

Queensland



**FINANCIAL INSTITUTIONS  
LEGISLATION  
AMENDMENT ACT 1997**

**Act No. 33 of 1997**



# Queensland



## FINANCIAL INSTITUTIONS LEGISLATION AMENDMENT ACT 1997

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	10
2	Commencement .....	10
<b>PART 2—AMENDMENT OF AFIC CODE</b>		
3	Code amended in pt 2 .....	10
4	Amendment of s 3 (Definitions) .....	10
5	Amendment of s 4 (Interpretation—words etc. used in Financial Institutions Code) .....	12
6	Insertion of new s 8A .....	12
	8A Friendly societies legislation .....	12
7	Amendment of s 9 (Principal object of financial institutions scheme and its achievement) .....	13
8	Amendment of s 10 (Principles of supervision) .....	14
9	Amendment of s 11 (Role of State supervisory authorities) .....	14
10	Amendment of s 13 (Financial institutions legislation binds the Crown) ..	14
11	Amendment of s 15 (Functions) .....	15
12	Amendment of s 23 (Consultation) .....	15
13	Amendment of s 25 (Composition of the Board) .....	15
14	Amendment of s 36 (Registration of special service providers) .....	15
15	Amendment of s 45 (Restrictions on making determination) .....	16
16	Insertion of new ss 46A and 46B .....	16
	46A Certain applied provisions not effective .....	16
	46B Limitation on court's power to make order .....	17
17	Replacement of ss 47A and 47B .....	18

---

47A	Reference to registration of fiscal body's name . . . . .	18
47B	Fiscal body must have certain words as part of name . . . . .	18
47BA	Approval of name for use . . . . .	19
18	Amendment of s 47C (Reservation of names) . . . . .	19
19	Replacement of ss 47E and 47F . . . . .	20
47E	End of reservation . . . . .	20
47F	AFIC may direct change of name or revoke approval of name . . . .	21
20	Amendment of s 48 (Obtaining information from State supervisory authorities) . . . . .	22
21	Amendment of s 52 (Obtaining evidence) . . . . .	22
22	Amendment of s 55 (Entry and search—monitoring compliance) . . . . .	22
23	Amendment of s 60 (Offence related warrant may be granted by telephone) . . . . .	22
24	Amendment of s 69 (Appointment of members) . . . . .	23
25	Amendment of s 111 (Terms and conditions of employment) . . . . .	23
26	Amendment of s 120 (Collection of administration levy) . . . . .	23
27	Amendment of s 121 (Interpretation—meaning of “required minimum number of directors”) . . . . .	23
28	Replacement of s 133 (Public Service Management and Employment Act of Queensland not to apply) . . . . .	23
133	Directors appointed under Code . . . . .	24
29	Replacement of s 144 (Public Service Management and Employment Act of Queensland not to apply) . . . . .	24
144	Executive director appointed under Code . . . . .	24
30	Amendment of s 153 (Terms and conditions of employment) . . . . .	24
31	Replacement of s 155 (Secrecy) . . . . .	24
155	Secrecy . . . . .	24
32	Amendment of s 157 (Directors and employees to act honestly etc.) . . . .	26
33	Amendment of s 164 (Delegation of Board's powers) . . . . .	26
33A	Insertion of new pt 14 . . . . .	27
	<b>PART 14—TRANSITIONAL</b>	
166	Transitional provision for commencement of amendments for applying Code to friendly societies . . . . .	27
34	Amendment for ‘financial institution’ and ‘financial institutions’ . . . . .	28

**PART 3—AMENDMENT OF AUSTRALIAN FINANCIAL  
INSTITUTIONS COMMISSION ACT 1992**

35	Act amended in pt 3 . . . . .	28
36	Amendment of s 11 (Interpretation of some expressions in the AFIC (Queensland) Code and the AFIC (Queensland) Regulations) . . . . .	28
<b>PART 4—AMENDMENT OF FINANCIAL INSTITUTIONS CODE</b>		
37	Code amended in pt 4 . . . . .	29
38	Amendment of s 3 (Definitions) . . . . .	29
39	Amendment of s 65 (Corporations Law applying under its own force) . . . . .	29
40	Amendment of s 66 (Functions of SSA) . . . . .	30
41	Amendment of s 71 (Public office of SSA and inspection of documents) . . . . .	30
42	Insertion of new ss 71A to 71F . . . . .	30
	71A Reproductions and transparencies . . . . .	30
	71B Records kept by devices . . . . .	31
	71C Material given in written form . . . . .	31
	71D Certified copies etc. are evidence . . . . .	32
	71E Obtaining information from certain document registers . . . . .	32
	71F Use in a proceeding of information from SSA database . . . . .	33
43	Amendment of pt 2, div 2 (Specific powers) . . . . .	33
	<i>Subdivision 1—Services corporations</i>	
	74A SSA may declare body as services corporation . . . . .	33
	74B Societies may subscribe for shares in services corporations . . . . .	34
	74C Applications for approval . . . . .	34
	74D Persons dealing with societies contravening s 74B(2) . . . . .	35
44	Amendment of s 76 (Obtaining evidence) . . . . .	35
45	Amendment of s 84 (Offence related warrant may be granted by telephone) . . . . .	35
46	Amendment of s 90 (Appointment of administrator) . . . . .	36
47	Insertion of new s 91A . . . . .	36
	91A Rules of society after s 91 no longer applies . . . . .	36
48	Amendment of s 94 (Supervision Fund) . . . . .	37
49	Amendment of s 97 (Credit Unions Contingency Fund) . . . . .	37
50	Amendment of s 98 (Contributions by credit unions) . . . . .	37

51	Insertion of new s 99A . . . . .	38
	99A Distribution of retained earnings of Credit Unions Contingency Fund . . . . .	38
52	Amendment of s 105D (Consequences of entering into contingency fund agreement) . . . . .	38
53	Amendment of s 106 (Restriction on initial advertisements) . . . . .	39
54	Amendment of s 112 (Level of assets of building society associated with primary objects) . . . . .	39
55	Amendment of s 115 (Registration) . . . . .	39
56	Insertion of new pt 4, div 1A . . . . .	41
	<i>Division 1A—Formation and registration of building society for approved holder</i>	
	115A Application of division . . . . .	41
	115B Registration of building society as wholly owned society . . . . .	41
	115C Offence . . . . .	43
	<i>Division 1B—Incorporation</i>	
57	Amendment of s 116 (Certificate of incorporation) . . . . .	43
58	Amendment of s 117 (Effect of incorporation) . . . . .	44
59	Amendment of pt 4, div 2 (Powers) . . . . .	44
	<i>Division 2—Legal capacity and powers</i>	
	117A Interpretation . . . . .	44
	117B Purpose of sections 118 and 119 . . . . .	44
60	Amendment of s 118 (Powers of societies) . . . . .	45
61	Replacement of s 119 (Acquisition of shares in services corporation) . . . . .	45
	119 Restrictions on societies . . . . .	45
	119A Persons having dealings with societies . . . . .	46
	119B Constructive notice not presumed . . . . .	49
62	Amendment of s 120 (Control of certain financial transactions) . . . . .	49
63	Insertion of new s 121A . . . . .	49
	121A Purchase of overseas plant and equipment . . . . .	49
64	Amendment of s 122 (Rules) . . . . .	50
65	Omission of s 123 (Model rules) . . . . .	50
66	Replacement of s 127 (Alteration of rules by board of directors) . . . . .	50
	127 Alteration of rules by board of directors . . . . .	50

67	Amendment of s 133 (Joint members) . . . . .	51
68	Replacement of s 138A (Dormant accounts) . . . . .	51
	138A Dormant accounts . . . . .	51
69	Amendment of s 139 (Name) . . . . .	53
70	Amendment of s 140 (Abbreviations etc. of society's name) . . . . .	54
71	Amendment of s 144 (Use of words 'building society', 'credit society', 'credit union' or 'credit co-operative') . . . . .	54
72	Insertion of new s 144A . . . . .	54
	144A Unregistered society not to trade or carry on business . . . . .	54
73	Amendment of 145 (Publication of name) . . . . .	55
74	Amendment of s 159 (Conversion of withdrawable share capital to deposits) . . . . .	56
75	Insertion of new section 159A . . . . .	56
	159A Conversion of shares to deposits (by direction) . . . . .	57
76	Replacement of s 160 (Withdrawable shares to rank equally with deposits on winding-up) . . . . .	57
	160 Withdrawable shares to rank equally with deposits on winding-up . . . . .	58
77	Replacement of s 161 (Charge on withdrawable shares or deposit account) . . . . .	58
	161 Charge on withdrawable shares or deposit account . . . . .	58
78	Amendment of s 173 (Sale of permanent shares forfeited for non-payment of call) . . . . .	60
79	Amendment of s 184 (Application of certain provisions of Code to redeemable preference shares) . . . . .	60
80	Amendment of s 234 (Election or appointment of directors) . . . . .	60
81	Amendment of s 238 (Qualifications of directors) . . . . .	61
82	Amendment of s 239 (Vacation of office) . . . . .	61
83	Amendment of s 240 (Declaration of interest) . . . . .	61
84	Amendment of s 243 (Financial accommodation to directors and associates) . . . . .	62
85	Insertion of new s 244A . . . . .	62
	244A Society not to indemnify director . . . . .	62
86	Amendment of s 254 (Proxy votes) . . . . .	63
87	Amendment of s 255 (Special resolutions) . . . . .	64

88	Amendment of s 258 (Register of directors etc.) . . . . .	64
89	Amendment of s 259 (Register of members) . . . . .	65
90	Amendment of s 260 (Register of holders of permanent shares) . . . . .	65
91	Amendment of s 274 (Directors' reports) . . . . .	65
92	Amendment of s 278 (Qualifications of auditors) . . . . .	66
93	Amendment of s 279 (Appointment of auditors) . . . . .	66
94	Amendment of s 280 (Nomination of auditors) . . . . .	66
95	Amendment of s 281 (Removal and resignation of auditors) . . . . .	67
96	Amendment of s 291A (Definitions) . . . . .	67
97	Amendment of s 293 (Application for registration of merger or transfer of engagements between societies of the same type) . . . . .	67
98	Amendment of s 298 (Certificate of confirmation (transfer by direction)) . . . . .	68
99	Replacement of s 298B (When transfer of engagements takes effect) . . . . .	68
	298B When transfer of engagements takes effect . . . . .	68
100	Amendment of s 300 (Effect of transfer of engagements) . . . . .	68
101	Amendment of s 302 (Application for registration of merger or transfer of engagements between societies of different types) . . . . .	68
102	Amendment of s 302A (Cancellation of building society's permanent shares) . . . . .	69
103	Amendment of s 307 (Certificate of confirmation (transfer by direction)) . . . . .	69
104	Replacement of s 307B (When transfer of engagements takes effect) . . . . .	69
	307B When transfer of engagements takes effect . . . . .	69
105	Replacement of pt 7, div 3 (Mergers and transfers of engagements involving foreign societies) . . . . .	69
	<i>Division 3—Mergers and transfers of engagements involving foreign societies</i>	
309	Definitions for div 3 . . . . .	70
310	Proposal for merger or transfer of engagements . . . . .	70
311	SSA may register merged society . . . . .	72
312	Certificate of confirmation for total transfer . . . . .	74
313	Certificate of confirmation for partial transfer . . . . .	75
314	When transfer of engagements takes effect . . . . .	75
315	Effect of merger . . . . .	76

316	Effect of transfer of engagements . . . . .	77
316A	Surrender of certificate of incorporation . . . . .	77
	<i>Division 3A—Effect of mergers and transfers of engagements involving only foreign societies</i>	
316B	Definitions for div 3A . . . . .	78
316C	Effect of merger of foreign societies . . . . .	78
316D	Effect of transfer of engagements between foreign societies . . . . .	79
106	Amendment of s 337 (Schemes of arrangement and reconstruction) . . . . .	81
107	Omission of pt 9, div 3 (Official management) . . . . .	81
108	Amendment of s 341 (Winding-up on certificate of SSA) . . . . .	81
109	Amendment of s 342 (Application of Corporations Law to winding-up) . . . . .	81
110	Amendment of s 352 (Self-incrimination) . . . . .	81
111	Amendment of s 364 (Registration) . . . . .	82
112	Insertion of new ss 364A–364E . . . . .	83
	364A Agents . . . . .	83
	364B End of appointment of foreign societies’ agents . . . . .	84
	364C Liability of agents . . . . .	84
	364D Office of foreign society . . . . .	84
	364E Service of documents . . . . .	85
113	Amendment of s 366 (SSA to be notified of certain changes) . . . . .	85
114	Omission of s 367 (Balance sheets) . . . . .	86
115	Amendment of s 369 (Society proposing to register as foreign society) . . . . .	86
116	Insertion of new s 369A . . . . .	86
	369A SSA to provide certain documents . . . . .	86
117	Amendment of s 374 (Effect of incorporation) . . . . .	86
118	Amendment of s 379 (Reviewable decisions) . . . . .	87
119	Amendment of s 382 (SSA to review certain decisions) . . . . .	87
120	Replacement of s 410 (Secrecy) . . . . .	87
	410 Secrecy . . . . .	87
121	Amendment of s 411 (Powers about money of members who have died) . . . . .	89
122	Omission of ss 412–413 . . . . .	90
123	Omission of schs 1 and 2 . . . . .	90

**PART 5—AMENDMENT OF FINANCIAL INSTITUTIONS  
(QUEENSLAND) ACT 1992**

124	Act amended in pt 5 .....	90
125	Amendment of s 6 (Interpretation of some expressions in the Financial Institutions (Queensland) Code and the Financial Institutions (Queensland) Regulations) .....	90
126	Amendment of s 22 (Amount credited to Credit Societies Guarantee Fund) .....	90

**PART 6—AMENDMENT OF PUBLIC SERVICE ACT 1996**

127	Act amended in pt 6 .....	91
128	Amendment of sch 2 (Amendments) .....	91

**SCHEDULE .....** 92**AMENDMENTS FOR 'FINANCIAL INSTITUTION' AND  
'FINANCIAL INSTITUTIONS'**

Queensland



# **Financial Institutions Legislation Amendment Act 1997**

**Act No. 33 of 1997**

---

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

*[Assented to 18 July 1997]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Financial Institutions Legislation Amendment Act 1997*.

### **Commencement**

**2.(1)** Subject to subsection (2) and (3), this Act commences on a day to be fixed by proclamation.

**(2)** Part 5 (other than section 125) is taken to have commenced on the day the *Financial Institutions (Queensland) Act 1992* commenced.

**(3)** Section 51 commences on the date of assent.

## **PART 2—AMENDMENT OF AFIC CODE**

### **Code amended in pt 2**

**3.** This part amends the AFIC Code set out in the *Australian Financial Institutions Commission Act 1992*, section 21.

### **Amendment of s 3 (Definitions)**

**4.(1)** Section 3, definition “State supervisory authority”—  
*omit.*

**(2)** Section 3—  
*insert—*

“**ASC**” means the Australian Securities Commission.

“**COFS**” means the coordinating body known as the Council of Financial Supervisors.

“**fiscal bodies legislation**” means—

- (a) the financial institutions legislation; and
- (b) the friendly societies legislation.

“**fiscal body**” means—

- (a) a financial institution; or
- (b) a friendly institution.

“**friendly association**” means a body formed by friendly societies and registered under the friendly societies legislation as an association.

“**friendly institution**” means—

- (a) a friendly society; or
- (b) a friendly association.

“**friendly societies legislation**” has the meaning given by section 8A.

“**friendly society**” means a body that is registered under the friendly societies legislation as a society.

“**ISC**” means the Insurance and Superannuation Commissioner under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth.

“**PHIAC**” means the Private Health Insurance Administration Council under the *National Health Act 1953* of the Commonwealth.

“**RBA**” means the Reserve Bank of Australia.

“**State supervisory authority**”, in relation to a State, means—

- (a) to the extent that a provision of this Code in which the expression appears applies, or is applied, to a financial body—the person or body declared by the financial institutions legislation of the State to be the State supervisory authority for the State; and
- (b) to the extent that a provision of this Code in which the expression appears applies, or is applied, to a friendly institution—the person or body declared by the friendly societies legislation of the State

to be the State supervisory authority for the State.’.

(3) Section 3, definition “association”, after ‘means’—

*insert—*

‘(other than in the definition “friendly association”)’.

(4) Section 3, definition “prudential standard”—

*insert—*

disclosure documents; or’.

(5) Section 3, definition “society”, after ‘means’—

*insert—*

‘(other than in the definition “friendly society”)’.

#### **Amendment of s 4 (Interpretation—words etc. used in Financial Institutions Code)**

5. Section 4, after ‘Financial Institutions Code’—

*insert—*

‘or Friendly Societies Code’.

#### **Insertion of new s 8A**

6. After section 8—

*insert—*

#### **‘Friendly societies legislation**

‘8A. The friendly societies legislation consists of—

- (a) 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 of the Act; and
  - (ii) regulations made under the Act; and
- (b) 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
- (c) the financial institutions legislation in so far as it applies or is otherwise relevant to the legislation mentioned in paragraph (a) or (b).’.

**Amendment of s 9 (Principal object of financial institutions scheme and its achievement)**

**7.(1)** Section 9(1)(b)—

*omit, insert—*

- ‘(b) to protect the interests of depositors with societies; and
- (c) to protect the interests of members and prospective members of friendly society benefit funds.’.

**(2)** Section 9(2)(a), ‘a system’—

*omit, insert—*

‘systems’.

**(3)** Section 9(2)(h)—

*omit, insert—*

- ‘(h) establishing the Australian Financial Institutions Commission to institute, develop and ensure the effective and efficient implementation of, uniform systems of prudential and other standards for, and for the supervision of, fiscal bodies; and’.

**(4)** Section 9(2)(i), ‘that uniform system’—

*omit, insert—*

‘the uniform systems’.

**(5)** Section 9(2)(l)—

*omit, insert—*

‘(1) obtaining for, and for the ongoing implementation of, the financial institutions scheme, the cooperation of the Commonwealth and of the following entities—

- (i) ASC;
- (ii) COFS;
- (iii) ISC;
- (iv) PHIAC;
- (v) RBA.’.

### **Amendment of s 10 (Principles of supervision)**

**8.** Section 10(1)(a) and (g), ‘Financial institutions’—

*omit, insert—*

‘Fiscal bodies’.

### **Amendment of s 11 (Role of State supervisory authorities)**

**9.(1)** Section 11(a), after ‘financial bodies’—

*insert—*

‘and friendly institutions’.

**(2)** Section 11(d), after ‘societies’—

*insert—*

‘and of members of friendly society benefit funds’.

### **Amendment of s 13 (Financial institutions legislation binds the Crown)**

**10.** Section 13, heading, ‘Financial institutions’—

*omit, insert—*

‘Fiscal bodies’.

**Amendment of s 15 (Functions)**

**11.(1)** Section 15(b), ‘a system’—

*omit, insert—*

‘systems’.

**(2)** Section 15(b), ‘that is’—

*omit, insert—*

‘that are’.

**Amendment of s 23 (Consultation)**

**12.** Section 23, ‘consult with’ to ‘financial institutions.’—

*omit, insert—*

‘consult with the Commonwealth, State supervisory authorities, industry bodies and fiscal bodies, and also with the following entities—

- (a) ASC;
- (b) COFS;
- (c) ISC;
- (d) PHIAC;
- (e) RBA.’.

**Amendment of s 25 (Composition of the Board)**

**13.(1)** Section 25, ‘8’—

*omit.*

**(2)** Section 25(d)—

*omit, insert—*

‘(d) up to 6 other directors.’.

**Amendment of s 36 (Registration of special service providers)**

**14.** Section 36(2)(b), from ‘and such’ to ‘AFIC; and’—

*omit, insert—*

‘(vi) services approved in writing for the body by AFIC, whether before or after registration; and’.

### **Amendment of s 45 (Restrictions on making determination)**

**15.(1)** Section 45(2), from ‘as, subject’ to ‘is solvent’—

*omit, insert—*

‘as it considers appropriate, that the value of the borrowing society’s assets is greater than the value of its liabilities’.

**(2)** Section 45(3)—

*omit.*

**(3)** Section 45(4)—

*renumber* as section 45(3).

### **Insertion of new ss 46A and 46B**

**16.** After section 46—

*insert—*

#### **‘Certain applied provisions not effective**

**‘46A.(1)** This section applies to the extent that, because of an applied provision, a charge on property of, or a liquidity support loan made to, a borrowing society would otherwise be void or voidable, either generally or as against a particular person.

**‘(2)** To that extent, the applied provision is ineffective.

**‘(3)** In this section—

**“a charge on property of a borrowing society”** means a charge given, or available, as security over property of the society in relation to a liquidity support loan made to the society.

**“applied provision”** means—

(a) for a charge on property of a borrowing society—

(i) the Corporations Law, section 266 or 267, as applying under

the Financial Institutions Code, section 227;<sup>1</sup> or

- (ii) the Corporations Law, section 588FJ, as applying under the Financial Institutions Code, section 342;<sup>2</sup> or
- (b) for a charge on property of, or a liquidity support loan made to, a borrowing society—the Corporations Law, section 588FE, as applying under the Financial Institutions Code, section 342.

**“liquidity support loan”**, in relation to a borrowing society, means a loan made to the society for the purposes of liquidity support consequent on a determination of the Board under section 44.

### **‘Limitation on court’s power to make order**

**‘46B.(1)** If, because of section 46A, a transaction that would otherwise be voidable because of section 588FE is not voidable, a court cannot be satisfied, for the purposes of section 588FF, that the transaction is voidable.

**‘(2)** This section is to remove doubt.

**‘(3)** In this section—

**“section 588FE”** means that section of the Corporations Law as applying under the Financial Institutions Code, section 342.

**“section 588FF”** means that section of the Corporations Law as applying under the Financial Institutions Code, section 342.’.

<sup>1</sup> This section of the Financial Institutions Code applies the Corporations Law, part 3.5 (Charges) to societies with all necessary and prescribed modifications.

<sup>2</sup> This section of the Financial Institutions Code applies the following provisions of the Corporations Law, with all necessary and prescribed modifications, to the winding-up or dissolution of a society or to a defunct or dissolved society—

- part 5.4 (Winding up in insolvency)
- part 5.4A (Winding up by the Court on other grounds)
- part 5.4B (Winding up in insolvency or by the Court)
- part 5.5 (Voluntary winding up)
- part 5.6 (Winding up generally)
- part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company) (other than section 588G)
- part 5.9 (Miscellaneous)

**Replacement of ss 47A and 47B****17. Sections 47A and 47B—**

*omit, insert—*

**‘Reference to registration of fiscal body’s name**

**‘47A.** In this part, a reference to registration of a fiscal body’s name is a reference to—

- (a) if the fiscal body is a financial body—registration by the SSA, under the Financial Institutions Code, of—
  - (i) a financial body’s rules containing the name; or
  - (ii) an alteration of a financial body’s rules to contain the name; or
- (b) if the fiscal body is a friendly institution—registration by the SSA, under the Friendly Societies Code, of—
  - (i) a friendly institution’s rules containing the name; or
  - (ii) an alteration of a friendly institution’s rules to contain the name; or
- (c) if the fiscal body 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.

**‘Fiscal body 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 friendly society must include the words ‘friendly society’ as part of its name.

**‘(4)** The name of a fiscal body must include the word ‘Limited’ or the abbreviation ‘Ltd.’ at the end of its name.

**‘Approval of name for use**

‘**47BA.(1)** AFIC may, on application by a fiscal body, approve the use by the fiscal body of a name other than its registered name subject to the conditions AFIC decides.

‘**(2)** However, AFIC may give approval under subsection (1) only if—

- (a) it first consults with the State supervisory authority with which the fiscal body’s rules are registered; and
- (b) the name the fiscal body wishes to use is reserved for the fiscal body by AFIC under this part.

‘**(3)** AFIC may, by written notice given to a fiscal body, revoke an approval given to the fiscal body under subsection (1) or vary or revoke conditions to which it is subject.

‘**(4)** If, other than in relation to a special services provider, AFIC gives an approval under subsection (1), revokes an approval under subsection (3) or varies or revokes conditions to which an approval is subject, AFIC must, as soon as practicable, notify each State supervisory authority of the approval, revocation or variation.

‘**(5)** A fiscal body must comply with the conditions of an approval under subsection (1).

‘Maximum penalty—\$75 000.

‘**(6)** An approval given under the Financial Institutions Code, section 139(5) (Name) before the commencement of this section, and still in force immediately before the commencement, is taken, for all purposes under the financial institutions legislation, to be an approval given under subsection (1).

‘**(7)** Subsection (2)(a) does not apply if the applicant under subsection (1) is a special services provider.’.

**Amendment of s 47C (Reservation of names)**

**18.(1)** Section 47C(1)(c) and (d)—

*omit, insert—*

- ‘(c) the name under which a society proposes to carry on business as a foreign society under the Financial Institutions Code; or

- (d) the name under which a friendly society proposes to carry on business as a foreign society under the Friendly Societies Code; or
- (e) a name, other than its registered name, a fiscal body proposes to use if approved under section 47BA (Approval of name for use).’.

**(2) Section 47C(3)(c)—***omit, insert—*

- ‘(c) has been approved for use by another fiscal body under section 47BA (Approval of name for use) or the corresponding provision of the fiscal bodies legislation of another participating State; or’.

**(3) Section 47C(3)(g)—***omit, insert—*

- ‘(g) does not comply with section 47B (Fiscal body must have certain words as part of name); or’.

**(4) Section 47C(5)—***omit.***Replacement of ss 47E and 47F****19. Sections 47E and 47F—***omit, insert—***‘End of reservation**

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

- (a) under the fiscal bodies legislation, the name becomes the registered name of the fiscal body; or
- (b) the name is approved for use under section 47BA (Approval of name for use) or the corresponding provision of the fiscal bodies 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 or revoke approval of name**

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

- (a) direct a fiscal body to change its name; or  
(b) revoke an approval given to a fiscal body under section 47BA (Approval of name for use).

**‘(2)** The circumstances are that AFIC is satisfied that the fiscal body’s name, or a name approved for use by the fiscal body under section 47BA, is likely to be confused with—

- (a) a name approved for use by another fiscal body under section 47BA or the corresponding provision of the fiscal bodies legislation of another participating State; or  
(b) another fiscal body’s name; or  
(c) a body corporate’s name; or  
(d) a name on the national business names register.

**‘(3)** A fiscal body must comply with a direction under subsection (1).

Maximum penalty—\$25 000.

**‘(4)** A direction under subsection (1) may state that it is to be implemented—

- (a) immediately; or  
(b) if AFIC considers a staged implementation is reasonable in the circumstances of the direction or revocation—in the way directed by AFIC.

**‘(5)** A revocation under subsection (1) may be expressed to have effect—

- (a) immediately; or  
(b) if AFIC considers that, in the circumstances, the revocation should have effect from a later time—a later time.

‘(6) In subsection (2)(a) and (b)—  
“**fiscal body**” includes a fiscal body under the fiscal bodies legislation of another participating State.’.

**Amendment of s 48 (Obtaining information from State supervisory authorities)**

20. Section 48(2), after ‘financial body’—  
*insert*—  
‘or friendly institution’.

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

21.(1) Section 52(9), ‘Neither an’—  
*omit, insert*—  
‘An’.  
(2) Section 52(9), ‘, nor any information’ to ‘the answer, is’—  
*omit, insert*—  
‘is not’.

**Amendment of s 55 (Entry and search—monitoring compliance)**

22. Section 55(2)(c), after ‘auditor’s’—  
*insert*—  
‘or actuary’s’.

**Amendment of s 60 (Offence related warrant may be granted by telephone)**

23. Section 60(2), ‘an’—  
*omit*.

**Amendment of s 69 (Appointment of members)**

24. Section 69(3)—

*omit, insert—*

‘(3) The members are to be appointed under this Code, and not under the *Public Service Act 1996* of Queensland.’.

**Amendment of s 111 (Terms and conditions of employment)**

25. Section 111(2)—

*omit, insert—*

‘(2) The Appeal Tribunal’s employees are to be employed under this Code, and not under the *Public Service Act 1996* of Queensland.’.

**Amendment of s 120 (Collection of administration levy)**

26. Section 120(6), ‘society’—

*omit, insert—*

‘body’.

**Amendment of s 121 (Interpretation—meaning of “required minimum number of directors”)**

27. Section 121, definition “required minimum number of directors”, paragraph (a), ‘8’—

*omit, insert—*

‘8 or 9’.

**Replacement of s 133 (Public Service Management and Employment Act of Queensland not to apply)**

28. Section 133—

*omit, insert—*

**‘Directors appointed under Code**

‘133. A director is to be appointed under this Code, and not under the *Public Service Act 1996* of Queensland.’.

**Replacement of s 144 (Public Service Management and Employment Act of Queensland not to apply)**

29. Section 144—

*omit, insert—*

**‘Executive director appointed under Code**

‘144. The executive director is to be appointed under this Code, and not under the *Public Service Act 1996* of Queensland.’.

**Amendment of s 153 (Terms and conditions of employment)**

30. Section 153(2)—

*omit, insert—*

‘(2) AFIC’s employees are to be employed under this Code, and not under the *Public Service Act 1996* of Queensland.’.

**Replacement of s 155 (Secrecy)**

31. Section 155—

*omit, insert—*

**‘Secrecy**

‘155.(1) In this section—

“**court**” includes a tribunal, authority or person having the power lawfully to require the production of documents or the answering of questions.

“**financial sector supervisory agency**” means a person or body prescribed by regulation to be a financial sector supervisory agency for this section.

“**Government agency**” means an agency of the State or the Commonwealth, and includes a body prescribed by regulation to be an

agency of a State or the Commonwealth.

**“law enforcement agency”** means a body prescribed by regulation 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 fiscal bodies 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 fiscal bodies legislation.

‘(2) This section applies to a director, and to a person who is or has been appointed or employed by AFIC for the purposes of carrying out any duties under the fiscal bodies legislation.

‘(3) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, disclose to a person protected information concerning another person;

unless the record is made, or the information disclosed—

- (c) under or for the purposes of the fiscal bodies legislation; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the fiscal bodies 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) the State supervisory authority in relation to a State; or
- (c) a financial sector supervisory agency; or

- (d) a law enforcement agency; or
- (e) a Minister or nominee of a Minister; or
- (f) a Government agency; or
- (g) to the extent the protected information or document is about a special services provider—the special services provider’s auditor; or
- (h) to the extent the protected information or document is about a special services provider and is relevant to the period of office of a former auditor of the special services provider—the former auditor.

‘(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 the protected document.

‘(6) A person to whom this section applies cannot be required to disclose to a court protected information or to produce to a court a protected document except when it is necessary to do so for the purposes of the fiscal bodies legislation.’.

#### **Amendment of s 157 (Directors and employees to act honestly etc.)**

**32.** Section 157(2)(b), after ‘financial body’—

*insert—*

‘or friendly institution’.

#### **Amendment of s 164 (Delegation of Board’s powers)**

**33.(1)** Section 164(1)(c) and (d), after ‘an’—

*insert—*

‘appropriately qualified’.

**(2)** Section 164—

*insert—*

‘(6) In this section—

“**appropriately qualified**” includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

The seniority of a person’s position in a body in which the person is employed.’.

### **Insertion of new pt 14**

**33A.** After section 165—

*insert—*

## **‘PART 14—TRANSITIONAL**

### **‘Transitional provision for commencement of amendments for applying Code to friendly societies**

‘**166.(1)** The budget and levy provisions have effect, and may be applied, with all necessary modifications for changing AFIC’s budget for the 97/98 financial year, and for changing the administration levies for funding its budget, to allow for the commencement, after the start of the 97/98 financial year, of the *Financial Institutions Legislation Amendment Act 1997* of Queensland.

‘(2) Additionally, the budget and levy provisions have effect, and may be applied, with all necessary modifications for changing AFIC’s budget for the 97/98 financial year, and for determining an establishment cost levy to be paid by friendly societies, to allow for the recouping by AFIC of expenditure incurred by it in the 97/98 financial year and in previous financial years in preparing for the integration of friendly societies into the financial institutions scheme.

‘(3) For the application of the modified budget and levy provisions for the purpose of subsection (2), a reference in the budget and levy provisions to the administration levy may be taken to be a reference to the establishment cost levy mentioned in the subsection.

‘(4) In this section—

“**budget and levy provisions**” means the following sections—

- section 118 (Determination of AFIC's budget)
- section 119 (Administration levy)
- section 120 (Collection of administration levy).

**“97/98 financial year”** means the financial year starting on 1 July 1997.’.

### **Amendment for ‘financial institution’ and ‘financial institutions’**

**34.(1)** Provisions mentioned in the schedule, part 1, ‘financial institution’—

*omit, insert—*

‘fiscal body’.

**(2)** Provisions mentioned in the schedule, part 2, ‘financial institutions’—

*omit, insert—*

‘fiscal bodies’.

## **PART 3—AMENDMENT OF AUSTRALIAN FINANCIAL INSTITUTIONS COMMISSION ACT 1992**

### **Act amended in pt 3**

**35.** This part amends the *Australian Financial Institutions Commission Act 1992*.

### **Amendment of s 11 (Interpretation of some expressions in the AFIC (Queensland) Code and the AFIC (Queensland) Regulations)**

**36.** Section 11(1)—

*insert—*

‘ “**Friendly Societies Code**” means the Friendly Societies (Queensland) Code.’.

## **PART 4—AMENDMENT OF FINANCIAL INSTITUTIONS CODE**

### **Code amended in pt 4**

**37.** This part amends the Financial Institutions Code set out in the *Financial Institutions (Queensland) Act 1992*, section 30.

### **Amendment of s 3 (Definitions)**

**38.(1)** Section 3—

*insert—*

‘ “**approved holder**” means a body corporate that, under a standard, is approved by AFIC as an approved holder for the purposes of part 4, division 1A.

“**certified**”, for sections 71 to 71D, means certified by the SSA.’.

**(2)** Section 3, definition “services corporation”, ‘section 119 (Acquisition of shares in services corporation)’—

*omit, insert—*

‘section 74A (SSA may declare body as services corporation)’.

### **Amendment of s 65 (Corporations Law applying under its own force)**

**39.** Section 65(2)(a)(vii), ‘debentures’—

*omit, insert—*

‘debentures),’.

**Amendment of s 66 (Functions of SSA)**

**40.(1)** Section 66(g)—

*omit, insert—*

‘(g) otherwise undertake the administration and enforcement of the financial institutions scheme so far as it relates to societies; and’.

**(2)** Section 66(h)(ii)—

*omit, insert—*

‘(ii) the operation, administration and enforcement of the financial institutions scheme so far as it relates to societies; and’.

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

**41.(1)** Section 71(2)—

*omit, insert—*

‘(2) All registers kept by the SSA under this Code, and the rules of financial bodies, must be kept at the SSA’s public office.’.

**(2)** Section 71(3)(a)(i), ‘registration documents and’—

*omit.*

**(3)** Section 71(3)(b)(ii), ‘extract’—

*omit, insert—*

‘certified extract’.

**Insertion of new ss 71A to 71F**

**42.** After section 71—

*insert—*

**‘Reproductions and transparencies**

**71A.(1)** This section applies if a reproduction or transparency of a document has been incorporated in the documents kept by the SSA.

‘(2) The SSA may produce the reproduction or transparency for a person’s inspection for the purposes of section 71(3)(a), and the person is not entitled to require the production of the original of the document.

‘(3) A certified copy of, or certified extract from, the reproduction or transparency may be supplied to a person for the purposes of section 71(3)(b), and the person is not entitled to require a copy of, or an extract from, the original of the document.

### **‘Records kept by devices**

‘71B.(1) This section applies if the SSA keeps by means of a mechanical, electronic or other device a record of the information set out in a document kept by the SSA.

‘(2) The SSA may, for the purposes of a person’s inspection of the document under section 71(3)(a)—

- (a) produce material in written form setting out what purports to be the contents of the document; or
- (b) if the person does not ask for the production of material mentioned in paragraph (a)—cause to be displayed what purports to be the contents of the document.

‘(3) If the SSA acts under subsection (2), the person is not entitled under section 71(3)(a) to require the production of the original of the document.

### **‘Material given in written form**

‘71C.(1) This section applies if—

- (a) a person seeks to obtain, under section 71(3)(b), a certified copy of, or certified extract from, a document; and
- (b) the SSA keeps by means of a mechanical, electronic or other device a record of information set out in the document; and
- (c) the SSA—
  - (i) gives the person material in written form setting out what purports to be the contents of the whole of the document, and certifies that the material sets out the contents of the whole of the document; or

- (ii) gives the person material in written form setting out what purports to be the contents of a part of the document, and certifies that the material sets out the contents of the part of the document.

‘(2) For the purposes of section 71(3)(b), the SSA is taken to have given the person—

- (a) if subsection (1)(c)(i) applies—a certified copy of the document; or
- (b) if subsection (1)(c)(ii) applies—a certified extract from the document.

#### **‘Certified copies etc. are evidence**

‘**71D.(1)** A certified copy of, or certified extract from, a document held by the SSA, or a certified copy of, or a certified extract from, a reproduction or transparency of a document incorporated in the documents held by the SSA, is, in a proceeding, admissible in evidence as a document of equal validity with the original of the document.

‘(2) The material in written form mentioned in section 71C(1)(c) is, in a proceeding, evidence of the information contained in it.

#### **‘Obtaining information from certain document registers**

‘**71E.(1)** The SSA may permit a person to search a prescribed register of documents by using a data processor to obtain prescribed information from the register.

‘(2) The SSA may make available to a person prescribed information (in the form of a document or otherwise) that the SSA has obtained from a prescribed register of documents by using a data processor.

‘(3) This section does not limit—

- (a) a power or function the SSA has other than under this section; or
- (b) a right a person has other than under this section.

‘(4) In this section—

“**data processor**” means a mechanical, electronic or other device for

processing data.

“search” includes inspect.

**‘Use in a proceeding of information from SSA database**

‘71F.(1) In a proceeding, material in written form purporting to have been prepared by the SSA is admissible as evidence of the matters stated in so much of the material as sets out what purports to be information obtained by the SSA, by using a data processor, from the SSA database.

‘(2) Material in written form need not bear a certificate or signature in order to be taken to purport to have been prepared by the SSA.

‘(3) This section does not limit, and is not limited by, sections 71 to 71E.

‘(4) In this section—

“data processor” means a mechanical, electronic or other device for processing data.

“SSA database” means so much of the database kept by the SSA (but not including any document imaging system) as consists of—

- (a) some or all of a register kept by the SSA under this Code; or
- (b) information set out in a document lodged under this Code.’.

**Amendment of pt 2, div 2 (Specific powers)**

43. Part 2, division 2, subdivision 1, heading—

*omit, insert—*

*‘Subdivision 1—Services corporations*

**‘SSA may declare body as services corporation**

‘74A. The SSA may, by Gazette notice, declare to be a services corporation a body corporate that provides or proposes to provide financial or other services to societies to enable them to further their objects.

**‘Societies may subscribe for shares in services corporations**

**‘74B.(1)** A society may subscribe for or otherwise acquire shares in a services corporation.

**‘(2)** However, a society must not, without the written approval of the SSA, apply funds of more than 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 for subsection (2)—\$25 000.

**‘Applications for approval**

**‘74C.(1)** On an application for approval under section 74B(2), the SSA may—

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

**‘(2)** The SSA may—

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

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

**‘(4)** The SSA must not refuse to give an approval, or subject an approval to conditions, 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.

**‘(5)** The SSA must not vary a condition imposed on an approval, or 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.

**‘(6)** The variation or revocation of a condition imposed on an approval or the revocation of an approval takes effect on the later of—

- (a) the day written notice of the variation or revocation is given to the society; or

(b) a day specified in that notice for the purpose.

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

Maximum penalty for subsection (7)—\$25 000.

**‘Persons dealing with societies contravening s 74B(2)**

‘**74D.** The application by a society of funds in contravention of section 74B(2) is enforceable by 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 of a type that the person should have known of the contravention.

*‘Subdivision 1A—Enforcement powers’.*

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

**44.(1)** Section 76(9), ‘Neither an’—

*omit, insert—*

‘An’.

**(2)** Section 76(9), ‘, nor any information’ to ‘the answer, is’—

*omit, insert—*

‘is not’.

**Amendment of s 84 (Offence related warrant may be granted by telephone)**

**45.** Section 84(2), ‘an’—

*omit.*

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

**46.(1)** Section 90(9)(c), ‘appointed or’—

*omit.*

**(2)** Section 90(10)(b), ‘until the’—

*omit, insert—*

‘until the end of the’.

**Insertion of new s 91A**

**47.** After section 91—

*insert—*

**‘Rules of society after s 91 no longer applies**

**‘91A.(1)** This section applies to a society if the SSA—

- (a) appoints directors of the society under section 90(9)(d) (Appointment of administrator); and
- (b) by written notice given to the society under section 91(1)(c) (Additional powers of SSA), specifies rules that are to be the society’s rules.

**‘(2)** On and from the section 91 expiry, the rules specified under section 91(1)(c), as amended under section 91(2)(c), (the **“SSA rules”**) continue to apply in the way (including in the way stated in section 91(4)(b)) they applied immediately before the section 91 expiry.

**‘(3)** Subsection (2) does not have effect to stop the society from making rules after the section 91 expiry, including, for example, rules directed at—

- (a) changing the way the SSA rules apply to the society; or
- (b) stopping the SSA rules from having further effect; or
- (c) reinstating as the rules of the society, in whole or in part, the rules that were the society’s rules immediately before the directors were appointed under section 90(9)(d).

**‘(4)** However, if before the section 91 expiry the SSA gave written notice to the society specifying a period (the **“specified period”**) for the purposes of this subsection, the society may make a rule within the specified period

only if the society first obtains the written consent of the SSA to the making of the rule.

‘(5) In this section—

“**section 91 expiry**” means the end of—

- (a) the time mentioned in section 91(1)(a) (Additional powers of SSA); or
- (b) if the time mentioned in section 91(1)(a) has been extended under section 91(3)—the time as extended.’.

### **Amendment of s 94 (Supervision Fund)**

**48.** Section 94(3)—

*insert—*

‘(aa) any payment for or towards the expenses of the SSA within the meaning of the Friendly Societies Code for performing its functions and exercising its powers under the friendly societies legislation within the meaning of the AFIC Code; and’.

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

**49.** Section 97(3), ‘is to consist of’—

*omit, insert—*

‘vests in the SSA, and consists of’.

### **Amendment of s 98 (Contributions by credit unions)**

**50.** Section 98(10)—

*omit, insert—*

‘**(10)** The amount standing to a credit union’s credit in the Credit Unions Contingency Fund is treated as a deferred asset in the accounts of the credit union.’.

**Insertion of new s 99A**

**51.** After section 99—

*insert—*

**‘Distribution of retained earnings of Credit Unions Contingency Fund**

**‘99A.(1)** The SSA may from time to time distribute the whole or a part of retained earnings to the contribution accounts of credit unions.

**‘(2)** A distribution under subsection (1) must be done in an equitable way, including taking into account the extent to which the generation of retained earnings is attributable to the contributions of each credit union to the Credit Unions Contingency Fund.

**‘(3)** The SSA may make a distribution under subsection (1) only if it is satisfied that the capital amount of the Credit Unions Contingency Fund will continue to be sufficient, after the distribution has been made, for the purposes mentioned in section 97(2) (Credit Unions Contingency Fund).

**‘(4)** In this section—

**“contribution accounts”**, of credit unions, means the parts of the Credit Unions Contingency Fund that, under section 98(10) (Contributions by credit unions), are treated as a deferred asset in the accounts of the credit unions.

**“retained earnings”** means all amounts standing to the credit of the Credit Unions Contingency Fund, other than amounts in the contribution accounts of credit unions.’.

**Amendment of s 105D (Consequences of entering into contingency fund agreement)**

**52.** Section 105D(5)—

*insert—*

- section 99A (Distribution of retained earnings of Credit Unions Contingency Fund)’.

**Amendment of s 106 (Restriction on initial advertisements)**

**53.** Section 106(2) to (4)—

*omit, insert—*

‘(2) The permission granted by the SSA under subsection (1) applies for the purposes of this section only, and must not be construed as—

- (a) permission for any other matter or thing for which permission under this Code is required; or
- (b) approval by the SSA of the content of any advertisement issued under the permission.

‘(3) A person must not issue, or cause to be issued, an advertisement mentioned in subsection (1) if the advertisement states, expressly or by implication, that permission to issue the advertisement has been granted by the SSA.

Maximum penalty for subsection (3)—\$100 000 or imprisonment for 15 years, or both.’.

**Amendment of s 112 (Level of assets of building society associated with primary objects)**

**54.** Section 112(2), from ‘derived from’ to ‘was provided’—

*omit, insert—*

‘derived from the application of funds by it in pursuance of objects that, when the funds were applied,’.

**Amendment of s 115 (Registration)**

**55.** Section 115(5)(d) to (f)—

*omit, insert—*

‘(d) if the society is proposed to operate as a credit union—

- (i) the proposed rules limit membership to persons having a common bond of association; and
- (ii) there are reasonable grounds for believing that, within the society’s post-registration period, the society will hold

deposits from its members of not less than the society's minimum deposit amount; and

- (e) there are reasonable grounds for believing that, if registered, the society will, within a reasonable time, be able—
  - (i) to comply with all applicable standards and applicable character requirements; and
  - (ii) to carry out its objects successfully; and
- (f) there is no good reason why the society and its rules should not be registered.

‘(6) In subsection (5)(d)(ii)—

**“minimum deposit amount”**, for a society, means—

- (a) \$200 000; or
- (b) if the SSA decides it is appropriate in the circumstances for a smaller minimum deposit amount to apply for the society—the amount the SSA decides.

**“post-registration period”**, for a society, means—

- (a) 3 months after the society's registration; or
- (b) if the SSA decides it is appropriate in the circumstances for a longer post-registration period to apply for the society—the period the SSA decides.

‘(7) The SSA may, for the purposes of paragraph (b) of the definition “minimum deposit amount” in subsection (6), decide a smaller minimum deposit amount for a society only if—

- (a) the society asks the SSA to do so; and
- (b) the SSA consults with AFIC, and has regard to AFIC's views in deciding whether it is appropriate for a smaller minimum deposit amount to apply for the society, and if so, the size of the amount.

‘(8) The SSA may, for the purposes of paragraph (b) of the definition “post-registration period” in subsection (6), decide a longer post-registration period for a society only if—

- (a) the society asks the SSA to do so; and
- (b) the SSA consults with AFIC, and has regard to AFIC's views in

deciding whether it is appropriate for a longer post-registration period to apply for the society, and if so, the length of the period.’.

### **Insertion of new pt 4, div 1A**

**56.** After section 115—

*insert—*

*‘Division 1A—Formation and registration of building society for approved holder*

#### **‘Application of division**

**‘115A.** This division provides for the registration of a building society on the application of an approved holder, and has effect as an alternative to division 1.

#### **‘Registration of building society as wholly owned society**

**‘115B.(1)** A person (the **“applicant”**) may apply to the SSA for the registration of a building society (the **“proposed society”**) under this division.

**‘(2)** The application must be made in accordance with the regulations.

**‘(3)** The application may be made only if, not earlier than 3 months before the application is made, AFIC has certified, under a standard relating to approved holders, that the applicant is an approved holder.

**‘(4)** The application must be accompanied by—

- (a) 2 copies of the proposed rules of the proposed society; and
- (b) a list containing the full name, date and place of birth, residential address and business occupation of each proposed director; and
- (c) written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society; and
- (d) the evidence the SSA requires to show—
  - (i) that the proposed society is eligible for registration under this

division; and

- (ii) that the proposed society, if registered, will be able to comply with the financial institutions legislation, all applicable standards and applicable character requirements; and
- (iii) that the proposed society, if registered, will be able to carry out its objects successfully.

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

‘(6) If the SSA is satisfied that the proposed society is eligible for registration under this division, the SSA must—

- (a) register the proposed society in the name specified in the proposed rules; and
- (b) register the proposed rules as the rules for the society; and
- (c) authorise the society to operate as a building society.

‘(7) A proposed society is eligible for registration under this division only if—

- (a) the application for registration of the proposed society complies with this Code; and
- (b) the applicant has obtained a suitable exemption under section 199 (Power of SSA to exempt etc. from division 5) from compliance with section 194 (Consequences of exceeding maximum permissible shareholding), and the conditions of the exemption include a condition requiring the applicant to hold all shares in the proposed society; and
- (c) the proposed rules of the proposed society are not contrary to the financial institutions legislation; and
- (d) there are reasonable grounds for believing that, within 3 months of its registration, the proposed society will have a paid-up share capital of not less than \$10 000 000, of which not less than 50% will be available on terms such that—
  - (i) repayment is not required within 7 years from its receipt by the proposed society; and

- (ii) repayment cannot be made without the consent of the SSA;  
and
- (e) there are reasonable grounds for believing that, if registered under this division, the proposed society will, within a reasonable time, be able—
  - (i) to comply with all applicable standards and applicable character requirements; and
  - (ii) to carry out its objects successfully; and
- (f) there is no good reason why the proposed society and its rules should not be registered.

### **‘Offence**

**‘115C.** A person must not make an offer or invitation to the public in order to raise funds for a building society proposed to be registered under this division by accepting amounts on deposit or loan.

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

### ***‘Division 1B—Incorporation’***

#### **Amendment of s 116 (Certificate of incorporation)**

**57.** Section 116(1)—

*omit, insert—*

**‘116.(1)** On registering a society, the SSA must—

- (a) issue to the society a document that includes—
  - (i) a certificate of incorporation; and
  - (ii) a written authority to operate—
    - (A) if the society is registered under division 1—as a building society or credit union; or
    - (B) if the society is registered under division 1A—as a building society; and

- (b) create and keep for its own records a copy of the document mentioned in paragraph (a).’.

### **Amendment of s 117 (Effect of incorporation)**

**58.(1)** Section 117(a)—

*omit.*

**(2)** Section 117(b) and (c)—

*renumber* as section 117(a) and (b).

### **Amendment of pt 4, div 2 (Powers)**

**59.** Part 4, division 2, heading—

*omit, insert—*

*‘Division 2—Legal capacity and powers*

### **‘Interpretation**

**‘117A.** In sections 117B to 119—

- (a) a reference to the doing of an act by a society includes a reference to the making of an agreement by the society and a reference to a transfer of property to or by the society; and
- (b) a reference to legal capacity includes a reference to powers.

### **‘Purpose of sections 118 and 119**

**‘117B.(1)** The purpose of sections 118(1) to (1C) and 119 is—

- (a) to abolish the doctrine of ultra vires in its application to societies; and
- (b) without affecting the validity of a society’s dealings with outsiders, to ensure that the society’s officers and members give effect to provisions of the society’s rules relating to objects or powers of the society.

‘(2) Sections 118(1) to (1C) and 119 are to be construed, and to have effect, in accordance with subsection (1).’.

### **Amendment of s 118 (Powers of societies)**

**60.(1)** Section 118, all words before subsection (1)(a)—

*omit, insert—*

#### **‘Legal capacity**

‘**118.(1)** A society has, both within and outside this State, the legal capacity of a natural person.

‘**(1A)** Without limiting subsection (1), a society has, both within and outside this State, power to—’.

**(2)** Section 118—

*insert—*

‘**(1B)** Subsections (1) and (1A) have effect in relation to a society—

- (a) subject to the financial institutions legislation (other than section 119 of this Code); and
- (b) if the society’s rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the society of any of its powers—despite the restriction or prohibition; and
- (c) despite its objects; and
- (d) despite section 119.

‘**(1C)** The fact that the doing of an act by a society would not be, or is not, in its best interests does not affect its legal capacity to do the act.’.

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

**61.** Section 119—

*omit, insert—*

#### **‘Restrictions on societies**

‘**119.(1)** A society’s rules may contain an express restriction on, or an express prohibition of, the exercise by the society of a power of the society

(including a power mentioned in section 118(1A)).

‘(2) A society contravenes this subsection if—

- (a) it exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the society’s rules; or
- (b) the society does an act otherwise than for the purposes of its objects.

‘(3) An officer of a society who is involved in a contravention by the society of subsection (2) contravenes this subsection.

‘(4) A person who contravenes subsection (2) or (3) does not commit an offence.

‘(5) If a society contravenes subsection (2) by exercising a power mentioned in subsection (2)(a), the exercise of the power is not invalid merely because of the contravention.

‘(6) If a society contravenes subsection (2) by doing an act mentioned in subsection (2)(b), the act is not invalid merely because of the contravention.

‘(7) An act of an officer of a society is not invalid merely because, by doing the act, the officer contravenes subsection (3).

‘(8) This section does not prejudice a proceeding by a member of a society to restrain the body from entering into or carrying out a transaction that lies beyond the powers conferred on the society by the financial institutions legislation, any other law or the society’s rules.

### ‘Persons having dealings with societies

‘119A.(1) A person having dealings with a society is, subject to subsection (6), entitled to make, in relation to those dealings, the assumptions mentioned in subsection (5).

‘(2) In a proceeding in relation to dealings mentioned in subsection (1), any assertion by the society that the matters that under subsection (1) the person is entitled to assume were not correct must be disregarded.

‘(3) A person (the “**first person**”) having dealings with a person (the “**second person**”) who has acquired or purports to have acquired title to property from a society (whether directly or indirectly) is, subject to

subsection (8), entitled to make, in relation to the acquisition or purported acquisition of title from the society, the assumptions mentioned in subsection (5).

‘(4) In a proceeding in relation to dealings mentioned in subsection (3), any assertion by the society or by the second person that the matters that under subsection (3) the first person is so entitled to assume were not correct must be disregarded.

‘(5) The assumptions that a person is, under subsection (1) or (3), entitled to make in relation to dealings with a society, or in relation to an acquisition or purported acquisition from a society of title to property, are—

- (a) that at all relevant times, the society’s rules have been complied with; and
- (b) that a person who appears, from notices or returns lodged with the SSA, to be a director, principal executive officer or secretary of the society has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, principal executive officer or secretary of a society; and
- (c) that a person who is held out by the society to be an officer or agent of the society has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned; and
- (d) that an officer or agent of the society who has authority to issue a document on behalf of the society has authority to warrant that the document is genuine and that an officer or agent of the society who has authority to issue a certified copy of a document on behalf of the society has authority to warrant that the copy is a true copy; and
- (e) that a document has been duly sealed by the society if—
  - (i) it bears what appears to be an impression of the society’s seal; and
  - (ii) the sealing of the document appears to be witnessed by 2 people, 1 of whom may be assumed to be a director because of paragraph (b) or (c) and the other of whom may be assumed to be a director or secretary of the society

because of those paragraphs; and

- (f) that the officers and agents of the society properly perform their duties to the society.

‘(6) Despite subsection (1), a person is not entitled to make an assumption mentioned in subsection (5) in relation to dealings with a society if—

- (a) the person has actual knowledge that the matter that, apart from this subsection, the person would be entitled to assume is not correct; or
- (b) because of the person’s connection or relationship with the society, the person ought to know that the matter that, apart from this subsection, the person would be entitled to assume is not correct.

‘(7) If, under subsection (6), a person is not entitled to make a particular assumption in relation to dealings with a society, subsections (1) and (2) have no effect in relation to any assertion by the society in relation to the assumption.

‘(8) Despite subsection (3), a person is not entitled to make an assumption mentioned in subsection (5) in relation to an acquisition or purported acquisition from a society of title to property if—

- (a) the person has actual knowledge that the matter that, apart from this subsection, the person would be entitled to assume is not correct; or
- (b) because of the person’s connection or relationship with the society, the person ought to know that the matter that, apart from this subsection, the person would be entitled to assume is not correct.

‘(9) If, under subsection (8), a person is not entitled to make a particular assumption in relation to dealings with a society, subsections (3) and (4) have no effect in relation to any assertion by the society or by any other person in relation to the assumption.

**‘Constructive notice not presumed**

‘**119B.** 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 or any document registered or lodged with the SSA in relation to the society.’

**Amendment of s 120 (Control of certain financial transactions)**

**62.** Section 120(4)—

*omit, insert—*

‘**(4)** A contract entered into by a society in contravention of this section is enforceable by another party to the contract unless—

- (a) the other party had actual knowledge of the contravention when the contract was entered into; or
- (b) because of the other party’s connection or relationship with the society, the other party should have known of the contravention.’

**Insertion of new s 121A**

**63.** After section 121, in division 2—

*insert—*

**‘Purchase of overseas plant and equipment**

‘**121A.(1)** Despite section 121, a credit union or a building society may, to the extent permitted by a standard, invest its funds in foreign currency, or carry out any of its activities in foreign currency, to buy plant and equipment, and goods and services, for its business.

‘**(2)** However, the conditions applying to a building society under section 121(4) for borrowing money in a foreign currency from a source within or outside Australia apply to a building society or credit union that, in buying plant and equipment, and goods and services, for its business, borrows money in a foreign currency from a source within or outside Australia.’

**Amendment of s 122 (Rules)**

**64.** Section 122(1) and (2)—

*omit, insert—*

‘**122.(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 a standard.’.

**Omission of s 123 (Model rules)**

**65.** Section 123—

*omit.*

**Replacement of s 127 (Alteration of rules by board of directors)**

**66.** Section 127—

*omit, insert—*

**‘Alteration of rules by board of directors**

‘**127.(1)** A society’s rules may be altered by a resolution of its board if—

- (a) the alteration is authorised or required by or under any Act or law or a standard; or
- (b) the SSA is satisfied that approval of the alteration by the members of the society is not necessary and alteration by a resolution of the board is appropriate.

‘**(2)** The society must give its members, by 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 alteration 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 altered its rules under this section (other than under subsection (1)(b)) to obtain approval of the alteration by the members of the society.’.

### **Amendment of s 133 (Joint members)**

**67.** Section 133—

*insert—*

‘(3) A person whose membership of a society is joint, whether or not the person is a primary joint member, is taken to be a member of the society for the purposes of the operation of section 138 (Financial accommodation to, and deposits from, members and others).’.

### **Replacement of s 138A (Dormant accounts)**

**68.** Section 138A—

*omit, insert—*

#### **‘Dormant accounts**

‘**138A.(1)** This section applies if there have been no transactions in a person’s deposit account with a society for 1 year, or a longer time specified in the society’s rules for the purposes of this section.

‘(2) The society may debit the account with a fee payable to the society only if there is an agreement between the person and the society that the society may continue to debit the account with the fee.

‘(3) The society may classify the account as a dormant account if—

- (a) 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
- (b) the society does not, within that month, receive a written notice from the person stating that the person wishes the account to

remain open.

‘(4) If the society classifies the account as a dormant account, the society may—

- (a) without any agreement, debit the account with a fee payable to the society, but the fee must not be more than the lesser of—
  - (i) the amount held for the person in the dormant account; or
  - (ii) the amount prescribed by regulation; and
- (b) stop or reduce the payment of interest on the account, but only if there is an agreement between the person and the society that the society may stop or reduce the payment of interest; and
- (c) without any agreement, close the dormant account and transfer the amount held in it to another account (the “**other account**”) the purposes of which include the holding of amounts from closed dormant accounts.

‘(5) If the society transfers the amount held in the dormant account to the other account, the society may—

- (a) without any agreement, debit the amount with a fee payable to the society, but the fee must not be more than the lesser of—
  - (i) the amount; or
  - (ii) the amount prescribed by regulation; and
- (b) if interest was payable on the amount when it was included in the other account—stop or reduce the payment of interest on the amount, but only if there is an agreement between the person and the society that the society may stop or reduce the payment of interest.

‘(6) A society may cancel a person’s membership of the society if—

- (a) the amount standing to the credit of the person’s only account with the society (whether or not the account is a dormant account) is lawfully totally paid out by the society; or
- (b) an amount transferred from a person’s dormant account to the other account is lawfully totally paid out by the society, and the person has no account with the society.

*Examples of payout of an amount mentioned in subsection (6)—*

1. The amount is totally paid out under a law of this State about unclaimed money.

2. The amount is totally paid out because of debits for fees payable to the society.

3. The amount is totally paid out because of debits for fees or taxes payable to this State or the Commonwealth.

‘(7) To avoid doubt, it is declared that this section is subject to any law of this State about unclaimed money.

‘(8) 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) debiting the account with a fee payable to the society; or

(c) debiting the account with a fee or tax payable to this State or the Commonwealth.’.

### **Amendment of s 139 (Name)**

**69.(1)** Section 139—

*insert—*

‘(1A) As soon as practicable after a name becomes the registered name of a society, the SSA must advise AFIC of the society’s name.’.

**(2)** Section 139(5) to (9)—

*omit, insert—*

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

(a) its registered name; or

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

Maximum penalty—\$75 000.

‘(6) A society does not contravene subsection (5) by using a name in a way mentioned in section 140(1) (Abbreviations etc. of society’s name).’.

**Amendment of s 140 (Abbreviations etc. of society's name)**

**70.** Section 140(2)(b)—

*omit, insert—*

‘(b) a name approved for its use by AFIC under part 6A (Names) of the AFIC Code.’.

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

**71.(1)** Section 144(6), after ‘subsection (4),’—

*insert—*

‘and, if the person is a body corporate, every officer of the body corporate who is in default,’.

**(2)** Section 144(6), penalty, ‘for subsection (6)’—

*omit.*

**(3)** Section 144—

*insert—*

‘(7) This section does not apply to an unregistered society within the meaning of section 144A (Unregistered society not to trade or carry on business).’.

**Insertion of new s 144A**

**72.** After section 144—

*insert—*

**‘Unregistered society not to trade or carry on business**

**‘144A.(1)** An unregistered society must not trade or carry on business in this State.

**‘(2)** However, an unregistered society does not contravene subsection (1) merely because the unregistered society deals with a member of the society who resides in this State, if—

(a) the member became a member of the unregistered society before

the member started to reside in this State; and

- (b) the dealings are only for the purposes of financial accommodation provided by the unregistered society to the member before the member started to reside in this State.

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

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

‘(5) The SSA may, at any time—

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

‘(6) An unregistered society that contravenes subsection (1) or a condition of an exemption under subsection (4), and every officer of the society who is in default, commits an offence.

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

‘(7) In this section—

“**trade or carry on business**” has the meaning given in section 144 (Use of words ‘building society’, ‘credit society’, ‘credit union’ or ‘credit co-operative’).

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

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

**73.(1)** Section 145(1)—

*omit, insert—*

‘**145.(1)** A society must ensure that its registered name appears in legible letters on—

- (a) all business letters, notices (other than advertisements) and other publications (other than advertisements) signed, issued or published by the society; and  
 (b) all bills of exchange, cheques, promissory notes, endorsements,

orders for money or goods, invoices, receipts and other documents signed or issued in the society's business.

**(1A)** On each advertisement published by a society, the society must use its registered name, or a name approved in relation to the society by AFIC under part 6A (Names) of the AFIC Code, or both.'

**(2)** Section 145(3), 'either its registered name' to 'section 139(5) (Name),'—

*omit, insert—*

'its registered name'.

**(3)** Section 145—

*insert—*

**(5)** A society does not contravene subsection (1), (2) or (3) merely because the society, when displaying its registered name, also displays a name approved in relation to the society by AFIC under part 6A of the AFIC Code.'

### **Amendment of s 159 (Conversion of withdrawable share capital to deposits)**

**74.(1)** Section 159, heading—

*omit, insert—*

**'Conversion of shares to deposits (special resolution)'**.

**(2)** Section 159(1), 'this section'—

*omit, insert—*

'this section and section 159A (Conversion of shares to deposits (by direction))'.

### **Insertion of new section 159A**

**75.** After section 159—

*insert—*

**‘Conversion of shares to deposits (by direction)**

**‘159A.(1)** A building society must establish a scheme for the conversion of withdrawable share capital of the society to deposits if—

- (a) the SSA directs it to establish the scheme; or
- (b) the regulations require the building society to establish the scheme.

**‘(2)** The SSA may give a direction for the purposes of subsection (1)(a) only if there is a standard prescribing requirements for establishing a scheme.

**‘(3)** If the SSA gives a direction for the purposes of subsection (1)(a), the building society must establish a scheme that complies with the standard mentioned in subsection (2).

**‘(4)** If a building society must establish a scheme for the purposes of subsection (1)(b), the building society must establish a scheme that complies with the regulation mentioned in subsection (1)(b).

**‘(5)** Subsection (1) has effect for a building society despite the absence of—

- (a) authority in the building society’s rules for the establishment of a scheme; or
- (b) a special resolution authorising the establishment of a scheme.

**‘(6)** A scheme established under the authority of this section takes effect at the time, and in the way, provided for in—

- (a) if the scheme is established for the purposes of subsection (1)(a)—the standard prescribing requirements for the scheme, and subject to those requirements, the direction of the SSA to establish the scheme; or
- (b) if the scheme is established under subsection (1)(b)—the regulations requiring the building society to establish the scheme.’.

**Replacement of s 160 (Withdrawable shares to rank equally with deposits on winding-up)**

**76.** Section 160—

*omit, insert—*

**‘Withdrawable shares to rank equally with deposits on winding-up**

**‘160.(1)** Withdrawable shares rank equally with deposits as regards return of capital on the winding-up of a building society.

**‘(2)** Subsection (1) applies to a building society despite anything in the building society’s rules.’.

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

**77.** Section 161—

*omit, insert—*

**‘Charge on withdrawable shares or deposit account**

**‘161.(1)** A society has, in relation to any debt owed by a person to the society, a charge on—

- (a) the person’s withdrawable shares in the society; and
- (b) the credit balance of any deposit account of the person; and
- (c) any dividend, interest, bonus or rebate payable to the person.

**‘(2)** The charge created by subsection (1) may be enforced by the appropriation by the society of the share capital or other money subject to the charge.

**‘(3)** A share in relation to which the whole of the capital has been appropriated under subsection (2) is forfeited to the society.

**‘(4)** However, the society may enforce the charge only if the society has given the person, in the way this section provides, the required information.

**‘(5)** If the person first takes up withdrawable shares in, or places money on deposit with, the society after the commencement of this section, the society must give the person the required information—

- (a) when the person first takes up withdrawable shares in, or first places money on deposit with, the society; and
- (b) at least once in each period of 12 months after it gives the person the required information for the purposes of paragraph (a).

‘(6) If the person first took up withdrawable shares in, or first placed money on deposit with, the society after 1 July 1992 but before the commencement of this section, and until the commencement of this section the society has complied with the repealed provision in relation to the person, the society must give the person the required information—

- (a) within 12 months after the society last informed the person under the repealed provision; and
- (b) at least once in each period of 12 months after it gives the person the required information for the purposes of paragraph (a).

‘(7) Subsection (8) applies if—

- (a) the person first took up withdrawable shares in, or placed money on deposit with, the society before 1 July 1992; or
- (b) the person first took up withdrawable shares in, or first placed money on deposit with, the society after 1 July 1992 but before the commencement of this section, but until the commencement of this section the society has not complied fully with the repealed provision in relation to the person.

(8) If this subsection applies, the society must give the person the required information—

- (a) within 6 months after the commencement of this section (except that if the society wishes to enforce the charge before the end of 6 months, but has not already given the person the required information, it must give the person the required information before it enforces the charge); and
- (b) at least once in each period of 12 months after it gives the person the required information for the purposes of paragraph (a).

‘(9) 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.

‘(10) In this section—

**“repealed provision”** means section 161(2) of this Code, as in force from time to time from 1 July 1992 until the commencement of this section.

**“required information”**, to be given to a person, means the information that, for any debt owed by the person to the society, the society may charge—

- (a) the person's shares in the society; and
- (b) the credit balance of any deposit account of the person; and
- (c) any dividend, interest, bonus or rebate payable to the person.'.

**Amendment of s 173 (Sale of permanent shares forfeited for non-payment of call)**

**78.** Section 173(1)—

*insert—*

- '(c) on a stock market lawfully operated by a stock exchange (within the meaning of paragraph (c) of the definition "stock exchange" in the Corporations Law, section 9).'

**Amendment of s 184 (Application of certain provisions of Code to redeemable preference shares)**

**79.(1)** Section 184(1)(e) to (i)—

*omit.*

**(2)** Section 184(1)(j) to (t)—

*renumber* as paragraphs (e) to (o).

**Amendment of s 234 (Election or appointment of directors)**

**80.(1)** Section 234(1), after 'legislation'—

*insert—*

'and to any standard about the election or appointment of directors'.

**(2)** Section 234(3)—

*omit, insert—*

'**(3)** Despite subsection (2), the society's rules may specify, for a director elected at an annual general meeting of the society, 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 the meeting mentioned in paragraph (a).’.

(3) Section 234(4), ‘or reappointment’—

*omit.*

(4) Section 234—

*insert—*

‘(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.’.

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

**81.** Section 238(c) and (d)—

*omit, insert—*

‘(ba) is a member of the society only on the basis of 1 or more joint memberships, and the person is not, for any joint membership, a primary joint member under section 133 (Joint members); or

(c) is an employee of the society; or

(d) is an insolvent under administration within the meaning of the Corporations Law, section 9; or’.

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

**82.(1)** Section 239(1)(i), ‘and is not reappointed or re-elected’—

*omit.*

(2) Section 239(3), ‘start’—

*omit, insert—*

‘end’.

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

**83.(1)** Section 240(4)(a), ‘member’—

*omit, insert—*

‘member or officer’.

(2) Section 240—

*insert—*

‘(8A) Subsection (8) 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.’.

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

84.(1) Section 243(5)—

*omit.*

(2) Section 243(6)—

*renumber* as subsection (5).

(3) Section 243, before subsection (7)—

*insert—*

‘(6) However, subsection (5) applies only if the financial accommodation is provided to the member on terms more favourable than the terms on which it is reasonable to expect the society would give if dealing with the member at arm’s length in the same circumstances.’.

### **Insertion of new s 244A**

85. After section 244—

*insert—*

#### **‘Society not to indemnify director**

‘244A.(1) A society or a related body corporate must not—

- (a) indemnify a person who is or has been a director of the society against a liability incurred by the person as a director of the

society; or

- (b) exempt a person mentioned in paragraph (a) from a liability mentioned in paragraph (a).

‘(2) A rule or any other instrument of a society, or an agreement or arrangement, is void to the extent that it provides for a society to do something that subsection (1) prohibits.

‘(3) Subsection (1) does not prevent a person from being indemnified against a liability to another person (other than the society or a related body corporate) unless the liability arises out of conduct involving a lack of good faith.

‘(4) Subsection (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to the proceeding, in which the court grants relief to the person under this Code.

‘(5) In this section—

“**indemnify**” includes indemnify indirectly through 1 or more interposed entities.’.

### **Amendment of s 254 (Proxy votes)**

**86.** Section 254(2)—

*omit, insert—*

‘(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; and
- (b) may act as a proxy for an unlimited number of members who specify the way the vote is to be exercised.’.

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

**87.(1)** Section 255(1), ‘of those members’—

*omit, insert—*

‘of the votes cast by those members’.

**(2)** Section 255(4), ‘setting out its terms’—

*omit, insert—*

‘containing the text or a summary of the motion for the passing of the resolution’.

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

**88.(1)** Section 258(3)(b)—

*omit, insert—*

‘(b) particulars of directorships held by the director in bodies corporate (other than related bodies corporate of the society) that are—

- (i) public companies or subsidiaries of public companies; or
- (ii) other financial institutions; or
- (iii) financial institutions within the meaning of the Financial Institutions Code of a participating State; or
- (iv) friendly institutions within the meaning of the AFIC Code; and’.

**(2)** Section 258(7A)—

*omit, insert—*

‘**(7A)** A society must lodge with the SSA—

- (a) within 1 month after a person has become, or ceased to be, a director, the principal executive officer or a secretary of the society, a return in the prescribed form advising that fact and containing in relation to a new director, principal executive officer or secretary the matters required by subsection (3)(a) or (3A) to be shown in the register; and

- (b) within 1 month after receiving a notice from a director, principal executive officer or secretary of a change in the matters required by subsection (3)(a) or (3A) 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.’.

### **Amendment of s 259 (Register of members)**

**89.(1)** Section 259(3), ‘to that part’—

*omit, insert—*

‘only to the part’.

**(2)** Section 259(4), ‘A society’ to ‘in subsection (3),’—

*omit, insert—*

‘Subject to subsection (3), a society may refuse to allow a person’.

### **Amendment of s 260 (Register of holders of permanent shares)**

**90.(1)** Section 260(3), ‘to that part’—

*omit, insert—*

‘only to the part’.

**(2)** Section 260(4), ‘A society’ to ‘in subsection (3),’—

*omit, insert—*

‘Subject to subsection (3), a society may refuse to allow a person’.

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

**91.** Section 274(1)(ab)(i) and (2)(ab)(i), after ‘interests’ and ‘securities’—

*insert—*

‘(if any)’.

**Amendment of s 278 (Qualifications of auditors)**

**92.(1)** Section 278(5)(d)—

*omit, insert—*

‘(d) at least 1 member of the firm is—

- (i) a registered company auditor; and
- (ii) ordinarily resident in this State; and’.

**(2)** Section 278—

*insert—*

‘**(12)** The SSA, after consultation with AFIC, may exempt—

- (a) a person from the requirement mentioned in subsection (4)(e); or
- (b) a firm from the requirement mentioned in subsection (5)(d)(ii).’.

**Amendment of s 279 (Appointment of auditors)**

**93.** Section 279—

*insert—*

‘**(2A)** Within 14 days after the appointment of an auditor under subsection (2), the society must give a notice of the appointment in the prescribed form to the SSA.

Maximum penalty—\$500.’.

**Amendment of s 280 (Nomination of auditors)**

**94.(1)** Section 280(3), ‘and,’—

*omit, insert—*

‘and’.

**(2)** Section 280(3), ‘commit’—

*omit, insert—*

‘commits’.

**Amendment of s 281 (Removal and resignation of auditors)**

**95.(1)** Section 281(1)—

*omit, insert—*

‘**281.(1)** A society may remove an auditor of the society from office only by special resolution at a general meeting of the society.’.

**(2)** Section 281(5)—

*omit, insert—*

‘**(5)** If an auditor is removed from office, the society must immediately—

- (a) give written notice of the removal 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.’.

**(3)** Section 281(12), ‘or, if an auditor’ to ‘after the removal’—

*omit.*

**Amendment of s 291A (Definitions)**

**96.** Section 291A, ‘In this Part’—

*omit, insert—*

‘In divisions 1 and 2’.

**Amendment of s 293 (Application for registration of merger or transfer of engagements between societies of the same type)**

**97.** Section 293(3)—

*insert—*

- ‘(aa) if the proposal is for a merger—any proposal for the composition of the board of the merged society; and
- (ab) if the proposal is for a total transfer of engagements—any proposal for the composition of the board of the transferee society; and’.

**Amendment of s 298 (Certificate of confirmation (transfer by direction))**

**98.** Section 298(2), after ‘confirmation’—

*insert—*

‘indicating that the certificate takes effect when it is issued’.

**Replacement of s 298B (When transfer of engagements takes effect)**

**99.** Section 298B—

*omit, insert—*

**‘When transfer of engagements takes effect**

**‘298B.** A transfer of engagements takes effect—

- (a) on the issue of the certificate of confirmation of the transfer; or
- (b) if a later time is stated in the certificate—at the later time.’.

**Amendment of s 300 (Effect of transfer of engagements)**

**100.** Section 300(4)(d), ‘merger’—

*omit, insert—*

‘transfer of engagements’.

**Amendment of s 302 (Application for registration of merger or transfer of engagements between societies of different types)**

**101.** Section 302(3)—

*insert—*

- ‘(aa) if the proposal is for a merger—any proposal for the composition of the board of the merged society; and
- (ab) if the proposal is for a total transfer of engagements—any proposal for the composition of the board of the transferee society; and’.

**Amendment of s 302A (Cancellation of building society's permanent shares)**

**102.** Section 302A—

*insert—*

‘(2) However, permanent shares may be cancelled for the purposes of subsection (1) only if the SSA has approved the way that—

- (a) the shares are cancelled; and
- (b) the proceeds of the cancellation are applied.’.

**Amendment of s 307 (Certificate of confirmation (transfer by direction))**

**103.** Section 307(2), after ‘confirmation’—

*insert—*

‘indicating that the certificate takes effect when it is issued’.

**Replacement of s 307B (When transfer of engagements takes effect)**

**104.** Section 307B—

*omit, insert—*

**‘When transfer of engagements takes effect**

‘**307B.** A transfer of engagements takes effect—

- (a) on the issue of the certificate of confirmation of the transfer; or
- (b) if a later time is stated in the certificate—at the later time.’.

**Replacement of pt 7, div 3 (Mergers and transfers of engagements involving foreign societies)**

**105.** Part 7, division 3—

*omit, insert—*

*‘Division 3—Mergers and transfers of engagements involving foreign societies*

**‘Definitions for div 3**

**‘309.** 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”**, to a specified provision of this Code, means, in a provision of this division about a foreign society, the provision of the financial institutions legislation of the participating State corresponding to the specified provision.

**“foreign society”** means a body corporate that is a society under the financial institutions legislation of another participating State, whether or not it is registered as a foreign society under Part 11 (Foreign societies).

**“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 whom a foreign society is to transfer, or has transferred, totally or partially, its engagements; or
- (b) a foreign society to whom 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**

**‘310.(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 (whether of the same

or a different type), 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 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—
  - (i) the participating State in which the merged society will be incorporated; and

(ii) whether the merged society proposes to operate as a building society or a credit union; 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**

‘311.(1) This section applies if—

(a) a society proposes a merger with a foreign society (whether of the same or a different type); 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 310 (Proposal for merger or transfer of engagements), and the foreign society has complied with the corresponding provision to section 310; 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) authorise it to operate as a building society or, as the case may be, credit union; and
- (c) cancel the registration of the society.

‘(6) On registering the merged society, the SSA must issue to the merged society—

- (a) a certificate of incorporation; and
- (b) either—

- (i) a written authority to operate as a building society; or
- (ii) a written authority to operate as a credit union.

‘(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

‘312.(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 310 (Proposal for merger or transfer of engagements), and the foreign society has complied with the corresponding provision to section 310; 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**

**‘313.(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 310 (Proposal for merger or transfer of engagements), and the foreign society has complied with the corresponding provision to section 310; 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**

**‘314.(1)** This section applies for 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 312 (Certificate of confirmation for total transfer), or the corresponding provision to section 312, 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 313 (Certificate of confirmation for partial transfer), and the corresponding provision to section 313, 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**

**‘315.(1)** This section applies on a merger of a society and a foreign society taking effect, whether the merged society is registered under section 311 (SSA may register merged society) or the corresponding provision to section 311.

**‘(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**

‘**316.(1)** This section applies on a total transfer of engagements taking effect under section 314 (When transfer of engagements takes effect).

‘**(2)** This section also applies on a partial transfer of engagements taking effect under section 314, 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**

‘**316A.(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 310 (Proposal for merger or transfer of engagements), the society must surrender its certificate of incorporation to the SSA.

‘(3) Upon the merger or transfer of engagements taking effect under the financial institutions legislation of the participating State, the SSA must cancel the registration of the society.

*‘Division 3A—Effect of mergers and transfers of engagements involving only foreign societies*

**‘Definitions for div 3A**

‘316B. In this division—

“**foreign society**” means a body corporate that is a society under the financial institutions legislation of another participating State, whether or not it is registered as a foreign society under Part 11 (Foreign societies).

**‘Effect of merger of foreign societies**

‘316C.(1) This section applies if—

- (a) a merger of a foreign society and another foreign society takes effect; and
- (b) the merged society is registered under the provisions of the financial institutions legislation of a participating State corresponding to—
  - (i) section 294 (SSA may register merged society); or
  - (ii) section 303 (SSA may register merged society); or
  - (iii) section 311 (SSA may register merged society).

‘(2) The merged society is the successor of the merging foreign societies.

‘(3) Without limiting subsection (2)—

- (a) the members of each merging foreign society become members of the merged society; and
- (b) all assets and liabilities of each merging foreign 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 foreign society was a party), a reference to a merging foreign society is a reference to the merged society; and
- (d) a legal proceeding by or against a merging foreign 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 foreign society apply to the merged society.

### **‘Effect of transfer of engagements between foreign societies**

**‘316D.(1)** This section applies if—

- (a) there is a total transfer of engagements from a foreign society (the **“transferor foreign society”**) to another foreign society (the **“transferee foreign society”**); and
- (b) a certificate of confirmation of the total transfer of engagements is issued under the provisions of the financial institutions legislation of the State in which the transferee foreign society is incorporated corresponding to—
  - (i) section 295 (Certificate of confirmation (voluntary transfer));  
or
  - (ii) section 298 (Certificate of confirmation (transfer by direction)); or
  - (iii) section 304 (Certificate of confirmation (voluntary transfer));  
or
  - (iv) section 307 (Certificate of confirmation (transfer by direction)); or
  - (v) section 312 (Certificate of confirmation for total transfer).

**‘(2)** This section also applies if—

- (a) there is a partial transfer of engagements from a foreign society (also the **“transferor foreign society”**) to another foreign society (also the **“transferee foreign society”**); and
- (b) certificates of confirmation of the partial transfer of engagements are issued under the provisions of the financial institutions

legislation of the State or States in which the foreign societies are incorporated corresponding to—

- (i) section 295 (Certificate of confirmation (voluntary transfer));  
or
- (ii) section 298 (Certificate of confirmation (transfer by direction)); or
- (iii) section 304 (Certificate of confirmation (voluntary transfer));  
or
- (iv) section 307 (Certificate of confirmation (transfer by direction)); or
- (v) section 313 (Certificate of confirmation for partial transfer);

but only—

- (c) subject to the terms on which the transfer takes place; and
- (d) to the extent necessary to give effect to the transfer.

‘(3) The transferee foreign society is the successor of the transferor foreign society.

‘(4) Without limiting subsection (3)—

- (a) the members of the transferor foreign society become members of the transferee foreign society; and
- (b) all assets and liabilities of the transferor foreign society become assets and liabilities of the transferee foreign society without any conveyance, transfer or assignment; and
- (c) in all documents (including, for example, a contract to which the transferor foreign society was a party), a reference to the transferor foreign society is a reference to the transferee foreign society; and
- (d) a legal proceeding by or against the transferor foreign society that is not finished when the transfer of engagements takes effect may be continued and finished by or against the transferee foreign society; and
- (e) the duties, obligations, immunities, rights and privileges applying

to the transferor foreign society apply to the transferee foreign society.’.

### **Amendment of s 337 (Schemes of arrangement and reconstruction)**

**106.** Section 337(2)(d) to (f)—

*omit.*

### **Omission of pt 9, div 3 (Official management)**

**107.** Part 9, division 3—

*omit.*

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

**108.** Section 341(5)—

*omit, insert—*

‘(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.’.

### **Amendment of s 342 (Application of Corporations Law to winding-up)**

**109.** Section 342, ‘5.5 and 5.6’—

*omit, insert—*

‘5.4A, 5.4B, 5.5, 5.6, 5.7B (other than section 588G) and 5.9’.

### **Amendment of s 352 (Self-incrimination)**

**110.** Section 352(2)—

*omit, insert—*

‘(2) An answer given by an officer to a question put to the officer by an investigator is not admissible in evidence against the officer in a criminal

proceeding (other than a proceeding in relation to the falsity of the answer) if—

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

‘(3) The fact that a document was produced by an officer to an investigator is not admissible in evidence against the officer in a criminal proceeding (other than a proceeding in relation to the falsity of the document) if—

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

### **Amendment of s 364 (Registration)**

**111.(1)** Section 364(2)(a)—

*omit, insert—*

- ‘(a) a certificate, not more than 2 months old, of the SSA of the participating State in which the society is incorporated stating that it considers that there is no good reason why the society should not be registered as a foreign society in this State; and’.

**(2)** Section 364(2)(c)—

*omit, insert—*

- ‘(c) a statement, verified as prescribed, setting out—
  - (i) the name of the person who is to be the agent of the society in this State; and
  - (ii) the address of the office to be maintained for the society by the society’s agent; and
  - (iii) each name under which the society proposes to carry on business in this State; and’.

**(3)** Section 364(3) and (4)—

*omit, insert—*

‘(3) If, on due application, the SSA is satisfied that the society is eligible for registration, the SSA must register the society as a foreign society, and issue a certificate of registration in accordance with the regulations.

‘(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) under the AFIC Code, part 6A, has been reserved by AFIC for the society for use in this State.’.

### **Insertion of new ss 364A–364E**

**112.** After section 364—

*insert—*

#### **‘Agents**

‘**364A.(1)** A foreign society must appoint, and ensure that at all times there is appointed, a person as its agent in this State.

‘(2) A foreign society is taken to have appointed a person as its agent for the purposes of subsection (1) if—

- (a) the foreign society lodges with the SSA a memorandum of appointment that—
  - (i) is duly executed on behalf of the foreign society and states the name of the person; and
  - (ii) is accompanied by a copy of the person’s consent to act as the foreign society’s agent;
  - (iii) authorises the person to act as the foreign society’s agent, including accepting, on the foreign society’s behalf, service of process and notices; and
- (b) the person is an individual resident in the State or a body corporate.

‘(3) A person whom a foreign society appoints as its agent is the agent of the foreign society until the person—

- (a) ceases under section 364B (End of appointment of foreign societies' agents) to be the agent; or
- (b) dies or ceases to exist.

### **'End of appointment of foreign societies' agents**

**'364B.(1)** A foreign society, or the person who is the agent of the foreign society, may lodge a written notice with the SSA stating that the person's appointment as agent has terminated, or is to terminate.

**'(2)** If a notice is lodged under subsection (1), the person ceases to be the agent of the foreign society—

- (a) at the end of the day of lodgment; or
- (b) if the notice specifies a day falling after the day of lodgment—the end of the specified day.

### **'Liability of agents**

**'364C.** The 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 imposing the penalty is satisfied that the agent should be personally liable.

### **'Office of foreign society**

**'364D.(1)** The agent of a foreign society must maintain in this State an office of the society.

**'(2)** A foreign society's office must be open, and attended by the foreign society's agent, or an officer or employee of the agent, in ordinary business hours.

**'(3)** An office is taken to be a foreign society's office in this State for the purposes of this Code only if there is lodged with the SSA a notice advising the address of the office.

**'(4)** The agent of a foreign society may lodge a written notice with the

SSA stating that the address of the foreign society's office in this State has changed, or is to change.

'(5) If a notice is lodged under subsection (4), the address of the foreign society's office in this State is taken to change—

- (a) at the end of the day of lodgment; or
- (b) if the notice specifies a day falling after the day of lodgment—the end of the specified day.

### **'Service of documents**

'**364E.(1)** A document may be served on a foreign society by leaving a copy of the document at, or posting it to, the foreign society's office in this State.

'(2) Without limiting subsection (1), a document may be served on a foreign society by delivering a copy of the document personally to a person authorised by the foreign society's agent to accept service of documents on behalf of the foreign society.

'(3) Nothing in this section affects—

- (a) the power of the Court to authorise a document to be served on a foreign society in a way not provided for by this section; or
- (b) the operation of the law of a State or the Commonwealth authorising a document to be served on a foreign society in a way not provided for by this section.'

### **Amendment of s 366 (SSA to be notified of certain changes)**

**113.(1)** Section 366(a) to (e)—

*omit.*

**(2)** Section 366(f) and (g)—

*renumber* as section 366(a) and (b).

**Omission of s 367 (Balance sheets)**

**114.** Section 367—

*omit.*

**Amendment of s 369 (Society proposing to register as foreign society)**

**115.(1)** Section 369(1), from ‘that it is complying’ to ‘the standard as varied.’—

*omit, insert—*

‘stating that the SSA considers that there is no good reason why the society should not be registered as a foreign society in the other participating State.’.

**(2)** Section 369(2)—

*omit, insert—*

‘(2) The SSA must issue the certificate to the society unless it is of the opinion that there is good reason why the society should not be registered as a foreign society in the other participating State.’.

**Insertion of new s 369A**

**116.** Part 11, after section 369—

*insert—*

**‘SSA to provide certain documents**

**‘369A.** The SSA, on request by the SSA of a participating State in which a foreign society is registered as a society must, without charge, provide copies of any public documents that are held by the SSA in accordance with section 71 (Public office of SSA and inspection of documents).’.

**Amendment of s 374 (Effect of incorporation)**

**117.** Section 374(a) to (c)—

*omit, insert—*

- ‘(a) has a common seal; and
- (b) may sue and be sued in its corporate name.’.

### **Amendment of s 379 (Reviewable decisions)**

#### **118. Section 379—**

*insert—*

‘**(3)** Also, subsection (1) does not apply to a decision made for section 382(4) (SSA to review certain decisions) to confirm or vary a decision (the “**original decision**”), but, subject to subsection (2), does apply to—

- (a) the original decision as confirmed or varied; and
- (b) a decision made for section 382(4) to reverse a decision.’.

### **Amendment of s 382 (SSA to review certain decisions)**

#### **119. Section 382—**

*insert—*

‘**(1A)** However, a person may not request the SSA to review—

- (a) a decision made for subsection (4) to confirm, vary or reverse a decision (the “**original decision**”); or
- (b) the original decision as confirmed or varied.

‘**(1B)** A request under subsection (1) must be made within 1 month after the person is given written notice of the decision.’.

### **Replacement of s 410 (Secrecy)**

#### **120. Section 410—**

*omit, insert—*

#### **‘Secrecy**

‘**410.(1)** In this section—

“**court**” includes a tribunal, authority or person having the power lawfully

to require the production of documents or the answering of questions.

**“financial sector supervisory agency”** means a person or body prescribed by regulation to be a financial sector supervisory agency for this section.

**“Government agency”** means an agency of the State or the Commonwealth, and includes a body prescribed by regulation to be an agency of a State or the Commonwealth.

**“law enforcement agency”** means a body prescribed by regulation 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 financial institutions 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 financial institutions legislation.

‘(2) This section applies to a director or member of the SSA, and to a person who is or has been appointed or employed by the SSA for the purposes of carrying out any duties under the financial institutions legislation.

‘(3) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, disclose to a person protected information concerning another person;

unless the record is made, or the information disclosed—

- (c) under or for the purposes of the financial institutions legislation; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the financial institutions 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
- (c) the SSA of another participating State; or
- (d) a financial sector supervisory agency; or
- (e) a law enforcement agency; or
- (f) a Minister or a nominee of a Minister; or
- (g) a Government agency; or
- (h) to the extent the protected information or document is about a society—the society’s auditor; or
- (i) to the extent the protected information or document is about a society and is relevant to the period of office of a former auditor of the society—the former auditor.

‘(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 the protected document.

‘(6) A person to whom this section applies cannot be required to disclose to a court any protected information or to produce to a court a protected document except when it is necessary to do so for the purposes of the financial institutions legislation.’.

### **Amendment of s 411 (Powers about money of members who have died)**

**121.** Section 411(1)(c)—

*omit, insert—*

- ‘(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.’.

### **Omission of ss 412–413**

**122.** Sections 412 and 413—

*omit.*

### **Omission of schs 1 and 2**

**123.** Schedules 1 and 2—

*omit.*

## **PART 5—AMENDMENT OF FINANCIAL INSTITUTIONS (QUEENSLAND) ACT 1992**

### **Act amended in pt 5**

**124.** This part amends the *Financial Institutions (Queensland) Act 1992*.

### **Amendment of s 6 (Interpretation of some expressions in the Financial Institutions (Queensland) Code and the Financial Institutions (Queensland) Regulations)**

**125.** Section 6(1)—

*insert—*

‘ **“Friendly Societies Code”** means the Friendly Societies (Queensland) Code.’.

### **Amendment of s 22 (Amount credited to Credit Societies Guarantee Fund)**

**126.** Section 22(2), ‘is credit’—

*omit, insert—*

‘is credited’.

## **PART 6—AMENDMENT OF PUBLIC SERVICE ACT 1996**

### **Act amended in pt 6**

**127.** This part amends the *Public Service Act 1996*.

### **Amendment of sch 2 (Amendments)**

**128.** Schedule 2, amendments of Australian Financial Institutions Commission Code—

*omit.*

**SCHEDULE****AMENDMENTS FOR ‘FINANCIAL INSTITUTION’  
AND ‘FINANCIAL INSTITUTIONS’**

section 34

**PART 1—PROVISIONS IN WHICH ‘FINANCIAL  
INSTITUTION’ IS OMITTED AND ‘FISCAL BODY’ IS  
INSERTED**

section 3, definition “group”

section 31(1)

section 34(2)

section 47C(1)(a) and (b) and (2) to (4)

section 55(2)

section 120(2) and (4) to (6)

section 132

section 139(f)

section 143(2)

section 156(2)(a)

**PART 2—PROVISIONS IN WHICH ‘FINANCIAL  
INSTITUTIONS’ IS OMITTED AND ‘FISCAL  
BODIES’ IS INSERTED**

section 3, definition “prudential standard”, paragraphs (a) and (b)

section 6, (other than in the words ‘financial institutions scheme’ and

‘financial institutions agreement’)

section 9(1)(a), (2)(a) to (d) and (g)

section 10 (other than in the words ‘financial institutions scheme’)

part 2, division 2

section 15(a), (b), (c)(i) and (g) to (i)

section 16(2)

section 18

section 28(1)(a), (c), (d) (other than in the words ‘financial institutions scheme’), (f) and (g) (other than in the words ‘financial institutions scheme’)

section 33(6)

section 35

section 47C(3)(a) and (b) and (4)

section 49(1)(a)

section 52(4)(a)

section 65(1)

section 85(1)(a) and (b)

section 94(1)

section 115

section 119(1), (2) and (4)

section 120(2)(b) and (3)

section 140(2)(b)

section 164(1)