalty: \$25 000.

(7) A society must, within 3 days after receiving a notice from a director under section 293 (1) (b), enter in its register the particulars of the change specified in the notice.

Maximum penalty: \$25 000.

(8) A society is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be on inquiry as to, the right of a person to or in relation to a security issued by the society or an interest in any benefit fund of the society.

(9) A society must lodge with the SSA —

- (a) within one month after a person has become, or ceased to be, a director or a secretary of the society, a return in the prescribed form advising that fact and containing in relation to a new director or secretary the matters required by subsection (3) or (4) to be shown in the register;



- (b) within one month after receiving a notice from a director or secretary of a change in the matters required by subsection (3) or (4) to be shown in the register, a return in the prescribed form advising the particulars of the change specified in the notice.

Maximum penalty: \$500.

(10) A register kept by a society under this section must be open for inspection —

- (a) by any member of the society, without fee; and
- (b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

(11) A society must produce its register at the start of each annual general meeting of the society and keep it open and accessible during the meeting to all persons attending the meeting.

Maximum penalty: \$5 000.

(12) It is a defence to a prosecution for failing to comply with subsection (3) or (6) in relation to particulars relating to a director if the defendant proves that the failure was due to the failure of a director to comply with section 293 in relation to those particulars.

(13) In this section —

“**security**” does not include benefit in a benefit fund.

#### **Register of members to be kept**

**318.** (1) A society must keep a register of members of the society and enter in the register —

- (a) the names and addresses of the members; and
- (b) the date of admission to membership of the society; and
- (c) any other prescribed information.

Maximum penalty: \$25 000.

(2) A society must, for each of its benefit funds, keep a register of members and enter in the register —

- (a) the names and addresses of the members of the benefit fund; and
- (b) the date of admission to membership of the benefit fund; and
- (c) any other prescribed information.

Maximum penalty: \$25 000.

### **Registers of members**

**319.** (1) The register of members of a society is evidence of membership of the society.

(2) The register of members of a benefit fund is evidence of membership of the benefit fund.

(3) A member of a society is entitled to have access to that part of a register of members in which particulars of his or her membership are entered.

(4) A society may refuse to allow a person, other than a member mentioned in subsection (3), to have access to a register unless the person satisfies the society that the person requires access for the purpose of —

- (a) calling a meeting of members of the society or a benefit fund; or
- (b) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with subsection (4), to have access to a register, the society may require the person to enter into a contract with the society under which the person undertakes —

- (a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and
- (b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) If a register includes the numbers of certificates or other documents evidencing the holdings of its members of shares (if any) allocated to them, nothing in subsections (3) to (5) requires —

- (a) a person to be allowed to see the numbers when inspecting the register; or
- (b) a copy of the register, or a part of it, sent to a person to contain those numbers.

### **Register of holders of permanent shares**

**320.** (1) A society must keep a register of holders of permanent shares in the society and enter in that register —

- (a) the names and addresses of those holders; and

- (b) the date of every allotment of any permanent shares to holders and the number of permanent shares comprised in each allotment; and
- (c) the date of entry of a transfer or transmission of any permanent shares to holders and the number of permanent shares comprised in each transfer or transmission; and
- (d) any other prescribed information.

Maximum penalty: \$25 000.

(2) The register of holders of permanent shares in a society is evidence of ownership of permanent shares in the society.

(3) A holder of permanent shares in a society is entitled to have access to that part of the register of holders of permanent shares in which particulars of his or her shareholding are entered.

(4) A society may refuse to allow a person, other than a holder of permanent shares mentioned in subsection (3), to have access to the register of holders of permanent shares unless the person satisfies the society that the person requires access for the purpose of —

- (a) calling a meeting of permanent shareholders; or
- (b) making an offer to acquire permanent shares; or
- (c) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with subsection (4), to have access to the register of holders of permanent shares, the society may require the person to enter into a contract with the society under which the person undertakes —

- (a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and
- (b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) Nothing in subsections (3) to (5) requires —

- (a) a person to be allowed to see the numbers of the certificates that have been issued evidencing the holding of permanent shares; or
- (b) a copy of the register, or part of it, sent to a person to contain those numbers.

**Power of Court to rectify register of holders of permanent shares**

- 321.** (1) If —
- (a) an entry is omitted from the register of holders of permanent shares; or
  - (b) an entry is made in the register without sufficient cause; or
  - (c) an entry wrongly exists in the register; or
  - (d) there is an error or defect in an entry in the register; or
  - (e) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having ceased to be a holder of permanent shares,

the person aggrieved, or any member or the society, may apply to the Court for rectification of the register and the Court may refuse the application or may order rectification of the register and payment by the society of any damages sustained by any party to the application.

- (2) On an application under this section, the Court may decide —
- (a) any question relating to the right of a person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises between —
    - (i) a holder, or alleged holder, of permanent shares on the one hand and another holder, or alleged holder, of permanent shares on the other hand; or
    - (ii) a holder, or alleged holder, of permanent shares on the one hand and the society on the other hand; and
  - (b) generally any question necessary or expedient to be decided in relation to the rectification of the register.

(3) If a society is required by this Code to lodge a return containing a list of holders of permanent shares with the SSA, the Court, when making an order for rectification of the register, is by its order to direct a notice of the rectification to be so lodged.

**Register of options**

**322.** (1) A society must keep a register of options granted to persons to take up permanent shares in the society.

Maximum penalty: \$25 000.

(2) A society must, within 14 days after the grant of an option to take up permanent shares in the society, enter in the register the following particulars —

- (a) the name and address of the holder of the option;
- (b) the date on which the option was granted;
- (c) the number and description of the shares in relation to which the option was granted;
- (d) the period during which, the time at which or the occurrence on the happening of which the option may be exercised;
- (e) the consideration (if any) for the grant of the option;
- (f) the consideration (if any) for the exercise of the option or the way in which that consideration is to be ascertained or determined;
- (g) such other particulars as are prescribed.

Maximum penalty: \$25 000.

(3) The register must be kept open for inspection —

- (a) by any member of the society, without fee; and
- (b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

Maximum penalty: \$5 000.

(4) A society must keep, at the place where the register is kept, a copy of every instrument by which an option to take up permanent shares in the society is granted and, for the purposes of subsection (3) and section 323 (4), those copies are taken to be part of the register.

Maximum penalty: \$25 000.

(5) Failure by a society to comply with any of the provisions of this section in relation to an option does not affect any rights in relation to the option.

### **Inspection of rules and other documents**

**323.** (1) A society must keep at its registered office available for inspection without fee by members of the society, persons eligible for membership of the society and its creditors —

- (a) a copy of this Code and the regulations; and

- (b) a copy of the AFIC Code and the regulations in force for the purposes of that Code; and
- (c) a copy of the rules of the society; and
- (d) a copy of the last accounts of the society, together with a copy of the report of the auditor on those accounts; and
- (e) a copy of the last directors' report under section 336.

(2) A society must keep a copy of its rules available for inspection without fee by members of the society at each office of the society.

(3) A society must, on request by a member of the society, give the member particulars of his or her financial position with the society as a member or shareholder.

(4) Subject to the regulations and to sections 318 and 319, a member may request a society to give him or her a copy of a register or any part of a register kept by the society under this Code and, where such a request is made, the society must send the copy to the member —

- (a) if the society requires payment of an amount prescribed by the rules, within 21 days after payment of the amount is received by the society or within such longer period as the SSA approves; or
- (b) in any other case, within 21 days after the request is made or within such longer period as the SSA approves.

Maximum penalty: \$5 000.

#### **Location of registers on computers**

**324.** (1) This section applies despite anything in this Division to the contrary.

(2) This section applies if —

- (a) a society records, otherwise than in writing, matters (the **“stored matters”**) this Division requires to be contained in a register; and
- (b) the record of stored matters is kept at a place (the **“place of storage”**) other than the place (the **“place of inspection”**) where the register is, apart from this section, required to be kept; and
- (c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and

- (d) the society has served the SSA with a notice stating that this section is to apply to —
  - (i) unless sub-paragraph (ii) applies, the register; or
  - (ii) if the stored matters are only some of the information that is required to be contained in the register, the register and matters that are of the same kind as the stored matters,and specifying the situation of the place of storage and the place of inspection.

(3) The society is taken to have complied with the requirements of this Division about the location of the register, but only as far as the register is required to contain the stored matters.

(4) However, if —

- (a) the situation of the place of storage or the place of inspection changes; and
- (b) the society does not serve notice of the change within 14 days after the change,

this section, as it applies to the society because of the serving of the notice mentioned in subsection (2) (d), ceases to apply at the end of the 14 days.

#### **Form and evidentiary value of registers**

**325.** (1) A register that is required by this Division to be kept or prepared may be kept or prepared —

- (a) by making entries in a bound or loose-leaf book; or
- (b) by recording or storing matters using a mechanical, electronic or other device; or
- (c) in another way approved by the SSA.

(2) Subsection (1) does not authorize a register 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 the matters is kept in written form approved by the SSA.

(3) A society must take all reasonable precautions, including the precautions (if any) prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any register or part of a register required by this Division to be kept or prepared by the society.

(4) If a society records or stores matters using a mechanical, electronic or other device, a duty imposed by this Division to make a register containing the matters available for inspection or to provide copies of the whole or a part of a register containing the matters is taken to be 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) A regulation may provide for how up-to-date the information contained in an instrument prepared for subsection (4) must be.

(6) If —

- (a) because of this Code, a register that this Division requires to be kept or prepared is evidence of a matter; and
- (b) the register, or part of the register, is kept or prepared by recording or storing matters (including the matter) using a mechanical, electronic or other device,

a written reproduction of the matter as so recorded or stored is evidence of the matter.

(7) A writing purporting to reproduce a matter recorded or stored using a mechanical, electronic or other device is taken to be a reproduction of the matter unless the contrary is established.

### ***Division 6 — Accounts***

#### **Financial year**

**326.** (1) The financial year of a society is the period from 1 July to the following 30 June.

(2) If a society is registered (otherwise than as a result of a merger) on a day falling between 1 January and 30 June in any year, its first financial year may, if the society so elects, extend to 30 June in the following year.

(3) Despite subsection (1), but subject to subsection (4), if at the commencement of this section the financial year of a society is a period other than that specified in subsection (1), the society may retain that period as its financial year.



(4) If the SSA by written notice given to the society directs it to comply with subsection (1), the society must do so within 2 years of receiving the notice.

Maximum penalty applying to subsection (4): \$5 000.

### **Financial years of groups**

**327.** (1) Subject to —

- (a) this section; and
- (b) where the entity is formed or incorporated outside Australia, any law in force in the entity's place of formation or incorporation,

a society's directors must do whatever is necessary to ensure that the financial year of each entity that the society controls coincides with the financial year of the society.

(2) Subsection (1) must be complied with in relation to a particular entity within 12 months after —

- (a) if the society controlled the entity at the commencement of this section, that commencement; or
- (b) if the society is taken to control the entity by virtue of a regulation made for the purposes of this Code or an applicable accounting standard, the date of the regulation or accounting standard taking effect; or
- (c) in any other case, the society began to control the entity.

### **Accounting records to be kept**

**328.** (1) A society must —

- (a) keep accounting records that correctly record and explain the transactions (including any transactions by the society as trustee) and the financial position of the society and each of its funds; and
- (b) keep the accounting records in a way that will enable —
  - (i) true and fair accounts of the society and each of its funds to be prepared periodically; and
  - (ii) the accounts of the society and each of its funds to be conveniently and properly audited in accordance with this Part; and

- (c) retain the accounting records for a period of 7 years after the completion of the transactions to which they relate; and
- (d) keep accounting records in writing in the English language or in a form which enables the accounting records to be readily accessible and readily convertible into writing in the English language; and
- (e) keep the accounting records at such a place or places as its directors think fit.

(2) If any of the accounting records of a society are kept at a place outside this State, the society must keep at a place within this State determined by the directors such information as would enable true and fair accounts, and any documents or reports required by this Part to be attached to the accounts, to be prepared.

Maximum penalty: \$75 000.

### **Inspection of accounting records**

**329.** (1) A society must make its accounting records available at all reasonable times for inspection without fee by any director of the society and by any other person authorized or permitted under the friendly societies legislation to inspect the accounting records.

Maximum penalty: \$75 000.

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

(3) A registered company auditor who inspects accounting records under a Court order must not disclose to a person other than the director on whose application the order was made any information acquired during the inspection.

Maximum penalty: \$50 000 or imprisonment for 7 years, or both.

(4) The cost of an inspection conducted under a Court order must be met by the society.

### **Profit and loss accounts and balance sheets**

**330.** The directors of a society must, before the day on which notice of an annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is

required by section 301 to be held, not less than 21 days before the end of the period, cause to be prepared —

- (a) profit and loss accounts for the last financial year giving a true and fair view of the profit or loss of the society and each of its funds for that financial year; and
- (b) balance sheets as at the end of the last financial year giving a true and fair view of the state of affairs of the society and each of its funds as at the end of that financial year.

### **Group accounts**

**331.** If at the end of a financial year of a society, the society is a holding society, the directors of the society must —

- (a) before the day on which notice of the next annual general meeting of the society is given; or
- (b) if an annual general meeting is not held within the period within which it is required by section 301 to be held, not less than 21 days before the end of that period,

cause to be prepared —

- (c) a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the society and the entities it controlled from time to time during that financial year (even if the society did not control the same entities during all of that financial year); and
- (d) a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs as at the year's end, of the economic entity constituted by the society and the entities that it controls at the year's end,

so far as such a true and fair view of the profit and loss and state of affairs concern members of the holding society.

### **Audit**

**332.** (1) The directors of a society must take reasonable steps to ensure that the accounts and group accounts are audited as required by this Part before the day before which the accounts are required by this Division to have been prepared.

(2) The directors of a society must cause to be attached to, or endorsed on, the accounts or group accounts the auditor's report given to the directors under Division 7.

**Directors to ascertain certain matters**

**333.** Before the profit and loss accounts and balance sheets are prepared, the directors of a society must 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; and
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realize in the ordinary course of business their value as shown in the accounting records of the 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 documents of the society at an amount that, having regard to its value to the society as a going concern, exceeds the amount that it would have been reasonable for the society to spend 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 because of the overstatement of the amount of that asset.

**Requirements applying to accounts and group accounts**

**334.** (1) The directors of a society must ensure that the accounts and group accounts —

- (a) comply with the prescribed requirements; and
  - (b) comply with applicable accounting standards.
- (2) AFIC may, by *Gazette* notice, declare an accounting standard to be an applicable accounting standard in relation to the accounts and group accounts, subject to any modifications that are specified in the notice.
- (3) AFIC may, by *Gazette* notice, vary or revoke a notice under subsection (2).

(4) If accounts or group accounts prepared in accordance with subsection (1) would not otherwise give a true and fair view of the matters required by this section to be dealt with in those accounts, the directors of the society must add such information and explanations as will give a true and fair view of those matters.

#### **Directors' statement**

**335.** (1) The directors of a society must cause to be attached to any accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether in the opinion of the directors —

- (a) the profit and loss accounts are drawn up so as to give a true and fair view of the profit or loss of the society and each of its funds for the financial year; and
- (b) the balance sheets are drawn up so as to give a true and fair view of the state of affairs of the society and each of its funds as at the end of the financial year; and
- (c) as at the date of the statement, there are reasonable grounds to believe that the society will be able to pay its debts as and when they fall due.

(2) The directors of a society that is a holding society must cause to be attached to group accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of —

- (a) the profit or loss of the society and the entities it controlled during all or part of the last financial year; and
- (b) the state of affairs of the society and the entities it controlled as at the end of the last financial year,

so far as they concern members of the society.

(3) The directors of a society —

- (a) must, in forming an opinion as to the matters mentioned in subsection (1) (a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen and information that has become available, since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts; and

- (b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information 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 as a result of those adjustments not having been made.
- (4) The directors of a society that is a holding society —
- (a) must, in forming an opinion as to the matters mentioned in subsection (2) (a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen, or information that has become available, since —
    - (i) in the case of circumstances or information relating to the society, the end of the financial year of the society to which the group accounts relate; or
    - (ii) in the case of circumstances or information relating to an entity controlled by the society, the end of the financial year of the entity to which the group accounts relate,being circumstances or information that would, if the group accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those group accounts; and
  - (b) must, if adjustments have not been made in those group accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of those group accounts, or of an amount or particular in those group accounts, include in the statement such information and explanations as will prevent those group accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

#### **Directors' reports**

**336.** (1) The directors of a society, other than a society to which subsection (2) applies, must, before (but not more than 3 weeks before) the day before which the accounts for its last financial year are required under this Division to be prepared, cause to be prepared a

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

- (a) stating the names of the directors in office at the date of the report and specifying for each director —
  - (i) the qualifications, experience and special responsibilities (if any) of the director; and
  - (ii) the number, type and class of any securities or any entitlement to an interest in a benefit fund of the society for which the society is required to keep particulars, for the director, under section 317; and
  - (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 2 since the commencement of this section or the date on which particulars were last given under this paragraph; and
- (b) stating that —
  - (i) the society keeps a register under section 317 containing information about the directors, including details of each director's interests in securities issued by the society or in a benefit fund of the society (where applicable); and
  - (ii) the register is open for inspection by any member of the society, without fee, and by any other person, on payment of the amount (if any) prescribed by the society's rules; and
- (c) stating —
  - (i) the principal activities of the society during its last financial year and any significant change in the nature of those activities that happened during that financial year; and
  - (ii) the net amount of the profit or loss of the society for that financial year after provision for income tax; and
  - (iii) the amount (if any) that the directors recommend should be paid by way of dividend and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2); and

- (d) containing a review of the operations of the society during that financial year and of the results of those operations; and
- (e) giving particulars of any significant change in the state of affairs of the society that happened during that financial year; and
- (f) 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 society; or
  - (ii) the results of those operations; or
  - (iii) the state of affairs of the society,in financial years subsequent to that financial year; and
- (g) referring to —
  - (i) likely developments in the operations of the society; and
  - (ii) the expected results of those operations,in financial years subsequent to that financial year.

(2) The directors of a society that is a holding society in relation to a financial year must, before (but not more than 3 weeks before) the day before which the group accounts for that financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors —

- (a) stating the names of the directors in office at the date of the report and specifying for each director —
  - (i) the qualifications, experience and special responsibilities (if any) of the director; and
  - (ii) the number, type and class of any securities or any entitlement to an interest in a benefit fund of the society for which the society is required to keep particulars, for the director, under section 317; and
  - (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 2 since the commencement of this section or the date on which particulars were last given under this paragraph; and



- (b) stating that —
  - (i) the society keeps a register under section 317 containing information about the directors, including details of each director's interests in securities issued by the society or in a benefit fund of the society (where applicable); and
  - (ii) the register is open for inspection by any member of the society, without fee, and by any other person, on payment of the amount (if any) prescribed by the society's rules; and
- (c) stating —
  - (i) the principal activities of the entities in the group during its last financial year and any significant change in the nature of those activities that happened during that period (even if the entities were not part of the group during all of the financial year); and
  - (ii) the net amount of the consolidated profit or loss of the entities in 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 an entity in the group; and
  - (iii) the amount (if any) that the directors of the society recommend should be paid by way of dividend and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1); and
- (d) containing a review of the operations of the group during that financial year and of the results of those operations; and
- (e) giving particulars of any significant change in the state of affairs of the group that happened during that financial year; and
- (f) 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; or
  - (ii) the results of those operations; or
  - (iii) the state of affairs of the group,in financial years subsequent to that financial year; and

- (g) 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) If, in the opinion of the directors of a society, it would prejudice the interests of the society if any particular information required under subsection (1) (g) or (2) (g) were to be included in a report —

- (a) the information need not be so included; and
- (b) the report must contain a statement that some, or all (as the case may require) of the information required under subsection (1) (g) or (2) (g) has not been included in the report.

(4) If a society, or an entity controlled by a holding society, has at any time granted to a person an option to have issued to him or her shares in the society or entity, the directors must state in the report —

- (a) in the case of an option granted by a holding society, or an entity controlled by a holding society, the name of the body granting the option; and
- (b) in the case of an option granted during the financial year or since the end of the financial year —
  - (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or of a class of shares of that society or entity, that the option was so granted; and
  - (ii) the number and classes of shares in relation to which the option was granted; and
  - (iii) the date of expiration of the option; and
  - (iv) the basis upon which the option is or was to be exercised; and
  - (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other body corporate; and
- (c) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option; and

- (d) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other body corporate.

(5) If any of the particulars required by subsection (4) have been stated in a previous report, they may be stated by reference to that report.

(6) The report must set out whether or not, during the financial year or since the end of the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that —

- (a) the director; or
- (b) a firm of which the director is a member; or
- (c) an entity in which the director has a substantial financial interest,

has made (during that or any other financial year) with —

- (d) the society; or
- (e) an entity that the society controlled, or a body corporate that was related to the society, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).

(7) A report referred to in subsection (6) must set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

(8) Subsections (6) and (7) do not apply to —

- (a) a benefit included in the aggregate amount of emoluments received or due and receivable, by directors shown in accordance with the regulations in force for the purposes of section 334 (1) (a); or
- (b) the fixed salary of a full-time employee of —
  - (i) the society; or
  - (ii) an entity that the society controlled, or a body corporate that was related to the society, at a relevant time; or

- (c) the provision of financial accommodation to a director that —
  - (i) does not contravene section 295; and
  - (ii) is shown in the society's accounts in accordance with applicable accounting standards.

(9) If there is attached to or included with a report of the directors laid before a society at its annual general meeting a statement, report or other document relating to the affairs of the society or any of the entities controlled by the society, not being a statement, report or document required by this Code to be laid before the society in general meeting, the statement, report or other document, for the purposes of section 464, is taken to be part of that first-mentioned report.

(10) To avoid doubt, if a society controlled a particular entity during part, but not all, of the financial year, the report need not relate to the entity's operations or state of affairs during a period during which the society did not control the entity or to the result of those operations.

**Directors of holding society must obtain information from entities controlled by the society**

**337.** (1) In this section —

“**reporting officers**”, in relation to an entity, means —

- (a) in the case of a body corporate, the body corporate's directors; or
- (b) in any other case, the entity's officers.

(2) Subject to subsection (5), the directors of a holding society must not cause the group accounts, or the statement under section 335 or the report under section 336 relating to them, to be prepared unless the directors have available to them sufficient information, in relation to each entity controlled by the society, 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 society and the entities it controlled during all or part of the last financial year; and
  - (ii) the state of affairs of the holding society and the entities it controlled as at the end of the last financial year,

so far as they concern members of the holding society; and

- (b) that neither the statement nor the report will be false or misleading in a material particular.

(3) Without limiting subsection (2), to ensure that the group accounts meet the requirements of the subsection, the directors must take, in relation to each entity controlled by the society, the reasonable steps that they are required to take under section 333 in relation to the society.

(4) The reporting officers of an entity controlled by a holding society during all or part of, or at the end of, a particular financial year must, at the request of the directors of the holding society, give to the holding society all the information that is required by the directors of the holding society for the preparation of the group accounts, the statement and the report.

(5) If the directors of a holding society, after taking all steps that are reasonably available to them, are unable to obtain from the reporting officers of the entity controlled by the holding society the information required for the preparation of the group accounts, the statement and the report, within the period within which they are respectively required by this Division to be prepared —

- (a) the directors of the holding society must cause the group accounts, statement and report to be prepared without incorporating or including the information relating to that entity, but —
  - (i) they must include in the group accounts, statement or report, as the case requires, a description of the nature of the information that has not been obtained, and must include such qualifications and explanations as are necessary to prevent the group accounts, statement or report from being misleading; and
  - (ii) they may qualify accordingly that part of the statement that is made under section 335 (2) (a); and
- (b) if the directors of the holding society have caused the group accounts, statement and report to be prepared in accordance with paragraph (a), they must, within one month after receiving any of that information from the reporting officers of the entity —
  - (i) lodge with the SSA a statement setting out or summarizing the information and containing such qualifications and explanations by the directors of the group accounts, statement or report as are necessary having regard to the information received from the reporting officers of the entity; and

- (ii) send a copy of that statement to each member of the society or, if the rules of the society so provide, make copies of the statement available to the members of the society at the registered office and each other office of the society.

**Accounts and reports to be laid before annual general meeting**

**338.** (1) The directors of a society must cause to be laid before each annual general meeting of the society —

- (a) a copy of the accounts made out in accordance with section 330 for the last financial year of the society; and
- (b) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was not a holding society, a copy of the directors' report made out in accordance with section 336 in relation to that financial year; and
- (c) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was a holding society, a copy of the group accounts made out in accordance with section 331 in relation to that financial year and a copy of the directors' report made out in accordance with section 336 in relation to that financial year; and
- (d) a copy of any auditor's report required by section 332 to be attached to and endorsed upon the accounts or group accounts; and
- (e) a copy of the statement by the directors required by section 335 to be attached to the accounts or group accounts.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to members of the society at the registered office and at each other office of the society from the day before which those documents are required under this Division to have been prepared until the holding of the annual general meeting.

**Contravention of Division**

**339.** (1) A director of a society who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division commits an offence.

Maximum penalty —

- (a) if the offence is committed with intent to deceive or defraud creditors of the society or creditors of any other person or

for a fraudulent purpose, \$100 000 or imprisonment for 15 years, or both; or

(b) in any other case, \$25 000.

(2) In any proceeding against a person for an offence against subsection (1) arising out of the accounts or the group accounts of a society not complying with an applicable accounting standard, the onus of proving that the accounts would not, if prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts lies on that person.

(3) In any proceeding for an offence against subsection (1) arising out of an omission from the accounts or the group accounts of a society, 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 this Division to be dealt with in those accounts.

(4) If, after the end of the period within which any accounts or any report of the directors of a society is or are required under this Division to be prepared, the SSA, by written notice 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 the requirements of this Division, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not prepared within that period.

#### *Division 7 — Audit*

##### **Qualifications of auditors**

**340.** (1) In this section —

“**officer of a society**” includes a receiver who is not also a manager.

(2) For the purposes of subsections (4) and (5), a person is taken to be an officer of a society if —

- (a) the person is an officer of an entity controlled by the society or a body corporate related to the society; or
- (b) except if the SSA directs that this paragraph not apply in relation to the person, the person has, at any time during the last 12 months, been an officer or promoter of the society or of an entity that is controlled by the society.

(3) For the purposes of this section, a person is not taken to be an officer of a society by reason only of —

- (a) being or having been the liquidator of the society or of an entity controlled by the society; or
- (b) having been appointed as auditor of the society or of an entity controlled by the society or, for any purpose relating to taxation, a public officer of a body corporate; or
- (c) being or having been authorized to accept, on behalf of the society or an entity controlled by the society, service of process or any notices required to be served on the society or entity.

(4) Subject to this section, a person must not —

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or
- (c) prepare a report required by the friendly societies legislation to be prepared by a registered company auditor or by an auditor of a society,

if —

- (d) the person is not a registered company auditor; or
- (e) the person is not ordinarily resident in this State; or
- (f) the person is indebted in an amount exceeding \$5 000 to the society or a related body corporate; or
- (g) the person —
  - (i) is an officer of the society; or
  - (ii) is a partner, employer or employee of an officer of the society; or
  - (iii) is a partner or employee of an employee of an officer of the society.

Maximum penalty: \$25 000.

(5) Subject to this section, a firm must not —

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or



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- (c) prepare a report required by the friendly societies legislation to be prepared by a registered company auditor or by an auditor of a society,

unless —

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in this State; or
- (e) if the business name under which the firm is carrying on business is not registered under the law of this State relating to business names, there has been lodged with the SSA a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and
- (f) neither the firm nor the member of the firm responsible for conducting the audit, or signing the report, is indebted in an amount exceeding \$5 000 to the society or a related body corporate; and
- (g) no member of the firm is —
  - (i) an officer of the society; or
  - (ii) a partner, employer or employee of an officer of the society; and
  - (iii) a partner or employee of an employee of an officer of the society; and
- (h) no officer of the society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

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

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

- (a) a person who was an auditor of the society by virtue of subsection (6) and who has so retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor of the society as from the day of that 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 343 does not apply to that resignation; and

- (b) a person who is a registered company auditor and who is so admitted to the firm is taken to have been appointed as an auditor of the society as from the date of admission to the firm; 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 society,

but nothing in this subsection affects the operation of subsection (5).

(8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a society by virtue of the appointment of the firm as auditor of the 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 society is not taken to be duly made or given unless it is signed in the firm name and in his or her 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 society, or prepares a report required by the friendly societies legislation to be prepared by an auditor of a society, each member of the firm commits an offence.

Maximum penalty: \$25 000.

(11) A person must not —

- (a) if appointed auditor of a society, knowingly disqualify himself or herself while the appointment continues from acting as auditor of the society; or
- (b) if a member of a firm that has been appointed auditor of a society, knowingly disqualify the firm while the appointment continues from acting as auditor of the society.

(12) The SSA, after consultation with AFIC, may exempt a person or firm from the requirement referred to in subsection (4) (e) or (5) (d).

### **Appointment of auditors**

**341.** (1) In this section, a reference to the appointment of a person or firm as auditor of a society includes a reference to the appointment of persons, firms, or a person or persons and a firm or firms, as auditors of the society.

(2) Within one month after incorporation, the directors of a society must appoint, unless the society at a general meeting has appointed, a person or firm as auditor of the society.

(3) A society, within 14 days after the appointment of an auditor under subsection (2), must give a notice of the appointment in the prescribed form to the SSA.

(4) A person or firm appointed as auditor under subsection (2) holds office, subject to this Division, until the first annual general meeting of the society.

(5) A society must —

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

Maximum penalty: \$25 000.

(6) A person or firm appointed as auditor under subsection (5) holds office —

- (a) until death or removal or resignation from office in accordance with section 343; or
- (b) until ceasing to be capable of acting as auditor because of section 340 (4) or (5).

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

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

(9) A society, or the directors of a society, must not appoint a person or firm as auditor of the society unless the person or firm has, before the appointment, consented by written notice given to the society or to the directors to act as auditor and has not withdrawn consent by written notice given to the society or to the directors.

Maximum penalty: \$5 000.

(10) A notice given by a firm must be signed in the firm name and in the name of a member of the firm who is a registered company auditor.

(11) A purported appointment of a person or firm as auditor of a society in contravention of subsection (9) has no effect.

(12) If an auditor of a society is removed from office at a general meeting in accordance with section 343 —

- (a) the society may at that meeting (without adjournment), by a resolution passed by a majority of its members as, being entitled so to do, vote in person, immediately appoint as auditor a person or firm to whom has been sent a copy of the notice of nomination in accordance with section 342; or
- (b) if a resolution is not passed, or could not be passed only because a copy of the notice of nomination had not been sent to a person, 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 society may, at the adjourned meeting, by ordinary resolution, appoint as auditor a person or firm notice of whose nomination for appointment as auditor has been received by the society from a member of the society at least 14 clear days before the date of the adjourned meeting.

(13) If after the removal from office of an auditor, the society fails to appoint another auditor under subsection (12) —

- (a) the society must, within 7 days after the failure, notify the SSA of the failure; and
- (b) the SSA must, unless there is another auditor of the society whom the SSA believes is able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor a person who or firm that has consented to be appointed.

Maximum penalty: \$25 000.

(14) Subject to subsection (13), if a society does not appoint an auditor when required by this Division to do so, the SSA may, on the written application of a member of the society, appoint as auditor of the society a person who or firm that has consented to be appointed.

(15) A person or firm appointed as auditor of a society under subsection (7), (12), (13) or (14) holds office, subject to this Division, until the next annual general meeting of the society.

(16) A director of a society must take all reasonable steps to comply with, or to secure compliance with, subsection (2) or (7).

Maximum penalty applying to subsection (16): \$25 000.

**Nomination of auditors**

**342.** (1) Subject to this section, a society must not appoint a person or firm as auditor of the society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless written notice of nomination of the person or firm as auditor was given to the society by a member —

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

(2) A purported appointment of a person or firm as auditor of the society in contravention of subsection (1) has no effect.

(3) If a society contravenes subsection (1), the society and any officer of the society who is in default each commits an offence.

Maximum penalty: \$25 000.

(4) If notice of nomination of a person or firm for appointment as auditor is received by the society, whether for appointment at a meeting or an adjourned meeting mentioned in section 341 (12) or at an annual general meeting, the society must not less than 7 days before the meeting or at the time notice of the meeting is given —

- (a) send a copy of the notice of nomination to each person or firm nominated and to each auditor of the society; and
- (b) cause a copy of the notice of nomination to be displayed in a conspicuous place at the registered office and each other office of the society until the day of the meeting.

Maximum penalty applying to subsection (4): \$5 000.

**Removal and resignation of auditors**

**343.** (1) Except as provided in section 44 (4) (f), an auditor of a society may only be removed from office by special resolution at a general meeting of the society.

(2) If notice of a special resolution to remove an auditor is given, the society must as soon as practicable send a copy of the notice to the auditor and to the SSA.

Maximum penalty: \$50 000.

(3) Within 7 days after receiving a copy of the notice, the auditor may make written representations of not more than a reasonable length to the society and request that a copy of the representations be displayed by the society in a conspicuous place at the registered office and each other office of the society until the day of the meeting at which the resolution is to be considered.

(4) Unless the SSA on the application of the society orders otherwise, the society must display a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, if 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.

Maximum penalty: \$50 000.

(5) If an auditor is removed from office, the society must immediately give to the SSA written notice of the removal.

Maximum penalty: \$50 000.

(6) An auditor of a society may, by written notice given to the society, resign as auditor of the society if the auditor —

- (a) by written notice given to the SSA, has applied for consent to the resignation and stated the reasons for the application; and
- (b) at or about the same time as the auditor gave the notice to the SSA, has given written notice of the application to the society; and
- (c) has received the consent of the SSA to the resignation.

(7) The SSA must, as soon as practicable after receiving a notice from an auditor, notify the auditor and the society whether it consents to the resignation.

(8) A statement made by an auditor in an application to the SSA for consent to the resignation or in answer to an inquiry by the SSA relating to the reasons for the application —

- (a) is not admissible in evidence in any civil or criminal proceeding against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor.

(9) A certificate by the SSA that a statement was made in the application or in the answer to an inquiry by the SSA is conclusive evidence that the statement was so made.

(10) Subject to subsection (11), the resignation of an auditor takes effect —

- (a) on the date (if any) specified for the purpose in the notice of resignation; or
- (b) on the date on which the SSA gives its consent to the resignation; or

(c) on the date (if any) fixed by the SSA for the purpose,  
whichever is the later.

(11) If, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of section 340 (5) (d), of acting as auditor of a society, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the society) give reasonable notice to the society of his or her retirement or withdrawal and, upon receipt of the notice by the society, the office of auditor becomes vacant.

Maximum penalty: \$50 000 or imprisonment for 7 years, or both.

(12) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor, the society must —

- (a) give a notice of the resignation, retirement or withdrawal in the prescribed form to the SSA; and
- (b) if there is a trustee for the holders of securities issued by the society, give to the trustee a copy of the notice given to the SSA.

Maximum penalty: \$50 000.

#### **Effect of winding up on office of auditor**

**344.** An auditor of a society ceases to hold office if —

- (a) a special resolution is passed for the voluntary winding up of the society; or
- (b) an order is made by the Court for the winding up of the society; or
- (c) the SSA issues a certificate under section 402 in relation to the society.

#### **Fees and expenses of auditors**

**345.** A society must pay the reasonable fees and expenses of an auditor, including the auditor's expenses in giving a report required to be given by this Code.

#### **Auditor's report**

**346.** (1) An auditor of a society must report to the members on the accounts required to be laid before the society at the annual general meeting and on the society's accounting records and other records

relating to those accounts and, if the society is a holding society for which group accounts are required, must also report to the members on the group accounts.

- (2) The auditor must state in the report —
- (a) whether the accounts and any group accounts are in the auditor's opinion properly prepared —
    - (i) so as to give a true and fair view of the matters required by sections 330 and 331 to be dealt with in the accounts or group accounts; and
    - (ii) in accordance with the friendly societies legislation; and
    - (iii) in accordance with applicable accounting standards; and
  - (b) if, in the auditor's opinion, the accounts or group accounts have not been prepared in accordance with a particular applicable accounting standard —
    - (i) whether, in the auditor's opinion, the accounts or group accounts, as the case may be, would, if prepared in accordance with that standard, have given a true and fair view of the matters required by sections 330 and 331 to be dealt with in those accounts; and
    - (ii) if, in the auditor's opinion, the accounts or group accounts would not, if so prepared, have given a true and fair view of those matters, the reasons for that opinion; and
    - (iii) if the directors have caused a statement to be attached to the accounts or group accounts giving particulars of the quantified financial effect on those accounts of the failure to so prepare the accounts, the auditor's opinion of those particulars; and
    - (iv) in a case to which neither sub-paragraph (ii) nor (iii) applies, particulars of the quantified financial effect on the accounts or group accounts of the failure to so prepare those accounts; and
  - (c) in the case of group accounts —
    - (i) the names of each entity that the society controlled during all or part of, or at the end of, the financial year but for which the auditor has not acted as auditor; and



- (ii) if there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of an entity controlled by the society of which he or she has not acted as auditor, and he or she has not examined the auditor's report (if any) on those accounts, the name of that entity; and
  - (iii) if the auditor's report on the accounts of an entity controlled by the society was made subject to any qualification, or included any comment made under subsection (4), the name of that entity and particulars of the qualification or comment; and
  - (d) 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
  - (e) if the auditor is not satisfied as to any matter mentioned in paragraph (a) or (b), the reasons for not being so satisfied.
- (3) The auditor of a society has a duty to form an opinion on each of the following matters —
- (a) whether the auditor has obtained all the information and explanations that he or she required;
  - (b) whether proper accounting records and other records, including registers, have been kept by the society as required by the friendly societies legislation;
  - (c) whether the returns received from offices of the society other than the registered office are adequate;
  - (d) if the society is a holding society —
    - (i) whether the accounts of the entities controlled by the society 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 the auditor has received satisfactory information and explanations as required by him or her for that purpose; and
    - (ii) whether the procedures and methods used by the society and by each of the entities it controls in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation.

(4) The auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in relation to any matter mentioned in subsection (3).

(5) The auditor must give the auditor's report to the directors of the society in sufficient time to enable the society to comply with the requirements of section 332 in relation to that report.

(6) The auditor's report —

- (a) must be attached to or endorsed on the accounts or group accounts; and
- (b) if a member so requires, must be read before the society at the annual general meeting; and
- (c) must be open to inspection by a member at any reasonable time.

(7) The auditor must, when giving the auditor's report, also give to the directors of the society a report as to —

- (a) the adequacy, in the auditor's opinion, of the systems adopted by the society to monitor and manage risks associated with its financial activities; and
- (b) any other matter of a kind prescribed in a standard made for the purpose of this subsection.

(8) An auditor must, at the time at which the auditor gives the directors of a society a report under subsection (7), give a copy of the report to the SSA.

(9) An auditor of a society who contravenes this section commits an offence.

Maximum penalty: \$5 000.

#### **Powers and duties of auditor**

**347.** (1) An auditor of a society has a right of access at all reasonable times to the accounting records and other records and registers of the society.

(2) The auditor is entitled to require from any officer of the society any information and explanation that the auditor requires for the audit.

(3) An auditor of a holding society for which group accounts are required has a right of access at all reasonable times to the accounting records and other records and registers of each entity that the society controlled during all or part of, or at the end of, any relevant financial year even if the holding society no longer controls the entity.

(4) The auditor is entitled to require from any officer or auditor of any entity controlled by the holding society, at the expense of the holding society, any information and explanation in relation to the affairs of the entity that the auditor requires for the purpose of reporting on the group accounts.

(5) An auditor of a society, or an agent authorized by the auditor in writing for the purpose —

- (a) is entitled to attend any general meeting of the society or, if held separately, any meeting of the members of any benefit fund; and
- (b) is entitled to receive all notices of, and other communications relating to, any general meeting of the society or, if held separately, any meeting of the members of any benefit fund that a member is entitled to receive; and
- (c) is entitled to be heard at any general meeting of the society or, if held separately, any meeting of the members of any benefit fund, that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor; and
- (d) is entitled so to be heard even though —
  - (i) the auditor retires at that meeting; or
  - (ii) a resolution to remove the auditor from office is passed at that meeting.

(6) If an auditor becomes aware that the society or the directors has or have not complied with section 301, or the provisions of section 338 relating to the laying of accounts or group accounts before the annual general meeting of the society, the auditor must immediately inform the SSA by written notice and, if accounts or group accounts have been prepared and audited, send to the SSA a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

(7) Except in a case to which subsection (6) applies, if an auditor, while performing duties as auditor of a society, is satisfied that —

- (a) there has been a contravention of the friendly societies legislation; and
- (b) the circumstances are such that, in the auditor's opinion, the matter has not been, or will not be, adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the society,

the auditor must immediately report the matter to the SSA by written notice.

- (8) If an auditor of a society or holding society —
- (a) is not satisfied that the accounts or group accounts comply with a particular applicable accounting standard; or
  - (b) is of the opinion that the accounts or group accounts do not comply with a particular applicable accounting standard,

the auditor must report the matter to the SSA in writing within 7 days after giving to the directors of the society or holding society his or her report under section 346.

(9) If an auditor sends to the SSA a report on the accounts or group accounts under subsection (8), the SSA may, by written notice to the society or holding society, require it to give a copy of the accounts or group accounts to the SSA within 7 days after service of the notice.

(10) In addition to any other report that an auditor, or former auditor, of a society is required to give to the SSA, an auditor, or former auditor, of a society must give to the SSA any report in relation to the affairs of the society that the SSA requires and the auditor, or former auditor, is able to give.

(11) An auditor, or former auditor, of a society who contravenes this section commits an offence.

Maximum penalty: \$5 000.

**Final audit on merger, etc.**

- 348.** (1) If —
- (a) a society is dissolved as part of a merger or transfer of engagements, under Part 7; or
  - (b) a society converts to a company or an incorporated association,

the auditor of the society must prepare a report containing prescribed statements and information relating to the accounts and the accounting records of the society for the financial year up to the date of dissolution of the society or the date approved by the SSA for the conversion, as the case may be, and for the preceding financial year if an auditor's report has not been prepared relating to the accounts for that year.

(2) The provisions of section 347 relating to the rights of access of an auditor to the records of a society and any entity controlled by a society apply in relation to a report under this section as if it were a report required under section 346.

(3) If a society is dissolved as part of a merger, or transfer of engagements, a report under this section in relation to the accounts must be given by the auditor to the directors of the merged society, or transferee society, as the case may be, within 2 months after the date of the merger or transfer and the directors of the merged society or transferee society must in turn, within 3 months after the date of the merger or transfer, send each auditor's report together with the accounts of each society dissolved as part of the merger or transfer to the SSA.

(4) If a society is converted to a company or an incorporated association, a report under this section in relation to the accounts must be given by the auditor —

- (a) if the society is converted to a company, to the directors of the company; or
- (b) if the society is converted to an incorporated association, to the managing body of the association,

within 2 months after the date approved by the SSA for the conversion and the directors of the company or the managing body of the association must in turn, within 3 months after the date approved for the conversion, send the auditor's report together with the accounts of the society to the SSA.

(5) An auditor of a society who contravenes this section commits an offence.

Maximum penalty: \$5 000.

(6) A director of a society or company, or a member of the managing body of an incorporated association, must take all reasonable steps to ensure that a report required by this section to be sent to the SSA by the directors of a society or company, or the managing body of the association, is so sent.

Maximum penalty applying to subsection (6): \$5 000.

#### **Auditors and entities controlled by societies**

**349.** (1) Despite the fact that an entity controlled by the society may be exempt from appointing an auditor under the Corporations Law, a society must ensure that the accounts and accounting records of an entity controlled by the society are audited in accordance with this Part.

Maximum penalty: \$75 000.

(2) If an entity controlled by a society has not appointed an auditor to audit its accounts and accounting records under this Part, the auditor of the holding society is also auditor of the entity.

**Obstruction of auditor**

- 350.** (1) An officer of a society must not —
- (a) fail without lawful excuse —
    - (i) to allow an auditor of the society access, in accordance with this Part, to any accounting records and other records and registers of the society that are in the custody or control of the officer; or
    - (ii) to give any information or explanation as and when required under this Part; or
  - (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.
- (2) An officer or auditor of an entity controlled by a society must not —
- (a) refuse or fail without lawful excuse —
    - (i) to allow an auditor of the society that controls the entity, or has controlled but no longer controls it, access, in accordance with this Part, to any accounting records and other records and registers of the entity in the custody or control of that officer or auditor; or
    - (ii) to give any information or explanation as and when required under this Part; or
  - (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

**Qualified privilege**

- 351.** (1) An auditor of a society has qualified privilege in relation to —
- (a) any oral or written statement made by the auditor while exercising functions as auditor of the society; and
  - (b) the giving to the SSA of a notice or report, or a copy of any accounts or group accounts.

(2) A person has qualified privilege in relation to the publishing of —

- (a) a document that is prepared by an auditor of a society while exercising functions as auditor of the society and is required under the friendly societies legislation to be lodged with the SSA or AFIC, whether or not the requirement has been complied with; and
- (b) any oral or written statement made by the auditor while exercising functions as auditor of the society.

(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 8 — Actuaries***

#### **Appointment of actuaries**

**352.** (1) Subject to subsection (2), a society must have an actuary appointed by the society.

(2) Within 6 weeks after a person ceases to be the actuary of a society, the society must appoint another person to be the actuary of the society.

(3) A person may only hold an appointment as actuary of a society if the person is eligible for such an appointment.

(4) Subject to section 353 (2), a person is eligible for appointment as a society's actuary if the person —

- (aa) is ordinarily resident in this State; and
- (a) is a Fellow of the Institute of Actuaries of Australia; and
- (b) has been such a Fellow for at least 5 years; and
- (c) is not indebted to the society by more than \$5 000; or
- (d) is not subject to a declaration in force under section 353 (3).

(5) An appointment of a person as actuary of a society cannot take effect while there is in force an appointment of another person as the society's actuary.

(6) The SSA, after consultation with AFIC, may exempt a person from the requirement referred to in subsection (4) (aa).

### **Cessation of appointment**

**353.** (1) A person ceases to hold an appointment as the actuary of a society if —

- (a) the person ceases to be eligible for such an appointment; or
- (b) the person gives the society a written notice of resignation of the appointment; or
- (c) the society gives the person written notice that the appointment is terminated.

(2) A person who, apart from this subsection, would be eligible for appointment as a society's actuary is not so eligible if there is in force a declaration by the SSA under subsection (3).

(3) The SSA may, in writing, declare that a person is not eligible for appointment as a society's actuary if the person has failed to perform adequately and properly the functions and duties of an actuary under this Code.

(4) A declaration takes effect 28 days after the date of the declaration or, if an earlier date is specified in the declaration, on that earlier date.

(5) The SSA must give a copy of a declaration to the person to whom it relates.

### **Notification of appointment etc.**

**354.** (1) A society that appoints a person under section 352 must give the SSA written notice of —

- (a) the name of the person; and
- (b) details of the actuarial qualifications and experience of the person; and
- (c) the date of the appointment; and
- (d) any other matter prescribed by the standards.

(2) Notice under subsection (1) must be given within 14 days after the day of the appointment.

(3) If a person ceases to be the actuary of a society, the society must give the SSA written notice that the person has so ceased and of the date on which he or she so ceased.

(4) Notice under subsection (3) must be given within 14 days after the day on which the person ceased to be the actuary of the society.



**Powers of actuary**

**355.** (1) The actuary of a society is entitled to have access to any information or document in the possession, or under the control, of the society if such access is reasonably necessary for the proper performance of the functions and duties of the actuary.

(2) The actuary of a society may require any officer of the society to answer questions or produce documents for the purpose of enabling the actuary to have the access to information and documents provided for by subsection (1).

(3) An officer of a society must not refuse or fail, without reasonable excuse, to comply with a requirement under subsection (2).

(4) The actuary of a society is entitled to attend a meeting of the directors of the society and to speak on any matter being considered at the meeting —

- (a) that relates to, or may affect —
  - (i) the solvency of the society or any of its benefit funds;  
or
  - (ii) the adequacy of the capital of the society; or
- (b) that relates to advice given by the actuary to the directors;  
or
- (c) that concerns a matter in relation to which the actuary will be required to give advice.

(5) The actuary of a society —

- (a) is entitled to attend any general meeting of the society or, if held separately, any meeting of the members of any benefit fund or any other meeting of members at which accounts are to be considered or at which any matter in connection with which the actuary is or has been subject to a duty under this Code is to be considered; and
- (b) is entitled to receive all notices of, and other communications relating to, any general meeting of the society or, if held separately, any meeting of the members of any benefit fund or any other meeting of members that a member is entitled to receive; and
- (c) is entitled to be heard at any general meeting of the society or, if held separately, any meeting of the members of any benefit fund or any other meeting of members that he or she attends on any part of the business of the meeting that concerns the actuary in the capacity of actuary; and
- (d) is entitled so to be heard even though the actuary retires at that meeting.

**Actuary's obligation to report to SSA**

**356.** (1) The actuary of a society must draw to the attention of the society any matter that comes to the attention of the actuary and that the actuary thinks requires action to be taken by the society or its directors —

- (a) to avoid a contravention of the friendly societies legislation; or
- (b) to avoid prejudice to the interests of the members of the society.

(2) If the actuary of a society thinks —

- (a) that there are reasonable grounds for believing that the society or a director of the society may have contravened the friendly societies legislation or any other law; and
- (b) that the contravention is of such a nature that it may affect significantly the interests of the members of the society,

the actuary must inform the SSA in writing of —

- (c) his or her opinion; and
- (d) the information on which it is based.

(3) If —

- (a) the actuary of a society has drawn to the attention of the society a matter that the actuary thinks requires action to be taken by the society or its directors —
  - (i) to avoid a contravention of the friendly societies legislation; or
  - (ii) to avoid prejudice to the interests of the members of the society; and
- (b) the actuary is satisfied that there has been a reasonable time for the taking of the action but the action has not been taken —

the actuary must inform the SSA in writing of the matter referred to in paragraph (a).

(4) If the actuary of a society considers on reasonable grounds that —

- (a) the directors of the society have failed to take such action as is reasonably necessary to enable the actuary to exercise his or her right under section 355 (4) or (5); or

- (b) an officer of the society has engaged in conduct calculated to prevent the actuary exercising his or her right under section 355 (4) or (5),

the actuary must inform the SSA of —

- (c) his or her opinion; and
  - (d) the information on which it is based.
- (5) If —
- (a) the actuary of a society becomes subject to an obligation under subsection (2) or (3) to inform the SSA of anything; and
  - (b) before the actuary informs the SSA, he or she ceases to be the actuary of the society concerned,

the actuary remains subject to the obligation as if he or she were still the actuary of the society.

### **Qualified privilege of actuary**

**357.** (1) A person who is, or has been, the actuary of a society has qualified privilege in respect of any statement, whether written or oral, made by him or her for the purpose of the performance of his or her functions as actuary of the society.

(2) In particular (and without limiting subsection (1)), a person who is or has been the actuary of a society has qualified privilege in respect of any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Code.

(3) The privilege conferred by this section is in addition to any privilege conferred on a person by any other law.

### **Actuarial investigations**

- 358.** (1) A society must arrange for its actuary to —
- (a) conduct a financial investigation in accordance with the standards either —
    - (i) as at the end of each financial year of the society; or
    - (ii) as otherwise determined by the SSA, in accordance with applicable standards, and notified in writing by the SSA to the society; and
  - (b) give the society a written report of the results of the investigation.

(2) *See note to section 1.*

(3) The society must, immediately after receipt of the report referred to in subsection (1) (b), send a copy of the report to the SSA.

### **Additional actuarial investigations**

**359.** (1) Nothing in this Division prevents a society from having its actuary investigate the financial condition of the society as at a time other than a time specified in section 358 (1) (a).

(2) A society must not make public the results of an investigation referred to in subsection (1) unless —

- (a) the investigation has been conducted in accordance with applicable standards; and
- (b) the actuary has given the society a written report of the results of the investigation.

(3) If the SSA, by written notice given to a society, requires that an investigation referred to in subsection (1) be conducted by the society —

- (a) the investigation must be conducted in accordance with applicable standards; and
- (b) the society must arrange for its actuary to give the society and the SSA a written report of the results of the investigation.

### ***Division 9 — Returns and Relief***

#### **Returns**

**360.** (1) A society must lodge returns with the SSA in accordance with the regulations.

Maximum penalty: \$5 000.

(2) The SSA may, by written notice, require a society to lodge such further returns that the SSA requires.

(3) A further return must contain the information required by the notice and must be lodged as often as is required by the notice.

(4) Without limiting the effect of this section, the information that may be required in a further return may comprise or include information relating to —

- (a) an entity controlled by the society; and

- (b) a body corporate or other entity formed or acquired outside Australia by an entity controlled by the society; and
- (c) a body corporate or other entity (whether within or outside Australia) with which —
  - (i) the society; or
  - (ii) an entity controlled by the society; or
  - (iii) a body corporate or other entity mentioned in paragraph (b),has invested funds.

(5) The SSA may, by written notice, require a society to lodge with a return or further return a report by a registered company auditor, or other person of a specified class, on specified matters to which the return relates.

(6) A society that fails to comply with a requirement of a notice given to it under this section commits an offence.

Maximum penalty applying to subsection (6): \$100 000.

#### **Relief from requirements as to accounts, audit and actuaries**

**361.** (1) The directors of a society may apply to the SSA in writing for an order relieving the directors, the society or the auditor or actuary of the society from compliance with any specified requirements of Division 6 (other than section 328), 7 or 8.

(2) An application under subsection (1) must be accompanied by a written statement made in accordance with a resolution of the directors of the society, signed by not less than 2 directors and stating the reasons for seeking the order.

(3) The SSA may require the directors making the application to supply such information relating to the operations of the society, and of any entity controlled by the society, as the SSA thinks necessary for the purpose of determining the application.

(4) The SSA may make an order unconditionally or subject to any conditions it considers appropriate.

(5) Notice of an order under subsection (4) must be given to the society.

(6) The SSA may, if it considers it appropriate, make an order in relation to a specified class of societies relieving the directors of a society included in that class, a society included in that class, the auditor of a society included in that class or the actuary of a society

included in that class, from compliance with any specified requirements of Division 6 (other than section 328), 7 or 8.

(7) The SSA may make an order under subsection (6) unconditionally or subject to any conditions it considers appropriate.

(8) Notice of an order under subsection (6) must be published in the *Gazette*.

(9) The SSA must not make an order in relation to a society, or a class of societies, under this section unless the SSA is of the opinion, in relation to each requirement of this Code specified in the order, that compliance with the requirement —

- (a) would render accounts or group accounts, or a report required in relation to those accounts, misleading; or
- (b) would be inappropriate to the circumstances of the society, or of the societies included in that class; or
- (c) would impose unreasonable burdens on —
  - (d) the society, an officer of the society or the auditor or actuary of the society; or
  - (i) the societies, or officers or auditors or actuaries of the societies, included in that class,

as the case may be.

(10) An order under this section may be limited in its effect to a period specified in the order.

(11) The SSA may, on application by the directors of a society or on its own initiative, revoke or suspend an order under this section.

(12) A revocation or suspension does not take effect —

- (a) in the case of an order under subsection (4), until written notice of the revocation or suspension is given to the society; or
- (b) in the case of an order under subsection (6), until notice of the revocation or suspension is published in the *Gazette*.

**PART 7 — MERGERS OF SOCIETIES AND TRANSFERS OF ENGAGEMENTS**

***Division 1 — Preliminary***

**Definitions**

**362.** In this Part —

“**certificate of confirmation**” means a certificate given by the SSA to confirm a transfer of engagements;

“**transferee society**” means a society to whom another society is to transfer, or has transferred, its engagements under this Part;

“**transferor society**” means a society that is to transfer, or has transferred, its engagements under this Part.

**Application of Part**

**363.** Nothing in this Part authorizes the restructure or termination of a benefit fund otherwise than in accordance with Part 4A.

***Division 2 — Mergers and Transfers of Engagements between Societies***

**Application for registration of merger or transfer**

**364.** (1) If 2 or more societies propose to consolidate all or any of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements.

(2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the SSA has determined that it may be approved by the society’s board.

(3) A society that is to approve the proposed merger, or transfer of engagements, by special resolution must send to each of its members a statement approved by the SSA specifying —

- (a) the financial position of each of the societies as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and
- (b) any proposal in relation to the appointment of directors of a merged society; and

- (c) any interest that any officer of any of the societies has in the proposed merger, or transfer of engagements; and
- (d) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of a society in relation to the proposed merger, or transfer of engagements; and
- (e) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements; and
- (f) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and
- (g) any other matter specified by the SSA.

(4) The statement mentioned in subsection (3) must be sent to the members of the society so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than —

- (a) where the resolution is to be decided at a meeting, 21 days before the date of the meeting; or
- (b) where the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with subsection (3).

(6) The SSA may grant an exemption, or approve a statement, subject to any conditions it considers appropriate.

(7) An application for the registration of a merger or transfer of engagements under this Division must be made in the way and form required by the SSA.

(8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

#### **SSA may register merged society**

**365.** (1) If, in relation to an application under this Division by societies for registration of a proposed merger, the SSA is satisfied that —

- (a) the societies involved have complied with section 364; and



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- (b) the proposed rules of the merged society are adequate; and
- (c) there are reasonable grounds for believing that the merged society will be able to comply with all applicable standards; and
- (d) the certificates of incorporation of the societies involved in the merger have been surrendered to the SSA; and
- (e) there is no good reason why the merged society and its rules should not be registered,

the SSA must —

- (f) register the merged society; and
- (g) register its rules; and
- (h) cancel the registration of the societies involved in the merger.

(2) On registering the merged society, the SSA must issue to the society a certificate of incorporation.

(3) A merger takes effect on the issue of the certificate of incorporation under subsection (2).

**Certificate of confirmation (voluntary transfer)**

**366.** (1) This section applies to a transfer of engagements following an application under section 364.

(2) For a total transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that —

- (a) the societies have complied with section 364; and
- (b) the rules, or proposed rules, of the transferee society are adequate; and
- (c) the certificate of incorporation of the transferor society has been —
  - (i) surrendered to the SSA; or
  - (ii) lost or destroyed; and
- (d) there is no good reason why the transfer should not take effect.

(3) For a partial transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that —

- (a) the societies have complied with section 364; and
- (b) the rules, or proposed rules, of the societies are adequate; and
- (c) there is no good reason why the transfer should not take effect.

**SSA may direct a transfer of engagements between societies**

**367.** (1) The SSA may, by written notice given to a society, direct it to totally or partially transfer its engagements to another society (the “**transferee society**”) if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The SSA must give a copy of the direction to the transferee society.

(3) For a total transfer of engagements, the direction must specify that the transferor society must surrender its certificate of incorporation to the SSA or satisfy the SSA that its certificate has been lost or destroyed.

(4) The SSA must not direct a society to transfer its engagements under this section unless —

- (a) the SSA is of the opinion that —
  - (i) the society has contravened the friendly societies legislation or the society’s rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
  - (ii) the management fund of the society has an accumulated deficit; or
  - (iii) the affairs of the society or a fund of the society are being managed or conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to one or both of the societies as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members or creditors of the society that is to be directed to transfer its engagements; or

- (c) the SSA has certified, in relation to the society, that any of the events mentioned in section 402 (1) (a), (b), (c) or (g) has happened.

**SSA may modify rules to facilitate transfer of engagements**

**368.** (1) If the SSA has directed a transfer of engagements under section 367, the SSA may, by notation on the registered copy of the rules of the transferor society (if it is to continue to exist) or the transferee society or both, amend the rules of the society to the extent necessary to ensure that the rules are appropriate.

(2) The SSA must amend the rules by notation on the registered copy.

(3) The SSA must immediately give written notice to the society of —

- (a) an amendment of the society's rules made under this section; and
- (b) the day on which the amendment takes effect.

(4) A society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice containing the text or a summary of an amendment of the society's rules under this section.

(5) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally —

- (a) in the area of the State in which the society operates; and
- (b) if the society operates in another State, or other States, in the other State or States.

**Society to comply with direction**

**369.** (1) A society must take all reasonable steps to comply with a direction under this Division to transfer its engagements.

Maximum penalty: \$100 000.

(2) An officer of a society must not —

- (a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements; or

- (b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

**Certificate of confirmation (transfer by direction)**

**370.** (1) This section applies to a transfer of engagements by a direction under section 367.

(2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation.

(3) If the transfer does not take effect immediately —

- (a) the direction must specify the day when the SSA proposes to issue the certificate of confirmation; and
- (b) when the SSA is satisfied that the societies have complied with the direction, it must issue a certificate of confirmation.

**Who receives the certificate of confirmation**

**371.** The SSA must give a certificate of confirmation —

- (a) for a partial transfer, to each of the societies; or
- (b) for a total transfer, to the transferee society.

**When transfer of engagements takes effect**

**372.** A transfer of engagements takes effect on the date of issue of the certificate of confirmation of the transfer or such later date as specified in the certificate.

**Cancellation of registration after total transfer**

**373.** When a total transfer of engagements takes effect, the SSA must cancel the transferor society's registration.

**Effect of merger**

**374.** (1) This section applies on a merger of societies under this Division taking effect.

- (2) The merged society is the successor of the merging societies.
- (3) Without limiting subsection (2) —
  - (a) the members of each merging society become members of the merged society; and
  - (b) all assets and liabilities of each merging society become assets and liabilities of the merged society without any conveyance, transfer or assignment; and
  - (c) in all documents (including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society; and
  - (d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society; and
  - (e) the duties, obligations, immunities, rights and privileges applying to a merging society apply to the merged society.

**Effect of transfer of engagements**

**375.** (1) This section applies on a transfer of engagements under this Division taking effect.

- (2) However, for a partial transfer, this section applies —
  - (a) subject to the terms on which the transfer takes place; and
  - (b) only to the extent necessary to give effect to the transfer.
- (3) The transferee society is the successor of the transferor society.
- (4) Without limiting subsection (3) —
  - (a) the members of the transferor society become members of the transferee society; and
  - (b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and
  - (c) in all documents (including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and

- (d) a legal proceeding by or against the transferor society that is not finished when the transfer takes effect may be continued and finished by or against the transferee society; and
- (e) the duties, obligations, immunities, rights and privileges applying to the transferor society apply to the transferee society.

***Division 3 — Mergers and Transfers of Engagements Involving Foreign Societies***

**Definitions in Division 3**

**376.** In this Division —

**“certificate of confirmation”** means a certificate given by the SSA, or by the SSA of a participating State, to confirm a transfer of engagements;

**“corresponding provision”**, in relation to a specified provision of this Code, means the provision of the friendly societies legislation of the participating State corresponding to the specified provision;

**“foreign society”** means a body corporate that is a society under the friendly societies legislation of another participating State, whether or not it is registered as a foreign society under Part 11;

**“participating State”**, in a provision of this Division about a foreign society, means the State in which the foreign society is incorporated;

**“transferee society”** means —

- (a) a society to which a foreign society is to transfer, or has transferred, totally or partially, its engagements; or
- (b) a foreign society to which a society is to transfer, or has transferred, totally or partially, its engagements;

**“transferor society”** means —

- (a) a society that is to transfer, or has transferred, totally or partially, its engagements to a foreign society; or
- (b) a foreign society that is to transfer, or has transferred, totally or partially, its engagements to a society.

**Proposal for merger or transfer of engagements**

**377.** (1) This section applies if a society proposes a consolidation of some or all of its assets, liabilities and undertakings with some or all of the assets, liabilities and undertakings of a foreign society, by —

- (a) the merger of the society and the foreign society; or
- (b) a total or partial transfer of the engagements of the society to the foreign society; or
- (c) a total or partial transfer of the engagements of the foreign society to the society.

(2) The proposed merger, or transfer of engagements, must be approved by a special resolution of the society unless the SSA has determined that it may be approved by the society's board.

(3) If the society is to approve the proposed merger or transfer of engagements by special resolution, it must prepare, and send to each of its members, a statement approved by the SSA specifying —

- (a) the financial position of the society and foreign society as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and
- (b) if the proposal is for a merger, any proposal for the composition of the board of directors of the merged society; and
- (c) if the proposal is for a total transfer of engagements, any proposal for the composition of the board of directors of the transferee society; and
- (d) any interest that any officer of the society or foreign society has in the proposed merger, or transfer of engagements; and
- (e) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society or foreign society in relation to the proposed merger, or transfer of engagements; and
- (f) whether the proposal is a merger, or transfer of engagements and the reason for the merger or transfer of engagements; and
- (g) if the proposal is for a transfer of engagements, whether it is a total or partial transfer of engagements; and
- (h) if the proposal is for a merger, the participating State in which the merged society will be incorporated; and
- (i) any other matter specified by the SSA.

(4) If, under the corresponding provision to this section, the foreign society is required to give its members a statement, the statement given by the society and the statement given by the foreign society must be consistent.

(5) The statement mentioned in subsection (3) must be sent to the members of the society so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than —

- (a) if the resolution is to be decided at a meeting, 21 days before the date of the meeting; or
- (b) if the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(6) The SSA may exempt the society —

- (a) from the requirements to prepare the statement mentioned in subsection (3) and to send the statement to its members; or
- (b) only from the requirement to send the statement mentioned in subsection (3) to its members.

(7) The SSA may grant an exemption, or approve a statement, subject to the conditions it considers appropriate.

**SSA may register merged society**

**378.** (1) This section applies if —

- (a) a society proposes a merger with a foreign society; and
- (b) the merged society is proposed to be incorporated in this State.

(2) An application may be made to the SSA to register the merged society.

(3) The application must be made by the society and the foreign society jointly.

(4) The SSA must register the merged society if it is satisfied that —

- (a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and
- (b) the proposed rules of the merged society are adequate; and



- (c) there are reasonable grounds for believing that the merged society will be able to comply with the standards; and
  - (d) one of the following applies —
    - (i) the certificate of incorporation of the society has been surrendered to the SSA;
    - (ii) the society's certificate of incorporation has been lost or destroyed; and
  - (e) one of the following applies —
    - (i) the certificate of incorporation of the foreign society has been surrendered to the SSA of the participating State;
    - (ii) the foreign society has satisfied the SSA of the participating State that its certificate of incorporation has been lost or destroyed; and
  - (f) there is no good reason why the merged society and its rules should not be registered.
- (5) If the SSA registers the merged society, it must also —
- (a) register its rules; and
  - (b) cancel the registration of the society.
- (6) On registering the merged society, the SSA must issue a certificate of incorporation to the merged society.
- (7) A merger takes effect on the issue of the certificate of incorporation under subsection (6).
- (8) An application for the registration of a merger under this Division —
- (a) must be made in the way and form required by the SSA; and
  - (b) must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

**Certificate of confirmation for total transfer**

**379.** (1) This section applies if a society proposes a total transfer of engagements from a foreign society to the society.

(2) The society may apply to the SSA for a certificate of confirmation of the total transfer of engagements.

(3) The SSA must issue a certificate of confirmation if it is satisfied that —

- (a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and
- (b) the rules, or proposed new rules, of the society are adequate; and
- (c) one of the following applies —
  - (i) the certificate of incorporation of the foreign society has been surrendered to the SSA of the participating State;
  - (ii) the foreign society has satisfied the SSA of the participating State that its certificate of incorporation has been lost or destroyed; and
- (d) there is no good reason why the transfer should not take effect.

(4) An application for a certificate of confirmation of a total transfer of engagements under this Division —

- (a) must be made in the way and form required by the SSA; and
- (b) if new rules are proposed for the society, must be accompanied by 2 copies of the proposed new rules.

#### **Certificate of confirmation for partial transfer**

**380.** (1) This section applies if a society proposes a partial transfer of engagements from a foreign society to the society or from the society to a foreign society.

(2) The society may apply to the SSA for a certificate of confirmation of the partial transfer of engagements.

(3) The SSA must issue a certificate of confirmation if it is satisfied that —

- (a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and

- (b) the rules, or proposed new rules, of the transferee society are adequate; and
  - (c) the SSA of the participating State has issued, or is about to issue, a certificate of confirmation of the partial transfer of engagements for the foreign society under the corresponding provision to this section; and
  - (d) there is no good reason why the transfer should not take effect.
- (4) An application for a certificate of confirmation of a partial transfer of engagements under this Division —
- (a) must be made in the way and form required by the SSA; and
  - (b) if the society is the transferee society, and new rules are proposed for the society, must be accompanied by 2 copies of the proposed new rules for the society.

**When transfer of engagements takes effect**

**381.** (1) This section applies to a total or partial transfer of engagements from a society to a foreign society or from a foreign society to a society.

- (2) The transfer of engagements takes effect —
- (a) if it is a total transfer of engagements —
    - (i) on the issue under section 379, or the corresponding provision to section 379, of the certificate of confirmation of the transfer; or
    - (ii) if a later time is stated in the certificate, at the later time; or
  - (b) if it is a partial transfer of engagements —
    - (i) when the certificates of confirmation of the transfer have issued, under section 380, and the corresponding provision to section 380, to both the transferor and transferee societies; or
    - (ii) if a later time is stated in the certificates, at the later time.

### **Effect of merger**

**382.** (1) This section applies on a merger of a society and a foreign society taking effect, whether the merged society is registered under section 378 or the corresponding provision to section 378.

- (2) The merged society is the successor of the merging societies.
- (3) Without limiting subsection (2) —
  - (a) the members of each merging society become members of the merged society; and
  - (b) all assets and liabilities of each merging society become assets and liabilities of the merged society without any conveyance, transfer or assignment; and
  - (c) in all documents (including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society; and
  - (d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society; and
  - (e) the duties, obligations, immunities, rights and privileges applying to a merging society apply to the merged society.

### **Effect of transfer of engagements**

**383.** (1) This section applies on a total transfer of engagements taking effect under section 381.

(2) This section also applies on a partial transfer of engagements taking effect under section 381, but only —

- (a) subject to the terms on which the transfer takes place; and
  - (b) to the extent necessary to give effect to the transfer.
- (3) The transferee society is the successor of the transferor society.
  - (4) Without limiting subsection (3) —
    - (a) the members of the transferor society become members of the transferee society; and
    - (b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and

- (c) in all documents (including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and
- (d) a legal proceeding by or against the transferor society that is not finished when the transfer of engagements takes effect may be continued and finished by or against the transferee society; and
- (e) the duties, obligations, immunities, rights and privileges applying to the transferor society apply to the transferee society.

**Surrender of certificate of incorporation**

**384.** (1) This section applies if a society proposes —

- (a) to merge with a foreign society, and under the proposal, the merged society is to be incorporated in the participating State; or
- (b) a total transfer of its engagements to a foreign society.

(2) After the proposed merger or transfer has been approved under section 377, the society must surrender its certificate of incorporation to the SSA.

(3) Upon the merger or transfer of engagements taking effect under the friendly societies legislation of the participating State, the SSA must cancel the registration of the society.

**Section number not used**

**385.** *See note to section 1.*

**PART 8 — CONVERSIONS TO COMPANIES AND  
INCORPORATED ASSOCIATIONS**

***Division 1 — Conversion to Company***

**Society may convert to company**

**386.** Subject to its rules, a society may apply to the SSA for approval of a proposal that the society convert to a company.

**Proposal to convert by society to be approved by members**

**387.** (1) Before a society applies to the SSA for approval to convert, the proposal and the memorandum of association and articles of association (if any) proposed for the company must be approved —

- (a) in a postal ballot conducted in accordance with the regulations in which not less than 20% (or in the case of a society whose rules specify a greater percentage, that greater percentage) of the members of the society have voted; and
- (b) by not less than 75% of the members who have voted; and
- (c) where the society has issued shares of more than one class, by members who have voted and who hold not less than 75% of the shares in each class held by all the members who have voted.

(2) Before a society applies to the SSA for approval to convert, the society must send to each of its members —

- (a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed memorandum of association and articles of association (if any) of the proposed company; and
- (b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and
- (c) a statement, the contents of which have been approved by the SSA, relating to —
  - (i) the financial position of the society; and
  - (ii) the reasons for the proposal to convert; and
  - (iii) any interest that its officers may have in the conversion; and

- (iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and
  - (v) any payments to be made to its members arising out of the conversion; and
  - (vi) the proposals for dealing with any benefit funds of the society; and
- (d) any other matters that the SSA directs.
- (3) The part of a statement under subsection (2) (c) (i) must include —
- (a) profit and loss accounts for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the society and any fund of the society for that period; and
  - (b) balance sheets as at the end of the last day of the period to which the profit and loss accounts relate, giving a true and fair view of the state of affairs of the society and any fund of the society on that day; and
  - (c) a report prepared by the auditor of the society containing prescribed statements and information relating to the accounts for the period to which the profit and loss accounts relate.
- (4) The documents mentioned in subsection (2), and the ballot papers to be used in the postal ballot, must be sent to the members of the society so that they will in the ordinary course of post reach each member who is entitled to vote not later than 21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.
- (5) The SSA may exempt a society from having to comply with subsection (2) or (3).
- (6) The SSA may grant an exemption, or approve a summary or statement, subject to any conditions it considers appropriate.

**SSA may direct as to percentage**

- 388.** (1) If —
- (a) a postal ballot is conducted for the purpose of section 387 (1); and

- (b) the percentage of members of the society who are required to vote in the postal ballot is 20%; and
- (c) less than 20% of members of the society vote in the postal ballot,

the SSA may, by written notice given to the society, direct that for the purpose of the postal ballot, the subsection is taken to have had effect as if the percentage specified by the SSA in the notice had been substituted for the 20% at all relevant times.

(2) The SSA must not give a notice to a society under subsection (1) unless the SSA is of the opinion that it is in the interests of the public, and of members of the society, to do so.

- (3) A notice under subsection (1) has effect according to its tenor.

### **Application by society to SSA for approval of proposal**

**389.** (1) An application for conversion by a society must be made in the prescribed form and must be accompanied by —

- (a) 2 copies of the proposed memorandum of association and articles of association (if any) of the proposed company; and
- (b) a copy of the register of members of the society and of the register of members of each of the benefit funds of the society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and
- (c) a statement setting out the day and terms on which the conversion of the society to a company is proposed to take effect; and
- (d) any other documents or information that the SSA requires; and
- (e) the prescribed fee.

(2) In determining whether or not to approve the proposal to convert, the SSA must have regard to —

- (a) the public interest; and
- (b) the interest of the members of the society to which the proposal relates; and
- (c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and



- (d) whether the company would be subject to prudential regulation similar to that applying to the society; and
  - (e) proposals for the payment of expenses associated with the proposal; and
  - (f) any other relevant matter.
- (3) The SSA —
- (a) may approve the proposal to convert subject to any conditions it considers appropriate; or
  - (b) may refuse to approve the proposal.

### **Conversion of society to company**

**390.** If —

- (a) a proposal by a society that it convert to a company is approved by the SSA; and
- (b) the company is formed and incorporated in accordance with any conditions of the SSA's approval; and
- (c) any other conditions of the approval relating to the transfer of membership, issuing of shares or any other matter are complied with,

then, on the day the society is registered as a company under the Corporations Law —

- (d) the property of the society vests in the company without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and
- (e) the debts and liabilities of the society become debts and liabilities of the company; and
- (f) the society's personality merges in that of the company.

### **Surrender of certificate of incorporation and cancellation of registration of society**

**391.** (1) A society that proposes to convert to a company must surrender its certificate of incorporation to the SSA.

(2) On the conversion of a society to a company, the SSA must cancel the registration of the society.

(3) A society that contravenes this section commits an offence.

Maximum penalty applying to subsection (3): \$5 000.

### **Certificate of SSA**

**392.** (1) The SSA may, on application by the company resulting from a conversion and production of any evidence that the SSA requires and on payment of the prescribed fee, issue to the company a certificate stating that a conversion under this Part has taken effect.

(2) A certificate issued by the SSA under subsection (1) is conclusive evidence as to the matters so certified and that the conditions of any approval have been complied with.

### ***Division 2 — Conversion to Incorporated Association***

#### **Society without benefit fund may convert to incorporated association**

**393.** Subject to its rules, a society that does not have a benefit fund may apply to the SSA for approval of a proposal that the society convert to an incorporated association.

#### **Proposal to convert to be approved by members or society's board**

**394.** (1) Before a society applies to the SSA for approval to convert, the proposal and the rules proposed for the incorporated association must be approved —

- (a) by a special resolution of the members of the society; or
- (b) if the SSA so determines, by a resolution of the society's board.

(2) If the proposal and the rules proposed for the incorporated association are to be approved by special resolution under subsection (1) (a), the society must send to each of its members —

- (a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed rules of the proposed incorporated association; and
- (b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and
- (c) a statement, the contents of which have been approved by the SSA, relating to —
  - (i) the financial position of the society; and
  - (ii) the reasons for the proposal to convert; and

- (iii) any interest that its officers may have in the conversion; and
  - (iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and
  - (v) any payments to be made to its members arising out of the conversion; and
- (d) any other matters that the SSA directs.
- (3) The part of a statement under subsection (2) (c) (i) must include —
- (a) the profit and loss account of the society for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the society for that period; and
  - (b) a balance sheet as at the end of the last day of the period to which the profit and loss account relates, giving a true and fair view of the state of affairs of the society on that day; and
  - (c) a report prepared by the auditor of the society containing prescribed statements and information relating to the accounts of the society for the period to which the profit and loss account relates.
- (4) The documents mentioned in subsection (2) must be sent to the members of the society so that they will in the ordinary course of post reach each member who is entitled to vote on the special resolution under subsection (1) (a) not later than 21 days before the date of the meeting at which the resolution will be determined.
- (5) The SSA may exempt a society from having to comply with subsection (2) or (3).
- (6) The SSA may grant an exemption, or approve a summary or statement, subject to any conditions it considers appropriate.

**Application by society to SSA for approval of proposal**

- 395.** (1) An application for conversion by a society must be made in the prescribed form and must be accompanied by —
- (a) 2 copies of the proposed rules of the proposed incorporated association; and
  - (b) a copy of the register of members of the society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and

- (c) a statement setting out the day and terms on which the conversion of the society to an incorporated association is proposed to take effect; and
  - (d) any other documents or information that the SSA requires; and
  - (e) the prescribed fee.
- (2) In determining whether or not to approve the proposal to convert, the SSA must have regard to —
- (a) the public interest; and
  - (b) the interests of the members of the society to which the proposal relates; and
  - (c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and
  - (d) proposals for the payment of expenses associated with the proposal; and
  - (e) any other relevant matter.
- (3) The SSA —
- (a) may approve the proposal to convert subject to any conditions it considers appropriate; or
  - (b) may refuse to approve the proposal.

**Conversion of society to incorporated association**

**396.** If —

- (a) a proposal by a society that it convert to an incorporated association is approved by the SSA; and
- (b) the incorporated association is formed and incorporated in accordance with any conditions of the SSA's approval; and
- (c) any other conditions of the approval relating to the transfer of membership or any other matter are complied with,

then, on the day the society is incorporated as an incorporated association in accordance with the law of this State relating to incorporated associations —

- (d) the property of the society vests in the incorporated association without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and

- (e) the debts and liabilities of the society become debts and liabilities of the incorporated association; and
- (f) the society's personality merges in that of the incorporated association.

**Surrender of certificate of incorporation and cancellation of registration of society**

**397.** (1) A society that proposes to convert to an incorporated association must surrender its certificate of incorporation to the SSA.

(2) On the conversion of a society to an incorporated association, the SSA must cancel the registration of the society.

(3) A society that contravenes this section commits an offence.

Maximum penalty applying to subsection (3): \$5 000.

**Certificate of SSA**

**398.** (1) The SSA may, on application by the incorporated association resulting from a conversion and production of any evidence that the SSA requires and on payment of the prescribed fee, issue to the incorporated association a certificate stating that a conversion under this Part has taken effect.

(2) A certificate issued by the SSA under subsection (1) is conclusive evidence as to the matters so certified and that the conditions of any approval have been complied with.

## **PART 9 — EXTERNAL ADMINISTRATION**

### **Arrangements and reconstructions**

**399.** (1) Parts 5.1 and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to a compromise or arrangement between a society and its creditors or a reconstruction of a society.

(2) Without limiting subsection (1), a reference in Part 5.1 or 5.9 of the Corporations Law to the Commission is taken to be a reference to the SSA.

### **Receivers and other controllers of property of societies**

**400.** (1) Parts 5.2 and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to a receiver or other controller of property of a society.

(2) Without limiting subsection (1), a reference in Part 5.2 or 5.9 of the Corporations Law to the Commission is taken to be a reference to the SSA.

### **Winding-up**

**401.** (1) A society may be wound-up voluntarily or by the Court or on a certificate of the SSA.

(2) Subject to this Part, a society may be wound-up in the way and circumstances in which a company may be wound-up under the Corporations Law.

### **Winding-up on certificate of SSA**

**402.** (1) In the case of a winding-up on a certificate of the SSA, the society may be wound-up if the SSA certifies that any of the following events has happened —

- (a) that the number of members is reduced to less than 25;
- (b) that the society has not started business within a year of registration or has suspended or ceased to carry on business for a period of more than 6 months;
- (c) that an event (to be specified in the certificate) has happened on the happening of which the regulations or the society's rules provide that the society is to be wound-up;

- (d) that the registration of the society has been obtained by mistake or fraud;
  - (e) that the society exists for an illegal purpose;
  - (f) that the society has, after notice by the SSA of any contravention of this Code or the society's rules, failed, within the time specified in the notice, to remedy the contravention or has committed any further contravention of a kind specified in the notice;
  - (g) that there are, and have been for a period of one month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum as provided by the society's rules;
  - (h) that, because of an investigation under this Code into the affairs of the society, it is in the interests of the public, members or creditors that the society should be wound-up.
- (2) The SSA must not so certify unless —
- (a) the event has been proved to its satisfaction; and
  - (b) in the case of an event mentioned in subsection (1) (d), (e), (f) or (h), AFIC has been informed of the happening of the event.
- (3) If the SSA so certifies, the SSA may appoint a person to be the liquidator of the society.
- (4) The liquidator appointed by the SSA may be employed in the office of the SSA and, if so, need not be a registered liquidator under the Corporations Law.
- (5) The liquidator, unless employed in the SSA's office is entitled to receive an amount of remuneration that the SSA considers appropriate, having regard to the rate of payment that normally would apply for such an appointment.
- (6) Any vacancy in the office of a liquidator appointed under subsection (3) must be filled by a person appointed by the SSA for the purpose.
- (7) A winding-up on a certificate of the SSA is taken to commence on the date that the certificate is issued by the SSA.
- (8) The liquidator must, within 14 days after the appointment, give notice of the appointment by *Gazette* notice.

### **Application of Corporations Law to winding-up**

**403.** (1) Subject to this Part, Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7A, 5.7B (except section 588G) and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to the winding-up or dissolution of a society or to a defunct or dissolved society.

(2) Without limiting subsection (1), a reference in Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7A, 5.7B (except section 588G) and 5.9 of the Corporations Law —

- (a) to a special resolution, is a reference to a special resolution of the society within the meaning of this Code; and
- (b) to the Commission, is a reference to the SSA; and
- (c) to a voluntary winding-up, includes a reference to a winding-up of a society on a certificate of the SSA.

### **Voluntary winding-up**

**404.** (1) If a society is to be wound-up voluntarily, a person employed in the office of the SSA may be appointed liquidator.

(2) If a society is being wound-up voluntarily and a vacancy happens in the office of liquidator, a person employed in the office of the SSA may be appointed liquidator to fill the vacancy.

(3) An appointment under subsection (1) or (2) is not effective unless made with the written approval of the SSA.

(4) A person appointed as liquidator under this section need not be a registered liquidator under the Corporations Law.

(5) The remuneration payable in relation to a liquidator appointed under this section must be paid to the SSA.

### **Vacancy in office of liquidator on voluntary winding-up**

**405.** Where —

- (a) a society is being wound-up voluntarily; and
- (b) the liquidator was not appointed under section 404; and
- (c) a vacancy happens in the office of liquidator that, in the SSA's opinion, is unlikely to be filled in the way provided by Part 5.5 of the Corporations Law,

the SSA may appoint as liquidator, a person qualified under that Part for such appointment.



**Remuneration of liquidator on voluntary winding-up**

**406.** Despite anything in this Code or in the Corporations Law, the remuneration paid to the liquidator of a society wound-up voluntarily must not exceed the amount fixed by the SSA.

**Priority on winding-up**

**407.** (1) Subject to this section, in the winding-up of a society, the assets of a society must first be applied in accordance with the provisions of the Corporations Law referred to in section 403 (1) in discharging debts and claims referred to in section 556 (1) of that Law.

(2) Subsection (1) has effect in relation to the assets of a benefit fund of a society only to the extent that debts or claims are liabilities that are referable to the fund.

(3) If any assets remain after the application of subsection (1) —

(a) any remaining assets of a benefit fund must be applied in the following order of priority —

(i) first, in discharge of any liabilities of the society referable to the fund other than liabilities determined under section 408; and

(ii) secondly, in discharge of any liabilities of the society referable to the fund determined under section 408; and

(b) any remaining assets of the management fund must be applied in discharge of any liabilities of the society.

(4) If any assets remain after the application of subsections (1) and (3), those assets must be applied in such a manner as the Court considers equitable, having regard to —

(a) the interests of the members of the society;

(b) the interests of creditors of the society whose debts have not been discharged.

(5) If a liability of the society —

(a) is referable to 2 or more benefit funds; or

(b) is referable in part to a benefit fund and in part to other business carried on by the society,

the liquidator may apportion the liability according to the proportion of the liability borne by the benefit fund, or each benefit fund, as the case may be.

(6) In making an apportionment under subsection (5), the liquidator must comply with any directions of the Court.

(7) The part of a liability apportioned to a benefit fund under subsection (5) is to be treated as a liability of the society that is referable to that fund.

#### **Determination of amounts to be treated as liabilities**

**408.** (1) In relation to each person who, according to the society's records, appears to have an interest in a benefit fund, the liquidator must determine —

- (a) whether the society has a liability to the person in respect of that interest; and
- (b) if the society has such a liability, the amount of that liability.

(2) Determinations under subsection (1) must be made by reference to the rules of the society and in accordance with any directions of the Court.

(3) The liquidator must notify each person referred to in subsection (1) of the amount determined under that subsection and, if the person has more than one interest in the benefit fund, the amount determined in respect of each interest.

(4) If the liquidator determines an amount under subsection (1), for the purposes of the winding-up —

- (a) the society is to be taken to have a liability referable to the benefit fund in that amount to the person to whom the determination relates; and
- (b) subject to subsection (5), that person is bound by the liquidator's determination.

(5) A person who is notified of an amount under subsection (3) may dispute the amount —

- (a) in accordance with the rules of the Court; or
- (b) as the Court otherwise directs in a particular case.

#### **Cancellation of registration**

**409.** As soon as practicable after the society is dissolved or taken to be dissolved, the SSA must register the dissolution and cancel the registration of the society.

**PART 10 — SPECIAL INVESTIGATIONS**

**Definition**

**410.** (1) In this Part —

“**officer**”, in relation to a society, includes —

- (a) a person who acts, or who at any time acted, as banker, solicitor, auditor, actuary or in any other capacity for the society; and
- (b) a person who —
  - (i) has, or has at any time had, in his or her possession any property of the society; or
  - (ii) is indebted to the society outside the normal trading terms of the person’s membership; or
  - (iii) is capable of giving information concerning the affairs of the society; and
- (c) if an investigator has reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (b), that person.

(2) A reference in this Part to a society includes —

- (a) if the SSA has given consent under section 412, a reference to a related body corporate; and
- (b) other than in that section, a reference to a services corporation.

(3) Where 2 or more investigators have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a society, each of those investigators may exercise the powers or perform the functions under this Part independently of the other investigator or investigators.

**Appointment of investigators**

**411.** (1) The SSA may appoint an investigator to investigate the affairs of a society if the SSA considers that it is desirable to do so —

- (a) for the protection of the public, or of the members or creditors of the society; or
- (b) in the public interest.

(2) The SSA may appoint a person as investigator only if the person has, in the SSA's opinion, the appropriate expertise for the position (whether because of training or otherwise).

(3) The SSA must, in the instrument appointing an investigator, specify full particulars of the appointment including —

- (a) the matters into which the investigations are to be made, being all the affairs or particular affairs of the society; and
- (b) the terms and conditions (if any) to which the appointment is subject.

(4) The SSA —

- (a) may, in the instrument appointing an investigator, specify the period in relation to which the investigation is to be made; and
- (b) may, at any time by written notice given to an investigator, vary —
  - (i) particulars specified in the instrument of appointment, being particulars mentioned in subsection (3) (a) or (b); or
  - (ii) the period in relation to which the investigation is to be made.

(5) The SSA may, by written notice given to an investigator, terminate the appointment at any time.

#### **Investigation of affairs of related body corporate**

**412.** If an investigator thinks it necessary, for the purposes of the investigation of affairs of a society, to investigate affairs of a body corporate that is or has at any relevant time been a related body corporate of the society, the investigator may with the written consent of the SSA investigate affairs of that body.

#### **Powers of investigators**

**413.** (1) An investigator may, by giving written notice to an officer of a society the affairs of which are being investigated under this Part, require the officer —

- (a) to produce to the investigator all documents of the society and other documents relating to affairs of the society as are in the custody or under the control of the officer; and

- (b) to give to the investigator all reasonable assistance in connection with the investigation; and
- (c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation.

(3) An investigator must not exercise his or her powers under subsection (1) in relation to an officer of a body corporate the affairs of which he or she is investigating under section 412 unless he or she has given to the officer of the body corporate a certificate stating that he or she is investigating affairs of the body corporate under that section and that the officer is an officer of the body corporate.

(4) Where documents are produced to an investigator under this Part, the investigator may take possession of the documents for such period as he or she considers necessary for the purpose of the investigation.

(5) During that period, the investigator must permit a person who would be entitled to inspect any one or more of those documents, if they were not in the possession of the investigator, to inspect at all reasonable times such of those documents as that person would be so entitled to inspect.

#### **Examination of officers**

**414.** (1) If affairs of a society are being investigated under this Part, an officer of the society must not —

- (a) fail to comply with a requirement of an investigator under section 413 to the extent to which he or she is able to comply with it; or
- (b) in purported compliance with such a requirement, knowingly give information that is false or misleading in a material particular; or
- (c) when appearing before an investigator for examination under such a requirement —
  - (i) make a statement that is false or misleading in a material particular; or
  - (ii) fail to be sworn or make an affirmation.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

- (2) A legal practitioner acting for the officer —
- (a) may attend the examination; and
  - (b) may, to the extent that the investigator permits —
    - (i) address the investigator; and
    - (ii) examine the officer,

in relation to matters in relation to which the investigator has questioned the officer.

(3) A person who complies with the requirement of an investigator under this section does not incur any liability to any person merely because of that compliance.

(4) A person required to attend for examination under this Part is entitled to such allowances and expenses as are prescribed.

### **Self-incrimination**

- 415.** (1) An officer is not excused from —
- (a) answering a question put to the officer by an investigator;  
or
  - (b) producing a document to an investigator,

on the ground that the answer or production of the document might tend to incriminate the officer.

(2) The answer is not admissible in evidence against the officer in a criminal proceeding (other than a proceeding in relation to the falsity of the answer or document) if —

- (a) before answering the question or producing the document, the officer claims that answering the question or production of the document might tend to incriminate the officer; and
- (b) answering the question or production of the document might in fact tend to incriminate the officer.

### **Privileged communications**

**416.** (1) An officer who is a legal practitioner may refuse to give information or produce a document to an investigator if —

- (a) the information or document is a privileged communication between the legal practitioner as such and another person; and

- (b) the other person does not agree to its being given or its production; and
- (c) subsection (2) does not apply.

(2) If the society to which the information or document relates is being wound-up, the legal practitioner must give the information or produce the document if the liquidator agrees to its being given or to its production.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

- (3) A legal practitioner commits an offence if he or she —
  - (a) refuses to give information or produce a document to an investigator on the ground that it is a privileged communication between the legal practitioner and another person who has not agreed to its being given or to its production; and
  - (b) knows the name of that other person and the residential or other address at which the person might be found; and
  - (c) fails to comply with a request by the investigator to supply the investigator with that name and address in writing.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

#### **Failure of officer to comply with requirement of investigator**

**417.** (1) If an officer of a society fails to comply with a requirement of an investigator appointed to investigate affairs of the society, the investigator may, unless the officer proves that the officer had a lawful excuse for the failure, certify the failure by signed writing to the Court.

(2) If an investigator gives a certificate under subsection (1), the Court may inquire into the case and —

- (a) order the officer to comply with the requirements of the investigator within a period fixed by the Court; or
- (b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator, punish the officer in like way as if the officer had been guilty of contempt of the Court and may also make an order under paragraph (a).

#### **Recording of examination**

**418.** (1) An investigator may cause to be made a record of the questions asked and the answers given at an examination under this Part.

(2) Except as provided by section 415, a record of the examination of any person under this Part may be used in evidence in any legal proceeding against the person.

(3) A copy of the record of the examination of any person must be given without fee to the person upon the written request of the person.

(4) Nothing in this section affects or limits the admissibility of other written or oral evidence.

(5) The SSA may give a copy of the record of any examination made under this section to a legal practitioner who satisfies the SSA that he or she is acting for a person who is conducting, or is in good faith contemplating, legal proceedings in relation to affairs being investigated by an investigator under this Part.

(6) A legal practitioner to whom a copy of a record is given under subsection (5) must —

- (a) use the record only in connection with the institution or preparation of, and in the course of, legal proceedings; and
- (b) not publish or communicate the record or any part of it for any other purpose.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

(7) If a report is made under section 420, any record made under this section relating to that report must be given with the report.

#### **Delegation of powers by investigator**

**419.** (1) An investigator may delegate the investigator's powers under this Part except —

- (a) the power to administer oaths or affirmations; and
- (b) the power to examine on oath or affirmation.

(2) A delegate must produce the instrument of delegation for inspection on request by an officer of a society the affairs of which are being investigated under this Part.

#### **Report of investigator**

**420.** (1) An investigator may, and if so directed by the SSA must, make interim reports to the SSA.

(2) On the completion or termination of the investigation, the investigator must report to the SSA the investigator's opinion in relation to the affairs the investigator has investigated, together with the facts on which the opinion is based.



(3) An investigator may, when making a report under this section, give to the SSA any documents of which the investigator has taken possession under section 413 (4).

(4) The SSA —

- (a) may retain the documents for such period as it considers to be necessary to enable a decision to be made as to whether or not any legal proceeding ought to be instituted because of the investigation; and
- (b) may retain the documents for such further period as it considers to be necessary to enable any such proceeding to be instituted and prosecuted; and
- (c) may permit other persons to inspect the documents while they are in its possession; and
- (d) may permit the use of the documents for the purposes of any legal proceeding instituted as a result of the investigation; and
- (e) must permit a person who would be entitled to inspect any of the documents if they were not in the possession of the SSA to inspect at all reasonable times such of the documents as the person would be so entitled to inspect.

(5) Subject to subsection (6), a copy of a final report must, and a copy of the whole or any part of an interim report may if the SSA considers it appropriate, be forwarded by the SSA to the registered office of the society to which it relates.

(6) The SSA is not bound to give a society or any other person a copy of a report, or any part of a report, by an investigator if the SSA is of the opinion that there is good reason for not divulging the contents of the report or part.

(7) The SSA may, if it is of the opinion that it is in the public interest to do so, cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this Part to be forwarded to the SSA with the report to which the record relates, a copy of the record may, subject to section 418, be given to such persons and on such conditions as the SSA considers appropriate.

#### **Proceedings following investigation**

**421.** (1) If from a report under section 420 or from the record of an examination under this Part, the SSA is of the opinion that an offence may have been committed by a person and that a prosecution ought to be instituted, the SSA must cause a prosecution to be instituted and prosecuted.

(2) The SSA may, by written notice given before or after the institution of a prosecution under subsection (1), require an officer of the society the affairs of which were investigated (not being an officer who is or, in the opinion of the SSA, is likely to be, a defendant in the proceeding) to give all assistance in connection with the prosecution or proposed prosecution that he or she is reasonably able to give.

(3) If a person to whom a notice is given under subsection (2) fails to comply with the requirement specified in the notice, the Court may on the application of the SSA, direct that person to comply with the requirement.

(4) If from a report of an investigator made under section 420 or from the record of an examination under this Part, the SSA is of the opinion that proceedings ought in the public interest to be brought by a society the affairs of which were investigated by the investigator, for the recovery of damages in relation to fraud, misfeasance or other misconduct in connection with affairs of the society, or for the recovery of property of the society, the SSA may cause proceedings to be instituted accordingly in the name of the society.

#### **Admission of investigator's report in evidence**

**422.** (1) A document certified by the SSA as a copy of an investigator's report is admissible in legal proceedings as evidence of —

- (a) the investigator's report of his or her opinion for the purposes of Part 9; and
- (b) any facts or matters found by the investigator to exist.

(2) The court before which legal proceedings are brought against a society or other person for or in respect of matters dealt with in an investigator's report under section 420 may order that a copy of the report be given to that society or person.

(3) Nothing in this section operates to diminish the protection given to witnesses by law.

#### **Expenses of investigation**

**423.** (1) Subject to this section, the expenses of and incidental to an investigation under this Part (including the costs incurred and payable by the SSA in a proceeding brought by it in the name of a society) must be paid by the SSA.

(2) If the SSA is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a society under this Part (including the costs incurred and payable by it in a

proceeding brought by it in the name of a society) should be paid by the society, the SSA may —

- (a) by order direct that the whole, or part of, the expenses be so paid; or
- (b) if they have been paid under subsection (1), direct the society to reimburse the SSA; or
- (c) in either case, direct the society to reimburse the SSA in relation to the remuneration of any employee of the SSA concerned with the investigation.

(3) An order under subsection (2) may specify —

- (a) the amount of the expenses to be paid or reimbursed; and
- (b) the time or times and the way in which the payment or reimbursement of the expenses is to be made.

(4) If an order has been made by the SSA under subsection (2), the society named in the order, to the extent specified in the order, is liable to pay the expenses or reimburse the SSA in relation to the expenses.

(5) An amount for which the society is liable under an order under subsection (2) may be recovered as a debt due to the SSA in a court having jurisdiction for the recovery of debts up to the amount concerned.

(6) An investigator may include in the report a recommendation whether —

- (a) an order under subsection (2) should be made; or
- (b) an application under subsection (7) for a like order should be made; or
- (c) both an order and an application should be made.

(7) An application may be made to a court by or on behalf of the SSA for the court to make the same order as the SSA is empowered to make under subsection (2).

(8) The court may make an order with respect to the application or its subject matter as it considers appropriate.

(9) Subsections (3), (4) and (5) apply to an order by the court as if it were an order made by the SSA.

(10) An application under subsection (7) may be made —

- (a) during proceedings in the court instituted in the name of the society under section 421 (4); or

- (b) on, or within 14 days after, a conviction by the court in proceedings certified by the SSA for the purposes of the application to have been instituted as a result of an investigation under this Part of affairs of a specified society.

**Offences**

**424.** A person who —

- (a) conceals, destroys, mutilates or alters a document of or relating to a society the affairs of which are being investigated under this Part; or
- (b) sends, causes to be sent or conspires with another person to send, out of this State such a document or any property belonging to or under the control of the society,

commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

**Defence**

**425.** In a prosecution for an offence against section 424, it is a defence if the person charged proves that he or she did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

**PART 11 — FOREIGN SOCIETIES**

**Definitions**

**426.** In this Part —

“**carrying on business**” means —

- (a) establishing or using an office for receiving amounts in consideration of the acquisition of an interest in a society or contributions to a benefit fund of a society; or
- (b) advertising in relation to raising share capital or inviting contributions to a benefit fund of a society,

but does not include —

- (c) maintaining an account at a bank, building society or credit union; or
- (d) creating evidence of a debt or creating a charge on property; or
- (e) securing or collecting any debts or enforcing rights in respect of such debts; or
- (f) conducting an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (g) investing funds or holding property; or
- (h) continuing to provide benefits to, and accept contributions to a benefit fund from, a member who, at the time of applying to contribute to a benefit fund, was resident in another State and has subsequently moved to this State; or
- (i) continuing to receive amounts in consideration of an interest in a society from a member who, at the time of acquiring the interest, was resident in another State and has subsequently moved to this State.

**Registration**

**427.** (1) A body corporate that is a society under the friendly societies legislation of another participating State and that proposes to carry on business as a society in this State may apply to the SSA in the prescribed way to be registered as a foreign society.

(2) An application for registration as a foreign society must be accompanied by —

- (a) a certificate issued within the preceding 2 months by the SSA of the participating State in which the society is incorporated stating that it considers there is no good reason why the society should not be registered as a foreign society in this State; and
- (b) the documents given to the society under the provisions of the friendly societies legislation of the participating State corresponding to section 436 (2); and
- (c) a statutory declaration by 2 directors of the society stating —
  - (i) the name and address of the office of the person who is to act as agent of the society in this State; and
  - (ii) any names that the society proposes to use in this State that have been approved under Part 6A of the AFIC Code and the conditions for the use of any approved name; and
- (ca) the prescribed fee; and
- (d) any documents prescribed for the purpose of this section.

(3) If, on due application, the SSA is satisfied that the society is eligible for registration, the SSA must —

- (a) register the society as a foreign society and issue a certificate of registration in accordance with the regulations.
- (b) *See note to section 1.*

(4) A society is not eligible for registration under this section unless each name under which it proposes to carry on business in this State —

- (a) is identical with a name under which it carries on business in the participating State in which the society is incorporated; and
- (b) has been reserved for the society for use in this State by AFIC under Part 6A of the AFIC Code.

### **Agents**

**428.** (1) A foreign society must appoint a person to act as agent for it in this State and must ensure that, at all times, it has such an agent.

(2) A foreign society must —

- (a) appoint an agent who is a person ordinarily resident in this State or a body corporate incorporated in this State; and
- (b) obtain the written consent of the agent to act as the agent of the society in this State; and
- (c) authorize the agent to accept on the society's behalf service of processes and notices; and
- (d) ensure that the agent maintains an office in this State and that the office is attended by the agent or a representative of the agent at all times during ordinary business hours.

### **Section number not used**

**429.** *See note to section 1.*

### **Liability of agent**

**430.** An agent of a foreign society —

- (a) is answerable for the doing of all acts, matters and things that the foreign society is required by or under this Code to do; and
- (b) is personally liable to a penalty imposed on the foreign society for a contravention of this Code if the court or tribunal hearing the matter is satisfied that the agent should be so liable.

### **Service on agent**

**431.** (1) A document may be served on a foreign society by leaving a copy of the document at, or posting it to, the office of the agent of the foreign society in this State.

(2) *See note to section 1.*

(3) Nothing in this section affects —

- (a) the power of the Court to authorize a document to be served on a foreign society in a manner not provided for by this section; or

- (b) the operation of the law of a State or the Commonwealth authorizing a document to be served on a foreign society in a manner not provided for by this section.

#### **Application of Code to foreign societies**

**432.** The prescribed provisions of this Code apply, with all necessary modifications and any prescribed modifications, to a foreign society as if the foreign society were a society.

#### **SSA to be notified of certain changes**

**433.** (1) A foreign society must, within one month after a change affecting the agent of the foreign society (or the address of the agent's office), lodge with the SSA particulars of that change accompanied by the prescribed documents.

(2) A change referred to in subsection (1) takes effect at the end of the day on which the society lodges the particulars and the documents required under subsection (1).

#### **Section number not used**

**434.** *See note to section 1.*

#### **Cessation of business**

**435.** (1) A foreign society must, within 7 days of ceasing to carry on business as a society in this State, notify the SSA in writing of that fact.

Maximum penalty: \$25 000.

(2) On notifying the SSA that it has ceased to carry on business as a society in this State, a foreign society is no longer obliged to comply with this Part.

(3) Unless the SSA has been notified in writing that the foreign society has resumed carrying on business as a society in this State, the SSA must, one year after receiving a notification under subsection (1), cancel the registration of the foreign society.

#### **Society proposing to register as foreign society**

**436.** (1) A society that proposes to apply to be registered as a foreign society in another participating State may apply to the SSA for a certificate stating that it considers that there is no good reason why the society should not be registered as a foreign society.



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(1A) An application under subsection (1) must be accompanied by the prescribed fee.

(2) If the SSA issues the certificate, it must also give to the society the prescribed documents.

**SSA to provide certain documents**

**437.** The SSA, on request by the SSA of a participating State in which a foreign society (within the meaning of this Code) is registered as a society must, without charge, provide copies of any public documents that may be inspected at the office of the SSA in this State.

## **PART 12 — ASSOCIATIONS**

### **Formation of associations**

**438.** A body proposed to be an association may be formed by 2 or more societies.

### **Objects of associations**

**439.** The objects of an association are such of the following as are authorized by the rules of the association —

- (a) to promote the interests of, and strengthen co-operation among, societies;
- (b) to render services, other than financial or commercial services, to its members;
- (c) to act on behalf of its members;
- (d) to advocate and promote practices and reforms that may be conducive to objects of the association;
- (e) to co-operate with other bodies with similar objects;
- (f) to promote the formation of societies;
- (g) to encourage the formulation, adoption and observance by societies of standards and conditions governing the carrying on of their business;
- (h) to perform such other functions as may be prescribed.

### **Registration**

**440.** (1) Two or more societies may apply to the SSA, in accordance with the regulations, for a body to be registered under this Part as an association.

(2) The application must be accompanied by —

- (a) the proposed rules of the body; and
- (b) such other documents as are prescribed; and
- (c) such evidence as the SSA requires —
  - (i) that the body is eligible for registration as an association; and

- (ii) that the body, if registered, will be able to comply with the friendly societies legislation and all applicable standards; and
  - (d) the prescribed fee.
- (3) The SSA may, for the purposes of this section, accept a statutory declaration as sufficient evidence of matters mentioned in the declaration.
- (4) If the SSA is satisfied that the body is eligible for registration, the SSA must register the body as an association and register its proposed rules.
- (5) A body is eligible for registration as an association only if —
- (a) the body's application for registration complies with this Part; and
  - (b) the proposed rules of the body are not contrary to the friendly societies legislation; and
  - (c) the objects of the body are appropriate for an association; and
  - (d) there are reasonable grounds for believing that the body will, if registered, be able to carry out its objects successfully; and
  - (e) there is no good reason why the body should not be registered.

#### **Certificate of incorporation**

**441.** (1) On registering an association under this Part, the SSA must issue a certificate of incorporation to the association.

(2) A certificate of incorporation is conclusive evidence that all requirements of this Part in relation to registration and matters precedent or incidental to registration have been complied with.

#### **Effect of incorporation**

**442.** On the issue under this Part of a certificate of incorporation to an association, the association is a body corporate with perpetual succession and —

- (a) has, subject to this Code and the association's rules, the legal capacity of a natural person; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

### **Membership**

**443.** (1) The members of an association are the societies by which the association is formed, and any other societies that are admitted to membership of the association under its rules.

(2) A body corporate that is a society under the friendly societies legislation of another participating State may be admitted to membership of an association.

### **Share capital**

**444.** The share capital (if any) of an association must be divided into shares in accordance with its rules.

### **Meetings**

**445.** (1) Meetings of the members of an association must be convened and conducted under the association's rules.

(2) A member of an association is, at any such meeting, entitled —

- (a) to be represented; and
- (b) to exercise voting rights,

under the rules.

(3) An association must cause full and accurate minutes to be kept of every meeting of its board and of the members of the association.

### **Application of Code to associations**

**446.** The prescribed provisions of this Code apply, with all necessary modifications and any prescribed modifications, to an association as if the association were a society.

**PART 13 — REVIEW OF DECISIONS**

**Reviewable decisions**

**447.** (1) Every decision of the SSA made under the friendly societies legislation is a reviewable decision.

(2) Subsection (1) does not apply to —

- (a) a decision under —
  - (i) section 25; or
  - (ii) Subdivision 2; or
  - (iii) section 43; or
  - (iv) section 45; or
  - (v) section 46; or
  - (vi) Subdivision 7 of Division 2 of Part 2; or
  - (vii) section 55; or
  - (viii) section 228; or
  - (ix) section 367; or
  - (x) Part 10; or
- (b) a decision under section 44 other than —
  - (i) a decision to remove an individual director; or
  - (ii) a decision to remove an auditor; or
  - (iii) a decision to remove an actuary; or
  - (iv) a decision directing a society to change any practice if the practice is not dealt with by a standard; or
- (c) a decision prescribed by a regulation made for the purposes of this subsection.

**Application for review of decisions**

**448.** (1) A person whose interests are affected by a reviewable decision may apply to the Appeals Tribunal for review of the decision.

(2) The Appeals Tribunal has power to review any decision in relation to which application is duly made to it under the friendly societies legislation for review of the decision.

### **Application of AFIC Code**

**449.** (1) The AFIC Code applies to the review of reviewable decisions by the Appeals Tribunal.

- (2) Without limiting subsection (1), the AFIC Code applies to —
- (a) the parties to proceedings before the Appeals Tribunal; and
  - (b) the conduct of proceedings before the Appeals Tribunal; and
  - (c) the places where the Appeals Tribunal may sit; and
  - (d) the powers of the Appeals Tribunal and its members; and
  - (e) payment of costs; and
  - (f) appeals from decisions of the Appeals Tribunal; and
  - (g) the operation and implementation of decisions that are the subject of review or appeal; and
  - (h) the protection and immunity of members of the Appeals Tribunal, persons representing parties before the Tribunal and persons summoned to attend or appearing before the Tribunal; and
  - (i) offences in relation to the Appeals Tribunal and proceedings of the Tribunal.

### **SSA to review certain decisions**

**450.** (1) A person whose interests are affected by a decision of the SSA made under the friendly societies legislation (other than a decision to cancel the certificate of approval of an auditor or to refuse to consent to the resignation of an auditor) may, by written notice given to the SSA within one month after the decision is made, request the SSA to review the decision.

(1A) A notice under subsection (1) must be accompanied by the prescribed fee.

(2) The SSA must comply with a request under subsection (1).

(3) When reviewing a decision, the SSA must give the person who requested the review an opportunity to appear before the SSA and make a submission in relation to the decision.

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(4)    The SSA may confirm, vary or reverse the decision.

(5)    Section 448 applies whether or not a person has requested a  
review of a decision under this section.

**PART 14 — MISCELLANEOUS**

***Division 1 — Evidence***

**Certificates etc.**

**451.** (1) In a proceeding, a document that appears to be a certificate of registration, certificate of incorporation or other certificate, or an authority, issued by the SSA under this Code, or a copy of any such document appearing to be certified as such by the SSA, is evidence of the matters stated in the certificate, authority or copy.

(2) Judicial notice must be taken of the imprint of the SSA's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

(3) A copy of, or extract from, a document lodged with, created by or otherwise held by the SSA, and certified to be a true copy or extract under the SSA's seal —

- (a) is as admissible in a proceeding as the original document; and
- (b) has the same validity in evidence as the original document or the extracted part of the original document.

(4) In a proceeding, a certificate of the SSA stating that a requirement of this Code 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,

is evidence of the matters specified in the certificate.

**Rules**

**452.** A printed copy of the rules of a society appearing to be certified by the society's secretary to be a true copy of its registered rules is evidence of the rules.

**Registers**

**453.** (1) The registers kept under this Code are evidence of the particulars directed or authorized by or under this Code to be inserted.



(2) A copy of an entry in a register is, if apparently certified by the secretary of the society concerned to be a true copy of the entry in question, evidence of the particulars to which the entry relates.

### **Minutes**

**454.** (1) An entry in the minutes purporting to be —

- (a) a minute of the business transacted at a meeting of a society, members of a benefit fund of the society, or the society's board; and
- (b) signed by the chairperson of the meeting at which the business was transacted or a subsequent meeting,

is evidence that the business as recorded was transacted at the meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a society, or of members of a benefit fund of the society, to the effect that a resolution was carried or was lost is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

### **Entries**

**455.** A copy of an entry in a book of a society regularly kept in the course of business is, if certified by statutory declaration of the secretary to be a true copy of the entry, admissible in evidence in any case where, and to the same extent as, the original entry itself is admissible.

## ***Division 2 — Offences***

### **Defaults by societies**

**456.** (1) A society must comply with a lawful requirement under the friendly societies legislation to give information to the SSA or another person.

(2) If a society contravenes subsection (1), the society and any officer of the society who is in default each commit an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### **Restrictions on powers**

**457.** (1) A society must not contravene a restriction imposed on its powers, or in relation to its exercise of its powers, under the friendly societies legislation.

Maximum penalty: \$100 000.

(2) Without limiting subsection (1), a society must not —

- (a) accept as a member a person who is not eligible for membership under the society's rules; or
- (b) raise money on loan or accept contributions to a benefit fund except as authorized and within the limits imposed by the friendly societies legislation or, subject to that legislation, the society's rules.

(3) If a society contravenes this section, any officer of the society who is in default commits an offence.

Maximum penalty applying to subsection (3): \$100 000 or imprisonment for 15 years, or both.

### **Offences by officers**

**458.** (1) In this section and sections 459 and 460 —

**“appropriate officer”** means —

- (a) in relation to a society that is being wound-up, the liquidator; and
- (b) in relation to a society that is under the management of an administrator, the administrator; and
- (c) in relation to a society the affairs of which are being investigated under Part 10, the person nominated as the appropriate officer in the particular case by the SSA; and
- (d) in relation to a society in relation to which a receiver or manager of all or any of the society's property has been appointed, whether by the Court or under the powers contained in any instrument, the receiver or manager; and
- (e) in relation to a society that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts, the SSA;

**“society to which this section applies”** means a society —

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10; or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts;

**“the relevant day”** means —

- (a) in relation to a society that is being wound-up, the day on which under this Code the winding-up has started or is taken to have started; and
- (b) in relation to a society that is under the management of an administrator, the day on which the administrator is appointed; and
- (c) in relation to a society the affairs of which are being investigated under Part 10, the day on which the investigator under that Part was appointed; and
- (d) in relation to a society in relation to which a receiver or manager has been appointed, the day on which the receiver or manager was appointed; and
- (e) in relation to a society that is, within the meaning of subsection (2), unable to pay its debts, the day on which the execution or other process was returned unsatisfied in whole or in part; and
- (f) in relation to a society that has, within the meaning of subsection (2), ceased to carry on business, the day on which a letter was first sent to the society or a notice was first published in the *Gazette* in relation to the society.

(2) For the purposes of subsection (1), a society is taken to have ceased to carry on business if the SSA —

- (a) has sent to the society by post a letter under section 572 (1) of the Corporations Law as applied by Part 9 and has not, within one month of sending the letter, received an answer to the effect that the society is carrying on business; or

- (b) has published in the *Gazette* a notice under section 572 (3) of that Law as so applied.
- (3) An officer, or former officer, of a society to which this section applies who —
- (a) does not to the best of the person's knowledge and belief fully and truly disclose to the appropriate officer —
    - (i) all the property of the society; and
    - (ii) how and to whom and for what consideration and when the society disposed of any part of its property, except such part as has been disposed of in the ordinary course of the society's business; or
  - (b) does not deliver up to the appropriate officer, or as the appropriate officer directs —
    - (i) all the property of the society in the person's custody or under the person's control and that the person is required by law to deliver up; or
    - (ii) all documents in the person's custody or under the person's control belonging to the society and that the person is required by law to deliver up; or
  - (c) within 5 years before the relevant day or at any time on or after that day —
    - (i) has concealed any part of the society's property to the value of \$100 or more, or has concealed a debt due to or from the society; or
    - (ii) has fraudulently removed part of the society's property to the value of \$100 or more; or
    - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of a document affecting, or relating to, the society's property or affairs; or
    - (iv) has made, or has been privy to the making of, a false entry in any document affecting, or relating to, the society's property or affairs; or
    - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making an omission in a document affecting or relating to the society's property or affairs; or

- (vi) by a false representation or other fraud, has obtained on credit for or on behalf of the society, property that the society has not subsequently paid for; or
- (vii) has obtained on credit for or on behalf of the society, under the false pretence that the society is carrying on business, property that the society has not subsequently paid for; or
- (viii) has pawned, pledged or disposed of any of the society's property that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the society's business; or
- (d) knowingly makes any material omission in any statement relating to the society's affairs; or
- (e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the appropriate officer of the knowledge or belief; or
- (f) prevents the production of any document affecting or relating to the society's property or affairs; or
- (g) within 5 years before the relevant day, or at any time on or after that day, has attempted to account for any part of the society's property by making entries in the society's documents showing fictitious transactions, losses or expenses; or
- (h) within 5 years before the relevant day, or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the society's creditors or any of them to an agreement relating to the society's affairs or to the winding-up,

commits an offence.

Maximum penalty applying to subsection (3): \$100 000 or imprisonment for 15 years, or both.

- (4) It is a defence to a charge —
  - (a) under subsection (3) (a), (b) or (d) or subsection (3) (c) (i), (vii) or (viii), if the accused person proves that the person had no intent to defraud; and
  - (b) under subsection (3) (c) (iii) or (iv) or subsection (3) (f), if the accused person proves that the person had no intent to conceal the state of affairs of the society or to defeat the law.

(5) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under subsection (3) (c) (viii), a 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.

Maximum penalty applying to subsection (5): \$100 000 or imprisonment for 15 years, or both.

### **Incurring debts not likely to be paid**

**459.** (1) If an officer of a society to which section 458 applies was knowingly a party to the contracting of a debt by the society and had at the time the debt was contracted, no probable or reasonable grounds of expectation, after taking into consideration the society's other liabilities (if any) at the time, of the society being able to pay the debt, the officer commits an offence.

Maximum penalty: \$25 000.

(2) If any business of a society to which section 458 applies has been carried out with intent to defraud the society's creditors or creditors of another person or for any fraudulent purpose, a person who is knowingly a party to the carrying on of the business in that way commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### **Powers of Court**

**460.** (1) If a person has been convicted of an offence under section 459, the Court on the application of the SSA or a prescribed person may declare that the person is personally responsible without any limitation of liability —

- (a) in the case of a conviction under section 459 (1), for the payment to the society of an amount equal to the whole of the debt to which the conviction relates or such part of the debt as the Court considers appropriate; and
- (b) in the case of a conviction under section 459 (2), for the payment to the society of the amount required to satisfy all or any of the society's debts as the Court considers appropriate.

(2) In relation to a society to which a conviction mentioned in subsection (1) relates —

- (a) the appropriate officer; and

- (b) a creditor of the society authorized by the SSA to make an application under subsection (1),

are prescribed persons for the purposes of that subsection.

(3) If the Court makes a declaration under subsection (1) in relation to a person it may —

- (a) give such further directions as it considers proper for the purpose of giving effect to the declaration and, in particular, may order that the liability of the person under the declaration is a charge on —
- (i) a debt or obligation due from the society to the person; or
- (ii) any charge or any interest in any charge on any of the society's assets held by or vested in the person or any body corporate or person on the person's behalf or any person claiming as assignee from or through the person liable or any body corporate or person acting on the person's behalf; or
- (b) from time to time make such further order as is necessary for the purpose of enforcing a charge imposed under this subsection.

(4) This section has effect despite the fact that the person concerned is criminally liable in relation to the matters on the ground on which the declaration is made.

(5) On the hearing of an application under subsection (1), the appropriate officer or other applicant may give evidence or call witnesses.

(6) In subsection (3) —

**“assignee”** includes any person to whom or in whose favour, by the direction 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 (other than consideration by way of marriage) given in good faith and without notice of any of the matters on which the conviction or declaration was made.

### **Inducement to be appointed as liquidator**

**461.** A person must not give, or agree or offer to give, to a member or creditor of a society valuable consideration with a view to securing the person's appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the liquidator of the society.

Maximum penalty: \$75 000 or imprisonment for 10 years, or both.

### **Falsification of records**

**462.** (1) An officer of a society must not destroy, mutilate, alter or falsify a document or security, or make or be privy to the making of any false or fraudulent entry in a document, belonging to the society with intent to defraud or deceive a person.

(2) A person who, having a duty to record information in the documents of a society, fails to record the information in the documents —

- (a) with intent to defraud another person; or
- (b) knowing that the failure will render other matter contained in the documents false or misleading in a material particular,

commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### **Frauds by officers**

**463.** An officer of a society who —

- (a) by false pretence, or by means of another fraud, induces a person to give credit to the society; or
- (b) with intent to defraud creditors of the society, makes or causes to be made a gift or transfer of, or charge on, or causes or connives at the levying of any execution against, the society's property; or
- (c) with intent to defraud the society's creditors, conceals or removes part of the society's property within 2 months before, or after, the date of any unsatisfied judgment or order for payment of money obtained against the society,

commits an offence.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### **False or misleading information**

**464.** A person must not make available, or give, information in a return, report, certificate, accounts or other document required by or for the purposes of this Code (other than Part 4B) or the friendly societies legislation or a standard —

- (a) that the person knows is false or misleading in a material particular; or



- (b) that has omitted from it a matter or thing the omission of which makes the information misleading in a material particular.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

**Power to examine defaulting officers**

**465.** (1) In this section —

**“society to which this section applies”** means a society —

- (a) that has been, or is being, wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10; or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

(2) For the purposes of subsection (1), a society has ceased to carry on business in the circumstances mentioned in section 458 (2).

(3) This section applies if it appears to the SSA that an officer or former officer of a society to which this section applies has conducted himself or herself in such a way that the officer or former officer has rendered himself or herself liable to action by the society in relation to the performance of the person’s duties as an officer of the society.

(4) The SSA, or a person who is authorized by it in that behalf, may apply *ex parte* to the Court for an order that the officer or former officer must attend before the Court on a day appointed by the Court to be examined as to the person’s conduct and dealings as an officer of the society.

(5) An examination under this section must not be held in open court unless the Court otherwise orders.

(6) The Court, on making the order under subsection (4) or at any subsequent time, on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it considers appropriate.

(7) The applicant and, with the leave of the Court, a creditor or member of the society, may take part in the examination either personally or by a legal practitioner.

(8) The person examined —

- (a) must be examined on oath; and
- (b) must answer all questions that the Court puts or allows to be put; and
- (c) is not entitled to refuse to answer a question that is relevant or material to the examination on the ground that the answer might tend to incriminate the person.

(9) The answer to a question put to a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if —

- (a) before answering the question, the person claims that answering the question might tend to incriminate the person; and
- (b) answering the question might in fact tend to incriminate the person.

(10) A person ordered to be examined under this section may be represented by a legal practitioner who is at liberty to put to the person examined any questions for the purpose of enabling the person to explain or qualify any answer given.

(11) Notes of the examination —

- (a) must be reduced to writing; and
- (b) must be read over to and signed by the person examined; and
- (c) may, subject to subsection (9), be used in evidence in a legal proceeding against the person examined; and
- (d) may be inspected and copied by the person examined, the SSA or applicant or, with the consent of the Court, by a creditor or member of the society.

(12) The Court may adjourn the examination from time to time.

(13) If the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it 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 another person who with the consent of the Court takes part in the examination.

**Power of Court to assess damages against certain persons**

**466.** (1) In this section —

**“society to which this section applies”** means a society —

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10; or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors;

**“prescribed person”** means —

- (a) a liquidator or provisional liquidator of the society concerned; or
- (b) if the society concerned is under the management of an administrator, the administrator or a member of the society; or
- (c) a person authorized by the SSA to apply under subsection (3).

(2) For the purposes of subsection (1), a society has ceased to carry on business in the circumstances mentioned in section 458 (2).

(3) If, on application by the SSA or a prescribed person, the Court is satisfied that a person who has taken part in the formation, promotion, administration, management or winding-up of a society to which this section applies —

- (a) has misapplied or retained or become liable or accountable for property of the society; or
- (b) has been guilty of negligence, default, breach of trust or breach of duty in relation to the society and that the society has suffered, or is likely to suffer, loss or damage as a result,

the Court may make one or both of the orders mentioned in subsection (4).

(4) The orders that may be made under subsection (3) are —

- (a) an order directing the person to pay money or transfer property to the society; and
- (b) an order directing the person to pay to the society the amount of the loss or damage.

(5) This section applies to the receipt of any money or property by an officer or former officer of the society, whether by way of salary or otherwise, that appears to the Court to have been unfair or unjust to the society or its members.

(6) This section applies despite the fact that the person concerned may be criminally liable in relation to the matters in relation to which the order is sought.

(7) If the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

#### **False copies of rules**

**467.** A person must not —

- (a) give to a member of a society or a person intending or applying to become a member, a copy of any rules or any amendment of the rules other than those that have been duly registered, representing that they are binding on the society's members; or
- (b) make any amendment in any of the rules of the society after they have been duly registered and circulate them representing that they have been duly registered.

Maximum penalty: \$25 000.

#### **Fraud or misappropriation**

**468.** A person must not —

- (a) by false representation or imposition obtain possession of property of a society; or
- (b) having property of a society in the person's possession, withhold or misapply that property, or wilfully apply part of the property, to purposes other than those specified or authorized in the society's rules or by or under the friendly societies legislation.

Maximum penalty: \$100 000 or imprisonment for 15 years, or both.

### **Commissions**

**469.** (1) An officer of a society must not accept from a person who enters into a transaction with the society a commission, fee or reward, whether pecuniary or otherwise, for or in connection with that transaction.

Maximum penalty: \$5 000.

(2) An officer of a society who commits an offence against subsection (1) is indebted to the society for double the value or amount of the commission, fee or reward.

### **Officers and other persons in default**

**470.** If this Code provides that an officer of a society or other body corporate who is in default commits an offence, the reference to the officer who is in default is, in relation to a contravention of, or an offence against, this Code, a reference to an officer of the society or other body corporate (including a person who subsequently ceased to be such an officer) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.

## ***Division 3 — Proceedings***

### **Proceedings for offences**

**471.** (1) A proceeding for an offence against this Code may be brought by —

- (a) the SSA; or
- (b) a person authorized in writing by the SSA.

(2) A proceeding may be started within —

- (a) for an alleged offence not punishable by imprisonment, 2 years; and
- (b) for an alleged offence punishable by imprisonment, 5 years,

after the alleged offence is committed or, with the consent of the Minister, at any later time.

### **Reciprocity in relation of offences**

**472.** If a person does or omits to do anything in this State and the person, if the person had done or omitted to do the thing in another

participating State, would have committed an offence against the provision of a law of that State that corresponds with a provision of this Code, the person commits an offence against that provision of this Code.

### **Continuing offences**

**473.** (1) If —

- (a) under this Code anything is required or directed to be done within a particular period or before a particular time; and
- (b) failure to do the thing within the period or before the time constitutes an offence; and
- (c) the thing is not done within the period or before the time,

then —

- (d) the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done; and
- (e) if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time, the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues; and
- (f) the penalty applicable to each such separate and further offence is \$500.

(2) If —

- (a) under this Code anything is required or directed to be done but no period within which or time by which the thing is to be done is specified; and
- (b) failure to do the thing constitutes an offence; and
- (c) a person is convicted of an offence in relation to a failure to do the thing,

the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues and the penalty applicable to each such separate and further offence is \$500.

### **Injunctions**

**474.** (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute —

- (a) a contravention of this Code; or

- (b) attempting to contravene this Code; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Code; or
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene this Code; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Code; or
- (f) conspiring with others to contravene this Code,

the Court may, on the application of the SSA or a person whose interests have been, are or would be affected by the conduct, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring that person to do anything.

(2) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Code, the Court may, on the application of —

- (a) the SSA; or
- (b) a person whose interests have been, are or would be affected by the failure to do the thing,

grant an injunction, requiring the person to do the thing.

(3) If an application is made for an injunction under subsection (1) or (2), the Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that the subsection applies.

(4) The Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised —

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and

- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(7) The power of the Court to grant an injunction requiring a person to do a thing may be exercised —

- (a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do the thing; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(8) If the SSA applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In a proceeding under this section against a person, the Court may make an order under section 299 in relation to the person.

(10) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

(11) The Court's powers under this section are in addition to its other powers.

### **Penalty notices**

**475.** (1) If the SSA or a person authorized by it has reason to believe that a person (including a society) has committed a prescribed offence, the SSA or authorized person may serve on the person a notice in accordance with the regulations —

- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and
- (b) setting out the prescribed penalty in relation to the prescribed offence; and



- (c) in the case of a prescribed offence constituted by a failure to do a particular thing, stating —
    - (i) that the obligation to do the thing continues despite the service of the notice or the payment of the prescribed penalty; and
    - (ii) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the thing, no further action will be taken against the person in relation to the prescribed offence; and
    - (iii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the thing, a proceeding may be instituted against the person; and
  - (d) in the case of a prescribed offence that is not constituted by a failure to do a particular thing, stating —
    - (i) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
    - (ii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person.
- (2) Subsection (1) does not authorize the SSA or an authorized person —
- (a) to serve on a person more than one notice under that subsection in relation to an alleged commission by the person of a particular prescribed offence; or
  - (b) to serve on a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against the person for the offence under section 471.
- (3) If a notice under subsection (1) is served on a person in relation to a prescribed offence constituted by the failure to do a particular thing —
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice and does the thing, no proceedings may be instituted against the person in relation to the prescribed offence; or

- (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice, but has not done the thing, no proceedings may be instituted against the person in relation to the prescribed offence, but the obligation to do the thing continues; or
- (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, but has done the thing, a proceeding may be instituted against the person in relation to the prescribed offence; or
- (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the thing, the obligation to do the thing continues, and a proceeding may be instituted against the person in relation to the prescribed offence.

(4) If a notice under subsection (1) is served on a person in relation to a prescribed offence, that is not constituted by a failure to do a particular thing —

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, no proceedings may be instituted against the person in relation to the prescribed offence; or
- (b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person in relation to the prescribed offence.

(5) The payment of an amount by a person under a notice served on the person under this section in relation to a prescribed offence is not to be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

#### **Power to grant relief**

**476.** (1) This section applies to a person who is —

- (a) an officer of a society; or
- (b) an auditor or actuary of a society, whether or not the auditor or actuary is an officer of the society; or
- (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 in relation to a society.

(2) If, in a 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 the person is such a person, it appears to the court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate.

(3) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in relation to any negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, the person may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under subsection (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

#### ***Division 4 — Other matters***

##### **Secrecy**

477. (1) In this section —

“**court**” includes a tribunal, authority or person having the power to lawfully require the production of documents or the answering of questions;

“**financial sector supervisory agency**” means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section;

“**Government agency**” includes a person or body declared by the regulations to be an agency of a State or Territory Government;

“**law enforcement agency**” means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section;

“**protected document**” means a document that —

- (a) contains information that concerns a person; and

- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under or in relation to the friendly societies legislation;

**“protected information”** means information that —

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under or in relation to the friendly societies legislation.

(2) This section applies to a person who is or has been appointed or employed by AFIC or the SSA for the purposes of carrying out any duties under the friendly societies legislation.

(3) A person to whom this section applies must not —

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person protected information concerning another person,

unless the record is made, or the information divulged or communicated —

- (c) under or for the purposes of friendly societies legislation; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the friendly societies legislation.

Maximum penalty: \$25 000.

(4) Subsection (3) does not prevent a person to whom this section applies from disclosing protected information or producing a protected document, to —

- (a) a court; or
- (b) AFIC or the SSA of another State;
- (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers;
- (d) a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth or a State;

- (e) a Minister or nominee of the Minister;
- (f) a Government agency.

(5) Subsection (3) does not prohibit a person to whom this section applies from disclosing protected information or producing a protected document relating to the affairs of a person if the person agrees in writing to the disclosure of the protected information or the production of a protected document.

(6) A person to whom this section applies cannot be required to produce to a court any protected document or to disclose protected information except when it is necessary to do so for the purposes of the friendly societies legislation.

#### **Powers about money of members who have died**

**478.** If a member of a society dies, the society may, without production of probate of the will or letters of administration of the estate, apply an amount (not exceeding the amount prescribed by the regulations) held by the society for the deceased person —

- (a) in payment of the deceased person's funeral expenses or debts; or
- (b) in payment to the executor of the deceased person's will; or
- (c) in payment to anyone else who is, in the society's opinion, entitled to the amount, having regard to the will of the deceased person or, if there is no will, the laws of intestacy.

#### **Limitation of doctrine of *ultra vires***

**479.** (1) A transaction to which a society is a party is not invalid as against another party to the transaction merely because of any deficiency in the capacity of the society to enter into, or carry out, the transaction unless the other party to the transaction has actual notice of the deficiency.

(2) A society is authorized to carry out a transaction that would, but for subsection (1), be invalid.

(3) The section does not prejudice a proceeding by a member of a society to restrain the society from entering into or carrying out a transaction that lies beyond the powers conferred on the society by the friendly societies legislation, any other law or the society's rules.

(4) To the extent that sections 30 and 67 are inconsistent with this section, those sections prevail.

**Abolition of doctrine of constructive notice**

**480.** A person dealing with a society, or an agent of a society, is not to be presumed to have notice of the society's rules and any document registered by or lodged with the SSA in relation to the society.

## PART 15 — TRANSITIONAL

### Continuing societies

**481.** A continuing society continues in existence and is taken to be registered under this Code as a society, and to be the same body on and after the date on which this section comes into operation as before that date.

### Application for certificate of incorporation

**482.** (1) On application by a society to which section 481 applies and on payment of the prescribed fee, the SSA must issue to the society a certificate of incorporation stating that the society is incorporated under this Code.

(2) The SSA need not issue a certificate of incorporation to a society under subsection (1) unless the society —

- (a) surrenders to the SSA its certificate of incorporation under the previous law or a corresponding previous enactment; or
- (b) satisfies the SSA that the certificate has been lost or destroyed.

### Benefit funds

**483.** (1) A benefit fund (within the meaning of the previous law) of a continuing society existing under the previous law immediately before the commencement of this section is deemed to be established under this Code as a benefit fund (within the meaning of this Code) of the continuing society.

(2) Subsection (1) does not apply to a benefit fund of a continuing society from which only non-monetary benefits were provided before the commencement of this section.

### Rules

**484.** (1) The rules of a continuing society, in force immediately before the commencement of this section, become its rules under this Code.

(2) The rules have effect subject to this Code.

(3) If any rules of a continuing society do not comply with this Code, the regulations or the standards, the society must, within 2 years after the commencement of this section, take all necessary steps to ensure that its rules do so comply.

### **Subsidiaries**

**485.** A continuing society that, immediately before the commencement of this section, is the holder of a subsidiary because of the lawful investment of its funds may continue to hold the subsidiary and is taken to do so with the approval of the SSA.

### **Directors**

**486.** (1) An existing term of office of a director of a continuing society that is not due to end until 3 years or more after the commencement of this section ends —

- (a) immediately before the re-election of directors at the third annual general meeting of the society after commencement of this section; or
- (b) at the end of that third annual general meeting.

(2) Subsection (1) does not, by implication, prevent the office of the director becoming vacant at an earlier time.

### **Annual general meeting**

**487.** If —

- (a) the time within which a continuing society must hold its annual general meeting under the previous law has been extended under the law; and
- (b) the extension of time is in force immediately before the commencement of this section,

the extension of time is taken to have been allowed by the SSA under section 301 (2).

### **Special resolutions**

**488.** A special resolution passed by a continuing society under the previous law, and not registered under the law before the commencement of this section, may be registered by the SSA under this Code.

### **Registers**

**489.** A register kept by the SSA under the relevant previous law may be incorporated in a register kept by the SSA under this Code.



### **Accounts**

**489A.** The directors of a society must prepare, or cause to be prepared, accounts for the financial year last ended before the commencement of this Code —

- (a) as if the friendly societies legislation had not been enacted;  
or
- (b) in accordance with Part 6 of this Code and the standards.

### **Winding-up**

**490.** If —

- (a) under the previous law, a certificate has been issued for the winding-up of a continuing society; and
- (b) immediately before the commencement of this section, a person has not been appointed liquidator of the society because of the certificate,

the certificate is taken to have been issued by the SSA under section 402 and the society may be wound-up accordingly.

### **Documents**

**491.** A certificate or other document, relating to a continuing society, issued or registered by, filed or lodged with or given to the SSA under the previous law has effect as if it were a certificate or other document issued or registered by, filed or lodged with or given to the SSA under this Code.

### **Operation of Part 4B**

**492.** (1) Despite the commencement of Part 4B, a failure to comply with that Part during the period of 6 months after that commencement is not a contravention of this Code.

(2) The SSA may, in writing given to a society, exempt the society from compliance with Division 2 of Part 4B in respect of one or more benefit funds for a further period ending not later than 12 months after the commencement of that Division.

(3) An exemption under subsection (2) applies to the society and anything done by any person in relation to the society and may be given subject to such conditions as are specified in the notice.

**Interstate society carrying on business in this State**

**493.** (1) An interstate society that prior to the commencement of this section carried on business within the meaning of section 426 in this State —

- (a) must as soon as practicable notify the SSA that it is carrying on business in this State;
- (b) if the society proposes to continue carrying on business in this State, must, within 6 months after the commencement of this section (or such longer period as the SSA may allow) apply to the SSA for registration under Part 11 as a foreign society.

(2) An interstate society that notifies the SSA in accordance with subsection (1) is deemed to be registered under Part 11 as a foreign society for 6 months after the commencement of this section, or such longer period as the SSA may allow.

(3) An interstate society that notifies the SSA and applies for registration in accordance with subsection (1) is deemed to be registered under Part 11 as a foreign society until so registered or until the SSA gives written notice to the society that its application for registration has been refused.

(4) In this section —

“**interstate society**” means a body incorporated as a friendly society in another State.

**SCHEDULE A**  
**MISCELLANEOUS PROVISIONS RELATING TO**  
**INTERPRETATION**

**PART 1 — PRELIMINARY**

**Displacement of Schedule by contrary intention**

1. The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Code.

**PART 2 — GENERAL**

**Code or Act includes statutory instruments under Code or Act**

2. In this Code, a reference to this Code, the AFIC Code or an Act, or a provision of this Code, the AFIC Code or an Act, includes a reference to the statutory instruments made under, or in force under or for the purposes of, those Codes, the Act or provision.

**Code to be construed not to exceed legislative power of Legislature**

3. (1) This Code is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this State.

(2) If a provision of this Code, or the application of a provision of this Code to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this State —

- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of this Code, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Code in addition to, and without limiting the effect of, any provision of this Code.

**Every section to be a substantive enactment**

4. Every section of this Code has effect as a substantive enactment without introductory words.

**Material that is, and is not, part of Code**

5. (1) The heading to a Part, Division or Subdivision into which this Code is divided is part of this Code.
- (2) A Schedule to this Code is part of this Code.
- (3) A heading to a section of this Code is not part of this Code.
- (4) A footnote to this Code or to a provision of this Code, and an endnote to this Code, are not part of this Code.

**References to particular Acts**

6. In this Code —
- (a) an Act of this State may be cited —
- (i) by its short title; or
- (ii) by reference to the year in which it was passed and its number; or
- (iii) in another way sufficient in an Act of this State for the citation of an Act;
- (b) a Commonwealth Act may be cited —
- (i) by its short title; or
- (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,  
together with a reference to the Commonwealth;
- (c) an Act of another State may be cited —
- (i) by its short title; or
- (ii) in another way sufficient in an Act of the State for the citation of such an Act,  
together with a reference to the State.

**References taken to be included in Act or Code citation etc.**

7. (1) A reference in this Code to an Act includes a reference to —
- (a) the Act as originally enacted, and as amended from time to time since its original enactment; and

- (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Code to a provision of this Code or of an Act includes a reference to —

- (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) A reference in this Code to a provision of the AFIC Code includes a reference to —

- (a) the provision as in force from time to time; and
- (b) if the provision has been omitted and re-enacted (with or without modification) since the commencement of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(4) Subclauses (1) and (2) apply to a reference in this Code to a law of the Commonwealth or another State as they apply to a reference in this Code to an Act and to a provision of an Act.

#### **References to commencement of AFIC Code**

**8.** In this Code, a reference to the commencement of the AFIC Code, or a provision of the AFIC Code, means the time at which the provision of this Code containing the reference comes into operation or, in the case of a provision of the AFIC Code, the time at which the provision comes into operation, whichever is the later.

#### **Interpretation best achieving Code's purpose**

**9.** (1) In the interpretation of a provision of this Code, the interpretation that will best achieve the purpose of this Code is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Code.

**Use of extrinsic material in interpretation**

**10.** (1) In this clause —

**“extrinsic material”** means relevant material not forming part of this Code, including, for example —

- (a) material that is set out in the document containing the text of this Code as printed by authority of the Government Printer; and
- (b) a report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Assembly or Legislative Council of Western Australia before the provision concerned was enacted; and
- (c) a report of a committee of the Legislative Assembly or Legislative Council of Western Australia that was made to the Legislative Assembly or Legislative Council of Western Australia before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in this Code; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Assembly or Legislative Council of Western Australia by the member bringing in the Bill before the provision was enacted; and
- (f) the speech made to the Legislative Assembly or Legislative Council of Western Australia by the member in moving a motion that the Bill be read a second time; and
- (g) material in the Votes and Proceedings of the Legislative Assembly or Minutes of Proceedings of Western Australia or in any official record of debates in the Legislative Assembly or Legislative Council of Western Australia; and
- (h) a document that is declared by this Code to be a relevant document for the purposes of this clause;

**“ordinary meaning”** means the ordinary meaning conveyed by a provision having regard to its context in this Code and to the purpose of this Code.

(2) Subject to subclause (3), in the interpretation of a provision of this Code, consideration may be given to extrinsic material capable of assisting in the interpretation —

- (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or
- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or
- (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to —

- (a) the desirability of a provision being interpreted as having its ordinary meaning; and
- (b) the undesirability of prolonging proceedings without compensating advantage; and
- (c) other relevant matters.

**Effect of change of drafting practice and use of examples**

**11.** (1) If —

- (a) a provision of this Code expresses an idea in particular words; and
- (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example, the use of a clearer or simpler style, the ideas must not be taken to be different merely because different words are used.

(2) If this Code includes an example of the operation of a provision —

- (a) the example is not exhaustive; and
- (b) the example does not limit, but may extend, the meaning of the provision; and
- (c) the example and the provision are to be read in the context of each other and the other provisions of this Code, but, if the example and the provision so read are inconsistent, the provision prevails.

**Compliance with forms**

**12.** (1) If a form is prescribed or approved by or for the purpose of this Code, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Code requires —

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

**PART 3 — TERMS AND REFERENCES**

**Definitions**

**13.** (1) In this Code —

“**Act**” means any Act or Ordinance passed by the Parliament of Western Australia, or by any Council previously having authority or power to pass laws in Western Australia, such Act or Ordinance having been assented to by or on behalf of Her Majesty;

“**adult**” means an individual who is 18 or more;

“**affidavit**”, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

“**amend**” includes —

- (a) omit or omit and substitute; and
- (b) add to; and
- (c) alter or vary; and
- (d) amend by implication;

“**appoint**” includes re-appoint;



“**Australia**” means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

“**business day**” means a day that is not —

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

“**calendar month**” means a period starting at the beginning of any day of one of the 12 named months and ending —

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

“**calendar year**” means a period of 12 months beginning on 1 January;

“**commencement**”, in relation to this Code or an Act or a provision of this Code or an Act, means the time at which this Code, the Act or provision comes into operation;

“**Commonwealth**” means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

“**confer**”, in relation to a function, includes impose;

“**contravene**” includes fail to comply with;

“**country**” includes —

- (a) a federation; or
- (b) a state, province or other part of a federation;

“**date of assent**”, in relation to an Act, means the day on which the Act receives the Royal Assent;

“**definition**” means a provision of this Code or the AFIC Code (however expressed) that —

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

**“document”** includes —

- (a) any paper or other material on which there is writing;  
and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

**“estate”** includes easement, charge, right, title, claim, demand, lien and encumbrance, whether at law or in equity;

**“expire”** includes lapse or otherwise cease to have effect;

**“external Territory”** means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

**“fail”** includes refuse;

**“financial year”** means a period of 12 months beginning on 1 July;

**“foreign country”** means a country (whether or not an independent sovereign State) outside Australia and the external Territories;

**“function”** includes duty;

**“*Gazette*”** means the *Government Gazette* of this State;

**“*Gazette notice*”** means notice published in the *Gazette*;

**“gazetted”** means published in the *Gazette*;

**“Government Printer”** means the Government Printer for this State, and includes any other person authorized by the Government of this State to print an Act or instrument;

**“indictment”** includes information, inquisition and presentment;

**“individual”** means a natural person;

**“insert”**, in relation to a provision of this Code or the AFIC Code, includes substitute;

**“instrument”** includes a statutory instrument;

“**interest**”, in relation to land or other property, means —

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property;

“**internal Territory**” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

“**Jervis Bay Territory**” means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

“**land**” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land;

“**liability**” means any liability or obligation (whether liquidated or unliquidated, certain or contingent, or accrued or accruing);

“**make**” includes issue and grant;

“**Minister**” has the meaning given by clause 18;

“**minor**” means an individual who is under 18;

“**modification**” includes addition, omission and substitution;

“**month**” means a calendar month;

“**named month**” means one of the 12 months of the year;

“**Northern Territory**” means the Northern Territory of Australia;

“**number**” means —

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter;

“**oath**”, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

“**office**” includes position;

“**omit**”, in relation to a provision of an Act, includes repeal;

“**party**” includes an individual and a body politic or corporate;

“**penalty**” includes forfeiture and punishment;

“**person**” includes an individual and a body politic or corporate;

“**power**” includes authority;

“**prescribed**” means prescribed by, or by regulations or standards made or in force for the purposes of or under, this Code;

“**printed**” includes typewritten, lithographed or reproduced by any mechanical means;

“**proceeding**” means a legal or other action or proceeding;

“**property**” means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

“**provision**”, in relation to this Code, the AFIC Code or an Act, means words or other matter that form or forms part of this Code, the AFIC Code or the Act, and includes —

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, sub-paragraph, sub-subparagraph or Schedule of or to this Code, the AFIC Code or the Act; and
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Code, the AFIC Code, or the Act; and
- (c) the long title and any preamble to the Act;

“**purpose**”, in relation to an Act, includes object;

“**record**” includes information stored or recorded by means of a computer;

“**repeal**” includes —

- (a) revoke or rescind; and
- (b) repeal by implication; and
- (c) abrogate or limit the effect of this Code or the instrument concerned; and

- (d) exclude from, or include in, the application of this Code or the instrument concerned any person, subject matter or circumstance;

“**sign**” includes the affixing of a seal and the making of a mark;

“**statutory declaration**” means a declaration made under an Act, or under a Commonwealth Act or an Act of another State, that authorizes a declaration to be made otherwise than in the course of a judicial proceeding;

“**statutory instrument**” means an instrument (including a regulation, standard or rule) made or in force under or for the purposes of this Code or the AFIC Code, and includes an instrument made or in force under any such instrument;

“**swear**”, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare and promise;

“**word**” includes any symbol, figure or drawing;

“**writing**” includes any mode of representing or reproducing words in a visible form.

- (2) In a statutory instrument —

“**the Code**” means the Code under, or for the purposes of, which the instrument is made or in force.

#### **Provisions relating to defined terms and gender and number**

**14.** (1) If this Code defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Code apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Code, words indicating a gender include each other gender.

- (4) In this Code —

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

**Meaning of “may” and “must”**

**15.** (1) In this Code, the word “may”, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Code, the word “must”, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

**Words and expressions used in statutory instruments**

**16.** (1) Words and expressions used in a statutory instrument made or in force under or for the purposes of this Code have the same meanings as they have, from time to time, in this Code, or relevant provisions of this Code.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

**Effect of express references to bodies corporate and individuals**

**17.** In this Code, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used) —

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Code there is particular reference to a body corporate (however expressed); and
- (b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Code there is particular reference to an individual (however expressed).

**References to Minister**

**18.** (1) In this Code —

- (a) a reference to a Minister is a reference to a Minister of the Crown of this State; and
- (b) a reference to a particular Minister by title, or to “the Minister” without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this State, who is acting for or on behalf of the Minister.

(2) In a provision of this Code, a reference to “the Minister” without specifying a particular Minister by title is a reference to —

- (a) the Minister of this State administering the provision; or
- (b) if, for the time being, different Ministers of this State administer the provision in relation to different matters —
  - (i) if only one Minister of this State administers the provision in relation to the relevant matter, the Minister; or
  - (ii) if 2 or more Ministers of this State administer the provision in relation to the relevant matter, any one of the Ministers; or
- (c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision, any one of the Ministers.

(3) To allay any doubt, it is declared that if —

- (a) a provision of this Code is administered by 2 or more Ministers of this State; and
- (b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

**Production of records kept in computers etc.**

**19.** If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Code —

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs —

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

**Application of offence provisions to bodies corporate**

**20.** (1) A provision of this Code relating to offences applies to bodies corporate as well as to individuals.

(2) If under this Code, a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate if the body corporate is the party aggrieved.

**References to this State to be implied**

**21.** In this Code —

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this State; and
- (b) a reference to a locality, jurisdiction or other matter or thing is a reference to such a locality, jurisdiction or other matter or thing in and of this State.

**References to officers and holders of offices**

**22.** In this Code, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

**Reference to certain provisions of this Code**

**23.** If a provision of this Code refers —

- (a) to a Part, section or Schedule by a number and without reference to this Code, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Code; or
- (b) to a Schedule without reference to it by a number and without reference to this Code, the reference, if there is only one Schedule to this Code, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Code, the reference is a reference to —
  - (i) the Division, designated by the number, of the Part in which the reference occurs; and
  - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and



- (iii) the subsection, designated by the number, of the section in which the reference occurs; and
- (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
- (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
- (vi) the sub-paragraph, designated by the number, of the paragraph in which the reference occurs; and
- (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and
- (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

#### **Words that form part of provision**

**24.** The word “and”, “or” or “but”, or a similar word, at the end of a paragraph, subparagraph or sub-subparagraph or another provision of this Code forms part of the provision concerned.

#### **Reference to provisions of a Code or an Act is inclusive**

**25.** In this Code, a reference to a portion of this Code or the AFIC Code or an Act includes —

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Code, the AFIC Code or the Act referred to that forms the beginning of the portion; and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Code, the AFIC Code or the Act referred to that forms the end of the portion.

#### **PART 4 — FUNCTIONS AND POWERS**

##### **Performance of statutory functions**

**26.** (1) If this Code confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Code confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Code confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

##### **Power to make instrument or decision includes power to amend or repeal**

**27.** Except as otherwise provided in this Code, if this Code authorizes or requires the making of an instrument or decision —

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

##### **Matters for which statutory instruments may make provision**

**28.** (1) If this Code authorizes or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Code may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of —

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

- (3) A statutory instrument may —
- (a) apply generally throughout this State or be limited in its application to a particular part of this State; or
  - (b) apply generally to all persons, matters or things or be limited in its application to —
    - (i) particular persons, matters or things; or
    - (ii) particular classes of persons, matters or things; or
  - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may —
- (a) apply differently according to different specified factors; or
  - (b) otherwise make different provision in relation to —
    - (i) different persons, matters or things; or
    - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorize a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Code authorizes or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- (7) If this Code authorizes or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Code may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Code in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument made or in force under this Code may provide for the review of, or a right of appeal against, a decision made under the statutory instrument or this Code and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

**Presumption of validity and power to make**

**29.** (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Code or a particular provision of this Code.

**Appointments may be made by name or office**

**30.** (1) If this Code authorizes or requires a person or body —

- (a) to appoint a person to an office; or
- (b) to appoint a person or body to exercise a power; or
- (c) to appoint a person or body to do another thing,

the person or body may make the appointment by —

- (d) appointing a person or body by name; or
- (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

**Acting appointments**

**31.** (1) If this Code authorizes a person or body to appoint a person to act in an office, the person or body may, in accordance with this Code, appoint —

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may —

- (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
- (b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until —

- (a) the appointer otherwise directs; or
- (b) the vacancy is filled; or
- (c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office —

- (a) the appointee has all the powers and functions of the holder of the office; and
- (b) this Code and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because —

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If this Code authorizes the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

### **Powers of appointment imply certain incidental powers**

**32.** (1) If this Code authorizes or requires a person or body to appoint a person to an office —

- (a) the power may be exercised from time to time as occasion requires; and

- (b) the power includes —
- (i) power to remove or suspend, at any time, a person appointed to the office; and
  - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
  - (iii) power to reinstate or reappoint a person removed or suspended; and
  - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
  - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1) (b) may be exercised even if this Code provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1) (b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1) (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

### **Delegation of powers**

**33.** (1) If this Code authorizes a person or body to delegate a power, the person or body may, in accordance with this Code, delegate the power to —

- (a) a person or body by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation may be —

- (a) general or limited; and
- (b) made from time to time; and
- (c) revoked, wholly or partly, by the delegator.

(3) The delegation or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorized by the body for the purpose.

(4) A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated power, do anything that is incidental to the delegated power.

(6) A delegated power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a power is, under this Code, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the power when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a power is delegated to a particular officer or the holder of a particular office —

- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and
- (b) the power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A power that has been delegated may, despite the delegation, be exercised by the delegator.

(11) Subject to subclause (12), this clause applies to a sub-delegation of a power in the same way as it applies to a delegation of a power.

(12) If this Code authorizes the delegation of a power, the power may be sub-delegated only if this Code expressly authorizes the power to be sub-delegated.

#### **Exercise of power between enactment and commencement**

**34.** (1) If a provision of this Code (the “**empowering provision**”) that does not commence on its enactment would, had it commenced, confer a power —

- (a) to make an appointment; or

- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then —

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act (the “**empowering provision**”) that does not commence on its enactment would, had it commenced, amend a provision of this Code so that it would confer a power —

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then —

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If —

- (a) this Code has commenced and confers a power to make a statutory instrument (the “**basic instrument-making power**”); and
- (b) a provision of an Act that does not commence on its enactment would, had it commenced, amend this Code so as to confer additional power to make a statutory instrument (the “**additional instrument-making power**”),

then —

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and



- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of —

- (a) enabling the exercise of a power mentioned in the subclause; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect —

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If —

- (a) an appointment is made under subclause (1) or (2); or
- (b) an instrument, or provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect —

- (c) on the commencement of the relevant empowering provision; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

## **PART 5 — DISTANCE, TIME AND AGE**

### **Matters relating to distance, time and age**

**35.** (1) In the measurement of distance for the purposes of this Code, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Code, the period is to be calculated by excluding the day, or the day of the act or event, and —

- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and
- (b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Code for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Code for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Code, there is a reference to time, the reference is, in relation to the doing of anything in a State, a reference to the legal time in the State.

(7) For the purposes of this Code, a person attains an age in years at the beginning of the person's birthday for the age.

## **PART 6 — SERVICE OF DOCUMENTS**

### **Service of documents**

**36.** (1) If this Code requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served —

- (a) on an individual —
  - (i) by delivering it to the person personally; or

- (ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or
- (b) on a body corporate —
  - (i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or
  - (ii) by sending it by post, telex, facsimile or similar facility to its registered office.
- (2) Nothing in subclause (1) —
  - (a) affects the operation of another law that authorizes the service of a document otherwise than as provided in the subclause; or
  - (b) affects the power of a court or tribunal to authorize service of a document otherwise than as provided in the subclause.

**Meaning of service by post**

**37.** (1) If this Code requires or permits a document to be served by post (whether the expression “deliver”, “give”, “notify”, “send” or “serve” or another expression is used), service —

- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Code requires or permits a document to be served by a particular postal method (whether the expression “deliver”, “give”, “notify”, “send” or “serve” or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

**Time of provision of Code ceasing to have effect**

**38.** If a provision of this Code is expressed —

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,

the provision has effect until the last moment of the specified day.

**PART 7 — EFFECT OF REPEAL, AMENDMENT OR  
EXPIRATION**

**Repealed or amended provision of Code not revived**

**39.** If a provision of this Code is repealed or amended by an Act or a provision of an Act, the provision is not revived merely because the Act or the provision of the Act —

- (a) is later repealed or amended; or
- (b) later expires.

**Saving of operation of repealed provision of Code**

**40.** (1) The repeal, amendment or expiry of a provision of this Code does not —

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
- (d) affect a penalty incurred in relation to an offence arising under the provision; or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

**Continuance of repealed provisions**

**41.** If an Act repeals some or all of the provisions of this Code and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

**Code and amending Acts to be read as one**

**42.** This Code and all Acts amending this Code are to be read as one.

**PART 8 — OFFENCES UNDER CODE**

**Penalty at end of provision**

**43.** In this Code, a penalty specified at the end of —

- (a) a section (whether or not the section is divided into subsections); or
- (b) a subsection (but not at the end of a section); or
- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable on conviction —

- (d) if a minimum as well as a maximum penalty is specified, by a penalty not less than the minimum and not more than the maximum; or
- (e) in any other case, by a penalty not more than the specified penalty.

**Penalty other than at end of provision**

**44.** (1) In this Code, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable on conviction —

- (a) if a minimum as well as a maximum penalty is specified, by a penalty not less than the minimum and not more than the maximum; or
- (b) in any other case, by a penalty not more than the specified penalty.

(2) This clause does not apply to a penalty to which clause 43 applies.

**Indictable offences and summary offences**

**45.** (1) An offence against this Code that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Code that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If —

- (a) a proceeding for an offence against this Code that is punishable by imprisonment is brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not —

- (a) impose, in relation to a single offence against this Code, a period of imprisonment of more than 2 years; or
- (b) impose, in relation to offences against this Code, cumulative periods of imprisonment that are, in total, more than 5 years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

#### **Double jeopardy**

**46.** If an act or omission constitutes an offence —

- (a) under this Code; or
- (b) under another law of this State or a law of another State,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Code.

#### **Aiding and abetting, attempts etc.**

**47.** (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Code is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Code commits an offence and is punishable as if the attempted offence had been committed.

**PART 9 — INSTRUMENTS UNDER CODE**

**Schedule applies to statutory instruments**

**48.** (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Code, and things that may be done or are required to be done under this Code, except so far as the context or subject matter indicates or requires.

(2) The fact that a provision of this Schedule refers to this Code and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to that Code.

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**NOTES**

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