

Queensland



**FINANCIAL INSTITUTIONS  
LEGISLATION  
AMENDMENT ACT 1994**

**Act No. 27 of 1994**

# Queensland



## FINANCIAL INSTITUTIONS LEGISLATION AMENDMENT ACT 1994

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Queensland



# **Financial Institutions Legislation Amendment Act 1994**

**Act No. 27 of 1994**

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**An Act to amend the *Financial Institutions (Queensland) Act 1992*, the  
*Financial Institutions Code*, the *Australian Financial Institutions  
Commission Act 1992* and the *Australian Financial Institutions  
Commission Code***

*[Assented to 28 June 1994]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Financial Institutions Legislation Amendment Act 1994*.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF FINANCIAL INSTITUTIONS (QUEENSLAND) ACT 1992**

### **Act amended**

3. This Part amends the *Financial Institutions (Queensland) Act 1992*.

### **Omission of s 29 (Penalty Units Act does not apply)**

4. Section 29—  
*omit.*

## PART 3—AMENDMENT OF FINANCIAL INSTITUTIONS CODE

### Code amended

5. This Part amends the Financial Institutions Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992*.

### Amendment of s 3 (Definitions)

6.(1) Section 3 (definitions “**residential building**” and “**residential development**”)—

*omit.*

(2) Section 3—

*insert—*

‘ “**certificate of confirmation**” has the meaning given by section 291A (Definitions);

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

“**residential building**” means a building occupied, or to be occupied, by a person as the person’s principal place of residence, whether as owner, under a lease or tenancy agreement or otherwise, and—

- (a) includes a building declared by regulation to be a residential building for the purposes of this Code; but
- (b) does not include—
  - (i) a building that is not situated within Australia; or
  - (ii) a building declared by regulation not to be a residential building for the purposes of this Code;

“**residential development**” means—

- (a) construction or improvement of a residential building; or
- (b) conversion of a building to a residential building; or

- (c) improvement of land if—
- (i) a residential building is situated or being constructed on the land; and
  - (ii) the improvement is of a type normally associated with land containing a residential building; or
- (d) acquisition of land for a purpose mentioned in paragraph (a), (b) or (c);’.

“**transferee society**” has the meaning given by section 291A (Definitions);

“**transferor society**” has the meaning given by section 291A (Definitions);’.

#### **Amendment of s 4 (Interpretation—meaning of “associate”)**

7. Section 4, from ‘For the’ to ‘if—’—

*omit, insert—*

‘(1) This section applies for the purposes of this Code other than the following provisions—

- Part 5, Division 5 (Shareholding restrictions)
- section 243 (Financial accommodation to directors and associates)

‘(2) A person is an “**associate**” of another, or is associated with another, if—’.

#### **Amendment of s 71 (Public office of SSA and inspection of documents)**

8. Section 71(3)(a)(ii)—

*omit* ‘or given to’, *insert* ‘, created by or otherwise held by’.

**Amendment of s 76 (Obtaining evidence)**

**9.** Section 76(6)—

*omit, insert—*

‘**(6)** The SSA may authorise 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).’.

**Amendment of s 90 (Appointment of administrator)**

**10.(1)** Section 90(1)—

*omit* ‘may appoint’, *insert* ‘may, by written notice, appoint’.

**(2)** Section 90(1)—

*omit* ‘may revoke any such’, *insert* ‘may, by written notice, revoke the’.

**(3)** Section 90—

*insert—*

‘**(1A)** A notice of appointment must specify—

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

‘**(1B)** If the appointee’s name or business address changes, the appointee must immediately give written notice of the change to the SSA.’.

**Amendment of s 97 (Credit Unions Contingency Fund)**

**11.(1)** Section 97(3)(b)—

*omit* ‘Credit Unions Contingency’.

**(2)** Section 97(3)(c) and (d)—

*omit, insert—*

- ‘(c) amounts paid into the Fund under Subdivision 6A (Contingency fund agreements); and

- (d) interest and other income gained from the investment of amounts standing to the credit of the Fund; and
- (e) all other amounts lawfully paid into the Fund.’.

### **Insertion of new s 98A**

**12.** After section 98—

*insert—*

#### **‘Refunds of contributions**

**‘98A.(1)** In this section—

**“current balance”** of a credit union means the amount standing to the credit union’s credit in the Credit Unions Contingency Fund;

**“required balance”** of a credit union means the amount the credit union would be required to pay to the Credit Unions Contingency Fund under section 98 (Contributions by credit unions) if its current balance were nil.

**‘(2)** If, immediately after the SSA makes a determination under section 98, a credit union’s current balance is more than its required balance, the SSA must—

- (a) refund the excess amount to the credit union; or
- (b) apply the excess amount for the credit union’s benefit in some other way (for example, by deducting the amount from a future contribution required to be paid by the credit union to the Credit Unions Contingency Fund).’.

### **Amendment of s 103 (Payment out of Credit Unions Contingency Fund)**

**13.** Section 103(1)—

*insert—*

- ‘(h) amounts payable under section 98A (Refunds of contributions); and

- (i) amounts payable from the Credit Unions Contingency Fund under Subdivision 6A (Contingency fund agreements).’.

### **Insertion of new Sdiv 6A**

**14.** After section 105—

*insert—*

#### *‘Subdivision 6A—Contingency fund agreements*

#### **‘SSA may enter into contingency fund agreement**

**‘105A.(1)** The SSA may enter into an agreement for the purpose of this Subdivision (a **“contingency fund agreement”**) with the SSA of another participating State (the **“other SSA”**).

**‘(2)** Under the agreement the SSA must agree with the other SSA that one of them is to be the receiving SSA and the other is to be the transferring SSA.

**‘(3)** Section 105C (Things for inclusion in contingency fund agreement) deals with matters that—

- (a) must be included in the agreement; and
- (b) may be included in the agreement.

**‘(4)** The consequences of the SSA being a party to the agreement, whether as the receiving SSA or the transferring SSA, are specified in section 105D (Consequences of entering into contingency fund agreement), which has effect despite anything in the agreement.

**‘(5)** This section is subject to section 105B (Restrictions on entering into contingency fund agreement).

#### **‘Restrictions on entering into contingency fund agreement**

**‘105B.** The SSA may enter into a contingency fund agreement only if—

- (a) the agreement is not to take effect while it is a party to another contingency fund agreement; and

- (b) the State (the **“receiving State”**) of the SSA that is to be the receiving SSA does not have less credit unions under its financial institutions legislation than the State (the **“transferring State”**) of the SSA that is to be the transferring SSA has under its financial institutions legislation; and
- (c) the number of credit unions under the financial institutions legislation of the transferring State is not more than the number prescribed by regulation; and
- (d) the Minister has approved the SSA entering into the agreement.

#### **‘Things for inclusion in contingency fund agreement**

**‘105C.(1)** A contingency fund agreement must include provision for the identification at any time of how much of the receiving State’s Credit Unions Contingency Fund (the **“receiving fund”**) is attributable to each SSA.

**‘(2)** The agreement may include provisions for—

- (a) terms under which either SSA may end the agreement; and
- (b) the application of section 105D(7) (Consequences of entering into contingency fund agreement) including the extent to which, despite section 98(10) (Contributions by credit unions), a contribution paid to the receiving fund under section 98 is to be treated as a deferred asset in the accounts of a credit union under the financial institutions legislation of the transferring State; and
- (c) the conditions under which the receiving SSA may direct that interest and other income gained from the investment of amounts standing to the credit of the receiving fund may be paid to the receiving SSA.

#### **‘Consequences of entering into contingency fund agreement**

**‘105D.(1)** In this section—

**“corresponding provision”** to a specified provision of this Code, means the provision of the financial institutions legislation of the other participating State corresponding to the specified provision;

**“other participating State”** means the participating State whose SSA is a party to a contingency fund agreement with the SSA.

‘(2) When the contingency fund agreement starts, the transferring SSA must pay the amount in the transferring State’s Credit Unions Contingency Fund (the **“transferring fund”**) to the receiving fund.

‘(3) While the agreement is in force, interest and other income gained, before the agreement started, from the investment of money standing to the credit of the transferring fund is taken to be interest and other income gained from the investment of money standing to the credit of the receiving fund.

‘(4) While the agreement is in force—

(a) the provisions of this Code listed in subsection (5) or their corresponding provisions—

(i) if they are provisions of the financial institutions legislation of the transferring State—have no effect; and

(ii) if they are provisions of the financial institutions legislation of the receiving State—

(A) have effect; and

(B) apply so that a reference to a credit union that would, apart from this section, be a reference to a credit union under the financial institutions legislation of the receiving State (a **“receiving State credit union”**) includes a reference to a credit union under the financial institutions legislation of the transferring State (a **“transferring State credit union”**); and

(C) apply so that a reference to a building society that would, apart from this section, be a reference to a building society under the financial institutions legislation of the receiving State includes a reference to a building society under the financial institutions legislation of the transferring State; and

(b) section 317(3) (SSA may direct payment out of the fund) or its corresponding provision applies so that, if the credit union merging, or transferring the whole of its engagements, is a

transferring State credit union, the reference in the subsection to another participating State includes a reference to the receiving State.

*Example 1—*

If this State is the transferring State, the provisions of this Code listed in subsection (5) have no effect while the contingency fund agreement is in force, but the provisions of the financial institutions legislation of the receiving State corresponding to the provisions of this Code listed in subsection (5) apply to credit unions under this Code as well as to credit unions under the financial institutions legislation of the receiving State.

*Example 2—*

If this State is the receiving State, the provisions of this Code listed in subsection (5) have effect while the contingency fund agreement is in force, and apply to credit unions under the financial institutions legislation of the transferring State as well as to credit unions under this Code.

‘(5) The provisions are—

- section 74 (Execution of guarantees)
- section 97 (Credit Unions Contingency Fund)
- section 98 (Contributions by credit unions)
- section 98A (Refunds of contributions)
- section 99 (Support levy)
- section 100 (Compulsory loans)
- section 102 (Investment of Credit Unions Contingency Fund)
- section 103 (Payment out of Credit Unions Contingency Fund)
- section 104 (Payment from Credit Unions Contingency Fund on liquidation etc.)
- section 105 (SSA may direct payment of grant or loan from fund)
- section 317 (SSA may direct payment out of fund).

‘(6) While the agreement is in force—

- (a) the transferring fund continues to exist, despite subsection (4)(a); and

- (b) the transferring SSA must pay to the receiving fund all amounts paid to the transferring fund.

‘(7) In performing its functions and exercising its powers under section 98(1) and (2) or their corresponding provisions, the receiving SSA may make, subject to the agreement, a determination for the transferring State credit unions that is different from the determination it makes for the receiving State credit unions.

‘(8) While the agreement is in force—

- (a) debts that, immediately before the agreement started were, under section 98(8) or its corresponding provision, due and payable by a transferring State credit union to the transferring SSA are debts due and payable by the credit union to the receiving SSA under section 98(8) or its corresponding provision; and
- (b) the reference to a court in section 98(8) or its corresponding provision includes a reference to a court having jurisdiction in the transferring State.

‘(9) If the SSA is the transferring SSA, and default is made by a credit union in making a payment it must make under a provision corresponding to section 98, 99 or 100, the default is, for the purpose of section 101 (Failure to make payment an offence), taken to be a default in making a payment required to be made under section 98, 99 or 100 and for that purpose those sections are taken to have been effective.

‘(10) While the agreement is in force, an amount needed to discharge a liability of the transferring SSA under a guarantee that would, apart from the agreement, have been paid out of the transferring fund must be paid out of the receiving fund.

‘(11) If while the agreement is in force the receiving SSA directs, under section 103A (Payment of administration levy and supervision levy out of Credit Unions Contingency Fund) or its corresponding provision, the payment to itself of an amount of interest and other income (the “**receiving SSA’s payment**”), it must pay from the receiving fund to the transferring SSA an amount of interest and other income worked out under subsection (12) (the “**transferring SSA’s payment**”).

‘(12) The transferring SSA’s payment is worked out by using the following formula—

$$A = \frac{B \times C}{D}$$

‘(13) In subsection (12)—

“A” means the transferring SSA’s payment;

“B” means the receiving SSA’s payment;

“C” means the amount of the receiving fund that under the agreement is attributable to the transferring SSA;

“D” means the amount of the receiving fund that under the agreement is attributable to the receiving SSA.

‘(14) The transferring SSA must apply the transferring SSA’s payment as if it were an amount directed to be paid to it under section 103A or its corresponding provision.

‘(15) However, if the transferring SSA’s payment is more than is needed to offset the whole liability mentioned in section 103A or its corresponding provision, it must pay back the excess amount to the receiving fund.

‘(16) If the transferring SSA pays back an excess amount under subsection (15), the amount retains its identity as interest and other income gained from the investment of money standing to the credit of the receiving fund.

‘(17) While the agreement is in force—

- (a) a loan made to a transferring State credit union under section 105 (SSA may direct payment of grant or loan from fund) or its corresponding provision before the agreement started is taken to have been made by the receiving SSA from the receiving fund; and
- (b) the terms of the loan may be administered and enforced by the receiving SSA.

‘(18) When the agreement stops being in force, debts that, while the agreement was in force, were under section 98(8) or its corresponding provision due and payable by a transferring State credit union to the

receiving SSA become debts due and payable by the credit union to the transferring SSA under section 98(8) or its corresponding provision.

‘(19) When the agreement stops being in force—

- (a) a loan made under section 105 or its corresponding provision to a transferring State credit union while the agreement was in force is taken to be a loan made by the transferring SSA from the transferring fund; and
- (b) the terms of the loan may be administered and enforced by the transferring SSA.

‘(20) When the agreement stops being in force, the receiving SSA must pay to the transferring fund, out of the receiving fund, the amount of the receiving fund that under the agreement is attributable to the transferring SSA.’.

### **Amendment of s 119 (Acquisition of shares in services corporation)**

**15.(1)** Section 119(1) (after ‘provides’)—

*insert* ‘or proposes to provide’.

**(2)** Section 119(11)—

*omit* ‘subsection (2)’, *insert* ‘subsection (3)’.

### **Amendment of s 131 (Members)**

**16.** Section 131(6)—

*omit, insert*—

‘(6) 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; or
- (b) the acquisition of shares or interests.’.

**Amendment of s 134 (Corporate membership)****17.** Section 134(3)(b)—*omit, insert—*

‘(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.’.

**Amendment of s 138 (Financial accommodation to, and deposits from, members and others)****18.(1)** Section 138(3) to (4)—*omit, insert—*

‘(3) A society must not provide financial accommodation to a person who is not a member of the society.

Maximum penalty—\$5 000.

‘(4) Subsection (3) is subject to section 433 (Providing financial accommodation to, or accepting deposits from, non-members).

‘(5) A society must not accept a deposit of money from a person who is not a member of the society other than—

- (a) from an unincorporated body of persons, up to an amount decided by the SSA; or
- (b) under a standard authorising acceptance of the deposit.

Maximum penalty—\$5 000.’.

**(2)** Section 138(5)—*renumber* as subsection (6).

**Insertion of new s 138A**

**19.** After section 138 (in Part 4, Division 4)—

*insert—*

**‘Dormant accounts**

**‘138A.(1)** In this section—

**“transaction”**, in a person’s deposit account with a society, means a debit or credit to the account, other than for—

- (a) the payment of interest by the society; or
- (b) the charging of a fee by the society for keeping the account.

**‘(2)** A society may classify a person’s deposit account as a dormant account if—

- (a) there have been no transactions in the account for at least 1 year; and
- (b) the society has given to the person a written notice stating that, unless the person gives to the society a written notice within 1 month stating that the person wishes the account to remain open, the society intends to close the account; and
- (c) the society does not receive a written notice from the person under paragraph (b).

**‘(3)** A society may cancel a person’s membership of the society if the person’s only account with the society is a dormant account.

**‘(4)** A society may transfer the amount held in a dormant account to another account (the **“suspense account”**).

**‘(5)** The society may charge a person a fee for keeping an amount for the person in the suspense account, but the fee must not be more than the lesser of—

- (a) the amount held for the person in the suspense account; or
- (b) the amount prescribed by regulation.

**‘(6)** This section is subject to any law of this State about unclaimed money.’.

**Amendment of s 139 (Name)**

**20.(1)** Section 139(2)—

*omit, insert—*

‘(2) The SSA may register a proposed society’s rules, or an alteration 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.’.

**(2)** Section 139—

*insert—*

‘(5A) The SSA may give an approval under subsection (5) only if the name the society wishes to use is reserved for the society by AFIC under Part 6A of the AFIC Code.’.

**(3)** Section 139—

*insert—*

‘(7A) A society does not contravene subsection (7) by using a name in a way mentioned in section 140(1) (Abbreviations etc. of society’s name).’.

**Replacement of s 140 (Society must have certain words as part of name)**

**21.** Section 140—

*omit, insert—*

**‘Abbreviations etc. of society’s name**

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

- (a) the abbreviation ‘Co-op.’ for the word ‘Co-operative’; or
- (b) the abbreviation ‘Ltd.’ for the word ‘Limited’; or
- (c) the abbreviation ‘Aust.’ for the word ‘Australian’; or
- (d) the abbreviation ‘No.’ for the word ‘Number’; or
- (e) the symbol ‘&’ for the word ‘and’; or
- (f) 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 section 139(5) (Name).’.

### **Omission of ss 142 and 143**

**22.** Sections 142 and 143—

*omit.*

### **Amendment of s 144 (Use of words ‘building society’, ‘credit society’, ‘credit union’ or ‘credit co-operative’)**

**23.** Section 144(2)(a) (after ‘other words’)—

*insert* ‘, abbreviations or symbols’.

### **Amendment of s 145 (Publication of name)**

**24.(1)** Section 145(1)(a)—

*omit.*

**(2)** Section 145(1)(b)—

*omit* ‘official’.

**(3)** Section 145(1)(b) and (c)—

*renumber* as section 145(1)(a) and (b).

### **Amendment of s 146 (Seal)**

**25.(1)** Section 146—

*renumber* as section 146(2).

(2) Section 146—

*insert—*

‘146.(1) A society must ensure its registered name appears in legible letters on its seal.’.

### **Amendment of s 147 (Registered office)**

26. Section 147(4)—

*omit* ‘On registration by the SSA of the new address or on’,

*insert* ‘At the end of the day of registration by the SSA of the new address or at the end of,’.

### **Amendment of s 155 (Power to make certain payments)**

27. Section 155(2)—

*omit, insert—*

‘(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.’.

### **Amendment of s 161 (Charge on withdrawable shares or deposit account)**

28.(1) Section 161(1)—

*omit.*

(2) Section 161(2)—

*omit, insert—*

‘(2) A society must inform a person—

- (a) at the time when the person takes up withdrawable shares in, or

places money on deposit with, the society; and

(b) at least once a year after that time;

that the society may charge the person's shares or the credit balance of the person's deposit account for any debt owed by the person to the society.'.

(3) Section 161(3)—

*omit* 'member', *insert* 'person'.

(4) Section 161(3)(a)—

*omit* 'member's', *insert* 'person's'.

(5) Section 161—

*insert*—

'(6) This section applies to an unincorporated body of persons that deposits money with a society in the same way that it applies to a person.'.

### **Amendment of s 172 (Calls and effect of non-compliance with calls on permanent shares)**

29. Section 172(3)—

*omit, insert*—

'(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, or interest that otherwise would accrue 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 building society.'.

### **Amendment of s 179 (Exceptions)**

30. Section 179(3)(b)—

*omit, insert*—

- '(b) the giving by a building society of financial assistance to acquire fully paid permanent shares in the society, if—

- (i) the assistance is given under a scheme approved—
  - (A) if the scheme is conducted only for employees of the society—by the society at a general meeting; or
  - (B) in any other case—by the SSA in accordance with a standard; and
- (ii) the shares are to be held by or for the benefit of a person taking part in the scheme.’.

### **Amendment of s 195 (Exceptions)**

**31.** Section 195(c) (before ‘the person had’)—  
*insert* ‘if’.

### **Amendment of s 238 (Qualifications of directors)**

**32.(1)** Section 238(b)—  
*omit, insert*—

‘(b) is not—

- (i) a member of the society; or
- (ii) the representative, appointed under section 134 (Corporate membership), of a body corporate member of the society; or’.

**(2)** Section 238(e) (after ‘Law’)—  
*insert* ‘for a reason other than the person’s age’.

### **Amendment of s 239 (Vacation of office)**

**33.(1)** Section 239(1)—  
*omit, insert*—

‘**239.(1)** The office of a director becomes vacant if the director—  
(a) dies; or

- 
- (b) becomes a person who, under section 238 (Qualifications of directors), is not eligible to be a director; or
  - (c) for a director who is the representative, appointed under section 134 (Corporate membership), 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 134; or
  - (d) for a director elected under section 235 (Employee directors)—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 239A (Removal of directors); or
  - (i) completes a term of office and is not reappointed or re-elected.’.
- (2) Section 239(2)—  
omit ‘(j)’, insert ‘(h)’.

### **Insertion of new s 239A**

**34.** After section 239—

*insert—*

#### **‘Removal of directors**

‘**239A.(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.’.

### **Amendment of s 240 (Declaration of interest)**

**35.** Section 240—

*insert—*

‘(1A) Subsection (1) does not apply to a contract to provide financial accommodation if the provision of the financial accommodation does not contravene section 243 (Financial accommodation to directors and associates).’.

### **Amendment of s 241 (General duty to make disclosure)**

**36.** Section 241(2)(a)(ii)—

*omit ‘, or an associate,’.*

**Replacement of s 242 (Certain dealings prohibited)**

**37.** Section 242—

*omit, insert—*

**‘Certain financial accommodation to officers prohibited**

**‘242.(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 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.’.

**Amendment of s 243 (Financial accommodation to directors and associates)**

**38.(1)** Section 243(1) to (3)—

*omit, insert—*

**‘243.(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.

**‘(1A)** 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.

**‘(2)** 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 (3); or
  - (ii) given under a scheme approved under subsection (3); 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.

**(3)** For the purposes of subsection (2)(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.’.

**(2)** Section 243(4)—

*omit* ‘from a society that the society has no power to provide’,

*insert* ‘given in contravention of subsection (2)’.

### **Amendment of s 253 (Voting)**

**39.** Section 253(4)—

*omit, insert*—

**(4)** A society's rules may provide that a member's entitlement to vote may not be exercised, or a member's entitlement to receive notices of meetings may be suspended, if—

- (a) the member does not have, or did not have at a certain time, or has not had for a certain period, a specified minimum amount of—
  - (i) paid-up share capital; or
  - (ii) deposits; or
  - (iii) deposits of a particular class; or
- (b) the member has, or had at a certain time, any unpaid calls on a share.

*Example—*

The rules may provide that a member may vote at a meeting only if the member has paid all outstanding calls on the member's shares by 4.00 p.m. on the day 14 days before the meeting is to be held.

'(4A) Subsection (4) is subject to section 172(3)(b) (Calls and effect of non-compliance with calls on permanent shares).'

**Replacement of s 254 (Proxy votes)**

**40.** Section 254—

*omit, insert—*

**'Proxy votes**

'**254.(1)** The rules of a society may provide for—

- (a) whether proxy voting is allowed at a meeting of the society; and
- (b) the use of a proxy that specifies the way the member giving the proxy wishes the vote to be exercised; and
- (c) whether a person who is not a member may be appointed as proxy for a member.

'(2) At a meeting of a society, a person may not act as proxy for more than 10 members.

'(3) Subsection (1) does not limit section 122 (Rules).'

**Amendment of s 255 (Special resolutions)**

**41.** Section 255—

*insert—*

'(5A) However, the failure by a member to receive notice of a proposed special resolution does not invalidate the passing of the resolution.'

**Amendment of s 258 (Register of directors etc.)**

**42.** Section 258(3)(c)—

*omit, insert—*

‘(c) securities issued by the society in which the director has a relevant interest, and the nature and extent of the interest; and’.

**Amendment of s 274 (Directors’ reports)**

**43.(1)** Section 274(1)(a)—

*omit* ‘giving, in relation to each of the directors, particulars of’,

*insert* ‘specifying for each director’.

**(2)** Section 274(1)(a)(ii)—

*omit, insert—*

‘(ii) the number, type and class of any securities for which the society is required to keep particulars, for the director, under section 258 (Register of directors etc.); and’.

**(3)** Section 274(1)—

*insert—*

‘(ab)stating that—

(i) the society keeps a register under section 258 containing information about the directors, including details of each director’s interests in securities issued by the society; and

(ii) the register is open for inspection—

(A) by any member of the society, without fee; and

(B) by any other person, on payment of the amount (if any) prescribed by the society’s rules; and’.

**(4)** Section 274(2)(a)—

*omit* ‘giving, in relation to each of the directors, particulars of’,

*insert* ‘specifying for each director’.

**(5)** Section 274(2)(a)(ii)—*omit, insert—*

- ‘(ii) the number, type and class of any securities for which the society is required to keep particulars, for the director, under section 258 (Register of directors etc.); and’.

**(6)** Section 274(2)—*insert—*

‘(ab)stating that—

- (i) the society keeps a register under section 258 containing information about the directors, including details of each director’s interests in securities issued by the society; and
- (ii) the register is open for inspection—
  - (A) by any member of the society, without fee; and
  - (B) by any other person, on payment of the amount (if any) prescribed by the society’s rules; and’.

**(7)** Section 274(8)—*insert—*

‘(c) the provision of financial accommodation to a director that—

- (i) does not contravene section 243 (Financial accommodation to directors and associates); and
- (ii) is shown in the society’s accounts in accordance with applicable accounting standards.’.

**Insertion of new Pt 7, Div 1A****44.** Before Part 7, Division 1—*insert—*

***‘Division 1A—Preliminary***

**‘Definitions**

**‘291A.** 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.’.

**Replacement of s 295 (Certificate confirming transfer of engagements between societies of the same type)**

**45.** Section 295—

*omit, insert—*

**‘Certificate of confirmation (voluntary transfer)**

**‘295.(1)** This section applies to a transfer of engagements following an application under section 293 (Application for registration of merger or transfer of engagements between societies of the same type).

**‘(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 293; 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 293; 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.’

**Amendment of s 296 (SSA may direct a transfer of engagements between societies of the same type)**

**46.(1)** Section 296(1)(after ‘type’)—  
*insert* ‘(the “**transferee society**”)’.

**(2)** Section 296(1)—  
*omit* ‘other society’, *insert* ‘transferee society’.

**(3)** Section 296(2)—  
*omit* ‘other society’, *insert* ‘transferee society’.

**(4)** Section 296—  
*insert*—

‘**(2A)** 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.’.

**Replacement of s 298 (Day on which transfer of engagements takes effect)**

**47.** Section 298—  
*omit, insert*—

**‘Certificate of confirmation (transfer by direction)**

‘**298.(1)** This section applies to a transfer of engagements by a direction under section 296 (SSA may direct a transfer of engagements between societies of the same type).

‘**(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**

‘298A. 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**

‘298B. A transfer of engagements takes effect on the issue of the certificate of confirmation of the transfer.

**‘Cancellation of registration after total transfer**

‘298C. When a total transfer of engagements takes effect, the SSA must cancel the transferor society’s registration.’.

**Replacement of s 299 (Effect of merger)**

48. Section 299—

*omit, insert—*

**‘Effect of merger**

‘299.(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.’.

### **Replacement of s 300 (Effect of transfer of engagements)**

**49.** Section 300—

*omit, insert—*

#### **‘Effect of transfer of engagements**

**‘300.(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 merger 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.’.

### **Insertion of new s 302A**

**50.** After section 302—

*insert—*

#### **‘Cancellation of building society’s permanent shares**

**‘302A.** A building society must cancel its permanent shares before—

- (a) merging with a credit union to operate as a credit union; or
- (b) totally transferring its engagements to a credit union.’.

### **Replacement of s 304 (Certificate confirming transfer of engagements between societies of different types)**

**51.** Section 304—

*omit, insert—*

#### **‘Certificate of confirmation (voluntary transfer)**

**‘304.(1)** This section applies to a transfer of engagements following an application under section 302 (Application for registration of merger or transfer of engagements between societies of different types).

**‘(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 302; 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 302; 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.’.

**Amendment of s 305 (SSA may direct a transfer of engagements between societies of different types)**

**52.(1)** Section 305(1) (after ‘type’)—

*insert* ‘(the “**transferee society**”)’.

**(2)** Section 305(1)—

*omit* ‘other society’, *insert* ‘transferee society’.

**(3)** Section 305(2)—

*omit* ‘other society’, *insert* ‘transferee society’.

**(3)** Section 305—

*insert*—

‘**(2A)** 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.’.

**Replacement of s 307 (Day on which transfer of engagements takes effect)**

**53.** Section 307—

*omit, insert*—

**‘Certificate of confirmation (transfer by direction)**

‘**307.(1)** This section applies to a transfer of engagements by a direction under section 305 (SSA may direct a transfer of engagements between societies of different types).

‘**(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**

‘307A. 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**

‘307B. A transfer of engagements takes effect on the issue of the certificate of confirmation of the transfer.

#### **‘Cancellation of registration after total transfer**

‘307C. When a total transfer of engagements takes effect, the SSA must cancel the transferor society’s registration.’.

### **Replacement of s 313 (Certificate confirming transfer of engagements to society)**

54. Section 313—

*omit, insert—*

#### **‘Certificate of confirmation**

‘313.(1) This section applies to a transfer of engagements following an application under section 311 (Application for registration of merger or transfer of engagements between society and foreign society).

‘(2) The SSA must issue a certificate of confirmation if it is satisfied

that—

- (a) the society and foreign society have complied with section 311; and
- (b) the rules, or proposed rules, of the transferee society are adequate; and
- (c) for a total transfer of engagements—
  - (i) the certificate of incorporation of the foreign society has been surrendered to the SSA of the participating State in which it is incorporated; or
  - (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.

**‘Who receives the certificate of confirmation**

**‘313A.** 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**

**‘313B.** A transfer of engagements takes effect on the issue of the certificate of confirmation of the transfer.’

**Replacement of s 314 (Effect of merger)**

**55.** Section 314—

*omit, insert—*

**‘Effect of merger**

**‘314.(1)** This section applies on a merger of a society and a foreign society 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.’.

### **Replacement of s 315 (Effect of transfer of engagements)**

**56.** Section 315—

*omit, insert—*

#### **‘Effect of transfer of engagements**

‘**315.(1)** This section applies on a total 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 foreign society.

‘(4) Without limiting subsection (3)—

- (a) the members of the foreign society become members of the transferee society; and
- (b) all assets and liabilities of the foreign 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 foreign society was a party), a reference to the foreign society is a reference to the transferee society; and
- (d) a legal proceeding by or against the foreign society that is not finished when the merger 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 foreign society apply to the transferee society.’.

**Amendment of s 320 (Proposal to convert building society to be approved by members)**

**57.** Section 320(3)(c)—

*omit* ‘financial year up to that day’,

*insert* ‘period to which the profit and loss account relates’.

**Amendment of s 341 (Winding-up on certificate of SSA)**

**58.** Section 341(5)—

*omit, insert*—

‘(5) The liquidator, unless employed in the SSA’s office—

- (a) must give the security prescribed by regulation; and
- (b) 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.’.

**Amendment of s 348 (Appointment of investigators)**

**59.** Section 348(2)—

*omit, insert*—

‘(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).’.

**Amendment of s 350 (Powers of investigators)**

**60.** Section 350(1), all words before ‘this Part’—

*omit, insert—*

‘**350.(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—’.

**Amendment of s 364 (Registration)**

**61.(1)** Section 364(4)—

*omit* ‘is not such as is likely to be confused with the name of a body corporate or a registered business name’,

*insert* ‘has been reserved by AFIC for the society for the purpose under Part 6A of the AFIC Code’.

**(2)** Section 364(5)—

*omit.*

**Amendment of s 383 (Certificates etc.)**

**62.** Section 383(3)—

*omit, insert—*

‘**(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.’.

**Amendment of s 402 (Financial bodies to comply with standards)**

**63.** Section 402—

*insert—*

‘**(2)** If a society contravenes a standard about industry funded liquidity

support arrangements for societies, any officer of the society who is in default commits an offence.

Maximum penalty—\$25 000.’.

**Replacement of s 411 (Powers in relation to money of members who have died or become of unsound mind)**

64.(1) Section 411—

*omit, insert—*

**‘Powers about money of members who have died**

**‘411.(1)** 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 held by the society that was deposited or paid up on a withdrawable share by 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 laws of probate and accepted practice for the administration of deceased estates.

**‘(2)** No action lies against a society for—

- (a) applying an amount under subsection (1) that is not more than the amount prescribed by regulation; or
- (b) failing to act under subsection (1).’.

**Omission of s 431 (Society must offer membership in certain circumstances)**

65. Section 431—

*omit.*

**Replacement of s 433 (Providing financial accommodation to a person who is not a member)**

66. Section 433—

*omit, insert—*

**‘Providing financial accommodation to, or accepting deposits from, non-members**

**‘433.(1)** In this section—

**“existing non-member”** of a continuing society means a person who is not a member of the society and—

- (a) who has a loan or other financial accommodation from the society that was provided before 1 July 1994; or
- (b) who has a deposit account with the society that was opened before 1 July 1994;

**“relevant continuing society”** means a continuing society that, immediately before 1 July 1992, was authorised to provide financial accommodation to, or accept money on deposit from, a person who was not a member of the society.

**‘(2)** Despite section 138(3) (Financial accommodation to, and deposits from, members and others)—

- (a) if financial accommodation was validly provided before 1 July 1992 by a relevant continuing society to an existing non-member, the continued provision of the accommodation is taken to be, and always to have been, authorised if otherwise provided in accordance with this Code; and
- (b) if a deposit account was validly opened with a relevant continuing society by an existing non-member before 1 July 1992, the continued operation of the account is taken to be, and always to have been, authorised if otherwise operated in accordance with this Code; and
- (c) financial accommodation provided after 30 June 1992 and before 1 July 1994 by a relevant continuing society to an existing non-member—
  - (i) is taken to be, and always to have been, authorised if the financial accommodation was otherwise provided in accordance with this Code; and
  - (ii) may continue to be provided to the existing non-member; and

- (d) a deposit account with the society that was opened by an existing non-member after 30 June 1992 and before 1 July 1994—
  - (i) is taken to be, and always to have been, authorised if the account was otherwise operated in accordance with this Code; and
  - (ii) may continue to be operated.

‘(3) Subsection (2) does not authorise a society to—

- (a) provide further financial accommodation to an existing non-member; or
- (b) open a new deposit account for an existing non-member; or
- (c) materially alter the terms on which the society is continuing to provide financial accommodation to an existing non-member; or
- (d) materially alter the terms on which an existing non-member’s deposit account continues to be operated.’.

**Amendment of Sch 2 (Matters to be provided for in rules of credit union)**

**67.** Schedule 2 (heading)—

*omit ‘UNION’, insert ‘UNIONS’.*

**PART 4—AMENDMENT OF AUSTRALIAN  
FINANCIAL INSTITUTIONS COMMISSION ACT  
1992**

**Act amended**

**68.** This Part amends the *Australian Financial Institutions Commission Act 1992*.

**Omission of s 17 (Jurisdiction conferred on Supreme Court)**

**69.** Section 17—

*omit.*

**Omission of s 19 (Penalty Units Act does not apply)**

**70.** Section 19—

*omit.*

**PART 5—AMENDMENT OF AUSTRALIAN  
FINANCIAL INSTITUTIONS COMMISSION CODE****Code amended**

**71.** This Part amends the AFIC Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992*.

**Amendment of s 40 (Application of Financial Institutions Code)**

**72.** Section 40 (after ‘to a special services provider’)—

*insert* ‘and to AFIC’.

**Amendment of s 46 (Provision of liquidity support)**

**73.** Section 46(7) (after ‘with a’)—

*insert* ‘direction or’.

**Insertion of new Pt 6A**

**74.** After Part 6—

*insert—*

**‘PART 6A—NAMES**

**‘Reference to registration of financial institution’s name**

**‘47A.** In this Part, a reference to registration of a financial institution’s name is a reference to—

- (a) if the institution is a society—registration by the SSA, under the Financial Institutions Code, of—
  - (i) a society’s rules containing the name; or
  - (ii) an alteration of a society’s rules to contain the name; or
  - (iii) a body corporate of that name as a foreign society; or
- (b) if the institution is a special services provider—registration by AFIC, under this Code, of—
  - (i) a special services provider’s rules containing the name; or
  - (ii) an alteration of a special services provider’s rules to contain the name.

**‘Financial institution must have certain words as part of name**

**‘47B.(1)** The name of a building society must include the words ‘building society’ as part of its name.

**‘(2)** The name of a credit union must include the words ‘credit union’, ‘credit society’ or ‘credit co-operative’ as part of its name.

**‘(3)** The name of a financial institution must include the word ‘Limited’ or the abbreviation ‘Ltd.’ at the end of its name.

**‘Reservation of names**

**‘47C.(1)** A person may apply in writing to AFIC to reserve a specified name as—

- (a) the name for a proposed financial institution; or
- (b) the new name for a financial institution; or
- (c) the name under which a society proposes to carry on business as a foreign society; or
- (d) a name, other than its registered name, a financial institution proposes to use if approved under section 139(5) (Name) of the

Financial Institutions Code.

‘(2) If the name is available to the financial institution or proposed financial institution, AFIC must reserve it for 2 months.

‘(3) For the purpose of this section, a name is available to a financial institution or proposed financial institution unless the name—

- (a) is reserved for another financial institution or proposed financial institution under the financial institutions legislation; or
- (b) is registered for another financial institution under the financial institutions legislation; or
- (c) has been approved for use by another financial institution under section 139(5) of the Financial Institutions Code or the corresponding provision of the financial institutions legislation of another participating State; or
- (d) is reserved or registered for a body corporate under the Corporations Law; or
- (e) is on the national business names register; or
- (f) is likely to be confused with a name mentioned in paragraphs (a) to (e); or
- (g) does not comply with section 47B (Financial institution must have certain words as part of name); or
- (h) is, in AFIC’s opinion, undesirable.

‘(4) In subsection (3)(a) to (c)—

“**financial institution**” or “**proposed financial institution**” includes a financial institution or proposed financial institution under the financial institutions legislation of another participating State.

‘(5) In this section, a reference to section 139(5) of the Financial Institutions Code includes, for a special services provider, that provision as applied under section 40 (Application of Financial Institutions Code).’

#### ‘**Extension of reservation**

‘**47D.** On application by the person who applied for reservation of a name, AFIC may, before the end of the period for which the name is

reserved (or the period as previously extended), grant 1 or more extensions of the period.

**‘End of reservation**

**‘47E.** A name stops being reserved for a financial institution or proposed financial institution when—

- (a) the name is registered under the financial institutions legislation; or
- (b) the name is approved for use under section 139(5) (Name) of the Financial Institutions Code or the corresponding provision of the financial institutions legislation of another participating State; or
- (c) AFIC cancels the reservation of the name at the request of the person who applied for reservation; or
- (d) the period (or extended period) of reservation ends.

**‘AFIC may direct change of name etc.**

**‘47F.(1)** If, through inadvertence or otherwise, the circumstances mentioned in subsection (2) arise, AFIC may—

- (a) direct a financial institution to change its name; or
- (b) direct the SSA to revoke approval given to a financial institution, under section 139(5) (Name) of the Financial Institutions Code, to use a name.

**‘(2)** The circumstances are that AFIC is satisfied the financial institution’s name, or a name approved for use by the financial institution under section 139(5) of the Financial Institutions Code, is likely to be confused with—

- (a) a name approved for use by another financial institution under that section or the corresponding provision of the financial institutions legislation of another participating State; or
- (b) another financial institution’s name; or
- (c) a body corporate’s name; or
- (d) a name on the national business names register.

‘(3) A financial institution must comply with a direction under subsection (1).

Maximum penalty—\$25 000.

‘(4) In subsection (2)(a) and (b)—

“**financial institution**” includes a financial institution under the financial institutions legislation of another participating State.’.

### **Amendment of s 52 (Obtaining evidence)**

**75.** Section 52(6)—

*omit, insert—*

‘(6) AFIC may authorise an employee for the purpose of subsection (1)(a) only if the person has, in AFIC’s opinion, the appropriate expertise for the purpose (whether because of training or otherwise).’.

### **Amendment of s 63 (Proceedings for offences)**

**76.** Section 63(1)—

*omit, insert—*

‘**63.(1)** AFIC, or a person authorised in writing by AFIC, may bring a proceeding for—

- (a) an offence against this Code; or
- (b) an offence against section 402(1) (Financial bodies to comply with standards) of the Financial Institutions Code for a contravention of a standard about industry funded liquidity support arrangements for societies; or
- (c) an offence against section 402(2) of the Financial Institutions Code.

‘**(1A)** Before starting a proceeding for an offence mentioned in subsection (1)(b) or (c), AFIC must give written notice to the SSA.

‘**(1B)** However, a failure to give the notice does not affect the validity of the proceeding.’.

**Amendment of s 96 (Appeals to Supreme Court of Queensland from decisions of Appeals Tribunal)**

**77.(1)** Section 96, heading—

*omit* ‘to Supreme Court of Queensland’.

**(2)** Section 96(1) to (4), (6) and (7)—

*omit* ‘Supreme Court of Queensland’, *insert* ‘Court’.

**Amendment of s 97 (Operation and implementation of a decision subject to appeal)**

**78.** Section 97 (1) and (2)—

*omit* ‘Supreme Court of Queensland’, *insert* ‘Court’.

**Amendment of s 98 (Reference of questions of law to Supreme Court of Queensland)**

**79.(1)** Section 98, heading—

*omit* ‘to Supreme Court of Queensland’.

**(2)** Section 98(1) and (3)—

*omit* ‘Supreme Court of Queensland’, *insert* ‘Court’.

**Amendment of s 99 (Costs)**

**80.(1)** Section 99—

*insert*—

‘**(1A)** The Appeals Tribunal may also direct the parties to the proceeding to pay to it the amount prescribed by regulation or, if no amount is prescribed, a reasonable amount, for the costs of conducting the proceeding.’.

**(2)** Section 99(2), after ‘subsection (1)’—

*insert* ‘or (1A)’.

**(3)** Section 99(3), after ‘subsection (1)’—

*insert* 'or (1A)'.

**Amendment of s 100 (Protection of members)**

**81.** Section 100—

*omit* 'Supreme Court of Queensland', *insert* 'High Court'.