

Queensland



FINANCIAL INSTITUTIONS CODE 1992

**Reprinted as in force on 6 October 1998
(includes amendments up to Act No. 33 of 1997)**

Reprint No. 4B

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Information about this reprint

This Code is reprinted as at 6 October 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



FINANCIAL INSTITUTIONS CODE 1992

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
<i>Division 1—Introductory</i>		
1	Short title	21
2	Commencement	21
<i>Division 2—Interpretation</i>		
3	Definitions	21
4	Interpretation—meaning of “associate”	27
5	Interpretation—meaning of “director”	28
6	Interpretation—reference to a holding body corporate	29
7	Interpretation—meaning of “holding society”	29
8	Interpretation—meaning of making a decision	29
9	Interpretation—meaning of offer, invitation or issue to the public	29
10	Interpretation—meaning of “officer”	30
11	Interpretation—meaning of related body corporate	31
12	Interpretation—meaning of “subsidiary”	31
13	Interpretation—when one entity controls another	33
<i>Division 3—General interpretative provisions</i>		
<i>Subdivision 1—Preliminary</i>		
14	Meaning of relevant Code	34
15	Displacement of Division by contrary intention	34
<i>Subdivision 2—General</i>		
16	Relevant Code or Act includes statutory instruments under relevant Code or Act	34
17	Relevant Codes to be construed not to exceed legislative power of Legislature	34

18	Every section to be a substantive enactment	35
19	Material that is, and is not, part of a relevant Code	35
20	References to particular Acts and to enactments	35
21	References taken to be included in Act or relevant Code citation etc.	36
22	Interpretation best achieving relevant Code's purpose	37
23	Use of extrinsic material in interpretation	37
24	Affect of change of drafting practice and use of examples	39
25	Compliance with forms	39
26	Jurisdiction of courts and tribunals	40
	<i>Subdivision 3—Terms and references</i>	
27	Definitions	40
28	Provisions relating to defined terms and gender and number	45
29	Meaning of “may” and “must” etc.	45
30	Words and expressions used in statutory instruments	46
31	Effect of express references to bodies corporate and individuals	46
32	References to Minister	46
33	Production of records kept in computers etc.	47
34	Application of offence provisions to bodies corporate	48
35	References to this State to be implied	48
36	References to officers and holders of offices	48
37	Reference to certain provisions of a relevant Code	48
38	Headings part of provision etc.	49
39	Reference to provisions of a relevant Code or Act is inclusive	50
	<i>Subdivision 4—Functions and powers</i>	
40	Performance of statutory functions etc.	50
41	Power to make instrument or decision includes power to amend or repeal	50
42	Matters for which statutory instruments may make provision	51
43	Presumption of validity and power to make	52
44	Appointments may be made by name or office	52
45	Acting appointments	53
46	Powers of appointment imply certain incidental powers	54

47	Delegation of powers	55
48	Exercise of powers between enactment and commencement	56
	<i>Subdivision 5—Distance, time and age</i>	
49	Matters relating to distance, time and age	59
	<i>Subdivision 6—Service of documents</i>	
50	Service of documents and meaning of service by post etc.	60
51	Meaning of service by post etc.	60
52	Time of relevant Code ceasing to have effect	61
	<i>Subdivision 7—Effect of repeal, amendment or expiration</i>	
53	Repealed relevant Codes etc. not revived	61
54	Saving of operation of repealed relevant Code etc.	61
55	Continuance of repealed provisions	62
56	Relevant Code and amending Acts to be read as one	62
	<i>Subdivision 8—Offences under relevant Codes</i>	
57	Penalty at end of provision	62
58	Penalty other than at end of provision	63
59	Indictable offences and summary offences	63
60	Double jeopardy	64
61	Aiding and abetting, attempts etc.	64
	<i>Subdivision 9—Instruments under relevant Codes</i>	
62	Division applies to statutory instruments	65
	<i>Division 4—Operation of financial institutions legislation</i>	
63	Extraterritorial operation of legislation	65
64	Act binds the Crown	65
	<i>Division 5—Application and adoption of Corporations Law</i>	
64A	Definitions	65
65	Corporations Law applying under its own force	66
65A	Corporations Law adopted under a regulation	67
65B	Adopted provisions of Corporations Law	68
	PART 2—FUNCTIONS AND POWERS OF SSA	
	<i>Division 1—General</i>	
66	Functions of SSA	68

67	General powers	69
68	SSA to comply with standards	69
69	Application of variation under standards	69
70	SSA to keep Minister informed	70
71	Public office of SSA and inspection of documents	70
71A	Reproductions and transparencies	71
71B	Records kept by devices	71
71C	Material given in written form	71
71D	Certified copies etc. are evidence	72
71E	Obtaining information from certain document registers	72
71F	Use in a proceeding of information from SSA database	73
72	Power of SSA to reject documents, etc.	73
73	Extension or abridgment of time	74
74	Execution of guarantees	74

Division 2—Specific powers

Subdivision 1—Services corporations

74A	SSA may declare body as services corporation	75
74B	Societies may subscribe for shares in services corporations	75
74C	Applications for approval	75
74D	Persons dealing with societies contravening s 74B(2)	76

Subdivision 1A—Enforcement powers

75	Obtaining information etc.	76
76	Obtaining evidence	78
77	Inspectors	79
78	Inspector to produce identity card	80
79	Entry and search—monitoring compliance	80
80	Entry and search—evidence of offences	81
81	General powers of inspector in relation to places	82
82	Monitoring warrants	83
83	Offence related warrants	84
84	Offence related warrant may be granted by telephone	85
85	Obstruction etc. of inspectors	87

86	False or misleading statements	87
	<i>Subdivision 2—Special meeting and inquiry</i>	
87	Special meeting and inquiry	87
	<i>Subdivision 3—Special power of intervention</i>	
88	Intervention by SSA	89
	<i>Subdivision 4—Power to suspend operations of society</i>	
89	Power to suspend operations	91
	<i>Subdivision 5—Administrators</i>	
90	Appointment of administrator	92
91	Additional powers of SSA	94
91A	Rules of society after s 91 no longer applies	95
92	Stay of proceedings	96
93	Administrator to report to SSA	96
	<i>Subdivision 6—Levies, compulsory loans and funds</i>	
94	Supervision Fund	97
95	Supervision levy	97
96	Consultation	99
97	Credit Unions Contingency Fund	99
98	Contributions by credit unions	100
98A	Refunds of contributions	101
99	Support levy	102
99A	Distribution of retained earnings of Credit Unions Contingency Fund . . .	103
100	Compulsory loans	104
101	Failure to make payment an offence	104
102	Investment of Credit Unions Contingency Fund	104
103	Payment out of Credit Unions Contingency Fund	104
103A	Payment of administration levy and supervision levy out of Credit Unions Contingency Fund	105
104	Payment from Credit Unions Contingency Fund on liquidation etc.	106
105	SSA may direct payment of grant or loan from fund	107
	<i>Subdivision 6A—Contingency fund agreements</i>	
105A	SSA may enter into contingency fund agreement	107

105B	Restrictions on entering into contingency fund agreement	107
105C	Things for inclusion in contingency fund agreement	108
105D	Consequences of entering into contingency fund agreement	108
	<i>Subdivision 7—Advertising by societies</i>	
106	Restriction on initial advertisements	113
107	Power to control advertising	114
	PART 3—PRINCIPLES, OBJECTS AND CHARACTERISTICS OF SOCIETIES	
	<i>Division 1—Principles</i>	
108	Principles	114
	<i>Division 2—Objects</i>	
109	Objects	118
110	Primary objects of building societies	118
	<i>Division 3—Characteristics</i>	
111	Meaning of assets	119
112	Level of assets of building society associated with primary objects	119
113	Level of financial accommodation provided by credit union restricted	120
	PART 4—SOCIETIES	
	<i>Division 1—Formation and registration</i>	
114	Formation of societies	121
115	Registration	122
	<i>Division 1A—Formation and registration of building society for approved holder</i>	
115A	Application of division	125
115B	Registration of building society as wholly owned society	126
115C	Offence	127
	<i>Division 1B—Incorporation</i>	
116	Certificate of incorporation	128
117	Effect of incorporation	128
	<i>Division 2—Legal capacity and powers</i>	
117A	Interpretation	129
117B	Purpose of sections 118 and 119	129
118	Legal capacity	129

Financial Institutions Code 1992

119	Restrictions on societies	130
119A	Persons having dealings with societies	131
119B	Constructive notice not presumed	133
120	Control of certain financial transactions	133
121	Control of foreign currency transactions	135
121A	Purchase of overseas plant and equipment	136

Division 3—Rules

122	Rules	136
124	Copies of rules	137
125	Society and members to be bound by rules	137
126	Alteration of rules by special resolution	137
127	Alteration of rules by board of directors	137
128	Registration of alteration of rules	138
129	Power of SSA to require modification of rules	139
130	Power of SSA to modify rules to facilitate transfer of engagements	139

Division 4—Membership

131	Members	140
132	Members who are minors	141
133	Joint members	141
134	Corporate membership	142
135	Cessation of membership	143
136	Expulsion of member	143
137	Liability of members	143
138	Financial accommodation to, and deposits from, members and others	143
138A	Dormant accounts	144

Division 5—Name and office

139	Name	146
140	Abbreviations etc. of society's name	147
141	Change of name does not affect identity	147
144	Use of words 'building society', 'credit society', 'credit union' or 'credit co-operative'	147
144A	Unregistered society not to trade or carry on business	148

145	Publication of name	149
146	Seal	150
147	Registered office	150

PART 5—SHARES, OTHER SECURITIES AND CHARGES

Division 1—Shares generally

148	Application of Divisions 2 and 3	151
149	Classes of shares, rights, etc.	151
150	Determination of share capital	152
151	Priorities on winding-up as between shares and deposits	152
152	Liability of shareholders	152
153	Board to approve sale or transfer unless rules provide otherwise	152
154	Restriction on application of capital	152
155	Power to make certain payments	154
156	Validation of shares improperly issued	155

Division 2—Withdrawable shares

157	Issue of withdrawable shares at a premium prohibited	155
158	Cancellation of withdrawable shares	155
159	Conversion of shares to deposits (special resolution)	156
159A	Conversion of shares to deposits (by direction)	157
160	Withdrawable shares to rank equally with deposits on winding-up	158
161	Charge on withdrawable shares or deposit account	158

Division 3—Permanent shares

162	Interpretation	160
163	Issue of permanent shares	160
164	Issue of preference shares	161
165	Rights of holders of preference shares to be set out in rules	161
166	Cancellation of permanent shares	161
167	Dividends, interest etc. in relation to permanent shares	162
168	Approval of rules for permanent share issues	163
169	Allotment of permanent shares otherwise than for cash	164
170	Power to exempt in relation to non-cash consideration	165
171	Differences in calls, reserve liability etc.	165

172	Calls and effect of non-compliance with calls on permanent shares	165
173	Sale of permanent shares forfeited for non-payment of call	166
174	Prohibition of allotment unless minimum subscription received	166
175	Return as to allotments	168
176	Issue of permanent shares at premium	169
177	Special resolution for reduction of permanent share capital	170
178	Building society financing dealings in its permanent shares etc.	173
179	Exceptions	175
180	Consequences of building society financing dealings in its permanent shares etc.	179
181	Prohibition on subsidiary acquiring permanent shares of holding building society	183
182	Options over permanent shares	184
	<i>Division 4—Redeemable preference shares</i>	
183	Interpretation	184
184	Application of certain provisions of Code to redeemable preference shares	184
185	Issue of redeemable preference shares	185
	<i>Division 5—Shareholding restrictions</i>	
	<i>Subdivision 1—Interpretative provisions</i>	
186	Application of Division	187
187	Extraterritorial operation of Division	187
188	What constitutes an “entitlement” to shares	187
189	What constitutes a “relevant interest” in shares	188
190	Interpretation—meaning of “associate”	190
191	Interpretation—meaning of voting power or right to vote	192
192	Inadvertence or mistake	192
	<i>Subdivision 2—Maximum shareholdings</i>	
193	Maximum permissible shareholding	193
194	Consequences of exceeding maximum permissible shareholding	194
195	Exceptions	194
	<i>Subdivision 3—Substantial shareholdings</i>	
196	Substantial shareholding and substantial shareholders	195

<i>Subdivision 4—Power of societies to obtain information</i>		
197	Power to obtain information	196
<i>Subdivision 5—Enforcement</i>		
198	Court orders—substantial shareholdings	196
199	Power of SSA to exempt etc. from Division 5	197
<i>Division 6—Issue of securities</i>		
200	Definition	198
209	Documents acknowledging deposits or loans pursuant to offer to the public etc.	198
210	Issuing of certain securities at a discount prohibited	198
211	Issuing of securities as partly paid up etc.	199
212	Power of SSA to exempt etc. from Division 6	199
<i>Division 7—Exempt stock market</i>		
213	Application of Division	200
215	Stock market	200
<i>Division 8—Title to and transfer of securities</i>		
216	Definition	200
216A	Restricted application of this Division	201
217	Document of title to be evidence of title	201
218	Building society may have duplicate common seal	201
219	Loss or destruction of documents	201
220	Instrument of transfer	203
221	Registration of transfer at request of transferor	204
222	Notice of refusal to register transfer	205
223	Remedy for refusal to register transfer or transmission	205
224	Certification of transfers	206
225	Duties of building society in relation to issue of certificates	207
226	Exemption	208
<i>Division 9—Registration of charges</i>		
227	Registration of charges	209
228	Directions by AFIC and SSA	209
229	SSA approval of charges necessary in certain circumstances	210

PART 6—MANAGEMENT***Division 1—Directors and officers***

230	Interpretation	210
231	Board of directors	211
232	Meetings	211
233	Number of directors	211
234	Election or appointment of directors	211
235	Employee directors	212
236	Alternate directors	212
237	Chairperson	213
238	Qualifications of directors	213
239	Vacation of office	214
239A	Removal of directors	215
240	Declaration of interest	216
241	General duty to make disclosure	218
242	Certain financial accommodation to officers prohibited	219
243	Financial accommodation to directors and associates	220
244	Directors' remuneration	222
244A	Society not to indemnify director	222
245	Management contracts	223
246	Duties of directors and officers	223
247	Prohibition on transfer of money	225
248	Unlawfully acting as director	228

Division 2—Meetings

249	Annual general meeting	228
250	Special general meeting	228
251	Quorum	229
252	Notice of meeting	229
253	Voting	230
254	Proxy votes	231
255	Special resolutions	231
256	Minutes	232

Division 3—Registers and inspection

257	Registers	233
258	Register of directors etc.	233
259	Register of members	236
260	Register of holders of permanent shares	237
261	Power of Court to rectify register of holders of permanent shares	238
262	Register of options	239
263	Inspection	240
263A	Location of registers on computers	241
263B	Form and evidentiary value of registers	242

Division 4—Accounts

264	Financial year	243
265	Financial years of groups	244
266	Accounting records to be kept	244
267	Inspection of accounting records	245
268	Profit and loss account and balance sheet	246
269	Group accounts	246
270	Audit	247
271	Directors to ascertain certain matters	247
272	Requirements applying to accounts and group accounts	248
273	Directors' statement	248
274	Directors' reports	250
275	Directors of holding society must obtain information from entities controlled by the society	256
276	Accounts and reports to be laid before annual general meeting	258
277	Contravention of Division	259

Division 5—Audit

278	Qualifications of auditors	260
279	Appointment of auditors	263
280	Nomination of auditors	266
281	Removal and resignation of auditors	266
282	Effect of winding-up on office of auditor	269

283	Fees and expenses of auditors	269
284	Auditor's report	269
285	Powers and duties of auditor	272
286	Final audit on merger, etc.	274
287	Auditors and entities controlled by societies	275
288	Obstruction of auditor	276
289	Qualified privilege	276
	<i>Division 6—Returns and relief</i>	
290	Returns	277
291	Relief from requirements as to accounts and audit	278
	PART 7—MERGERS AND TRANSFERS OF ENGAGEMENTS	
	<i>Division 1A—Preliminary</i>	
291A	Definitions	280
	<i>Division 1—Mergers and transfers of engagements between societies of the same type</i>	
292	Interpretation—societies of the same type	280
293	Application for registration of merger or transfer of engagements between societies of the same type	281
294	SSA may register merged society	282
295	Certificate of confirmation (voluntary transfer)	283
296	SSA may direct a transfer of engagements between societies of the same type	284
297	Society to comply with direction	285
298	Certificate of confirmation (transfer by direction)	285
298A	Who receives the certificate of confirmation	285
298B	When transfer of engagements takes effect	286
298C	Cancellation of registration after total transfer	286
299	Effect of merger	286
300	Effect of transfer of engagements	286
	<i>Division 2—Mergers and transfers of engagements between societies of different types</i>	
301	Interpretation—societies of different types	287
302	Application for registration of merger or transfer of engagements between societies of different types	288

Financial Institutions Code 1992

302A	Cancellation of building society's permanent shares	289
303	SSA may register merged society	290
304	Certificate of confirmation (voluntary transfer)	290
305	SSA may direct a transfer of engagements between societies of different types	291
306	Society to comply with direction	292
307	Certificate of confirmation (transfer by direction)	293
307A	Who receives the certificate of confirmation	293
307B	When transfer of engagements takes effect	293
307C	Cancellation of registration after total transfer	293
308	Effect of merger and transfer of engagements	293
	<i>Division 3—Mergers and transfers of engagements involving foreign societies</i>	
309	Definitions for div 3	294
310	Proposal for merger or transfer of engagements	295
311	SSA may register merged society	296
312	Certificate of confirmation for total transfer	298
313	Certificate of confirmation for partial transfer	299
314	When transfer of engagements takes effect	300
315	Effect of merger	300
316	Effect of transfer of engagements	301
316A	Surrender of certificate of incorporation	301
	<i>Division 3A—Effect of mergers and transfers of engagements involving only foreign societies</i>	
316B	Definitions for div 3A	302
316C	Effect of merger of foreign societies	302
316D	Effect of transfer of engagements between foreign societies	303
	<i>Division 4—Payment out of Credit Unions Contingency Fund</i>	
317	SSA may direct payment out of fund	305
	PART 8—CONVERSIONS	
	<i>Division 1—Building societies</i>	
318	Interpretation	306
319	Building society may convert to company or credit union	306

320	Proposal to convert by building society to be approved by members	306
321	SSA may direct as to percentage	308
322	Application by building society to SSA for approval of proposal	308
323	Conversion of building society to company	309
324	Conversion of building society to credit union	310
<i>Division 2—Credit unions</i>		
325	Interpretation	310
326	Credit union may convert to building society	311
327	Proposal to convert by credit union to be approved by members	311
328	Application by credit union to SSA for approval of proposal	312
329	Conversion of credit union to building society	313
<i>Division 3—Directed conversion to company</i>		
330	SSA may direct conversion	314
331	Society to comply with direction	314
332	Day on which conversion to take effect	315
333	Conversion of society to company	315
<i>Division 4—General</i>		
334	Surrender of certificate of incorporation etc.	315
335	Conversion of society to building society or credit union does not result in its dissolution	316
336	Certificate of SSA	316
PART 9—EXTERNAL ADMINISTRATION		
<i>Division 1—Arrangements and reconstructions</i>		
337	Schemes of arrangement and reconstruction	317
<i>Division 2—Receivers and managers</i>		
338	Receivers and managers	317
<i>Division 4—Winding-up</i>		
340	Winding-up	318
341	Winding-up on certificate of SSA	318
342	Application of Corporations Law to winding-up	319
343	Voluntary winding-up	320
344	Vacancy in office of liquidator on voluntary winding-up	320

345	Remuneration of liquidator on voluntary winding-up	320
346	Cancellation of registration	321

PART 10—SPECIAL INVESTIGATIONS

347	Interpretation	321
348	Appointment of investigators	322
349	Investigation of affairs of related body corporate	323
350	Powers of investigators	323
351	Examination of officers	324
352	Self-incrimination	324
353	Privileged communications	325
354	Failure of officer to comply with requirement of investigator	326
355	Recording of examination	326
356	Delegation of powers by investigator	327
357	Report of investigator	327
358	Proceedings following investigation	329
359	Admission of investigator's report in evidence	329
360	Expenses of investigation	330
361	Offences	331
362	Defence	332

PART 11—FOREIGN SOCIETIES

363	Definition	332
364	Registration	332
364A	Agents	333
364B	End of appointment of foreign societies' agents	334
364C	Liability of agents	334
364D	Office of foreign society	334
364E	Service of documents	335
365	Application of Code to foreign societies	335
366	SSA to be notified of certain changes	335
368	Cessation of business	336
369	Society proposing to register as foreign society	336
369A	SSA to provide certain documents	336

PART 12—ASSOCIATIONS

370	Formation of associations	337
371	Objects of associations	337
372	Registration	337
373	Certificate of incorporation	338
374	Effect of incorporation	339
375	Membership	339
376	Share capital	339
377	Meetings	339
378	Application of Code to associations	340

PART 13—REVIEW OF DECISIONS

379	Reviewable decisions	340
380	Application for review of decisions	341
381	Application of AFIC Code	341
382	SSA to review certain decisions	342

PART 14—MISCELLANEOUS*Division 1—Evidence*

383	Certificates etc.	343
384	Rules	343
385	Registers	344
386	Minutes	344
387	Entries	344

Division 2—Offences

388	Defaults by financial bodies	344
389	Restrictions on powers	345
390	Offences by officers	345
391	Incurring debts not likely to be paid	349
392	Powers of Court	350
393	Inducement to be appointed as liquidator or official manager	351
394	Falsification of records	351
395	Frauds by officers	352
396	False or misleading information	352

397	Power to examine defaulting officers	353
398	Power of Court to assess damages against certain persons	355
399	False copies of rules	356
400	Fraud or misappropriation	357
401	Commissions	357
402	Financial bodies to comply with standards	357
403	Officers and other persons in default	358
<i>Division 3—Proceedings</i>		
404	Proceedings for offences	358
405	Reciprocity in relation of offences	358
406	Continuing offences	359
407	Injunctions	360
408	Penalty notices	361
409	Power to grant relief	364
<i>Division 4—Other matters</i>		
410	Secrecy	365
411	Powers about money of members who have died	367
PART 15—TRANSITIONAL		
414	Continuing societies and associations	367
415	Application for certificate of incorporation or authority to operate	368
416	Rules	368
417	Building society started to have been formed under previous law	368
418	Credit union started to have been formed under relevant previous law	369
419	Subsidiaries	370
420	Directors	370
421	Annual general meeting	370
422	Special resolutions	371
423	Registers	371
424	Winding-up	371
425	Continuing foreign societies	371
426	Shareholding restrictions	372

427	Provision of financial or commercial services by continuing association	373
428	Transfer of engagements by continuing association of credit unions to special services provider	373
429	Documents	374
430	Security over prime liquid assets	374
432	Standards under AFIC (Queensland) Code	375
433	Providing financial accommodation to, or accepting deposits from, non-members	375
434	Matters relating to register of directors, principal executive officer and secretaries	376

PART 16—VALIDATION

435	Validation of Amendment Regulation	377
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ENDNOTES

1	Index to endnotes	378
2	Date to which amendments incorporated	378
3	Key	378
4	Table of earlier reprints	379
5	Tables in earlier reprints	379
6	List of legislation	379
7	List of annotations	380

FINANCIAL INSTITUTIONS CODE 1992

[as amended by all amendments that commenced on or before 6 October 1998]

PART 1—PRELIMINARY

Division 1—Introductory

Short title

1. This Code may be referred to as the Financial Institutions Code.

Commencement

2. This Code commences as provided under section 2 of the *Financial Institutions (Queensland) Act 1992* of Queensland.

Division 2—Interpretation

Definitions

3. In this Code—

“**accounting records**” include—

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

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

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

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

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

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

“**Appeals Tribunal**” means the Australian Financial Institutions Appeals Tribunal.

“**applicable accounting standard**” means an accounting standard as applying under section 272 (Requirements applying to accounts and group accounts).

“**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.

“**association**” means a body registered as an association under this Code.

“**bank**” means—

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

“**board**”, in relation to a financial institution, means the board of directors of the institution.

“**body**” includes an entity.

“**body corporate**” means any body corporate whether formed or incorporated within or outside this State, but does not include—

- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown; or
- (b) a corporation sole.

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

“building society” means a body that is—

- (a) registered under this Code as a society; and
- (b) authorised under this Code to operate as a building society.

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

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

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

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

- (a) a consolidated profit and loss account that section 269 (Group accounts) requires to be made out in relation to a financial year of the society;
- (b) a consolidated balance sheet that section 269 (Group accounts) requires to be made out in relation to the financial year;
- (c) statements, reports and notes (other than a directors’ report) attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet.

“Court” means the Supreme Court or a Supreme Court Judge, of this State.

“credit union” means a body that is—

- (a) registered under this Code as a society; and
- (b) authorised under this Code to operate as a credit union.

“director” has the meaning given by section 5.

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

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

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

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

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

“exempt stock market” has the meaning given by section 9 of the Corporations Law.

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

“financial body” means—

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

“financial institution” means—

- (a) a society; or
- (b) an association; or
- (c) a special services provider.

“financial institutions agreement” has the meaning given by section 3 (Definitions) of the AFIC Code.

“financial institutions legislation” has the meaning given by section 8 of the AFIC Code.

“financial institutions scheme” has the meaning given by section 6 of the AFIC Code.

“foreign society” means a body corporate registered as a foreign society under Part 11 (Foreign societies).

“group” means an economic entity of which a financial institution is a part.

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

“holding body corporate” means a body corporate that is the holding body corporate of another body corporate.

“holding building society” means a building society that is the holding building society of a body corporate.

“holding society” has the meaning given by section 7.

“inspector” means a person authorised under section 77 (Inspectors).

“Ministerial Council” means the Ministerial Council established under the financial institutions agreement.

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

“officer” has the meaning given by section 10 (Interpretation—meaning of “officer”).

“participating State” has the same meaning as in the AFIC Code.

“permanent share”, in relation to a building society or prescribed financial institution that may issue permanent shares, means a share in the building society or financial institution, other than a withdrawable share or a redeemable preference share.

“prescribed interest” has the meaning given by section 9 of the Corporations Law.

“profit or loss” means—

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

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

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

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

- (a) includes a building declared by regulation to be a residential

building for the purposes of this Code; but

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

“residential development” means—

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

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

“services corporation” means a body corporate declared to be a services corporation under section 74A (SSA may declare body as services corporation).

“share” means a share in the share capital of a body corporate.

“society” means—

- (a) a building society; or
- (b) a credit union; or
- (c) any other body registered under this Code as a society.

“special services provider” means a body that is registered under the financial institutions legislation as a special services provider.

“standard” means a standard in force under section 28 (Making etc. of standards) of the AFIC Code.

“State” means a State or Territory.

“SSA”, in relation to a State, means the person or body declared by the

financial institutions legislation of the State to be the State supervisory authority for the State.

“**subsidiary**” has the meaning given by section 12.

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

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

“**Tribunal**” means the Australian Financial Institutions Appeals Tribunal.

“**withdrawable share**”, in relation to a society, means a share in the society (other than a preference share) that may be withdrawn by the holder of the share, and includes—

- (a) such a share that may be withdrawn only after a particular period has elapsed or notice of a particular period has been given; and
- (b) shares of a prescribed class.

Interpretation—meaning of “associate”

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

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

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

- (a) they are partners; or
- (b) one is a spouse, parent or child of the other; or
- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body or entity; or
- (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body or entity; or

- (f) they are related bodies corporate; or
- (g) a relationship of a prescribed kind exists between them; or
- (h) a chain of relationships can be traced between them under any 1 or more of the above paragraphs.

Interpretation—meaning of “director”

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

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

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

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

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

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

Interpretation—reference to a holding body corporate

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

Interpretation—meaning of “holding society”

7. A society is a holding society if the society—
- (a) controlled another entity during all or part of a financial year of the society; or
 - (b) controlled another entity at the end of a financial year of the society.

Interpretation—meaning of making a decision

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

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

Interpretation—meaning of offer, invitation or issue to the public

- 9.(1) For the purposes of this Code—
- (a) a reference to an invitation to subscribe for or purchase securities includes a reference to an invitation to make an offer to subscribe for or purchase securities; and

- (b) a reference to an offer of securities for subscription or purchase includes a reference to an offer to accept money on deposit or loan; and
- (c) a reference to an invitation to subscribe for or purchase securities includes a reference to an invitation to lodge money on deposit or loan; and
- (d) a reference to the public includes a reference to a section of the public, including the membership of a society or a section of the membership of a society.

(2) For the purposes of this Code, a reference to, or to the making of—

- (a) an offer to the public; or
- (b) an invitation to the public; or
- (c) an issue to the public;

includes a reference to, or to the making of, an offer, invitation or issue to any section of the public, whether selected as clients of the person making the offer, invitation or issue or in any other way.

(3) Subsection (2) applies even though—

- (a) the offer or issue is capable of acceptance only by a person to whom the offer or issue is made; or
- (b) an offer or application may be made pursuant to the invitation only by a person to whom the invitation is made.

(4) A genuine offer, invitation or issue is not taken to have been made to the public—

- (a) merely because it is made to persons whose ordinary business is the buying and selling of securities, whether as principal or agent; or
- (b) in any case or circumstances of a prescribed kind.

Interpretation—meaning of “officer”

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

- (a) a director, secretary, executive officer or employee of the body or

entity; and

- (b) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity; and
 - (c) an official manager, or deputy official manager, of the body or entity; and
 - (d) a liquidator of the body or entity appointed in a voluntary winding-up of the body or entity; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body or entity and other persons.
- (2) None of the following is an officer of the body corporate or entity—
- (a) a receiver who is not also a manager;
 - (b) a receiver and manager appointed by a court;
 - (c) a liquidator appointed by a court.

Interpretation—meaning of related body corporate

11. If a body corporate is—

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

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

Interpretation—meaning of “subsidiary”

12.(1) Subject to subsection (5), a body corporate is a subsidiary of a financial institution if—

- (a) the financial institution—
 - (i) controls the composition of the body corporate’s board of directors; or
 - (ii) is in a position to cast, or control the casting of, more than

Financial Institutions Code 1992

50% of the maximum number of votes that might be cast at a general meeting of the body corporate; or

(iii) holds more than 50% of the issued share capital of the body corporate (other than any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the body corporate is a subsidiary of a body corporate that is a subsidiary of the financial institution (including a body corporate that is a subsidiary of the financial institution by another application of this paragraph).

(2) The composition of a body corporate's board of directors is controlled by a financial institution if the financial institution can appoint or remove all or a majority of the directors by the exercise of a power exercisable with or without the consent or concurrence of another person.

(3) For the purposes of subsection (2), a financial institution is taken to have power to make an appointment of directors if—

(a) a person cannot be appointed as director without the exercise of such a power by the financial institution in the person's favour; or

(b) a person's appointment as a director follows necessarily from the person being a director or other officer of the financial institution.

(4) Subsection (2) does not limit by implication the circumstances in which the composition of a body corporate's board of directors is taken to be controlled by a financial institution.

(5) In determining whether a body corporate is a subsidiary of a financial institution—

(a) any shares held or power exercisable by the financial institution in a fiduciary capacity must be treated as not held or exercisable by it; and

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for the financial institution; or

(ii) by, or by a nominee for, a subsidiary of the financial institution (other than a subsidiary that is concerned only in a fiduciary capacity);

must be treated as held or exercisable by the financial institution;
and

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

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

Interpretation—when one entity controls another

13.(1) For the purposes of Divisions 4 (Accounts) and 5 (Audit) of Part 6 (Management), an entity controls another entity if the entity is a subsidiary of the first entity.

(2) Despite subsection (1), a regulation may make provision for determining, for the purposes of those Divisions as they apply in relation to a society in relation to prescribed financial years, whether or not an entity controls another entity.

(3) Subject to subsection (2), if because of a provision of an applicable accounting standard that—

- (a) deals with the making out of consolidated accounts; and
- (b) applies to a financial year;

an entity is taken for the purposes of the accounting standard to control another entity, the first entity is also taken to control the other entity for the purposes of those Divisions as they apply in relation to a society in relation to the financial year.

Division 3—General interpretative provisions***Subdivision 1—Preliminary*****Meaning of relevant Code**

14. In this Division—

“**relevant Code**” means this Code or the AFIC Code.

Displacement of Division by contrary intention

15. The application of this Division may be displaced, wholly or partly, by a contrary intention appearing in a relevant Code.

Subdivision 2—General**Relevant Code or Act includes statutory instruments under relevant Code or Act**

16. In a relevant Code, a reference to the relevant Code, another relevant Code or an Act, or a provision of the relevant Code, another relevant Code or an Act, includes a reference to the statutory instruments made under, or in force under or for the purposes of, the relevant Code, Act or provision.

Relevant Codes to be construed not to exceed legislative power of Legislature

17.(1) A relevant Code is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this State.

(2) If a provision of a relevant Code, or the application of a provision of a relevant Code to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Legislature of this State—

- (a) it is valid provision to the extent to which it is not in excess of the power; and

- (b) the remainder of the relevant Code, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This section applies to a relevant Code in addition to, and without limiting the effect of, any provision of the relevant Code.

Every section to be a substantive enactment

18. Every section of a relevant Code has effect as a substantive enactment without introductory words.

Material that is, and is not, part of a relevant Code

19.(1) The heading to a Part, Division, Subdivision, section, subsection or another provision of a relevant Code is part of the relevant Code.

(2) A Schedule to a relevant Code is part of the relevant Code.

(3) Punctuation in a relevant Code is part of the relevant Code.

(4) A footnote to a relevant Code or to a provision of a relevant Code, and an endnote to a relevant Code, are not part of the relevant Code.

References to particular Acts and to enactments

20.(1) In any relevant Code—

(a) an Act of this State may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number;

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth;

(c) an Act of another State may be cited—

- (i) by its short title; or
 - (ii) in another way sufficient in an Act of the State for the citation of such an Act;
- together with a reference to the State.

(2) An enactment may be cited by reference to the provision of the Act or relevant Code in which it is contained.

(3) The reference is to be made according to—

- (a) in the case of an Act—the copy of the Act printed by the relevant Government Printer or a person authorised by law to print the Act; or
- (b) in the case of a relevant Code—the copy of the relevant Code printed by the Government Printer of Queensland or a person authorised by Queensland law to print the Code.

(4) In this section—

“enactment” means any portion of an Act, relevant Code or statutory instrument.

References taken to be included in Act or relevant Code citation etc.

21.(1) A reference in a relevant Code to an Act or another relevant Code includes a reference to—

- (a) the Act or other relevant Code as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the Act or other relevant Code has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act or relevant Code as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in a relevant Code to a provision of that or any other relevant Code or to an Act includes a reference to—

- (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision

as re-enacted, and as amended from time to time since its re-enactment.

(3) Subsections (1) and (2) apply to a reference in a relevant Code to a law of the Commonwealth or another State as they apply to a reference in a relevant Code to an Act and to a provision of an Act.

Interpretation best achieving relevant Code's purpose

22.(1) In the interpretation of a provision of a relevant Code, the interpretation that will best achieve the purpose of the relevant Code is to be preferred to any other interpretation.

(2) Subsection (1) applies whether or not the purpose is expressly stated in the relevant Code.

Use of extrinsic material in interpretation

23.(1) In this section—

“**extrinsic material**” means relevant material not forming part of the relevant Code concerned, including, for example—

- (a) material that is set out in the document containing the text of the relevant Code as printed by the Government Printer of Queensland; and
- (b) a report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Assembly of Queensland before the provision concerned was enacted; and
- (c) a report of a committee of the Legislative Assembly of Queensland that was made to the Legislative Assembly of Queensland before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in the relevant Code; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Assembly of Queensland by the member bringing in the Bill before the

provision was enacted; and

- (f) the speech made to the Legislative Assembly of Queensland by the member in moving a motion that the Bill be read a second time; and
- (g) material in the Votes and Proceedings of the Legislative Assembly of Queensland or in any official record of debates in the Legislative Assembly of Queensland; and
- (h) a document that is declared by a relevant Code to be a relevant document for the purposes of this section.

“ordinary meaning” means the ordinary meaning conveyed by a provision having regard to its context in the relevant Code and to the purpose of the relevant Code.

(2) Subject to subsection (3), in the interpretation of a provision of a relevant Code, consideration may be given to extrinsic material capable of assisting in the interpretation—

- (a) if the provision is ambiguous or obscure—to provide an interpretation of it; or
- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or
- (c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

- (a) the desirability of a provision being interpreted as having its ordinary meaning; and
- (b) the undesirability of prolonging proceedings without compensating advantage; and
- (c) other relevant matters.

Affect of change of drafting practice and use of examples**24.(1)** If—

- (a) a provision of a relevant Code expresses an idea in particular words; and
- (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—
 - (i) the use of a clearer or simpler style; or
 - (ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

(2) If a relevant Code includes an example of the operation of a provision—

- (a) the example is not exhaustive; and
- (b) the example does not limit, but may extend, the meaning of the provision; and
- (c) the example and the provision are to be read in the context of each other and the other provisions of the relevant Code, but, if the example and the provision so read are inconsistent, the provision prevails.

Compliance with forms

25.(1) If a form is prescribed or approved by or for the purpose of a relevant Code, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of a relevant Code requires—

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or

- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

Jurisdiction of courts and tribunals

26. If a provision of a relevant Code, whether expressly or by implication, authorises a proceeding to be instituted in a particular court or tribunal in relation to a matter, the provision is taken to confer jurisdiction in the matter on the court or tribunal.

Subdivision 3—Terms and references

Definitions

27.(1) In a relevant Code—

“**Act**” means an Act of the Legislature of this State.

“**adult**” means an individual who is 18 or more.

“**affidavit**”, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

“**amend**” includes—

- (a) omit or omit and substitute; and
- (b) alter or vary; and
- (c) amend by implication.

“**appoint**” includes reappoint.

“**Australia**” means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

“**business day**” means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

“**calendar month**” means a period starting at the beginning of any day of

1 of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day—at the end of the next named month.

“calendar year” means a period of 12 months beginning on 1 January.

“commencement”, in relation to a relevant Code or an Act or a provision of a relevant Code or an Act, means the time at which the relevant Code, Act or provision comes into operation.

“Commonwealth” means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

“confer”, in relation to a function, includes impose.

“contravene” includes fail to comply with.

“country” includes—

- (a) a federation; or
- (b) a state, province or other part of a federation.

“date of assent”, in relation to an Act, means the day on which the Act receives the Royal Assent.

“definition” means a provision of a relevant Code (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression.

“document” includes—

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device).

“estate” includes easement, charge, right, title, claim, demand, lien and

encumbrance, whether at law or in equity.

“**expire**” includes lapse or otherwise cease to have effect.

“**external Territory**” means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

“**fail**” includes refuse.

“**financial year**” means a period of 12 months beginning on 1 July.

“**foreign country**” means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

“**function**” includes duty.

“**Gazette**” means the Government Gazette of this State.

“**gazetted**” means published in the Gazette.

“**Gazette notice**” means notice published in the Gazette.

“**Government Printer**” means the Government Printer of this State, and includes any other person authorised by the Government of this State to print an Act or instrument.

“**indictment**” includes information, inquisition and presentment.

“**individual**” means a natural person.

“**insert**”, in relation to a provision of a relevant Code, includes substitute.

“**instrument**” includes a statutory instrument.

“**interest**”, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

“**internal Territory**” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

“**Jervis Bay Territory**” means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* (Cwlth).

“**land**” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the

interest in the land.

“liability” means any liability or obligation (whether liquidated or unliquidated, certain or contingent, or accrued or accruing).

“make” includes issue and grant.

“Minister” has the meaning given by section 32 (References to Minister).

“minor” means an individual who is under 18.

“modification” includes addition, omission and substitution.

“month” means a calendar month.

“named month” means 1 of the 12 months of the year.

“Northern Territory” means the Northern Territory of Australia.

“number” means—

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter.

“oath”, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

“office” includes position.

“omit”, in relation to a provision of an Act, includes repeal.

“party” includes an individual and a body politic or corporate.

“penalty” includes forfeiture and punishment.

“person” includes an individual and a body politic or corporate.

“power” includes authority.

“prescribed” means prescribed by, or by regulations or standards made or in force for the purposes of or under, the relevant Code in which the word is used.

“printed” includes typewritten, lithographed or reproduced by any mechanical means.

“proceeding” means a legal or other action or proceeding.

“property” means any legal or equitable estate or interest (whether present

or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

“provision”, in relation to a relevant Code or an Act, means words or other matter that form or forms part of the relevant Code or Act, and includes—

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to the relevant Code or Act; and
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to the relevant Code or Act; and
- (c) the long title and any preamble to the Act.

“purpose”, in relation to an Act, includes object.

“record” includes information stored or recorded by means of a computer.

“regulation” means a regulation made or in force for the purposes of the relevant Code in which the word is used.

“repeal” includes—

- (a) revoke or rescind; and
- (b) repeal by implication; and
- (c) abrogate or limit the effect of the relevant Code or instrument concerned; and
- (d) exclude from, or include in, the application of the relevant Code or instrument concerned any person, subject matter or circumstance.

“sign” includes the affixing of a seal and the making of a mark.

“State” means a State of the Commonwealth.

“statutory declaration” means a declaration made under an Act, or under a Commonwealth Act or an Act of another State, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

“statutory instrument” means an instrument (including a regulation, standard or rule) made or in force under or for the purposes of a

relevant Code, and includes an instrument made or in force under any such instrument.

“**swear**”, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare and promise.

“**Territory**” means a Territory of the Commonwealth.

“**this Code**” includes any regulations made for the purposes of the relevant Code.

“**word**” includes any symbol, figure or drawing.

“**writing**” includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

“**the Code**” means the Code under, or for the purposes of, which the instrument is made or in force.

Provisions relating to defined terms and gender and number

28.(1) If a relevant Code defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to a relevant Code apply except so far as the context or subject matter otherwise indicates or requires.

(3) In a relevant Code, words indicating a gender include each other gender.

(4) In a relevant Code—

- (a) words in the singular include the plural; and
- (b) words in the plural include the singular.

Meaning of “may” and “must” etc.

29.(1) In a relevant Code, the word “**may**”, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In a relevant Code, the word “**must**”, or a similar word or

expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

Words and expressions used in statutory instruments

30. Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in the relevant Code, or relevant provisions of the relevant Code, under or for the purposes of which the instrument is made or in force.

Effect of express references to bodies corporate and individuals

31. In a relevant Code, a reference to a person generally (whether the expression “**person**”, “**party**”, “**someone**”, “**anyone**”, “**no-one**”, “**one**”, “**another**” or “**whoever**” or another expression is used)—

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in the relevant Code there is particular reference to a body corporate (however expressed); and
- (b) does not exclude a reference to an individual or a body corporate merely because elsewhere in the relevant Code there is particular reference to an individual (however expressed).

References to Minister

32.(1) In a relevant Code—

- (a) a reference to a Minister is a reference to a Minister of the Crown of this State; and
- (b) a reference to a particular Minister by title, or to “**the Minister**” without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this State, who is acting for or on behalf of the Minister.

(2) In a provision of a relevant Code, a reference to “**the Minister**” without specifying a particular Minister by title is a reference to—

- (a) the Minister of this State administering the provision; or
 - (b) if, for the time being, different Ministers of this State administer the provision in relation to different matters—
 - (i) if only 1 Minister of this State administers the provision in relation to the relevant matter—the Minister; or
 - (ii) if 2 or more Ministers of this State administer the provision in relation to the relevant matter—any 1 of the Ministers; or
 - (c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision—any 1 of the Ministers.
- (3)** To allay any doubt, it is declared that if—
- (a) a provision of a relevant Code is administered by 2 or more Ministers of this State; and
 - (b) the provision requires or permits anything to be done in relation to any of the Ministers;

the provision does not require or permit it to be done in a particular case by or in relation to more than 1 of the Ministers.

Production of records kept in computers etc.

33. If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under a relevant Code—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

Application of offence provisions to bodies corporate

34.(1) A provision of a relevant Code relating to offences punishable on indictment or summary conviction applies to bodies corporate as well as to individuals.

(2) If under a relevant Code, a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate if the body corporate is the party aggrieved.

References to this State to be implied

35. In a relevant Code—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this State; and
- (b) a reference to a locality, jurisdiction or other matter or thing is a reference to such a locality, jurisdiction or other matter or thing in and of this State.

References to officers and holders of offices

36. In a relevant Code, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

Reference to certain provisions of a relevant Code

37. If a provision of a relevant Code (“**the Code concerned**”) refers—

- (a) to a Part, section or Schedule by a number and without reference to a relevant Code—the reference is a reference to the Part, section or Schedule, designated by the number, of or to the Code concerned; or
- (b) to a Schedule without reference to it by a number and without reference to a relevant Code—the reference, if there is only 1 Schedule to the Code concerned, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph,

sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to a relevant Code—the reference is a reference to—

- (i) the Division, designated by the number, of the Part in which the reference occurs; and
- (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
- (iii) the subsection, designated by the number, of the section in which the reference occurs; and
- (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
- (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
- (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
- (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and
- (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

Headings part of provision etc.

38.(1) The heading to a Part, Division, Subdivision, section, subsection, Schedule or another provision of a relevant Code forms part of the provision to which it is a heading.

(2) The word ‘and’, ‘or’ or ‘but’, or a similar word, at the end of a paragraph, subparagraph, sub-subparagraph or another provision of a relevant Code forms part of the provision concerned.

Reference to provisions of a relevant Code or Act is inclusive

39. In a relevant Code, a reference to a portion of that or another relevant Code or an Act includes—

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of the relevant Code or Act referred to that forms the beginning of the portion; and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of the relevant Code or Act referred to that forms the end of the portion.

Example—

A reference to ‘sections 5 to 9’ includes both section 5 and section 9. It is not necessary to refer to ‘sections 5 to 9 (both inclusive)’ to ensure that the reference is given an inclusive interpretation.

Subdivision 4—Functions and powers**Performance of statutory functions etc.**

40.(1) If a relevant Code confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If a relevant Code confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If a relevant Code confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

Power to make instrument or decision includes power to amend or repeal

41. If a relevant Code authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Matters for which statutory instruments may make provision

42.(1) If a relevant Code authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under the relevant Code may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

- (a) apply generally throughout this State or be limited in its application to a particular part of this State; or
- (b) apply generally to all persons, matters or things or be limited in its application to—
 - (i) particular persons, matters or things; or
 - (ii) particular classes of persons, matters or things; or
- (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

- (a) apply differently according to different specified factors; or
- (b) otherwise make different provision in relation to—
 - (i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If a relevant Code authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If a relevant Code authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under the relevant Code may make provision with respect to a particular aspect of the matter despite the fact that provision is made by the relevant Code in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or the relevant Code under which the statutory instrument is made or in force, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

Presumption of validity and power to make

43.(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under a particular relevant Code or a particular provision of a relevant Code.

Appointments may be made by name or office

44.(1) If a relevant Code authorises or requires a person or body—

- (a) to appoint a person to an office; or
- (b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

Acting appointments

45.(1) If a relevant Code authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with the relevant Code, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subsection (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

- (b) the vacancy is filled; or
- (c) the end of a year from the day of the vacancy;

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

- (a) the appointee has all the powers and functions of the holder of the office; and
- (b) the relevant Code and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If the relevant Code authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

Powers of appointment imply certain incidental powers

46.(1) If a relevant Code authorises or requires a person or body to appoint a person to an office—

- (a) the power may be exercised from time to time as occasion requires; and
- (b) the power includes—
 - (i) power to remove or suspend, at any time, a person appointed to the office; and
 - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - (iii) power to reinstate or reappoint a person removed or

suspended; and

- (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
- (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subsection (1)(b) may be exercised even if the relevant Code under which the person was appointed provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subsection (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subsection (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

Delegation of powers

47.(1) If a relevant Code authorises a person or body to delegate a power, the person or body may, in accordance with the Code, delegate the power to—

- (a) a person or body by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation may be—

- (a) general or limited; and
- (b) made from time to time; and
- (c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated power, do anything that is incidental to the delegated power.

(6) A delegated power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a power is, under a relevant Code, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a power is delegated to a particular officer or the holder of a particular office—

- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and
- (b) the power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A power that has been delegated may, despite the delegation, be exercised by the delegator.

(11) Subject to subsection (12), this section applies to a subdelegation of a power in the same way as it applies to a delegation of a power.

(12) If a relevant Code authorises the delegation of a power, the power may be subdelegated only if the Code expressly authorises the power to be subdelegated.

Exercise of powers between enactment and commencement

48.(1) If a provision of a relevant Code (the “**empowering provision**”) that does not commence on its enactment would, had it commenced, confer a power—

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative

character; or

- (c) to do another thing;

then—

- (d) the power may be exercised; and

- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of a Queensland Act (the **“empowering provision”**) that does not commence on its enactment would, had it commenced, amend a provision of a relevant Code so that it would confer a power—

- (a) to make an appointment; or

- (b) to make a statutory instrument of a legislative or administrative character; or

- (c) to do another thing;

then—

- (d) the power may be exercised; and

- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If—

- (a) a relevant Code that has commenced confers a power to make a statutory instrument (the **“basic instrument-making power”**); and

- (b) a provision of a Queensland Act that does not commence on its enactment would, had it commenced, amend the relevant Code so as to confer additional power to make a statutory instrument (the **“additional instrument-making power”**);

then—

- (c) the basic instrument-making power and the additional instrument-

Financial Institutions Code 1992

making power may be exercised by making a single instrument;
and

- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subsection (2).

(4) If an instrument, or a provision of an instrument, is made under subsection (1) or (2) that is necessary for the purpose of—

- (a) enabling the exercise of a power mentioned in the subsection; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect—

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

- (a) an appointment is made under subsection (1) or (2); or
- (b) an instrument, or provision of an instrument, made under subsection (1) or (2) is not necessary for a purpose mentioned in subsection (4);

the appointment, instrument or provision takes effect—

- (c) on the commencement of the relevant empowering provision; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subsection (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subsection (2) but before the provision's commencement, this section applies as if the references in subsections (2) and (5) to the commencement of the empowering provision were references to the commencement of the

provision mentioned in subsection (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Subdivision 5—Distance, time and age

Matters relating to distance, time and age

49.(1) In the measurement of distance for the purposes of a relevant Code, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by a relevant Code, the period is to be calculated by excluding the day, or the day of the act or event, and—

- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and
- (b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by a relevant Code for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by a relevant Code for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in a relevant Code, there is a reference to time, the reference is, in relation to the doing of anything in a State, a reference to the legal time in the State.

(7) For the purposes of a relevant Code, a person attains an age in years at the beginning of the person's birthday for the age.

Subdivision 6—Service of documents

Service of documents and meaning of service by post etc.

50.(1) If a relevant Code requires or permits a document to be served on a person (whether the expression 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used), the document may be served—

- (a) on an individual—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or
- (b) on a body corporate—
 - (i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or
 - (ii) by sending it by post, telex, facsimile or similar facility to its registered office.

(2) Nothing in subsection (1)—

- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subsection; or
- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subsection.

Meaning of service by post etc.

51.(1) If a relevant Code requires or permits a document to be served by post (whether the expression 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used), service—

- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and

- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If a relevant Code requires or permits a document to be served by a particular postal method (whether the expression ‘deliver’, ‘give’, ‘notify’, ‘send’ or ‘serve’ or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

Time of relevant Code ceasing to have effect

52. If a relevant Code or a provision of a relevant Code is expressed—

- (a) to expire on a specified day; or
 (b) to remain or continue in force, or otherwise have effect, until a specified day;

the relevant Code or provision has effect until the last moment of the specified day.

Subdivision 7—Effect of repeal, amendment or expiration

Repealed relevant Codes etc. not revived

53. If a relevant Code or a provision of a relevant Code is repealed or amended by a Queensland Act or a provision of a Queensland Act, the relevant Code or provision is not revived merely because the Queensland Act or the provision of the Queensland Act—

- (a) is later repealed or amended; or
 (b) later expires.

Saving of operation of repealed relevant Code etc.

54.(1) The repeal, amendment or expiry of a relevant Code or a provision of a relevant Code does not—

- (a) revive anything not in force or existing at the time the repeal,

- amendment or expiry takes effect; or
- (b) affect the previous operation of the relevant Code or provision or anything suffered, done or begun under the relevant Code or provision; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the relevant Code or provision; or
 - (d) affect a penalty incurred in relation to an offence arising under the relevant Code or provision; or
 - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the relevant Code or provision had not been repealed or amended or had not expired.

Continuance of repealed provisions

55. If a Queensland Act repeals some or all of the provisions of a relevant Code and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

Relevant Code and amending Acts to be read as one

56. A relevant Code and all Queensland Acts amending the Code are to be read as one.

Subdivision 8—Offences under relevant Codes

Penalty at end of provision

57. In a relevant Code, a penalty specified at the end of—

- (a) a section (whether or not the section is divided into subsections);
or
- (b) a subsection (but not at the end of a section); or

- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection;

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable on conviction—

- (d) if a minimum as well as a maximum penalty is specified—by a penalty not less than the minimum and not more than the maximum; or
- (e) in any other case—by a penalty not more than the specified penalty.

Penalty other than at end of provision

58.(1) In a relevant Code, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable on conviction—

- (a) if a minimum as well as a maximum penalty is specified—by a penalty not less than the minimum and not more than the maximum; or
- (b) in any other case—by a penalty not more than the specified penalty.

(2) This section does not apply to a penalty to which section 57 (Penalty at end of provision) applies.

Indictable offences and summary offences

59.(1) An offence against a relevant Code that is not punishable by imprisonment is punishable summarily.

(2) An offence against a relevant Code that is punishable by imprisonment is, subject to subsection (3), punishable on indictment.

(3) If—

- (a) a proceeding for an offence against a relevant Code that is punishable by imprisonment is brought in a court of summary

jurisdiction; and

- (b) the prosecutor requests the court to hear and determine the proceeding;

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

- (a) impose, in relation to a single offence against a relevant Code, a period of imprisonment of more than 2 years; or
- (b) impose, in relation to offences against a relevant Code, cumulative periods of imprisonment that are, in total, more than 5 years.

(5) Nothing in this section renders a person liable to be punished more than once in relation to the same offence.

Double jeopardy

60. If an act or omission constitutes an offence—

- (a) under a relevant Code; or
- (b) under another law of this State or a law of another State;

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under the relevant Code.

Aiding and abetting, attempts etc.

61.(1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against a relevant Code is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against a relevant Code commits an offence and is punishable as if the attempted offence had been committed.

Subdivision 9—Instruments under relevant Codes**Division applies to statutory instruments**

62.(1) This Division applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to a relevant Code, and things that may be done or are required to be done under a relevant Code, except so far as the context or subject matter indicates or requires.

(2) The fact that a provision of this Division refers to a relevant Code and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to the relevant Code.

Division 4—Operation of financial institutions legislation**Extraterritorial operation of legislation**

63. The financial institutions legislation applies—

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

Act binds the Crown

64.(1) The financial institutions legislation binds the Crown in right of this State and, so far as the legislative power of the Legislature of this State permits, the Crown in all its other capacities.

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

Division 5—Application and adoption of Corporations Law**Definitions**

64A. In this Division—

“**Corporations Law**” includes the Corporations Regulations.

Corporations Law applying under its own force

65.(1) The provisions of the Corporations Law (other than the provisions of the Corporations Law mentioned in subsection (2)) are excluded from applying under their own force to financial institutions and the securities of financial institutions.

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

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

curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Law provision; or

- (iv) otherwise about the administration of a non-excluded Corporations Law provision.

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

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

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

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

Example of the operation of section 65—

Under section 65, provisions of the Corporations Law that apply to a ‘company’ or a ‘corporation’ do not apply to financial institutions. Therefore, provisions about the duties and liabilities of officers, e.g. section 232 of the Corporations Law, do not apply to officers of financial institutions, who are subject to comparable provisions in this Code. However, section 65 does allow, for example, Part 7.12 of the Corporations Law to apply directly to financial institutions. Part 7.12 applies because under the definition of ‘corporation’ in section 57A of the Corporations Law, a financial institution is a corporation for Part 7.12. Nevertheless, the application of that Part to financial institutions is qualified by section 1083A of the Corporations Law for certain securities.

Corporations Law adopted under a regulation

65A.(1) A regulation may adopt, with or without modification, a provision of the Corporations Law for application to financial institutions or the securities of financial institutions.

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

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

Adopted provisions of Corporations Law

65B.(1) This section applies if a provision of the Corporations Law (the “**adopted provision**”) is adopted for application to financial institutions or the securities of financial institutions, with or without modification, under a provision (the “**adopting provision**”) of this Code (including a regulation permitted by section 65A (Corporations Law adopted under a regulation)).

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

(3) However, each of the following words in the adopted provision has the meaning given in this Code—

- Gazette
- Minister.

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

PART 2—FUNCTIONS AND POWERS OF SSA

Division 1—General

Functions of SSA

66. The functions of the SSA are to—

- (a) register, supervise and regulate financial bodies; and
- (b) supervise and enforce compliance by financial bodies with this

Code and with standards; and

- (c) ensure that an effective and efficient system of prudential supervision is applied to societies; and
- (d) protect the interests of members and depositors of societies; and
- (e) administer funds established under this Code; and
- (f) facilitate or direct the transfer of engagements of, or the conversion or merger of, financial bodies; and
- (g) otherwise undertake the administration and enforcement of the financial institutions scheme so far as it relates to societies; and
- (h) provide information and statistics to AFIC relating to—
 - (i) financial bodies; and
 - (ii) the operation, administration and enforcement of the financial institutions scheme so far as it relates to societies; and
- (i) advise, and make recommendations to, AFIC; and
- (j) carry out such other functions as are conferred on it by or under the financial institutions legislation.

General powers

67.(1) The SSA has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the SSA has such powers as are conferred on it by or under the financial institutions legislation.

SSA to comply with standards

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

Application of variation under standards

69.(1) If a standard provides that the operation of the standard in relation to a particular financial institution may be varied by a SSA by temporarily

changing a requirement of the standard, the SSA may temporarily change the requirement as allowed under the standard.

(2) Subsection (1) does not limit section 67 (General powers).

SSA to keep Minister informed

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

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

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

Public office of SSA and inspection of documents

71.(1) The SSA must maintain a public office.

(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.

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

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

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.

Power of SSA to reject documents, etc.

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

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

(e) contains an error, alteration or erasure;

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

(f) that the document be appropriately amended or completed and resubmitted; or

(g) that a fresh document be submitted in its place; or

(h) if the document has not been duly completed—that a supplementary document be submitted.

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

Extension or abridgment of time

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

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

Execution of guarantees

74.(1) The SSA may execute a guarantee, either alone or jointly with another person, in favour of a bank or other person for the repayment of an amount raised on loan by a credit union.

(2) In addition to any other terms or conditions to which the guarantee may be subject, it is subject to the terms and conditions (if any) prescribed for the purpose of this subsection.

Division 2—Specific powers***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

Obtaining information etc.

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

- (a) to give to it, within a reasonable period and in a reasonable way specified in the notice, specified information and reports; and

Financial Institutions Code 1992

- (b) to give to it, at the reasonable times and in a reasonable way specified in the notice, periodic reports on specific matters; and
- (c) to notify it, within the reasonable time and in a reasonable way specified in the notice, if—
 - (i) a specified event or change of circumstances happens; or
 - (ii) the financial body or body corporate becomes aware that a specified event or change of circumstances is likely to happen.

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

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

Maximum penalty—\$25 000.

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

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

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

Obtaining evidence

76.(1) The SSA may, if it is reasonably necessary for the purposes of the financial institutions legislation, by written notice given to a person, require the person—

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

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

(3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

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

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

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

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

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

Maximum penalty—\$25 000.

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

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

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

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

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

Inspectors

77.(1) The SSA may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Code on an inspector; or
- (b) any powers conferred by this Code on an inspector.

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

(3) The identity card must—

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

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

Maximum penalty—\$5000.

Inspector to produce identity card

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

Entry and search—monitoring compliance

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

- (a) enter any place; and
- (b) exercise the powers set out in section 81 (General powers of inspector in relation to places).

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

- (a) the place is premises occupied by a financial body or services corporation, or a body corporate related to a financial body or services corporation, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (b) the place is premises occupied by a banker or liquidator of a financial body, or a body corporate related to a financial body, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (c) the place is premises that are not occupied for residential purposes, the inspector believes on reasonable grounds that accounting records or other prescribed documents of, or any auditor's working papers relating to, a financial body, or a body corporate related to a financial body, are kept or are to be found on the premises and the entry is made when the premises are open for conduct of business or otherwise open for entry; or

- (d) the occupier of the place consents to the entry or exercise of the power; or
- (e) a warrant under section 82 (Monitoring warrants) authorises the entry or exercise of the power.

Entry and search—evidence of offences

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

- (a) enter the place; and
- (b) exercise the powers set out in section 81 (General powers of inspector in relation to places).

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

- (a) the inspector may seize the evidence;
- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Code in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding;
- (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector’s possession.

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

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 83 (Offence related warrants) that was

issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, while searching the place under subsection (1) under a warrant under section 83 (Offence related warrants)—

- (a) an inspector finds a thing that the inspector believes, on reasonable grounds, to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Code; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) An inspector who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

(6) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if damage is caused to anything—the person who appears to the inspector to be the owner.

General powers of inspector in relation to places

81.(1) The powers an inspector may exercise under section 79(1)(b) (Entry and search—monitoring compliance) or 80(1)(b) (Entry and search—evidence of offences) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;

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

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

Maximum penalty—\$5 000

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

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

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

Monitoring warrants

82.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

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

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

the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 81 (General powers of inspector in relation to places); and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrants

83.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

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

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

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 81 (General powers of inspector in relation to places); and

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

Offence related warrant may be granted by telephone

84.(1) If, because of urgent circumstances, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 83 (Offence related warrants).

(2) Before applying for the warrant, the inspector must prepare information of the kind mentioned in section 83(2) that sets out the grounds on which the issue of the warrant is sought.

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

(4) If the Magistrate is satisfied—

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

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 83 (Offence related warrants), complete and sign such a warrant as the Magistrate would issue under that section if the application had been made under that section.

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

- (a) the Magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and

(b) the inspector must—

- (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
- (ii) write on the form of warrant the name of the Magistrate and the date on which and the time at which the Magistrate signed the warrant.

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

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

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

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 83 (Offence related warrants).

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

(9) If—

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

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

Obstruction etc. of inspectors

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

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

False or misleading statements

86.(1) In this section—

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

(2) A person must not—

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

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

Subdivision 2—Special meeting and inquiry**Special meeting and inquiry**

87.(1) The SSA may, on the written application of a majority of the directors, or not less than 10% of the members, of a society or on its own initiative—

Financial Institutions Code 1992

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

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

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

(3) An application under subsection (1) must be supported by such evidence as the SSA directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

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

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

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

(6) The SSA may—

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

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

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

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

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

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

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

- (a) if the meeting is called or inquiry is held under subsection (1)—by the applicants or out of the funds of the society or by any officer or member, or former officer or member, in such proportions as may be agreed between the SSA and those persons; or
- (b) if the inquiry is held under subsection (2)—
 - (i) in the case of a related body corporate—out of the funds of the society to whom the body corporate is related; or
 - (ii) in the case of a services corporation—out of the funds of the services corporation, or out of the funds of any society that has shares in the services corporation, in such proportions as the SSA directs;

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

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

Subdivision 3—Special power of intervention

Intervention by SSA

88.(1) If the SSA is of the opinion that—

- (a) a financial body has contravened the financial institutions legislation and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation; or
- (b) a financial body is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
- (c) the affairs of a financial body are being conducted in an improper

or financially unsound way;

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

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

(3) While the financial body is under direction, the SSA may do all things that it considers necessary to ensure that the principal objects of the financial institutions scheme are achieved in relation to the body.

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

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

(5) If the financial body—

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

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

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

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

Subdivision 4—Power to suspend operations of society**Power to suspend operations**

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

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

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

- (c) give any financial accommodation to members;
- (d) accept the deposit of any amount;
- (e) borrow any amount;
- (f) accept any payment on account of share capital except calls that fell due before the notice was given;
- (g) repay any amount paid on shares;
- (h) repay any money on deposit or loan;
- (i) pay or transfer an amount to any person, or create an obligation to do so.

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

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

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

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

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

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

Subdivision 5—Administrators

Appointment of administrator

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

(1A) A notice of appointment must specify—

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

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

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

- (a) the SSA is of the opinion that—
 - (i) the society has contravened the financial institutions legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
 - (ii) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
 - (iii) the affairs of the society are being conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to the society as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members, depositors or creditors that the society's affairs be conducted by an administrator; or
- (c) the SSA has certified that any of the events mentioned in section 341(1)(a), (b), (c) or (g) (Winding-up on certificate of

SSA) has happened.

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

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

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

(5) A director of a society must not be appointed or elected while the administrator is in office except in the circumstances mentioned in subsection (9).

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

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

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

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

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

(10) Directors elected or appointed under subsection (9)—

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

and

- (b) in the case of directors appointed under subsection (9)(d)—hold office, subject to section 91 (Additional powers of SSA), until the end of the society's next annual general meeting.

(11) The expenses of conducting a society's affairs by an administrator are payable from the society's funds.

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

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

(13) An amount certified under subsection (12)(b) is a debt due to the SSA and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(14) An administrator has, in relation to the expenses specified in subsection (11), the same priority on the winding-up of a society as the liquidator of the society has.

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

(16) An administrator is not liable for any loss that is not a loss to which subsection (15) applies but must account for the loss in a report given under this section.

Additional powers of SSA

91.(1) If the SSA appoints directors of a society under section 90(9)(d) (Appointment of administrator), the SSA may, by written notice given to the society, specify—

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

(b) the terms and conditions on which all or any of the directors hold office; and

(c) the rules that are to be the society's rules.

(2) While this section applies to a society, the SSA may—

(a) from time to time remove and appoint directors; and

(b) from time to time vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1); and

(c) amend all or any of the rules specified under subsection (1).

(3) The SSA may, by written notice given to the society, extend the time for which this section is to apply in relation to a society.

(4) A rule specified by the SSA under this section as a rule of a society—

(a) is not to be amended or revoked except in the way set out in this section; and

(b) if it is inconsistent with any other rule of the society—prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and

(c) has the same evidentiary value as is by this Code accorded to the society's rules and to copies of them.

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.

Stay of proceedings

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

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

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

Administrator to report to SSA

93. On the receipt of a request from the SSA, the administrator of a

society must, without delay, prepare and give to the SSA a report showing how the administration is being carried out.

Subdivision 6—Levies, compulsory loans and funds

Supervision Fund

94.(1) There is established a fund called the Supervision Fund.

(2) The SSA must pay into the Supervision Fund—

- (a) all amounts received as supervision levy under this Division; and
- (b) any income from the investment of any money credited to the Supervision Fund and the proceeds of the sale of any investment.

(3) The SSA must pay out of the Supervision Fund—

- (a) any payment for or towards the expenses of performing its functions and exercising its powers under the financial institutions legislation other than in the administration of the Credit Unions Contingency Fund; and
- (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
- (b) expenses incurred in administering the Supervision Fund.

(4) The SSA may invest any money in the Supervision Fund in any way it considers appropriate.

Supervision levy

95.(1) The SSA may determine that an amount is to be paid to it by financial bodies as a supervision levy.

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

- (a) a specified amount; or
- (b) a specified percentage of an amount to be determined, on a specified day, by reference to specified factors relating to financial

bodies (including, for example, factors such as paid-up capital, reserves, obligations and debts and total assets); or

(c) both a specified amount and such a specified percentage.

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

(4) The SSA may—

(a) fix the amount of the levy differently for different financial bodies; and

(b) determine that the levy is not payable by specified financial bodies.

(5) The SSA may, in the determination, require the levy to be paid in 1 amount by a specified time or permit the levy to be paid by specified instalments.

(6) If the SSA permits the levy to be paid by instalments, it may, in the determination, allow a discount for payment in 1 amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

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

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

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

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

(a) an amount of levy payable by the financial body; or

(b) the time within which an amount of levy is payable by the financial body.

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

(12) In subsections (9) to (11)—
“levy” includes late payment charge and interest in relation to levy.

Consultation

96. In determining the amount to be paid as supervision levy under section 95 (Supervision levy), the SSA may, where it is appropriate and practicable to do so, consult with industry bodies and financial institutions.

Credit Unions Contingency Fund

97.(1) There is established a fund called the Credit Unions Contingency Fund.

(2) The Credit Unions Contingency Fund is established—

- (a) to provide protection for members of credit unions; and
- (b) to facilitate mergers and transfers of engagements between credit unions or between credit unions and building societies; and
- (c) to facilitate the rehabilitation of credit unions; and
- (d) to facilitate the liquidation of credit unions in an orderly way; and
- (e) to facilitate the payment to, and collection by, the SSA of levies payable by credit unions.

(3) The Credit Unions Contingency Fund vests in the SSA, and consists of—

- (a) amounts credited to the Fund under any other law of this State; and
- (b) amounts paid into the Fund by credit unions under sections 98 (Contributions by credit unions), 99 (Support levy) and 100 (Compulsory loans); and
- (c) amounts paid into the Fund under Subdivision 6A (Contingency fund agreements); and
- (d) interest and other income gained from the investment of amounts standing to the credit of the Fund; and
- (e) all other amounts lawfully paid into the Fund.

(4) Despite any other provision of the financial institutions legislation or any other law, on payment into the Credit Unions Contingency Fund—

- (a) late payment charges and interest in relation to contributions under section 98 (Contributions by credit unions); and
- (b) amounts of levy under section 99 (Support levy) and late payment charges and interest in relation to levy;

become the property of the SSA absolutely and are freed from any trust, obligation, interest or charge to which they may have been subject in the hands of a credit union before the payment.

Contributions by credit unions

98.(1) The SSA, after consulting with AFIC in relation to the matter, may determine from time to time the contribution to be paid to the Credit Unions Contingency Fund by all credit unions.

(2) A determination may—

- (a) specify a fixed amount of contribution; or
- (b) specify a formula by which the amount of contribution may be calculated.

(3) A determination may include requirements relating to mergers or transfers of engagements between credit unions or between credit unions and building societies.

(4) The SSA may, in the determination, require the contribution to be paid in 1 amount by a specified time or permit the contribution to be paid by specified instalments.

(5) If the SSA permits the contribution to be paid by instalments, it may, in the determination, allow a discount for payment in 1 amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

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

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

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

(9) The SSA may, on the application of a credit union, vary the time within which an amount of contribution is payable by the credit union.

(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.

(11) An amount paid by a credit union as late payment charge or interest is treated as an expense in the accounts of the credit union.

(12) In subsections (8) and (9)—

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

Refunds of contributions

98A.(1) In this section—

“current balance” of a credit union means the amount standing to the credit union's credit in the Credit Unions Contingency Fund.

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

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

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

Support levy

99.(1) If, in the SSA's opinion, the capital amount of the Credit Unions Contingency Fund has been reduced to such an extent that it is desirable that further payment be made into the Fund, the SSA may determine that an amount is to be paid into the Fund by credit unions as a support levy.

(2) The SSA must not levy a credit union for which a liquidator is appointed.

(3) A support levy under subsection (1) must not exceed the prescribed percentage of the aggregate of the amount of the credit union's share capital (if any) and the amount held by it on deposit, as at a date specified by the SSA for the purpose of the levy.

(4) The SSA may determine that more than 1 levy be paid in any financial year, but the aggregate of the levies must not be more than the maximum amount of a levy mentioned in subsection (3).

(5) The SSA may, in the determination, require the levy to be paid in 1 amount by a specified time or permit the levy to be paid by specified instalments.

(6) If the SSA permits the levy to be paid by instalments, it may, in the determination, allow a discount for payment in 1 amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

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

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

(9) If there is a total transfer of engagements between societies that are credit unions, the society that continues to be registered is liable to pay to the SSA the levy imposed in relation to share capital (if any) and deposits acquired by that credit union from the other credit union.

(10) If there is a merger of societies that are credit unions, the merged society is liable to pay to the SSA the levy imposed in relation to the total share capital (if any) and deposits of the credit unions involved in the merger.

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

(12) The SSA may, on the application of a credit union, vary the time within which an amount of levy is payable by the credit union.

(13) An amount paid by a credit union as levy is treated as an expense in the accounts of the credit union.

(14) In subsections (9) to (13)—
“levy” includes late payment charge and interest in relation to levy.

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.

Compulsory loans

100.(1) The SSA may at any time order a credit union to pay to the Credit Unions Contingency Fund a specified amount by way of compulsory loan at a rate of interest and on terms and conditions determined by the SSA.

(2) For the purposes of subsection (1), an amount is specified if a proportion is specified of the aggregate of—

- (a) the amount of paid-up share capital (if any) of the credit union; and
- (b) the amount of the money deposited with and the amount of the money on loan to the credit union.

(3) A payment required to be made into the Credit Union Contingency Fund by a credit union under this section is in addition to any contribution or levy required to be made by the credit union under section 98 (Contributions by credit unions) or section 99 (Support levy).

Failure to make payment an offence

101. If default is made in making any payment required to be made under section 95 (Supervision levy), 98 (Contributions by credit unions), 99 (Support levy) or 100 (Compulsory loans), the financial body concerned and any officer of the financial body who is in default each commit an offence.

Maximum penalty—\$25 000.

Investment of Credit Unions Contingency Fund

102. The SSA may invest money standing to the credit of the Credit Unions Contingency Fund in any way it considers appropriate.

Payment out of Credit Unions Contingency Fund

103.(1) There may be paid out of the Credit Unions Contingency Fund—

- (a) all amounts due to be paid under the terms of loans made under section 100 (Compulsory loans) or investments made under

- section 102 (Investment of Credit Unions Contingency Fund); and
- (b) all amounts ordered to be paid out of the Credit Unions Contingency Fund under section 100 (Compulsory loans) by way of interest on payments from credit unions; and
 - (c) all amounts ordered to be paid out of the Credit Unions Contingency Fund under section 104 (Payment from Credit Unions Contingency Fund on liquidation etc.); and
 - (d) all amounts directed to be paid out of the Credit Unions Contingency Fund under section 105 (SSA may direct payment of grant or loan from fund) or section 317 (SSA may direct payment out of fund); and
 - (e) all amounts required to discharge a liability of the SSA under a guarantee given by it under section 74 (Execution of guarantees); and
 - (f) all expenses incurred in administering the Credit Unions Contingency Fund; and
 - (g) amounts payable under section 103A.
 - (h) amounts payable under section 98A (Refunds of contributions); and
 - (i) amounts payable from the Credit Unions Contingency Fund under Subdivision 6A (Contingency fund agreements).

(2) Money from the Credit Unions Contingency Fund may be paid in accordance with a direction under section 317 (SSA may direct payment out of fund).

Payment of administration levy and supervision levy out of Credit Unions Contingency Fund

103A.(1) The SSA may direct that the whole or a part of the interest and other income gained from the investment of money standing to the credit of the Credit Unions Contingency Fund be paid to the SSA to offset the liability of credit unions to pay to the SSA—

- (a) the supervision levy payable under section 95; and

(b) the administration levy that the SSA is required to collect, and remit to AFIC, under section 120 of the AFIC Code.

(2) If the whole liability is not offset by the amount of interest and other income directed to be paid to the SSA, the amount is to be divided up and applied by the SSA under subsections (3) and (4).

(3) The amount is to be divided on a proportionate basis into 2 separate amounts having regard to the amount of the liability mentioned in subsection (1)(a) and the amount of the liability mentioned in subsection (1)(b).

(4) Each separate amount is to be applied on a proportionate basis having regard to the amount of the liability of each credit union in relation to each levy.

(5) If an amount is paid to the SSA under this section, the SSA must give written notice to each credit union of the amount by which the liability of the credit union in relation to each levy has been offset.

(6) The SSA may give a direction under subsection (1) only if it is of the opinion that the capital amount of the Fund is, and will continue to be, sufficient for the purposes mentioned in section 97(2)(a) to (d) (Credit Unions Contingency Fund).

Payment from Credit Unions Contingency Fund on liquidation etc.

104.(1) If a credit union is being wound-up, the SSA must order that the amount of contributions paid by the credit union to the Credit Unions Contingency Fund under section 98 (Contributions by credit unions), and standing to the credit of the credit union in the Fund, be paid from the Fund to the credit union.

(2) If the SSA is satisfied that it is in the interests of depositors, or a class of depositors, with a credit union, the SSA may order that an amount be paid from the Credit Unions Contingency Fund to the credit union.

(3) An order under subsection (2) may be made subject to any conditions that the SSA considers appropriate.

SSA may direct payment of grant or loan from fund

105.(1) The SSA may direct that an amount be paid from the Credit Unions Contingency Fund to a credit union by way of grant or loan.

(2) The grant or loan may be made subject to the terms and conditions (including the giving of security) that the SSA considers appropriate.

Subdivision 6A—Contingency fund agreements**SSA may enter into contingency fund agreement**

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

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

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

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

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

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

Restrictions on entering into contingency fund agreement

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

- (a) the agreement is not to take effect while it is a party to another contingency fund agreement; and
- (b) the State (the “**receiving State**”) of the SSA that is to be the receiving SSA does not have less credit unions under its financial

institutions legislation than the State (the “**transferring State**”) of the SSA that is to be the transferring SSA has under its financial institutions legislation; and

- (c) the number of credit unions under the financial institutions legislation of the transferring State is not more than the number prescribed by regulation; and
- (d) the Minister has approved the SSA entering into the agreement.

Things for inclusion in contingency fund agreement

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

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

Consequences of entering into contingency fund agreement

105D.(1) In this section—

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

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

Financial Institutions Code 1992

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

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

(4) While the agreement is in force—

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

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

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

(A) have effect; and

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

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

(b) section 317(3) (SSA may direct payment out of the fund) or its corresponding provision applies so that, if the credit union merging, or transferring the whole of its engagements, is a transferring State credit union, the reference in the subsection to another participating State includes a reference to the receiving State.

Financial Institutions Code 1992

Example 1—

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

Example 2—

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

(5) The provisions are—

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

(6) While the agreement is in force—

- (a) the transferring fund continues to exist, despite subsection (4)(a);
and
- (b) the transferring SSA must pay to the receiving fund all amounts

paid to the transferring fund.

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

(8) While the agreement is in force—

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

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

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

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

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

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

(13) In subsection (12)—

“A” means the transferring SSA's payment;

“B” means the receiving SSA's payment;

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

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

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

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

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

(17) While the agreement is in force—

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

(b) the terms of the loan may be administered and enforced by the receiving SSA.

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

transferring SSA under section 98(8) or its corresponding provision.

(19) When the agreement stops being in force—

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

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

Subdivision 7—Advertising by societies

Restriction on initial advertisements

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

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

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

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

- (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.

Power to control advertising

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

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

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

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

Maximum penalty—\$75 000.

PART 3—PRINCIPLES, OBJECTS AND CHARACTERISTICS OF SOCIETIES

Division 1—Principles

Principles

108.(1) The principles set out in subsection (2) do not have the force of law and are subject to the other provisions of the financial institutions legislation.

(2) The following principles are recognised in relation to societies—

Part A—Building Societies**(a) Open and voluntary membership**

- Membership in a building society should be voluntary. Membership should be open to all who can make use of its services and are willing to accept the corresponding responsibilities.

(b) Democratic control

- A building society should be a democratic body.
- Its affairs should be administered by persons elected or appointed in a way agreed by the members. Those persons should be accountable to them.

(c) Non-discrimination

- A building society should be non-discriminatory in relation to age, race, nationality, sex, religion and politics.

(d) Savings and home ownership

- A building society should encourage savings and home ownership among its members and assist in raising the standard of housing in the community.

(e) Distribution to members

- The surplus arising out of the operations of a building society, after allowing appropriate reserve levels and payment of dividends on share capital, should belong to and benefit all members.

(f) On-going education

- A building society should actively promote the education of its members, officers and employees, along with the public in general, in the principles of building societies.

(g) Co-operation

- A building society should actively co-operate with other building societies in order to best serve the interests of its members and their communities.

Part B—Credit Unions**(a) Open and voluntary membership**

- Membership in a credit union should be voluntary. Membership should be open to all within the accepted common bond of association who can make use of its services and are willing to accept the corresponding responsibilities.

(b) Democratic control

- Members of a credit union should enjoy equal rights to vote (“one member, one vote”) and participate in decisions affecting the credit union, without regard to the amount of savings or deposits or the volume of business.
- Voting in credit union support organisations or associations may be proportional or representational, in keeping with democratic principles.
- A credit union is a co-operative enterprise serving and controlled by its members, and should thus be autonomous, within the framework of the law and industry supervision.
- Credit union elected offices are voluntary in nature and elected officials should not receive a salary. Elected officials may, however, be reimbursed legitimate expenses.

(c) Non-discrimination

- A credit union should be non-discriminatory in relation to age, race, nationality, sex, religion and politics.

(d) Service to members

- A credit union’s services should be directed to improving the economic and social well-being of all members.

(e) Distribution to members

- To encourage thrift through savings and thus to provide financial accommodation and other services, a fair rate of interest should be paid on savings and deposits, within the capability of the credit union.
- The surplus arising out of the operations of a credit union,

after allowing appropriate reserve levels and payment of limited dividends on share capital if it exists, should belong to and benefit all members, with no member or group of members benefiting to the detriment of others.

- This surplus may be distributed among members in proportion to their transactions with the credit union as interest or directed to improved or additional services required by the members.

(f) **Building financial stability**

- A prime concern of a credit union should be to build the financial strength, including adequate reserves and internal controls, that will ensure continued service to its membership.

(g) **On-going education**

- A credit union should actively promote the education of its members, officers and employees, along with the public in general, in the economic, social, democratic and mutual self-help principles of credit unions.
- The promotion of thrift and the wise use of credit, as well as education on the rights and responsibilities of members, are essential to the dual social and economic character of credit unions in serving member needs.

(h) **Co-operation among co-operatives**

- In keeping with their philosophy and the pooling practices of co-operatives, a credit union should, within its capabilities, actively co-operate with other credit unions, co-operatives and their associations at local, national, and international levels in order to best serve the interests of its members and their communities.

(i) **Social responsibility**

- Continuing the ideals and beliefs of co-operative pioneers, credit unions seek to bring about human and social development.
- Their vision of social justice extends both to the individual

members and to the larger community in which they work and reside.

- The credit union ideal is to extend service to all who need and can use it.
- Every person is either a member or a potential member and appropriately part of the credit union sphere of interest and concern.
- Decisions should be taken with full regard for the interest of the broader community within which a credit union and its members reside.

Division 2—Objects

Objects

109.(1) A society is a financial co-operative.

(2) The objects of a society are—

- (a) to raise funds by subscription, deposit or otherwise, as authorised by this Code; and
- (b) to apply the funds, subject to this Code and the society's rules, in providing financial accommodation to its members; and
- (c) to encourage savings among its members; and
- (d) to promote co-operative enterprise, and to provide programs and services to its members, to assist its members to meet their financial needs.

(3) The society's rules may include other objects in addition to those mentioned in subsection (2).

Primary objects of building societies

110.(1) The primary objects of a building society are—

- (a) to apply its funds in providing financial accommodation to its members for the purchase of residential buildings or for residential development; and

- (b) to apply its funds for any other purpose specified in a regulation made for the purpose of this paragraph.

(2) The application of the funds is subject to this Code and the building society's rules.

Division 3—Characteristics

Meaning of assets

111. In this Division, a reference to assets of a building society or credit union is a reference to—

- (a) an amount for the time being recorded in the accounts of the building society or credit union as assets of the building society or credit union; or
- (b) if the building society or credit union is a holding society—an amount for the time being recorded in the group accounts as assets of the building society or credit union or a subsidiary of the building society or credit union; or
- (c) an amount that is taken to be an asset of the building society or credit union under a standard.

Level of assets of building society associated with primary objects

112.(1) In this section—

“primary objects” means primary objects under section 110 (Primary objects of building societies).

(2) Subject to this section, a building society must ensure that, at all times, not less than 50% of the total assets of the building society comprises assets derived from the application of funds by it in pursuance of objects that, when the funds were applied, were its primary objects.

Maximum penalty—\$75 000.

(3) The SSA may, by written notice given to the building society, exempt a building society from subsection (2).

(4) An exemption—

- (a) may be conditional or unconditional; and
- (b) must be limited to a specified period.

(5) The SSA may, by written notice given to the building society, vary or revoke an exemption.

(6) A building society must, in keeping its accounts, keep a separate account in accordance with the regulations of its assets derived from financial accommodation provided in pursuance of its primary objects.

Maximum penalty—\$5 000.

(7) This section is not to be construed as excusing a building society from complying with any applicable standard.

Level of financial accommodation provided by credit union restricted

113.(1) In this section—

“commercial purposes” means—

- (a) if the term is given a meaning for the purposes of this section by a standard—that meaning; or
- (b) in any other case—purposes connected with a business conducted, or to be conducted, by a member of the credit union or an associate of a member.

(2) A credit union must ensure at all times that not less than 60% of the total assets of the credit union, including the 10% mentioned in subsection (3), comprise assets derived from financial accommodation provided to members for any purpose.

Maximum penalty—\$75 000.

(3) If a credit union provides financial accommodation to members for commercial purposes, it must ensure at all times that not more than 10% of its total assets comprise assets derived from such accommodation.

(4) The SSA may, by written notice given to the credit union, exempt a credit union from subsection (2) or (3).

(5) An exemption—

- (a) may be conditional or unconditional; and

(b) must be limited to a specified period.

(6) The SSA may, by written notice given to the credit union, vary or revoke an exemption.

(7) A credit union must, in accordance with the regulations, keep separate accounts of its assets derived from financial accommodation provided for different purposes.

Maximum penalty—\$5 000.

PART 4—SOCIETIES

Division 1—Formation and registration

Formation of societies

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

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

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

(a) a written statement showing—

(i) the objects of the society; and

(ii) whether the society is proposed to operate as a building society or a credit union; and

(iii) the reasons for believing—

(A) that an application for registration of the society should be granted; and

(B) that, if registered, the society will be able to carry out its objects successfully; and

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

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

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

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

whichever is the greater.

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

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

- (a) make an offer or invitation to the public in order to raise funds for the proposed society, whether by allotting a share or interest in the proposed society or accepting amounts on deposit or loan; or
- (b) take an amount in consideration of the allotment of a share or interest in, or providing financial accommodation by, the proposed society.

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

Registration

115.(1) A proposed society formed under this Part may apply to the SSA, in accordance with the regulations, to be registered under this Code as a society and authorised to operate either as a building society or credit union.

(2) An application for registration must—

- (a) be made within 2 months after the formation meeting at which

the first directors of the society were elected; and

- (b) be accompanied by—
- (i) a statutory declaration by the person presiding at the formation meeting and the secretary of the meeting stating that the requirements of section 114 (Formation of societies) have been complied with; and
 - (ii) a copy of the statement presented to the meeting, signed by the person presiding and the secretary; and
 - (iii) 2 copies of the proposed rules of the society, certified by the person presiding and the secretary to be the rules approved at the meeting; and
 - (iv) a list containing the full name, date and place of birth, residential address and business occupation of each director; and
 - (v) a list containing the full name, address and occupation of each of 25 or more adults who attended the meeting and applied for membership and shares; and
 - (vi) written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society; and
 - (vii) such evidence as the SSA requires—
 - (A) that the society is eligible for registration; and
 - (B) that the society, if registered, will be able to comply with the financial institutions legislation, all applicable standards and applicable character requirements; and
 - (C) that the society, if registered, will be able to carry out its objects successfully.

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

(4) If the SSA is satisfied that the society is eligible for registration, the SSA must—

- (a) register the society and its proposed rules; and

(b) authorise the society to operate either as a building society or a credit union, but not both.

(5) A society is eligible for registration only if—

(a) the society's application for registration complies with this Code; and

(b) the proposed rules of the society are not contrary to the financial institutions legislation; and

(c) if the society is proposed to operate as a building society—there are reasonable grounds for believing that, within 3 months of its registration, the 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 society; and

(ii) repayment cannot be made without the consent of the SSA; and

(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.

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

Certificate of incorporation

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).

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

(3) A written authority to operate either as a building society or credit union is conclusive evidence that the society is authorised under this Code to operate as a building society or credit union, as the case may be.

Effect of incorporation

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

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

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).

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—

- (a) receive amounts on deposit; and
- (b) make arrangements for providing insurance; and
- (c) acquire shares in an association or a special services provider by purchase or otherwise; and
- (d) hold a subsidiary but only if approved of by the SSA; and
- (e) act as trustee; and

- (f) obtain registration as a foreign society under the financial institutions legislation of another participating State; and
- (g) do anything else that it is authorised to do by the financial institutions legislation or the society's rules.

(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.

(2) A society must not give security over any part of its undertaking required for the purpose of liquidity support under Part 6 (Industry funded liquidity support arrangements for societies) of the AFIC Code (other than security in favour of a special services provider to facilitate the provision of liquidity support by the special services provider).

Maximum penalty—\$75 000.

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

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.

Control of certain financial transactions

120.(1) In this section—

“approved financial contracts” means—

Financial Institutions Code 1992

- (a) futures contracts relating to—
 - (i) securities issued or guaranteed by the Treasurer or the Government of this State or by the Commonwealth or another State; or
 - (ii) bills of exchange that have been accepted or endorsed by a prescribed bank and are payable within 200 days;
but only if made or dealt in or on a futures market of a futures exchange within the meaning of the Corporations Law; or
- (b) interest rate swap contracts, or forward interest rate contracts, to which a bank, or other body approved by AFIC for the purpose, is a party; or
- (c) options relating to contracts mentioned in paragraph (a) or (b); or
- (d) other contracts of a kind approved by AFIC under subsection (5).

(2) Except as provided by this section, a society must not engage in transactions of the following kinds—

- (a) transactions relating to financial or other futures;
- (b) options in futures transactions;
- (c) forward interest rate transactions;
- (d) interest rate swap transactions;
- (e) other financial transactions of a kind specified in a standard.

(3) A society may enter into and deal in approved financial contracts only if it does so for the purpose of reducing the risk of adverse variations—

- (a) in the costs of the borrowing or raising of money by the society;
or
- (b) in the revenue obtainable by the society from investments made or financial accommodation provided by the society.

(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.

(5) AFIC may approve kinds of contracts for the purposes of this section and subject the approval to such conditions as it considers appropriate.

(6) A society that contravenes subsection (2) or (3) commits an offence and is liable on conviction to a maximum penalty of \$75 000.

Control of foreign currency transactions

121.(1) In this section—

“**approved hedging arrangements**” consist of 1 or more of the following contracts—

- (a) forward exchange rate contracts;
- (b) currency swap contracts;
- (c) other contracts of a kind approved by AFIC.

(2) A credit union must not—

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

(3) A building society must not—

- (a) invest any of its funds in foreign currency; or
- (b) except as provided by subsection (4), carry out any of its activities in foreign currency.

(4) A building society may borrow money in a foreign currency from a source within or outside Australia if—

- (a) the loan contract is hedged under subsection (5); and
- (b) the society complies with any directions given by the SSA.

(5) A loan contract is hedged for the purposes of subsection (4) if—

- (a) the building society enters into approved hedging arrangements to minimise the risks of losses in relation to the principal and interest payments on the loan contract that might otherwise be incurred due to adverse movements in currency exchange rates; and

- (b) the cost of such arrangements is fixed in Australian currency as at the time the loan contract is entered into; and
- (c) the other party to the hedging arrangements is a bank or other body approved by AFIC for the purpose.

(6) A society that contravenes subsection (2) or (3) commits an offence and is liable on conviction to a maximum penalty of \$75 000.

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.

Division 3—Rules

Rules

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.

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

(4) If there is any inconsistency between a rule of a society and the financial institutions legislation or a standard, the financial institutions

legislation or standard prevails and the rule is invalid to the extent of the inconsistency.

Copies of rules

124.(1) A society must give a copy of its rules to a member or proposed member who requests it and has paid to the society the fee (if any) payable under subsection (2).

Maximum penalty—\$5 000.

(2) A society may charge a fee for supplying the copy but only if the fee has been approved by its board.

Society and members to be bound by rules

125. The rules of a society bind the society, all its members, and all persons claiming through the society or a member, to the same extent as if—

- (a) each member had subscribed his or her name and affixed his or her seal to the rules; and
- (b) there were contained in the rules a covenant on the part of each member and the member's legal representative to observe all the rules subject to the financial institutions legislation and the standards.

Alteration of rules by special resolution

126. Subject to sections 127 (Alteration of rules by board of directors), 129 (Power of SSA to require modification of rules) and 130 (Power of SSA to modify rules to facilitate transfer of engagements), the rules of a society may be altered only if the alteration has been approved by special resolution of the members under section 255 (Special resolutions).

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.

Registration of alteration of rules

128.(1) If the SSA is satisfied—

- (a) that an alteration made under section 126 (Alteration of rules by special resolution) or 127 (Alteration of rules by board of directors) is not contrary to the financial institutions legislation or the standards; and
- (b) that there is no good reason why the alteration should not be registered;

the SSA must register the alteration.

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

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

Power of SSA to require modification of rules

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

- (a) to comply with the financial institutions legislation; or
- (b) to give effect to a standard; or
- (c) in the interests of the members or depositors of the society; or
- (d) in the public interest;

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

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

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

- (a) an alteration of its rules made under this section; and
- (b) the day on which the alteration starts.

(4) The society must give written notice of the alteration to its members not later than the day on which notice is given of the next general meeting of the society.

Maximum penalty—\$5 000.

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

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

Power of SSA to modify rules to facilitate transfer of engagements

130.(1) If the SSA has directed a transfer of engagements under Part 7 (Mergers and transfers of engagements), the SSA may, by notation on the registered copy of the rules of the transferor society (if it is to continue to exist) or the transferee society, alter the rules of the society to the extent necessary to ensure that the rules are appropriate.

- (2) The SSA must alter the rules by notation on the registered copy.
- (3) The SSA must immediately give written notice to a society of—
- (a) an alteration of its rules made under this section; and
 - (b) the day on which the alteration starts.
- (4) A society must give written notice of the alteration to its members not later than the day on which notice is given of the next general meeting of the society.
- (5) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally—
- (a) in the area of this State in which the society operates; and
 - (b) if the society operates in another State, or other States—in the other State or States.

Division 4—Membership

Members

- 131.(1)** The members of a society are—
- (a) the persons who sign the application for membership on the formation of the society; and
 - (b) any other persons who are admitted to membership under the society's rules.
- (2) A credit union's rules must limit membership to persons having a common bond of association.
- (3) The members of a merged society are the persons who, on the day of the merger, are members of a society that is a party to the merger, and any other persons who are admitted to membership under the merged society's rules.
- (4) The members of a society to which another society has transferred the whole of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society.
- (5) The members of a society to which another society has transferred

part of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society and are specified, for the purposes of this subsection, in an agreement between the societies.

(6) A person may exercise the rights of membership of a society only if the person has complied with any requirements for membership under the society's rules, including, for example—

- (a) the payment of an amount; or
- (b) the acquisition of shares or interests.

Members who are minors

132.(1) Subject to a society's rules, a minor may be a member.

(2) A member of a society who is a minor cannot hold office in a society and cannot vote at a meeting of the society.

(3) A member of a society is not at any time entitled on any ground relating to the member's minority or former minority to avoid any of the member's obligations or liabilities—

- (a) as a member; or
- (b) under any deed, mortgage, bill, lien, charge, contract, instrument or document entered into by the member as a member.

Joint members

133.(1) Membership in a society may be joint if the society's rules provide for it.

(2) If membership is joint the following provisions apply—

- (a) the register of members must indicate that a person is a joint member;
- (b) the joint members are entitled to choose the order in which they are named in the register of members, but failing any such choice the society may enter the names in the order it considers appropriate;
- (c) the joint member who is named first in the society's register of

members is the primary joint member;

- (d) subject to the society's rules, but without affecting the right of a member to obtain a copy of the balance sheet from the society on demand, a notice or other document may be given or sent to the primary joint member;
- (e) for the purpose of determining—
 - (i) who is qualified to vote on a resolution at a meeting of the society; and
 - (ii) the number or proportion of members required to give effect to any provision of the financial institutions legislation or the society's rules;

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

(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).

Corporate membership

134.(1) Subject to a society's rules, a body corporate may be a member of the society.

(2) A body corporate that is a member of a society may, by written notice given to the society, appoint an individual to represent it at meetings of members of the society.

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

- (a) is entitled—
 - (i) to receive notice of all meetings of members in the same way as a member of the society; and
 - (ii) to exercise the same rights of voting as a member of the society; and
- (b) is eligible to be elected as a director of the society if—
 - (i) the body corporate holds the qualifications required for

holding office as a director (other than qualifications about age and being an individual); and

- (ii) a person has not been appointed as liquidator of the body corporate.

Cessation of membership

135.(1) A person ceases to be a member of a society as provided by the society's rules.

(2) If a member of a society dies, the member's estate remains liable until another person is registered as the holder of the member's shares or until the society pays the value of all the shares.

Expulsion of member

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

Liability of members

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

Financial accommodation to, and deposits from, members and others

138.(1) A person who wishes to obtain financial accommodation must apply to the society in a way approved by the society.

(2) A society may provide financial accommodation to, and accept a deposit of money from, its members.

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

Maximum penalty—\$5 000.

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

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

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

Maximum penalty—\$5 000.

(6) This section does not limit the power of a society to invest funds under the financial institutions legislation or the standards.

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.

Division 5—Name and office

Name

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

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

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

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

Maximum penalty—\$5 000.

(5) 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).

Abbreviations etc. of society's name

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

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

(2) In this section—

“name” of a society means—

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

Change of name does not affect identity

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

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

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

Use of words 'building society', 'credit society', 'credit union' or 'credit co-operative'

144.(1) In this section—

“trade or carry on business”, in relation to a person or body, includes—

- (a) establishing or using an office for receiving share capital, deposits or loan funds; and
- (b) advertising for share capital, deposits or loan funds; and
- (c) providing financial accommodation to members of the person or body residing within this State.

(2) Subject to this section—

- (a) a person or body, other than a society, foreign society or services corporation, must not trade or carry on business, under a name or title of which the words “building society”, “credit union”, “credit society”, “credit co-operative”, or any other words, abbreviations or symbols with a similar meaning, form part; and
- (b) a person or body, other than a society or foreign society, must not hold out that its trade or business is that of a society.

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

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

(5) The SSA may, at any time—

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

(6) A person who contravenes subsection (2) or a condition of an exemption under subsection (4), and, if the person is a body corporate, every officer of the body corporate who is in default, and every director or other person having the control and management of an unincorporated body contravening the subsection or condition, commits an offence.

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

(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).

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.

Publication of name

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

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

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

(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.

Seal

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

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

Maximum penalty—\$25 000.

Registered office

147.(1) A society must have a registered office.

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

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

Maximum penalty—\$5 000.

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

PART 5—SHARES, OTHER SECURITIES AND CHARGES

Division 1—Shares generally

Application of Divisions 2 and 3

148.(1) A society may issue withdrawable shares.

(2) Only a building society or a prescribed financial institution may issue permanent shares or redeemable preference shares.

Classes of shares, rights, etc.

149.(1) In this section—

“**building society**” includes a financial institution that, under the regulations, may issue permanent shares.

(2) The rules of a building society may provide for the division of the society’s share capital into classes of shares.

(3) All shares in a class of shares must have the same nominal value.

(4) The rights attaching and terms and conditions of issue applying to a class of shares are as provided in the building society’s rules or determined by the board under the rules, but no such rules may be registered unless the provisions in relation to those rights, terms and conditions comply with the requirements of this Code and are, in the SSA’s opinion, otherwise appropriate.

Determination of share capital

150. The amount of the share capital of a society is the aggregate of the nominal values of the shares that have been issued by the society.

Priorities on winding-up as between shares and deposits

151.(1) A society's rules may not provide for any permanent share capital to be repaid in the event of the winding-up of the society in priority to funds of the society consisting of deposits made with the society.

(2) Subsection (1) does not prevent a society from accepting money on deposit under an agreement under which the claims of the depositor are, in the event of the winding-up of the society, subordinated to the claims of other creditors and the holders of shares other than permanent shares in the society.

Liability of shareholders

152.(1) The liability of a shareholder in a society in relation to a share on which no loan has been made is limited to the amount (if any) unpaid in relation to the share.

(2) The liability of a shareholder in a society in relation to a share on which a loan has been made is limited to the amount payable under or in relation to the loan together with the amount (if any) unpaid in relation to the share.

Board to approve sale or transfer unless rules provide otherwise

153. Unless a society's rules otherwise provide, a share in the society may be transferred only with the consent of the society.

Restriction on application of capital

154.(1) Except as provided by section 155 (Power to make certain payments), a society must not apply any of its shares or capital money either directly or indirectly in—

- (a) making a payment to a person in consideration of the person's subscribing or agreeing to subscribe (whether absolutely or

conditionally); or

- (b) procuring or agreeing to procure subscriptions (whether absolute or conditional);

for any permanent shares in the society (whether the shares are or the money is so applied by being added to the purchase price of property acquired by the society or to the contract price of work to be executed for the society or the money is paid out of the nominal purchase price or contract price or otherwise).

(2) If a society contravenes subsection (1), any officer of the society who is in default commits an offence.

Maximum penalty—\$25 000.

(3) If—

- (a) a person is convicted of an offence against subsection (2) in relation to a society; and
- (b) the court by which the person is convicted is satisfied that the society has suffered loss or damage because of the act that constituted the offence;

the court may, in addition to imposing a penalty, order the convicted person to pay a specified amount of compensation to the society.

(4) The order may be enforced as if it were a judgment of that court.

(5) If a contravention of subsection (1) takes place and—

- (a) a person (other than the society concerned) who was, at the time of the contravention, aware of the matters constituting the contravention, made a profit because of the contravention—the society may (whether or not the person or another person has been convicted of an offence against subsection (2) in relation to the contravention) recover the profit from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned; and
- (b) the society concerned has suffered loss or damage because of the contravention—the society may recover the loss or damage from a person who is in default (whether or not the person or another person has been convicted of an offence against subsection (2) in relation to the contravention) as a debt due to the society by action

in a court having jurisdiction for the recovery of debts up to the amount concerned.

Power to make certain payments

155.(1) Subject to subsection (2), a society may make a payment by way of brokerage or commission to a person in consideration of—

- (a) the person's subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the society; or
- (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the society;

only if—

- (c) the payment is not prohibited by the society's rules; and
- (d) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in a disclosure statement or prospectus issued in relation to the shares or, if there is no such disclosure statement or prospectus, in a statement lodged with the SSA before the society becomes liable to make the payment; and
- (e) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in the disclosure statement, prospectus or statement.

(2) The total amount of payments by a society by way of brokerage or commission for shares must not be more than the lesser of the following amounts—

- (a) 10% of the total amount payable on allotment of the shares;
- (b) if the society's rules specify an amount, or a rate for calculating an amount, for the purpose—the amount specified or calculated in accordance with the specified rate.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a society may apply any part of the money or shares in making a payment that would, if it were made directly by the society, be lawful under this section.

Validation of shares improperly issued

156.(1) If a society has purported to issue shares and—

- (a) the creation or issue of the shares is invalid under this Code or the society's rules or for any other reason; or
- (b) the terms of the purported issue are inconsistent with or are not authorised by this Code or the rules;

the Court may, on application made by the society, a holder or mortgagee of any of the shares, or a creditor of the society, and, on being satisfied that in all the circumstances it is just and equitable to do so, make an order under this section.

(2) An order under this section may—

- (a) validate the purported issue of the shares; or
- (b) confirm the terms of the purported issue of the shares; or
- (c) do both those things.

(3) On an office copy of an order made under this section being lodged with the SSA, the shares to which the order relates are taken to have been validly issued on the terms of the issue of the shares.

Division 2—Withdrawable shares**Issue of withdrawable shares at a premium prohibited**

157. A society must not issue withdrawable shares at a premium.

Cancellation of withdrawable shares

158.(1) The rules of a society may provide for the cancellation by the society of any of its withdrawable shares, but no such rules may be registered unless the provisions relating to cancellation comply with the requirements of this Code and are, in the SSA's opinion, otherwise appropriate.

(2) Subject to this section, withdrawable shares in a society may not be cancelled by the society if the membership status of the person holding any of the shares would be lost unless the cancellation is made—

- (a) under the society's rules and at the request or with the consent of the person; or
- (b) under a provision of this Code other than this section.

(3) In the case of withdrawable shares in a society cancelled under this section, the society must pay to the holder of cancelled shares the amount paid-up on the shares, together with any other amount to which the holder may be entitled in relation to the shares.

Conversion of shares to deposits (special resolution)

159.(1) In this section and section 159A (Conversion of shares to deposits (by direction))—

“building society” includes a financial institution that, under the regulations, may issue permanent shares.

(2) If authorised by its rules, a building society may, by special resolution, establish a scheme for the conversion of withdrawable share capital of the society to deposits.

(3) A scheme under this section—

- (a) must provide for—
 - (i) cancellation, subject to this Code, of the shares to which the scheme applies; and
 - (ii) the recording in the building society's accounts, as a deposit lodged by each member who was the holder of cancelled shares, of the amount paid-up by the member on the shares, together with any other amount to which the member may be entitled in relation to the shares; and
- (b) if the membership status of a person holding shares affected by the scheme would otherwise be lost—must provide for the preservation of that status by doing 1 or more of the following—
 - (i) excluding shares, or conferring on the member the right to exclude shares, from the scheme;
 - (ii) conferring on the member the right to subscribe for permanent shares in place of shares affected by the scheme;
 - (iii) taking such other steps as may be approved by the SSA; and

- (c) may provide for rights attaching to shares affected by the scheme to attach to other shares that will continue to be held by the member after implementation of the scheme.

(4) Special resolutions may be passed at a single meeting of a building society for the purposes of—

- (a) altering the society's rules to authorise it to establish a scheme under this section; and
- (b) establishing the scheme;

but, except to the extent necessary to enable both resolutions to be passed at the same meeting, the resolutions may not take effect before the alteration of rules has been registered by the SSA in accordance with section 128 (Registration of alteration of rules).

(5) A scheme under this section may not take effect unless the building society satisfies the SSA, by lodging such documents as the SSA may require, that it has—

- (a) taken action, as required by the SSA, to invite and receive applications from creditors for the discharge, partial discharge or securing of liabilities arising from debts or claims that would, as at the date fixed by the SSA, have been admissible as evidence against the society if the society had then started to be wound-up; and
- (b) discharged or secured, or made appropriate arrangements for discharging or securing, such liabilities in accordance with applications received by it within a period fixed by the SSA.

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.

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.

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.

Division 3—Permanent shares

Interpretation

162. In this Division—

“building society” includes a financial institution that, under the regulations, may issue permanent shares.

Issue of permanent shares

163.(1) Permanent shares in a building society may be issued as fully paid-up shares or shares to be paid for by periodical or other subscription or at call.

(2) If the rules of a building society provide for the issue of permanent shares of different classes, the rules must provide that each class of permanent shares ranks equally with the other classes of permanent shares in relation to the return of capital and any distribution of surplus assets and profits in the winding-up of the building society.

Issue of preference shares

164.(1) Without limiting section 149 (Classes of shares, rights etc.), preference shares may be issued as a class of permanent shares.

(2) The SSA may, by Gazette notice, declare that specified preference shares issued by a building society are a class of permanent shares.

(3) A declaration has effect for the purposes of the application of this Code to the shares to which the declaration relates.

Rights of holders of preference shares to be set out in rules

165. A building society must not allot a preference share, or convert an issued share into a preference share, unless its rules set out the rights of the holder of the share in relation to—

- (a) repayment of capital; and
- (b) participation in surplus assets and profits; and
- (c) cumulative or non-cumulative dividends; and
- (d) payment of interest; and
- (e) voting; and
- (f) priority of payment of capital, dividend and interest;

in relation to other shares or other classes of preference shares.

Cancellation of permanent shares

166.(1) Subject to section 173 (Sale of permanent shares forfeited for non-payment of call), issued or unissued permanent shares in a building society may not be cancelled by the building society except—

- (a) under its rules and with the approval of the SSA; or

(b) under a provision of this Code other than this section.

(2) If the SSA gives approval to the cancellation of permanent shares in a building society, the SSA may attach conditions to the approval and may, on noncompliance with a condition of the approval, revoke the approval.

(3) Without limiting subsection (2), the SSA may impose conditions on the cancellation of permanent shares in a building society to the effect of the permitted buy-back procedures set out in Division 4B of Part 2.4 of the Corporations Law as if—

- (a) a reference in that Division to a company were a reference to the building society; and
- (b) a permitted buy-back in accordance with that Division were the procedure leading to cancellation of the permanent shares under subsection (1).

(4) Subject to subsection (5), a building society must not cancel a permanent share if the result of taking such action would be that the building society fails to satisfy, or is in breach of, a standard.

(5) Despite any other provision of this Code, a building society must cancel any permanent share that is forfeited to the building society under this Code or its rules and is not required by this Code to be sold.

Dividends, interest etc. in relation to permanent shares

167.(1) In this section—

“**dividend**” includes a payment by way of bonus.

(2) A building society may, if authorised by its rules and the board so determines, in relation to a particular class of permanent shares—

- (a) distribute profits by way of dividends or bonus shares (whether fully or partly paid-up) to the holders of the shares; or
- (b) pay interest out of its revenue to the holders of the shares; or
- (c) do both these things.

(3) Dividends or bonus share issues in relation to permanent shares may vary in value proportionately according to the extent to which each permanent share in relation to which the payment or issue is made is paid up.

(4) A building society commits an offence if dividends are paid otherwise than out of profits or out of a share premium account maintained by the building society under this Division.

Maximum penalty—\$75 000.

(5) If dividends are paid otherwise than out of profits in contravention of subsection (4), the creditors of the building society are entitled to recover from any officer of the building society who knowingly caused or permitted the payment to be made the amount of the debts owed by the building society to them respectively to the extent that the dividends so paid have exceeded profits.

(6) If the whole amount is recovered from one officer, that officer may recover contribution from any other officer similarly liable.

(7) A liability imposed on an officer under this section is extinguished on the person's death.

Approval of rules for permanent share issues

168.(1) A building society must not issue permanent shares unless the society's rules authorise the issue of permanent shares and the society otherwise complies with this Code.

(2) If, at the commencement of this section, the rules of a building society authorise the issue of permanent shares, the society must not issue permanent shares under the rules unless the society first submits the rules to the SSA for its approval under this section.

(3) If a building society proposes to adopt rules that authorise the issue of permanent shares, the society must first submit the rules to the SSA for its approval under this section.

(4) The SSA may approve rules for the issue by a building society of permanent shares if the SSA is satisfied that—

- (a) the rules make appropriate provision for the reasonable apportionment of reserves and profits of the society among different classes of shareholders; and
- (b) there would be, on a winding-up of the society, a reasonable apportionment of reserves and profits among different classes of shareholders.

Allotment of permanent shares otherwise than for cash

169.(1) For the purposes of this section, the issue of shares under a dividend reinvestment plan, or the issue of bonus shares paid for out of the share premium account under section 176 (Issue of permanent shares at premium), is not an issue of shares otherwise than in consideration of payment in cash.

(2) A building society must not allot permanent shares as fully or partly paid-up otherwise than in consideration of payment in cash unless the building society has obtained a report from an expert, signed by the expert and stating—

- (a) what, in the expert's opinion, is the money value, at the time of the signing of the report, of the consideration given in relation to the shares; and
- (b) whether or not, in the expert's opinion, the consideration is fair and reasonable as at that time and the reasons for the opinion; and
- (c) particulars of any relationship that the expert has with the building society or an associate of the building society; and
- (d) particulars of any pecuniary or other interest that the expert has that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased report; and
- (e) particulars of any fee or pecuniary or other benefit, whether direct or indirect, that the expert has received, or will or may receive, for or in connection with the making of the report.

(3) A copy of a report under subsection (2) must—

- (a) if a disclosure statement is required to be issued under this Part in relation to the shares concerned—be incorporated by the building society in the disclosure statement; or
- (b) in any other case—be lodged with the SSA by the building society not less than 7 days before the shares are allotted.

(4) The building society must, if it has obtained the opinions of more than 1 expert for the purposes of this section, attach to any report that is dealt with under subsection (3) a statement setting out, in relation to each of the experts (other than the one who signed the report)—

- (a) the name of the expert; and

- (b) particulars of the opinion (if any) expressed by the expert on the matters on which an expert's opinion is required for the purposes of this section.

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

Power to exempt in relation to non-cash consideration

170.(1) The SSA may, by written notice, exempt a building society, conditionally or unconditionally, from a requirement of section 169 (Allotment of permanent shares otherwise than for cash).

(2) The SSA may, on non-compliance with a condition of an exemption under this section, by written notice, revoke the exemption.

Differences in calls, reserve liability etc.

171.(1) A building society may, if authorised by its rules—

- (a) make arrangements on the issue of permanent shares for varying the amounts and times of payment of calls as among shareholders; and
- (b) accept from a shareholder the whole or a part of the amount remaining unpaid on any permanent shares although no part of that amount has been called-up.

(2) A building society may, by special resolution, determine that any proportion of its permanent share capital that has not been already called-up is not capable of being called-up except in the event and for the purposes of the building society being wound-up, but the resolution does not prejudice any rights acquired by a person before the passing of the resolution.

Calls and effect of non-compliance with calls on permanent shares

172.(1) Calls on permanent shares in a building society must be so made that they are payable not less than 14 days from the day on which the call is made, and no subsequent call may be made within 7 days from the day on which the call made immediately before it is payable.

(2) When a call is made, notice of the amount of the call, of the day when

it is payable and of the place for payment must, not less than 7 days before the day, be sent by post to the holder of shares on which the call is made.

(3) If a call on a share is not paid on or before the day for its payment, the shareholder is not entitled—

- (a) to any dividend declared on the share, or interest that otherwise would accrue on the share, after the day for payment and before the day the call is paid; or
- (b) while the call remains unpaid—to a vote for the share in any meeting of members of the building society.

(4) If a call on a share is unpaid at the end of 14 days after the day for its payment, the share may be forfeited by resolution of the board.

Sale of permanent shares forfeited for non-payment of call

173.(1) Permanent shares forfeited to a building society for non-payment of a call must be offered for sale not more than 6 weeks after their forfeiture—

- (a) by auction; or
- (b) on a stock market lawfully established or operated by the building society; or
- (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).

(2) The rules of a building society must provide for—

- (a) the procedure to be followed in the conduct of the auction; and
- (b) the application of the proceeds of sale of the forfeited shares.

Prohibition of allotment unless minimum subscription received

174.(1) A building society must not make an allotment of permanent shares in the building society that have been offered to the public or in relation to which an invitation has been issued to the public unless—

- (a) the minimum subscription (if any) has been subscribed; and

- (b) the sum payable on application for the subscribed shares has been received by the building society.

(2) For the purposes of subsection (1), if a building society has received a cheque or payment order for the sum payable on application for an allotment of shares in the building society, the sum is not taken to have been received by the building society until the cheque is paid by the bank on which it is drawn or payment is made in accordance with the order.

(3) In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, an amount equal to the sum of—

- (a) the nominal value of each share; and
- (b) if the share is, or is to be, issued at a premium—the amount of the premium payable on each share;

less any amount payable otherwise than in cash is taken to have been subscribed in relation to each share for the allotment of which an application has been made.

(4) If the conditions mentioned in subsection (1) have not been satisfied within 4 months after the issue of the disclosure statement, the building society must repay, under this section, all money received from applicants for shares.

(5) If a building society is liable, under subsection (4), to repay money received from applicants for shares—

- (a) the money must be repaid without interest within 7 days after the building society becomes liable; and
- (b) if the money is not repaid within the period—
 - (i) the directors of the building society are, subject to subsection (6), jointly and severally liable to repay the money with interest at the prescribed rate calculated from the end of the period; and
 - (ii) each director of the building society commits an offence for which the director is liable on conviction to a maximum penalty of \$5 000.

(6) A director of a building society is not liable under subsection (5)(b)(i), and does not commit an offence against

subsection (5)(b)(ii), if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on the director's part.

(7) An allotment made by a building society to an applicant in contravention of this section is voidable at the option of the applicant and is voidable even if the building society is being wound-up.

(8) An option mentioned in subsection (7) is exercisable by written notice served on the building society within 1 month after the date of the allotment.

(9) A director of a building society who knowingly contravenes, or permits or authorises the contravention of, any of the provisions of this section (other than subsection (5)) commits an offence and is liable, in addition to the penalty for the offence, to compensate the building society and any person to whom an allotment has been made in contravention of this section respectively for any loss, damages or expenses that the building society or the person has sustained or incurred because of the allotment.

Maximum penalty—\$5 000.

(10) A proceeding for the recovery of compensation under subsection (9) must be started within 2 years after the date of the allotment.

(11) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section, or purporting to do so, is void.

Return as to allotments

175.(1) If a building society makes an allotment of its permanent shares, the building society must, within 1 month after the allotment is made, lodge with the SSA a return, in accordance with the regulations, stating—

- (a) the number and nominal values of the shares comprised in the allotment; and
- (b) the amount (if any) paid or due and payable on the allotment of each share; and
- (c) if the capital of the building society is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and

- (d) subject to subsection (2), the full name, or the surname and at least 1 given name and initials, and the address of each of the allottees and the number and class of shares allotted to the person.

(2) The particulars mentioned in subsection (1)(d) need not be included in a return in relation to shares that have been allotted in consideration of the payment of money.

(3) If shares in a building society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made under a written contract, the building society must lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of any such contract.

(4) If a certified copy of a contract is lodged under subsection (3), the original contract duly stamped must be produced at the same time to the SSA.

(5) If shares in a building society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made—

- (a) under a contract not reduced to writing; or
- (b) under the society's rules; or
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or
- (d) under the application of money held by the building society in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled;

the building society must lodge with the return a statement containing such particulars as are prescribed.

(6) For the purposes of this section, any shares in a building society applied for prior to the registration of the building society are taken to have been allotted on the date of registration of the building society.

Issue of permanent shares at premium

176.(1) If a building society issues permanent shares for which a premium is received by the building society (whether in money or in the

form of other valuable consideration) the aggregate amount or value of the premiums on the shares must be transferred to an account called the “**share premium account**”, and the provisions of this Part relating to the reduction of the share capital of a building society apply, subject to this section, as if the share premium account were paid-up share capital of the building society.

(2) The share premium account may be applied—

- (a) in paying-up shares to be issued to members of the building society as fully paid bonus shares; or
- (b) in paying-up, in whole or in part, the balance unpaid on shares previously issued to members of the building society; or
- (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the building society; or
- (d) in writing-off the preliminary expenses of the building society; or
- (e) in writing-off the expenses of, or the payment made in relation to any issue of shares in, or debentures of, the building society; or
- (f) in providing for the premium payable on redemption of debentures or redeemable preference shares.

Special resolution for reduction of permanent share capital

177.(1) Subject to confirmation by the Court, a building society may, if authorised by its rules, by special resolution reduce its permanent share capital in any way and, in particular, may do all or any of the following—

- (a) extinguish or reduce the liability on any of its shares in relation to share capital not paid-up;
- (b) cancel any paid-up share capital that is lost or is not represented by available assets;
- (c) pay off any paid-up share capital that is in excess of the society’s needs.

(2) If the proposed reduction of permanent share capital involves either diminution of liability in relation to unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

Financial Institutions Code 1992

- (a) every creditor of the building society who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of starting the winding-up of the building society, would be admissible in evidence against the building society, is entitled to object to the reduction; and
- (b) the Court, unless satisfied on affidavit that there are no such creditors, must settle a list of the names of creditors entitled to object and, for that purpose, must ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and
- (c) if a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not been determined, does not consent to the reduction, the Court may dispense with the consent of the creditor on the building society securing payment of the creditor's debt or claim by appropriating as the Court directs—
 - (i) if the building society admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim; or
 - (ii) if the building society does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after inquiry and adjudication of the kind required where a building society is wound-up by the Court.

(3) The Court may, having regard to any special circumstances of a case, direct that all or any of the provisions of subsection (2) do not apply in relation to creditors included in a particular class of creditors.

(4) The Court may, if satisfied that in relation to each creditor who under subsection (2) is entitled to object—

- (a) the creditor's consent to the reduction has been obtained; or
- (b) the creditor's debt has been discharged or secured; or
- (c) the creditor's claim has been determined or has been secured;

make an order confirming the reduction on such terms and conditions as it considers appropriate.

(5) A building society must not act on a resolution for the reduction of permanent share capital before application is made to the SSA for registration of the resolution and an office copy of the order of the Court is lodged with the SSA, but a resolution may specify an earlier date (but not earlier than the date of the resolution) as the date from which the reduction of capital is to have effect.

(6) A certificate of the SSA stating that the resolution and an office copy of the order made under subsection (4) have been registered by the SSA is conclusive evidence that all the requirements of this Code relating to the reduction of permanent share capital have been complied with in relation to the building society.

(7) A shareholder or former shareholder in a building society is not liable, in relation to any share in the building society, to any call or contribution of more than the difference (if any) between the amount of the share as fixed by an order made under subsection (4) and the amount paid, or the reduced amount (if any) that is taken to have been paid, on the share.

(8) Despite any other provision of this Code, if the name of a creditor who is entitled under subsection (2) to object to a reduction is, because of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, not entered on the list of creditors and, after the reduction, the building society is unable, within the meaning of the provisions relating to winding-up by the Court, to pay the amount of the creditor's debt or claim—

- (a) every person who was a member of the building society at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of the debt or claim an amount not more than the amount that the person would have been liable to contribute if the building society had started to be wound-up on the day before that date; and
- (b) if the building society is wound-up—the Court, on the application of any such creditor and proof of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, may settle accordingly a list of the names of persons liable to contribute because of paragraph (a) and make

and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding-up;

but nothing in this subsection affects the rights of the contributories among themselves.

(9) An officer of a building society who—

- (a) knowingly conceals the name of a creditor entitled to object to a reduction in the permanent share capital of the building society; or
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor of the building society;

commits an offence.

Maximum penalty—\$5 000.

(10) The granting, under the rules of a building society, of a lease, licence or other right to occupy or use land or a building, or a part of land or a building, in favour of a member of the building society by force of the person's membership does not constitute a reduction of the permanent share capital of the building society.

Building society financing dealings in its permanent shares etc.

178.(1) Except as otherwise expressly provided by this Code, a building society must not—

- (a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—
 - (i) the acquisition by a person, whether before, or at the same time as, the giving of financial assistance, of permanent shares in the building society; or
 - (ii) the proposed acquisition by a person of permanent shares in the building society; or
- (b) whether directly or indirectly, in any way, acquire permanent shares in the building society; or
- (c) whether directly or indirectly, in any way, lend money on the security of permanent shares in the building society.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the providing of security, the releasing of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a building society is taken to have given financial assistance for the purpose of an acquisition or proposed acquisition (the “**relevant purpose**”) if—

- (a) the building society gave the financial assistance for purposes that included the relevant purpose; and
- (b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

(4) For the purposes of this section, a building society is taken to have given financial assistance in connection with an acquisition or proposed acquisition if, when the financial assistance was given to a person, the building society was aware that the financial assistance would financially assist—

- (a) the acquisition by a person of permanent shares in the building society; or
- (b) if permanent shares in the building society had already been acquired—the payment by a person of any unpaid amount of the subscription payable for the shares or any premium payable in relation to the shares, or the payment of any calls on the shares.

(5) If a building society contravenes subsection (1), any officer of the society who is in default commits an offence.

Maximum penalty—\$5 000.

(6) If—

- (a) a person is convicted of an offence against subsection (5); and
- (b) the court by which the person is convicted is satisfied that the building society or another person has suffered loss or damage because of the contravention that constituted the offence;

that court may, in addition to imposing a penalty, order the convicted person to pay compensation to the building society or other person of an amount specified by the court.

(7) The order may be enforced as if it were a judgment of that court.

(8) The power of a court under section 409 (Power to grant relief) to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (6) from the liability to have such an order made against the person.

(9) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition, whether by way of purchase, subscription or otherwise.

Exceptions

179.(1) Section 178(1) (Building society financing dealings in its permanent shares etc.) does not prohibit—

- (a) the payment of a dividend by a building society in good faith and in the ordinary course of commercial dealing; or
- (b) a payment made by a building society under a reduction of capital in accordance with this Part; or
- (c) the discharge by a building society of a liability of the building society that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms; or
- (d) an acquisition by a building society of an interest (other than a legal interest) in fully paid permanent shares in the building society if no consideration is provided by the building society, or by any related body corporate, for the acquisition; or
- (e) the purchase by a building society of permanent shares in the building society under an order of a court; or
- (f) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a building society of a lien on permanent shares in the building society (other than fully paid shares) for any amount payable to the building society in relation to the shares; or
- (g) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a building society with a subscriber for permanent shares in the building society permitting

the subscriber to make payments for the shares (including payments in relation to any premium) by instalments.

(2) Subsection (1) does not—

- (a) imply that a particular act of a building society would, but for that subsection, be prohibited by section 178(1) (Building society financing dealings in its permanent shares etc.); or
- (b) limit the operation of any rule of law permitting the giving of financial assistance by a building society, the acquisition of permanent shares by a building society or the lending of money by a building society on the security of permanent shares.

(3) Section 178(1) (Building society financing dealings in its permanent shares etc.) does not prohibit—

- (a) the making of a loan, the giving of a guarantee or the providing of security by a building society in the ordinary course of business if the loan that is made by the building society, or in relation to which the guarantee or security is given or provided, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or
- (b) the giving by a building society of financial assistance to acquire fully paid permanent shares in the society, if—
 - (i) the assistance is given under a scheme approved—
 - (A) if the scheme is conducted only for employees of the society—by the society at a general meeting; or
 - (B) in any other case—by the SSA in accordance with a standard; and
 - (ii) the shares are to be held by or for the benefit of a person taking part in the scheme.

(4) Section 178(1) (Building society financing dealings in its permanent shares etc.) does not prohibit the giving by a building society of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of permanent shares in the building society if—

- (a) the building society does so under a special resolution passed by

Financial Institutions Code 1992

the building society; and

- (b) the notice of the proposed special resolution given to members of the building society sets out—
 - (i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and
 - (ii) the effect that the giving of the financial assistance would have on the financial position of the building society and any group for which the building society is the holding building society;

and is accompanied by a copy of a statement made under a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not fewer than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the building society (including future liabilities and contingent liabilities), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the building society or any class of those creditors or members; and

- (c) not later than the day after the day when the notice mentioned in paragraph (b) is given to members of the building society, there is lodged with the SSA a copy of that notice and a copy of the statement that accompanied the notice; and
- (d) within 21 days after the general meeting of the building society at which the special resolution is passed a notice—
 - (i) setting out the terms of the special resolution; and
 - (ii) stating that any of the persons specified in subsection (6) may, within the period specified in that subsection, make an application to the Court opposing the giving of the financial assistance;

is published, in each State in which the building society is carrying on business, in a newspaper circulating generally in the State; and

- (e) no application opposing the giving of the financial assistance is

made within the period specified in subsection (6) or, if such an application is made, the application is withdrawn or the Court approves the giving of the financial assistance.

(5) If, on application to the Court by a building society, the Court is satisfied that subsection (4) has been substantially complied with by the building society in relation to proposed financial assistance of the kind mentioned in that subsection, the Court may, by order, declare that the subsection has been complied with in relation to the proposed financial assistance.

(6) If a special resolution is passed by a building society, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice mentioned in subsection (4)(d), by—

- (a) a member or creditor of the building society; or
- (b) a member or creditor of a subsidiary of the building society; or
- (c) the SSA.

(7) On an application under subsection (6), the Court—

- (a) is to, in determining what orders to make in relation to the application, have regard to the rights and interests of the members of the building society or of any class of them as well as to the rights and interests of the creditors of the building society or of any class of them; and
- (b) may not make an order approving the giving of the financial assistance unless the Court is satisfied that—
 - (i) the building society has disclosed to the members of the building society all material matters relating to the proposed financial assistance; and
 - (ii) the proposed financial assistance would not, after taking into account the financial position of the building society (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the building society or of any class of those creditors or members; and
- (c) may do all or any of the following—

- (i) make an order for the purchase by the building society of the interests of dissentient members of the building society;
- (ii) adjourn the proceeding in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the building society or by a subsidiary of the building society) of the interests of dissentient members;
- (iii) give such ancillary or consequential directions and make such ancillary or consequential orders as it considers appropriate;
- (iv) make an order disapproving the giving of the financial assistance or, subject to this section, an order approving the giving of the financial assistance.

(8) If the Court makes an order under this section in relation to a building society, the building society must, within 14 days after the making of the order, lodge with the SSA an office copy of the order.

(9) The passing of a special resolution by a building society relating to financial assistance, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the building society of any duty to the building society under this Code or otherwise (whether or not of a fiduciary nature) in connection with the giving of the financial assistance.

(10) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

Consequences of building society financing dealings in its permanent shares etc.

180.(1) Except as provided by this section—

- (a) the validity of a contract or transaction is not affected by a contravention of section 178(1)(a) (Building society financing dealings in its permanent shares etc.); and
- (b) the validity of a contract or transaction is not affected by a contravention of section 178(1)(b) unless the contract or transaction effects the acquisition that constitutes the contravention; and

- (c) the validity of a contract or transaction is not affected by a contravention of section 178(1)(c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) If a building society makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid because—

- (a) the contract was made or performed, or the transaction was engaged in, in contravention of section 178 (Building society financing dealings in its permanent shares etc.); or
- (b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

the first contract or transaction is, subject to this section, voidable at the option of the building society by written notice given to each of the other parties to the contract or transaction.

(3) The Court may, on the application of a member, officer or creditor of a building society, by order, authorise the person to give a notice under subsection (2) in the name of the building society.

(4) If—

- (a) a building society makes or performs a contract, or engages in a transaction; and
- (b) the contract is made or performed, or the transaction is engaged in, in contravention of section 178 (Building society financing dealings in its permanent shares etc.) or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section; and
- (c) the Court is satisfied, on the application of the building society or of another person, that the building society or that other person has suffered, or is likely to suffer, loss or damage because of—
 - (i) the making or performance of the contract or the engaging in of the transaction; or
 - (ii) the making or performance of a related contract or the engaging in of a related transaction; or
 - (iii) the contract or transaction being void because of section 178

Financial Institutions Code 1992

(Building society financing dealings in its permanent shares etc.) or having become void, or becoming void, under this section; or

- (iv) a related contract or transaction being void because of section 178 (Building society financing dealings in its permanent shares etc.) or having become void, or becoming void, under this section;

the Court may make such orders as it considers just and equitable (including, for example, any of the orders mentioned in subsection (5)) against a party to the contract or transaction or to the related contract or transaction, or against the building society or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under subsection (4) include—

- (a) an order directing a person to refund money or return property to the building society or another person; and
- (b) an order directing a person to pay to the building society or another person a specified amount not more than the amount of the loss or damage suffered by the building society or other person; and
- (c) an order directing a person to indemnify the building society or another person against any loss or damage that the building society or other person may suffer because of the contract or transaction or because of the contract or transaction being or having become void.

(6) If a certificate signed by at least 2 directors, or by a director and a secretary, of a building society stating that the requirements of section 179(4) (Exceptions) have been complied with in relation to the proposed giving by the building society of financial assistance for the purpose of an acquisition or proposed acquisition by a person of permanent shares in the building society is given to a person—

- (a) the person to whom the certificate is given is not under any liability to have an order made against the person under subsection (4) because of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate;

and

- (b) any such contract or transaction is not invalid, and is not voidable under subsection (2), because the contract is made or performed, or the transaction is engaged in, in contravention of section 178 (Building society financing dealings in its permanent shares etc.) or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section.

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the building society concerned or another person who has suffered, or is likely to suffer, loss or damage because of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 179(4) (Exceptions) had not been complied with in relation to the financial assistance to which the certificate related.

(8) For the purpose of subsection (7), a person is, in the absence of evidence to the contrary, taken to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In a proceeding, a document purporting to be a certificate given under subsection (6) is, in the absence of evidence to the contrary, taken to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) is, in the absence of evidence to the contrary, taken to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 179(4) (Exceptions) have been complied with in relation to the proposed giving by a building society of financial assistance and any of those requirements had not been complied with in relation to the proposed giving of that assistance at the time when the certificate was signed by that person, the person commits an offence.

Maximum penalty—\$25 000.

(12) If a building society makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 178(1)(a) (Building society financing dealings in its permanent shares etc.) or lends money as mentioned in section 178(1)(c), any contract or transaction made or engaged in because of, or by means of, or in relation to, the financial assistance or money is to be taken, for the purposes of this section, to be related to the first contract or transaction.

(13) The power of a court under section 409 (Power to grant relief) to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against the person.

(14) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, if there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of the person apart from this section, the provisions of this section or of the order made by the Court prevail.

Prohibition on subsidiary acquiring permanent shares of holding building society

181.(1) A body corporate must not be a holder of permanent shares of a building society that is its holding building society, and any allotment or transfer of permanent shares in a building society to its subsidiary is void.

(2) This section does not prevent a subsidiary from continuing to be a holder of permanent shares of its holding building society if, at the time when it becomes a subsidiary of the holding building society, it already holds permanent shares in the holding building society, but the subsidiary must, within 1 year or such longer period as the Court may allow after becoming the subsidiary of its holding building society, dispose of all of its shares in the holding building society.

(3) Subsections (1) and (2) apply in relation to a nominee for a body corporate that is a subsidiary as if references in this section to such a body corporate included references to a nominee for it.

- (4) Subsection (1) does not apply if—
- (a) the subsidiary is concerned as a personal representative; or
 - (b) the subsidiary is concerned as a trustee and—
 - (i) the holding building society or a subsidiary of the holding building society is not beneficially interested under the trust; or
 - (ii) the holding building society or a subsidiary of the holding building society is beneficially interested under the trust only by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, other than a transaction entered into with an associate of the holding building society or a subsidiary of the holding building society.

Options over permanent shares

182.(1) An option granted by a building society that enables a person to take up permanent shares in the building society after the end of 5 years from the date on which the option was granted is void.

(2) Subsection (1) does not apply where the holders of debentures of a building society have an option to take up permanent shares in the building society by way of redemption of the debentures.

Division 4—Redeemable preference shares

Interpretation

183. In this Division—

“**building society**” includes a financial institution that, under the regulations, may issue redeemable preference shares.

Application of certain provisions of Code to redeemable preference shares

184.(1) The following provisions apply to redeemable preference shares

to which this Division relates with all necessary modifications and any prescribed modifications—

- (a) section 163(2) (Issue of permanent shares);
- (b) section 165 (Rights of holders of preference shares to be set out in rules);
- (c) section 167 (Dividends, interest etc. in relation to permanent shares);
- (d) section 168 (Approval of rules for permanent share issues);
- (e) section 174 (Prohibition of allotment unless minimum subscription received);
- (f) section 175 (Return as to allotments);
- (g) section 176 (Issue of permanent shares at premium);
- (h) section 178 (Building society financing dealings in its permanent shares etc.);
- (i) section 179 (Exceptions);
- (j) section 180 (Consequences of building society financing dealings in its permanent shares etc.);
- (k) section 181 (Prohibition on subsidiary acquiring permanent shares of holding building society);
- (l) section 182 (Options over permanent shares);
- (m) section 260 (Register of holders of permanent shares);
- (n) section 261 (Power of Court to rectify register of holders of permanent shares);
- (o) section 262 (Register of options).

(2) Without limiting subsection (1), those provisions apply to redeemable preference shares as if those shares were permanent shares that are preference shares.

Issue of redeemable preference shares

185.(1) Subject to this section, a building society that has permanent share capital may, if authorised by its rules, issue redeemable preference

shares.

(2) The building society must not redeem the shares—

- (a) except on such terms, and in such way, as are provided by the society's rules; and
- (b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of permanent or redeemable preference shares made for the purposes of the redemption; and
- (c) unless they are fully paid-up.

(3) The premium (if any) payable on redemption is to be provided for out of profits or out of the share premium account.

(4) If redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of permanent shares, there must, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the “**capital redemption reserve**” the nominal amount of the shares redeemed, and section 177 (Special resolution for reduction of permanent share capital) applies as if the capital redemption reserve were paid-up permanent share capital of the building society.

(5) If, under this section, a building society has redeemed or is about to redeem preference shares, it may issue permanent shares or new redeemable preference shares up to the sum of the nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

(6) The capital redemption reserve may be applied in paying up unissued permanent shares or redeemable preference shares of the building society to be issued to members of the building society as fully-paid bonus shares.

(7) If a building society redeems any redeemable preference shares, it must, within 14 days after so doing, lodge with the SSA a notice in accordance with the regulations relating to the shares redeemed.

(8) Shares are taken to have been redeemed even if a cheque given in payment of the amount payable on redemption of the shares has not been presented for payment.

(9) If a building society contravenes this section, the building society commits an offence.

Maximum penalty for subsection (9)—\$5 000.

Division 5—Shareholding restrictions

Subdivision 1—Interpretative provisions

Application of Division

186. This Division applies to shares issued by a society under this Code.

Extraterritorial operation of Division

187. Without limiting the generality of section 63 (Extraterritorial operation of legislation)—

- (a) the obligation to comply with this Division extends to all individuals, whether or not resident in this State or in Australia and whether or not Australian citizens, and to all bodies, whether or not incorporated or carrying on business in this State or in Australia; and
- (b) this Division extends to acts done or omitted to be done outside this State, whether or not in Australia.

What constitutes an “entitlement” to shares

188. For the purposes of this Division, the shares in a society to which the society or another society or person is entitled include—

- (a) shares in which the society or person has a relevant interest; and
- (b) except if the person is a nominee body corporate in relation to which a certificate by the SSA is in force under section 190(4) (Interpretation—meaning of “associate”)—shares in which a person who is an associate of the person has a relevant interest.

What constitutes a “relevant interest” in shares

189.(1) For the purposes of this Division, a person has a “**relevant interest**” in a share in a society if—

- (a) the person or an associate of the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or
- (b) the person or an associate of the person has power to dispose of or to exercise control over the disposal of the share; or
- (c) the person or an associate of the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) It is immaterial for the purposes of this section whether a power that a person has—

- (a) is express or implied or formal or informal; or
- (b) is exercisable alone or jointly with other persons; or
- (c) cannot be related to a particular share; or
- (d) is, or is capable of being, exercised, subject to restraint or restriction;

and any such power exercisable jointly with other persons is taken to be exercisable by any of the persons.

(3) A reference in this section to power or control includes a reference to power or control that—

- (a) is direct or indirect; or
- (b) is, or is capable of being, exercised because of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them (whether or not they are enforceable);

and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Without limiting subsections (1) to (3), if a body corporate has, or is by force of this section taken to have, a power and—

- (a) the body corporate is, or its directors are, accustomed or under an

Financial Institutions Code 1992

obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or

- (b) a person has a controlling interest in the body corporate;

the person is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has or is taken to have.

(5) If a body corporate has, or is by force of this section (other than this subsection) taken to have, a power, a person (the “**relevant person**”) is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has, or is taken to have, if—

- (a) the relevant person has; or
(b) a person associated with the relevant person has; or
(c) persons associated with the relevant person together have; or
(d) the relevant person and a person or persons associated with the relevant person together have;

the power to exercise, or to control the exercise of, the voting power attached to not less than 10%, or such other proportion as may be prescribed, of the voting shares in the body corporate.

(6) If a person—

- (a) has entered into an agreement in relation to an issued share; or
(b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or
(c) has an option in relation to an issued share;

and, on performance of the agreement, enforcement of the right or exercise of the option, the person would have a relevant interest in the share, the person is, for the purposes of this section, taken to have that relevant interest in the share.

(7) For the purposes of this section, if a body corporate is, under subsection (6), taken to have a relevant interest in a share and—

- (a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with

the directions, instructions or wishes of a person in relation to the withdrawal of, or the exercise of control over the withdrawal of, the share capital subscribed for that share or in relation to the exercise of, or the control of the exercise of, any right to vote conferred on the holder of the share, or in relation to the disposal of, or the exercise of control over the disposal of, that share; or

- (b) a person has a controlling interest in the body corporate; or
- (c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 10%, or such other proportion as may be prescribed, of the voting shares in the body corporate;

the person is taken to have a relevant interest in that share.

(8) A body corporate may be taken, for the purposes of this Division, to have a relevant interest in a share in the body corporate itself.

(9) A relevant interest in a share is not to be disregarded only because of—

- (a) its remoteness; or
- (b) the way in which it arose.

(10) A director of a society is not taken to have a relevant interest in a share in the society merely because the board is entitled to withhold consent to a transfer of the share.

(11) A regulation may provide that relevant interests in shares in societies are, in such circumstances and subject to such conditions (if any) as are specified in the regulation, to be disregarded for the purposes of this section.

Interpretation—meaning of “associate”

190.(1) A reference in this Division to an associate of a person is a reference to—

- (a) if the person is a body corporate—
 - (i) a director or secretary of the body corporate; or
 - (ii) a body corporate that is related to that person; or
 - (iii) a director or secretary of such a related body corporate; or

- (b) if the matter to which the reference relates is shares in a body corporate (including, in a case where the first person is a body corporate, the first person)—a person (the “**relevant associate**”) that is the body corporate or another person with whom the first person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
 - (i) because of which the relevant associate, or the first person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power in the body corporate; or
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which the relevant associate may acquire from the first person, or the first person may acquire from the relevant associate, shares in the body corporate; or
 - (iv) under which the relevant associate, or the first person, may be required to dispose of shares in the body corporate in accordance with the directions of the first person or the relevant associate, as the case may be; or
 - (c) a person in concert with whom the first person is acting, or proposes to act, in relation to the matter to which the reference relates; or
 - (d) a person with whom the first person is, by force of the regulations, taken to be associated in relation to the matter to which the reference relates; or
 - (e) a person with whom the first person is, or proposes to become, associated, whether formally or informally, in another way in relation to the matter to which the reference relates; or
 - (f) if the first person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, another thing, with a view to becoming associated with a person as mentioned in paragraphs (b) to (e)—the last person.
- (2) A person is not taken to be an associate of another person under

subsection (1)(b) to (f) merely because—

- (a) 1 of the persons gives advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to the person's professional capacity or the person's business relationship with the other person; or
- (b) without limiting paragraph (a), if the ordinary business of 1 of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of the business.

(3) For the purposes of subsection (1)(b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(4) The SSA may issue to a nominee body corporate a certificate declaring the nominee body corporate to be an approved nominee body corporate for the purposes of section 188 (What constitutes an "entitlement" to shares) and may, at any time, by written notice given to the nominee body corporate, revoke the certificate.

(5) The SSA may issue to a person a certificate declaring that specified shares in which the person has a relevant interest are to be disregarded for the purposes of ascertaining the shares to which another person specified in the certificate is entitled and may, at any time, by written notice given to the first person, revoke the certificate.

Interpretation—meaning of voting power or right to vote

191. For the purposes of this Division, a reference to voting power or a right to vote attached to a share in a body corporate is, if the body corporate is a society, to be read as a reference to the right to vote conferred on the holder of a share in the society.

Inadvertence or mistake

192. In determining, for the purposes of a provision of this Division, whether or not a person's contravention of such a provision was due to the person's inadvertence or mistake or to the person not being aware of a

relevant fact or happening, a person's ignorance of, or a mistake on the person's part concerning, a matter of law is to be disregarded.

Subdivision 2—Maximum shareholdings

Maximum permissible shareholding

193.(1) For the purposes of this Subdivision, a person has more than the maximum permissible shareholding in a society if the person has an entitlement—

- (a) if a society has issued 1 class of either permanent shares or redeemable preference shares—to permanent shares or redeemable preference shares in the society, as the case may be, of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares or redeemable preference shares issued by the society; or
- (b) if a society has issued 1 class of permanent shares and 1 class of redeemable preference shares—
 - (i) to permanent shares in the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares issued by the society; or
 - (ii) to redeemable preference shares in the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all redeemable preference shares issued by the society; or
- (c) if a society has issued more than 1 class of permanent shares or more than 1 class of redeemable preference shares—to shares in any class of shares of the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all shares of that class issued by the society; or
- (d) to the withdrawable shares of a society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all withdrawable shares issued by the society.

(2) A percentage applicable under subsection (1) may be varied in its

application to a particular society by being decreased by the rules of the society.

Consequences of exceeding maximum permissible shareholding

194.(1) If a person has more than the maximum permissible shareholding in a society, the society must—

- (a) in the case of permanent shares—forfeit and sell the excess shares; or
- (b) in the case of withdrawable shares—cancel the excess shares and pay to the holder of any cancelled shares the amount paid-up on the shares, together with any other amount to which the holder may be entitled in relation to the shares.

(2) A society that is required to cancel shares must do so whether or not its rules provide for the cancellation of shares.

(3) A society must not cancel shares if the result of taking such action would be that the society fails to satisfy, or is in breach of a standard, but, in that case, the society must notify the SSA and take such action as the SSA may determine to achieve compliance with this section within such period as the SSA may determine.

(4) The order in which shares are cancelled must be as determined under the society's rules or, if there are no rules relating to the matter, as determined by the society's board.

(5) Section 173 (Sale of permanent shares forfeited for non-payment of call) applies to the offering and sale of shares forfeited as if the shares had been forfeited for non-payment of a call.

(6) If a person has more than the maximum permissible shareholding in a society and a society is required to cancel or forfeit and sell the excess shares, the person is not entitled to a vote in any meeting of members of the society until the excess shares are cancelled or forfeited and sold.

Exceptions

195. Section 194 (Consequences of exceeding maximum permissible shareholding) does not apply to a person—

- (a) who acquired the relevant interests concerned in accordance with an approval given under Part 7 (Mergers and transfers of engagement); or
- (b) who has the relevant interests concerned because of a share issue and the relevant interests represent a proportion of the issued shares of the society concerned no more than the proportion which the person had before the share issue; or
- (c) if the person had, before acquiring the excess shares, reported the proposal to acquire them to the SSA and obtained approval under section 199 (Power of SSA to exempt etc. from Division 5) and the total nominal value of the shares held by the person is not more than the limit approved under that section in relation to the person.

Subdivision 3—Substantial shareholdings

Substantial shareholding and substantial shareholders

196.(1) Part 6.7 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 6.7 of the Corporations Law are to be applied as if—

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA; and
- (c) a reference to a shareholder were a reference to a member; and
- (d) a reference to a voting share were a reference to a share; and
- (e) the expressions “**entitlement**”, “**relevant interest**” and “**associate**” had the meaning given in this Division rather than the meaning given in that Law.

(3) The purpose of subsections (1) and (2) is to apply Part 6.7 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 (Acquisition of shares) of the Corporations Law.

(4) However, the application of Part 6.7 of the Corporations Law under

subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

Subdivision 4—Power of societies to obtain information

Power to obtain information

197.(1) Part 6.8 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 6.8 of the Corporations Law are to be applied as if—

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA; and
- (c) the expressions “**entitlement**”, “**relevant interest**” and “**associate**” had the meaning given in this Division rather than the meaning given in that Law.

(3) The purpose of subsections (1) and (2) is to apply Part 6.8 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 (Acquisition of shares) of the Corporations Law.

(4) However, the application of Part 6.8 of the Corporations Law under subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

Subdivision 5—Enforcement

Court orders—substantial shareholdings

198.(1) For the purposes of this Part, sections 741 to 744 of the Corporations Law apply to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), those sections of the Corporations Law are to be applied as if—

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA.

Power of SSA to exempt etc. from Division 5

199.(1) The SSA may, subject to the standards, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with all or any of the provisions of this Division or any regulation made for the purposes of this Division.

(2) A person must not contravene a condition to which an exemption is subject.

Maximum penalty—\$25 000.

(3) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(4) The SSA may, subject to the standards, by written notice, declare that a provision of this Division or a regulation made for the purposes of this Division, has effect in its application to a particular person or particular persons—

- (a) in a particular case; or
- (b) in relation to particular shares or shares included in a particular class of shares;

as if the provision or regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the provision or regulation has effect accordingly.

(5) The SSA must cause a notification of the making of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

(6) A notification mentioned in subsection (5) must name—

- (a) the persons to whom the exemption or declaration relates; and
- (b) the provisions to which the exemption or declaration relates; and
- (c) if the exemption or declaration relates to a particular society or class of society—the society or class.

Division 6—Issue of securities**Definition**

200. In this Division—

“**society**” includes a prescribed financial institution and a financial institution of a prescribed class.

Documents acknowledging deposits or loans pursuant to offer to the public etc.

209.(1) If a society accepts money on deposit or loan from a person under an offer made to the public to accept money on deposit or loan or an invitation issued to the public to lodge money on deposit or loan, the society must, within 2 months after accepting the money, issue to the person a document that—

- (a) acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the society in relation to the deposit or loan; and
- (b) complies with the requirements of the regulations.

(2) Subsection (1) does not apply—

- (a) in relation to any offer or invitation if a prospectus or statement is registered or is required to be registered for the purposes of Division 2 or 5 of Part 7.12 of the Corporations Law in relation to the offer or invitation; or
- (b) in any case or circumstances of a prescribed kind.

Issuing of certain securities at a discount prohibited

210. A building society must not issue—

- (a) permanent shares at a discount; or
- (b) other securities at a discount unless they are of a prescribed class.

Issuing of securities as partly paid up etc.

211.(1) A society must not issue securities, other than withdrawable shares and permanent shares, as partly paid up.

(2) A society must not issue securities otherwise in consideration of the payment of cash.

(3) Subsection (2) does not apply to the issue of permanent shares.

Power of SSA to exempt etc. from Division 6

212.(1) The SSA may, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with all or any of the provisions of this Division (other than section 210 (Issuing of certain securities at a discount prohibited) or 211 (Issuing of securities as partly paid up etc.)) or a regulation made for the purposes of this Division.

(2) An exemption may relate to any particular securities or to securities included in a class of securities.

(3) A person must not contravene a condition to which an exemption is subject.

Maximum penalty—\$25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a provision of this Division (other than section 210 (Issuing of certain securities at a discount prohibited) or 211 (Issuing of securities as partly paid up etc.)), or a regulation made for the purposes of or under this Division, has effect in its application to or in relation to a particular person or particular persons—

(a) in a particular case; or

(b) in relation to particular securities or securities included in a particular class of securities;

as if the provision or regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the provision or regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

Division 7—Exempt stock market

Application of Division

213.(1) This Division applies only to a building society that has issued permanent shares.

(2) In this Division—

“**building society**” includes a financial institution that, under the regulations, may issue permanent shares.

Stock market

215.(1) A building society must not establish or operate a stock market for trade in securities issued by the building society except—

- (a) in accordance with an exemption under section 771 of the Corporations Law; and
- (b) in accordance with any applicable standard; and
- (c) as authorised by the society’s rules.

Maximum penalty—\$75 000.

(2) Rules of a building society relating to a stock market may only be registered by the SSA if they comply with the requirements of any applicable standard and are, in the SSA’s opinion, otherwise appropriate.

Division 8—Title to and transfer of securities

Definition

216. In this Division—

“**building society**” includes a prescribed financial institution.

Restricted application of this Division

216A. This Division does not apply to the extent that its application would be inconsistent with the application under its own force of Part 7.13 (Title to, and transfer of, securities), Division 3 (Transfer of marketable securities and marketable rights) of the Corporations Law.

Document of title to be evidence of title

217.(1) A document of title issued by a building society specifying any securities held by a member of the building society is evidence of the member's title to the securities.

(2) A document of title must be under the common seal of the building society and must state—

- (a) the name of the building society; and
- (b) the class of the securities; and
- (c) if appropriate, the nominal value of the securities and the extent to which the securities are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of securities in a building society.

Building society may have duplicate common seal

218. A building society may, if authorised by its rules, have a duplicate common seal, that must be a facsimile of the common seal of the building society with the addition on its face of the words 'Share Seal' or 'Document Seal' and a document of title referring to or relating to securities of the building society sealed with such a duplicate seal is taken to be sealed with the common seal of the building society.

Loss or destruction of documents

219.(1) Subject to subsection (2), where a document of title to shares, debentures or prescribed interests is lost or destroyed, the building society must, on application by the owner of the shares, debentures or prescribed interests issue a duplicate document to the owner—

Financial Institutions Code 1992

- (a) if the building society requires the payment of an amount of not more than the prescribed amount—within 21 days after the payment is received by the building society or within such longer period as the SSA approves; or
 - (b) in any other case—within 21 days after the application is made or within such longer period as the SSA approves.
- (2) The application must be accompanied by—
- (a) a written statement that the document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and
 - (b) a written undertaking that if it is found or received by the owner it will be returned to the building society.
- (3) The directors of a building society may, before accepting an application for the issue of a duplicate document, require the applicant to—
- (a) cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the document has been lost or destroyed and that the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the building society for a duplicate; or
 - (b) give a bond for an amount equal to at least the current market value of the shares, debentures or prescribed interests indemnifying the building society against loss following the production of the original document; or
 - (c) do both those things.
- (4) If—
- (a) a document of title to shares, debentures or prescribed interests is cancelled under the SCH certificate cancellation provisions; and
 - (b) having regard to the provisions, the document should not have been cancelled;

this section applies to the document as though it were destroyed on its cancellation.

- (5) For subsection (4)—

“SCH certificate cancellation provisions” has the meaning given by section 9 of the Corporations Law.

Instrument of transfer

220.(1) Despite anything in its rules or in a deed relating to permanent shares, debentures or prescribed interests, a building society must not register a transfer of permanent shares, debentures or prescribed interests unless an instrument of transfer has been delivered to the building society.

(2) The instrument of transfer must—

- (a) be in writing in any usual or common form or in any other form that the directors of the building society approve; and
- (b) be executed by or on behalf of both the transferor and the transferee.

(3) Subsection (1) does not prejudice the power of the building society to register as the holder of a security a person to whom the right to any securities issued by the building society has devolved by will or by operation of law.

(4) A transfer of shares, debentures or prescribed interests of a deceased holder made by the holder’s personal representative is, although the personal representative is not registered as the holder of those securities, as valid as it would be if the personal representative had been so registered at the time of the execution of the instrument of transfer.

(5) If the personal representative of a deceased holder duly constituted as such under the law in force in another participating State—

- (a) executes an instrument of transfer of shares, debentures or prescribed interests of the deceased holder to the personal representative or to another person; and
- (b) delivers the instrument to the building society, together with a written statement to the effect that, to the best of the personal representative’s knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in this State and no application for such a grant will be made, being a statement made within 3 months immediately before the date of delivery of the statement to the

building society;

the building society must register the transfer and pay to the personal representative any dividends or other money accrued in relation to the securities up to the time of the execution of the instrument, but this subsection does not operate so as to require the building society to do anything that it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of this State.

(6) A transfer or payment made under subsection (5) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as it would be if the personal representative were the personal representative of the deceased holder duly constituted under the law of this State.

(7) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of a security in place of the deceased person is taken to be an instrument of transfer effecting a transfer of the security to the personal representative.

(8) The production to a building society of a document that is, under the law of this State or under the law in force in another participating State, sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to a person must be accepted by the building society, despite anything in its rules or in a deed relating to its securities, as sufficient evidence of the grant.

Registration of transfer at request of transferor

221.(1) On the written request of the transferor of a permanent share, debenture or prescribed interest issued by a building society, the building society must enter in the appropriate register the name of the transferee in the same way and subject to the same conditions as it would if the application for the entry were made by the transferee.

(2) On the written request of the transferor of a permanent share, debenture or prescribed interest issued by a building society, the building society must, by written notice, require the person having the possession, custody or control of the document evidencing title to the security and the instrument of transfer of the security or either of them to deliver it or them to the registered office of the building society within a specified period (not

less than 7 and not more than 28 days after the date of the notice) to have the document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to the Court to issue a summons for the person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) On the appearance of a person so summoned, the Court may examine the person on oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person's absence and, in either case, the Court may order the person to deliver up such documents to the building society on such terms or conditions as the Court considers appropriate, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

(5) Lists of documents called in under this section and not brought in must be displayed in a conspicuous place at the registered office of the building society and must be advertised in the Gazette and in such newspapers and at such times as the building society considers appropriate.

Notice of refusal to register transfer

222. If a building society refuses to register a transfer of permanent shares, debentures or prescribed interests issued by the building society, it must, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

Remedy for refusal to register transfer or transmission

223.(1) If a building society fails to register, or the board of a building society fails to give its approval to, a transfer or transmission of permanent shares, debentures or prescribed interests issued by the building society, the transferee or transmittee may apply to the Court for an order under this section.

(2) If the Court is satisfied that the failure was without just cause, the Court may—

- (a) order that the transfer or transmission be registered; or
- (b) make such other order as it considers proper, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the building society or by the building society.

Certification of transfers

224.(1) The certification by a building society of an instrument of transfer of permanent shares, debentures or prescribed interests issued by the building society is taken to be a representation by the building society to any person acting on the faith of the certification that there have been produced to the building society such documents as on the face of them show title to the securities in the transferor named in the instrument of transfer but is not taken to be a representation that the transferor has any title to the securities.

(2) If a person acts on the faith of a false certification by a building society made negligently, the building society is under the same liability to the person as if the certification had been made fraudulently.

(3) If a certification is expressed to be limited to 42 days or any longer period from the date of certification, the building society and its officers are not, in the absence of fraud, liable in relation to the registration of any transfer of permanent shares, debentures or prescribed interests comprised in the certification after the end of the period or any extension of the period given by the building society if the instrument of transfer has not, within the period, been lodged with the building society for registration.

(4) For the purposes of this section—

- (a) an instrument of transfer is taken to be certificated if it bears the words ‘document lodged’ or words to similar effect; and
- (b) the certification of an instrument of transfer is taken to be made by a building society if—
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on behalf of the building society; and
 - (ii) the certification is signed by a person authorised to certificate

transfers on behalf of the building society or by an officer of the building society or of a corporation so authorised; and

- (c) a certification that purports to be authenticated by a person's signature or initials (whether or not handwritten) is to be taken to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorised to use the signature or initials for the purpose of certifying transfers on behalf of the building society.

Duties of building society in relation to issue of certificates

225.(1) Within 2 months after the issue to a person of permanent shares, debentures or prescribed interests of a building society, the building society must—

- (a) complete and have ready for delivery to the person all the appropriate documents in connection with the securities unless, in the case of shares, the conditions of the issue otherwise provide; and
- (b) unless otherwise instructed by the person, send or deliver the completed documents to the person or, if the person has instructed the building society in writing to send them to a nominated person, to the nominated person.

(2) Within 1 month after a transfer of permanent shares, debentures or prescribed interests is lodged with a building society (other than a transfer that the building society is for any reason entitled to refuse to register and does not register), the building society must—

- (a) complete and have ready for delivery to the transferee all the appropriate documents in connection with the transfer; and
- (b) unless otherwise instructed by the transferee, send or deliver the completed documents to the transferee or, if the transferee has instructed the building society in writing to send them to a nominated person, to the nominated person.

(3) If a building society on which a notice has been served requiring the building society to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service

of the notice, the Court may, on the application of the person entitled to take delivery of the documents, make an order directing the building society and any officer of the building society to make good the default within a specified time.

(4) An order under subsection (3) may provide that all costs of and incidental to the application are to be borne by the building society or by any officer of the building society in default in such proportions as the Court considers appropriate.

Exemption

226.(1) The power of the SSA to grant an exemption or make a declaration under this section may be exercised in relation to securities or a class of securities only if the SSA is satisfied that—

- (a) if the exemption were granted or the declaration were made—the interests of the holders of the securities or of securities in the class would continue to have adequate protection; and
- (b) the granting of the exemption or the making of the declaration would make transfer of the securities, or securities in the class, more efficient.

(2) The SSA may, by written notice, exempt particular securities, or a particular class of securities, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of—

- (a) this Division; and
- (b) a regulation made for the purposes of this Division.

(3) A person must not contravene a condition to which an exemption under subsection (2) is subject.

Maximum penalty—\$25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a provision of this

Division or a regulation made for the purposes of this Division has effect in its application to particular securities, or a particular class of securities, either generally or otherwise as provided in the declaration, as if the provision or regulation were omitted or modified or varied in a way specified in the declaration and, if such declaration is made, the provision or regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

Division 9—Registration of charges

Registration of charges

227.(1) Subject to this Division, Part 3.5 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 3.5 of the Corporations Law are to be applied as if—

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA.

Directions by AFIC and SSA

228.(1) AFIC may, from time to time, issue directions to societies in relation to standards, principles, practices and procedures to be observed in or in connection with the creation and registration of charges and may, from time to time, amend, vary or cancel a direction so issued.

(2) The SSA may, from time to time, issue directions, not inconsistent with directions issued by AFIC under subsection (1), in relation to the matters mentioned in that subsection and may, from time to time, amend, vary or cancel a direction so issued by the SSA.

(3) A provision of a direction issued under this section may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or

- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body; or
- (d) do any combination of those things.

(4) A regulation may make provision with respect to the creation and registration of charges and, in particular, a regulation may be made with respect to the following—

- (a) the issue of directions by AFIC or SSA under this section;
- (b) the enforcement of directions issued under this section.

SSA approval of charges necessary in certain circumstances

229.(1) The prior approval of the SSA to the creation of a charge on the property of a society is required except in prescribed circumstances.

(2) The SSA may decline to register a charge that has been created without the prior approval of the SSA.

(3) In determining whether or not to approve or whether to register a charge, the SSA must have regard to the effects that the charge may have on compliance by the society with the standards.

PART 6—MANAGEMENT

Division 1—Directors and officers

Interpretation

230. In this Division—

“**employee**”, in relation to a society, includes a person, or an employee of a person, who provides the society with services under a management contract.

Board of directors

231.(1) The business and operations of a society are to be managed and controlled by a board of directors.

(2) Subject to this section, the board may exercise all the powers of the society.

(3) The powers of the board are subject to any restrictions imposed by the financial institutions legislation, applicable standards and the society's rules.

(4) Every director acting in the society's business or operations under a resolution duly passed by the board is taken to be acting as the society's duly authorised agent.

(5) Anything done by or in relation to a director is not invalid merely because of a defect or irregularity in the director's election or appointment.

Meetings

232.(1) Meetings of a society's board must be held as often as is necessary for properly conducting the society's business.

(2) Meetings of the board must be held at intervals of not longer than 3 months.

(3) A quorum at a meeting of the board is the number of directors prescribed by the society's rules, but must not be less than half the total number of directors.

(4) Subject to this section, a meeting of the board may be conducted in any way prescribed by the society's rules.

Number of directors

233. The number of directors of a society must not be less than 5.

Election or appointment of directors

234.(1) Subject to the financial institutions legislation and to any standard about the election or appointment of directors the directors of a society are elected or appointed, hold and vacate office, and retire or are removed from

office, as prescribed by the society's rules.

(2) A director holds office for a term (not longer than 3 years) as is prescribed by the society's rules.

(3) Despite subsection (2), 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).

(4) A director is eligible for re-election at the end of the director's term.

(5) The directors must be elected—

- (a) at the annual general meeting of the society; or
- (b) by postal voting under the society's rules; or
- (c) in such other way as is prescribed by the society's rules.

(6) If the directors are elected by postal voting, the society must cause the results of the election to be announced at the society's next annual general meeting.

(7) Nothing in this section prevents a person nominated as a director from being appointed as a director if the number of directors nominated is less than or equal to the number of places to be filled.

Employee directors

235. The members of a society may, under the society's rules, elect 1 employee of the society nominated by the directors to be a director of the society.

Alternate directors

236.(1) If authorised by a society's rules, a director may appoint a person, who is eligible to be a director of the society, to be the alternate director in place of that director.

(2) The alternate director may act as a director in the absence of the

director who appointed him or her.

(3) Only a director who is an employee of the society may appoint an employee of the society to be his or her alternate director.

Chairperson

237.(1) A society's board must elect 1 of its members as chairperson.

(2) An employee of the society is not eligible to be the chairperson.

(3) The chairperson—

- (a) must hold office; and
- (b) must retire; and
- (c) may be removed from office;

as prescribed by the society's rules.

Qualifications of directors

238. Subject to sections 235 (Employee directors) and 236 (Alternate directors), a person is not eligible to be a director of a society if the person—

- (a) is a minor; or
- (b) is not—
 - (i) a member of the society; or
 - (ii) the representative, appointed under section 134 (Corporate membership), of a body corporate member of the society; or
- (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
- (e) is prohibited from being a director of a body corporate by the Corporations Law for a reason other than the person's age; or

- (f) has been convicted in the last 10 years—
 - (i) of an indictable offence in relation to the promotion, formation or management of a body corporate; or
 - (ii) of an offence involving fraud or dishonesty; or
 - (iii) of any prescribed offence.

Vacation of office

239.(1) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) becomes a person who, under section 238 (Qualifications of directors), is not eligible to be a director; or
- (c) for a director who is the representative, appointed under section 134 (Corporate membership), of a body corporate member of the society and whose eligibility for election to the office was based on being that representative—ceases to be eligible under section 134; or
- (d) for a director elected under section 235 (Employee directors)—ceases to be an employee of the society; or
- (e) is absent from 3 consecutive ordinary meetings of the board without its leave; or
- (f) resigns by written notice of resignation given to the board; or
- (g) is 3 months in arrears for an amount payable to the society and has failed to make arrangements for payment satisfactory to the society; or
- (h) is removed from office by a resolution under section 239A (Removal of directors); or
- (i) completes a term of office.

(2) If a casual vacancy happens in the office of a director as mentioned in subsection (1)(a) to (h), the board may appoint a person who is qualified under section 238 (Qualifications of directors) to fill the vacancy.

(3) The term of office of a director appointed to fill a casual vacancy ends at the end of the next annual general meeting of the society after the

appointment.

(4) A director may not be removed from office, and the office of a director does not become vacant, except as provided by the financial institutions legislation.

Removal of directors

239A.(1) A society may, by resolution, remove a director before the end of the director's term of office, despite anything in its rules or in any agreement between it and the director.

(2) The resolution may be passed only if the society has given notice to members specifying the proposed resolution and the day and time of the meeting when it is proposed the resolution will be made (the “**relevant meeting**”).

(3) The society must also give a copy of the notice to the director.

(4) A society's rules may provide for—

- (a) the period of notice; and
- (b) the way notice may be given to members; and
- (c) any other relevant matter.

(5) The director may make written representations to the society (of a reasonable length) before the relevant meeting.

(6) The society must promptly send to each member a copy of any written representations made by the director if—

- (a) the director asks the society to do so; and
- (b) there is enough time for the copies to be received by the members at least 2 days before the relevant meeting.

(7) At the relevant meeting, the director—

- (a) is entitled to be heard on the resolution to remove the director; and
- (b) if the director has made written representations under subsection (5) and a copy has not been sent to members under subsection (6)—may require that the representations be read out.

Declaration of interest

240.(1) A director of a society who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract, with the society must declare the nature and extent of the interest to the society's board under this section.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

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

(2) In the case of a proposed contract, the declaration must be made—

- (a) at the meeting of the board at which the question of entering into the contract is first considered; or
- (b) if the director was not at that time interested in the proposed contract—at the next meeting of the board held after the director becomes interested in the proposed contract.

(3) If a director becomes interested in a contract with the society after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.

(4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director—

- (a) is a member or officer of a specified entity; and
- (b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity;

is a sufficient declaration.

(5) A director of a society who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the society's board the fact and the nature, character and extent of the conflict.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

(6) A declaration required by subsection (5) in relation to holding an office or having an interest must be made by a person—

Financial Institutions Code 1992

- (a) if the person holds the office or has the interest when he or she becomes a director—at the first meeting of the board held after—
 - (i) the person becomes a director; or
 - (ii) the relevant facts as to holding the office or having the interest come to the person's knowledge;whichever is the later; or
- (b) if the person starts to hold the office or acquires the interest after the person becomes a director—at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.

(7) A declaration under this section must be recorded in the minutes of the meeting at which it was made and, unless the board otherwise determines, the director must not—

- (a) be present during any deliberation of the board in relation to the matter; or
- (b) take part in any decision of the board in relation to the matter.

(8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not—

- (a) be present during any deliberation of the board for the purpose of making the determination; or
- (b) take part in the making by the board of the determination.

(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.

(9) Every declaration must be reported by the board—

- (a) to the SSA immediately after the making of the declaration; and
- (b) to the members at the next annual general meeting after the making of the declaration.

(10) A society must, within 3 months after the end of its financial year, lodge with the SSA a return specifying—

- (a) all declarations made to the board during that financial year; and
- (b) all declarations in force at the end of the financial year.

Maximum penalty—\$50 000.

(11) This section is in addition to any rule of law or any provision in a society's rules restricting a director from having an interest in contracts with the society or from holding offices or having interests involving duties or interests in conflict with the director's duties or interests as a director.

General duty to make disclosure

241.(1) A director of a society must give written notice to the society—

- (a) of such particulars relating to securities, rights, options and contracts as are necessary to enable the society to comply with section 258 (Register of directors etc.); and
- (b) of particulars of any change relating to the particulars mentioned in paragraph (a), including the consideration (if any) received because of the event giving rise to the change.

(2) A notice under subsection (1) must be given—

- (a) if the notice is under subsection (1)(a)—within 14 days after the person—
 - (i) became a director; or
 - (ii) became aware that the person had acquired the securities, a relevant interest in the securities or the rights or options; or
 - (iii) entered into the contracts;

whichever happens last; and

- (b) if the notice is under subsection (1)(b)—within 14 days after the person becomes aware of the happening of the event giving rise to the change.

(3) A society must, within 7 days after receiving a notice, send a copy to each of the other directors of the society.

(4) A director or society who contravenes this section commits an offence and is liable on conviction to a maximum penalty of \$25 000.

(5) In any proceeding under this section, a person is, in the absence of evidence to the contrary, to be taken to have been aware at a particular time of a fact or happening of which an employee or agent of the person, being an employee or agent having duties of acting in relation to his or her employer's or principal's interests in a security issued by the society concerned, was aware at that time.

Certain financial accommodation to officers prohibited

242.(1) An officer of a society who is not a director of the society must not obtain financial accommodation from the society other than—

- (a) with the approval of a majority of the directors; or
- (b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Maximum penalty—\$50 000 or imprisonment for 7 years.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a society if it is obtained by—

- (a) a proprietary company in which the officer is a shareholder or director; or
- (b) a trust of which the officer is a trustee or beneficiary; or
- (c) a trust of which a body corporate is trustee if the officer is a director or other officer of the body corporate.

(3) A society must not give financial accommodation to an officer of the society if—

- (a) by giving the financial accommodation, the officer would contravene this section; and
- (b) the society knows or should reasonably know of the contravention.

Maximum penalty—\$50 000.

Financial accommodation to directors and associates

243.(1) In this section—

“associate” of a director means—

- (a) the director’s spouse; or
- (b) a person when acting in the capacity of trustee of a trust under which—
 - (i) the director or director’s spouse has a beneficial interest; or
 - (ii) a body corporate mentioned in paragraph (c) has a beneficial interest; or
- (c) a body corporate if—
 - (i) the director or director’s spouse has a material interest in shares in the body corporate; and
 - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(1A) For the purposes of this section, a person has a **“material interest”** in a share in a body corporate if—

- (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or
- (b) the person has power to dispose of or to exercise control over the disposal of the share; or
- (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) A society must not provide financial accommodation to a director, or to a person the society knows or should reasonably know is an associate of a director, unless—

- (a) the accommodation is—
 - (i) approved under subsection (3); or
 - (ii) given under a scheme approved under subsection (3); or
 - (iii) provided on terms no more favourable to the director or

Financial Institutions Code 1992

associate than the terms on which it is reasonable to expect the society would give if dealing with the director or associate at arm's length in the same circumstances; and

- (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Maximum penalty—\$50 000.

(3) For the purposes of subsection (2)(a)(i) and (ii), financial accommodation or a scheme is approved if—

- (a) it is approved by a resolution passed at a general meeting; and
- (b) full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(4) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (2) commits an offence.

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

(5) If a director of a society or an associate of a director accepts in payment of a debt owed by a member of the society to the director or associate, any proceeds of financial accommodation provided to the member by the society, this section has effect as if the financial accommodation has been provided to the director or associate.

(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.

(7) In this section, a reference to—

- (a) the provision of financial accommodation to a director or an associate of a director; or
- (b) the obtaining of financial accommodation by a director or an associate of a director; or
- (c) a debt owed to a director or an associate of a director;

includes a reference to a provision of financial accommodation to, or an

obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

Directors' remuneration

244. A director of a society (other than a director who is an employee of the society) must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the society.

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.

Management contracts

245.(1) In this section—

“management contract” means a contract or other arrangement under which—

- (a) a person who is not an officer of the society agrees to perform the whole, or a substantial part, of the functions of the society; or
- (b) a society agrees to perform the whole or a substantial part of its functions—
 - (i) in a particular way; or
 - (ii) in accordance with the directions of any person; or
 - (iii) subject to specified restrictions or conditions.

(2) A society must not enter into a management contract without the prior written approval of the SSA.

Maximum penalty—\$75 000.

(3) The SSA may subject its approval under subsection (2) to conditions.

(4) A management contract entered into in contravention of subsection (2) is void.

(5) A management contract entered into before the commencement of this section becomes void 6 months after that commencement unless the SSA directs that it continue in operation.

Duties of directors and officers

246.(1) An officer of a society must at all times act honestly in the exercise of the powers and the discharge of the functions of his or her office.

(2) If an officer contravenes subsection (1), the officer commits an offence for which the maximum penalty is—

- (a) if because of the contravention—
 - (i) the society is, or its members are, deceived or defrauded; or
 - (ii) a creditor of the society, or a creditor of any other person, is deceived or defrauded;

Financial Institutions Code 1992

\$100 000 or imprisonment for 15 years, or both; or

- (b) if the contravention was committed—
- (i) with the intention of deceiving or defrauding the society or its members, a creditor of the society or a creditor of any other person; or
 - (ii) for any other fraudulent purpose;
- but paragraph (a) does not apply—\$100 000 or imprisonment for 15 years, or both; or
- (c) in any other case—\$50 000 or imprisonment for 7 years, or both.

(3) An officer of a society must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the functions of his or her office and in the protection of the interests of members and depositors.

Maximum penalty—\$25 000.

(4) An officer or employee of a society, or a former officer or employee of a society, must not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

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

(5) An officer or employee of a society must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

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

(6) If—

- (a) a person is convicted of an offence against this section; and
- (b) the court by which the person is convicted is satisfied that the society has suffered loss or damage as a result of the act or omission that constituted the offence;

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the society of an amount specified by the court.

(7) The order may be enforced as if it were a judgment of that court.

(8) If a person contravenes this section, the society may, whether or not the person has been convicted of an offence against this section in relation to that contravention, recover from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned—

- (a) if that person or any other person has made a profit as a result of the contravention—an amount equal to that profit; and
- (b) if the society has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

(9) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors, officers and employees of a society.

(10) Section 10 (Interpretation—meaning of “officer”) applies in relation to subsection (3) as if, in subsection (1)(a) of the section, the words “, executive officer or employee” were omitted and the words “or executive officer” were substituted.

Prohibition on transfer of money

247.(1) Where—

- (a) an investigation is being carried out under Part 10 (Special investigations) in relation to an act or omission by a person, being an act or omission that constitutes or may constitute—
 - (i) a contravention of, or an offence against, this Code; or
 - (ii) an offence involving fraud or dishonesty or concerning the management of affairs of a society; or
- (b) a prosecution has been instituted against a person for an offence against this Code; or
- (c) a civil proceeding has been instituted against a person under this Code;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an “**aggrieved person**”) to whom the person mentioned in paragraph (a), (b) or (c), as the

case may be, (in this section called the “**relevant person**”), is liable, or may be or become liable, to pay money, whether in relation to a debt, by way of damages or compensation or otherwise, or to account for securities or other property, the Court may, on application by the SSA or by an aggrieved person, make 1 or more of the following orders—

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting a person holding money, securities or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities or other property, is or are held;
- (f) an order prohibiting the taking or sending out of Australia, by a person of money of the relevant person or of an associate of the relevant person;
- (g) an order prohibiting the taking, sending or transfer by a person of securities or other property of the relevant person, or of an associate of the relevant person—
 - (i) from a place in this State to a place outside this State (including the transfer of securities from a register in this State to a register outside this State); or
 - (ii) from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);
- (h) an order appointing—
 - (i) if the relevant person is an individual—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
 - (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court

orders, of the property or of part of the property of that person;

- (j) if the relevant person is an individual—an order requiring that person to deliver up to the Court his or her passport and any other documents the Court considers appropriate;
- (k) if the relevant person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.

(2) A reference in subsection (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example—

- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
- (b) in a fiduciary capacity.

(3) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(4) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(5) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(6) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first mentioned order.

(7) An order under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(8) This section has effect subject to the *Bankruptcy Act 1966* (Cwlth).

(9) A person must not contravene an order by the Court under this section that is applicable to the person.

Maximum penalty for subsection (9)—\$100 000 or imprisonment for 15 years, or both.

Unlawfully acting as director

248.(1) A person, who is not the director of a society, or the alternate director of such a director, must not purport to act as a director of a society.

(2) A director of a society must not permit a person who is not a director of the society, or the alternate director of such a director, to purport to act as a director of the society.

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

Division 2—Meetings

Annual general meeting

249.(1) The first annual general meeting of a society must be held within 18 months after it is registered under this Code.

(2) The second and every subsequent annual general meeting of a society must be held within 5 months after the close of its financial year, or within any further time allowed by the SSA or prescribed.

(3) A society that fails to hold an annual general meeting as required by this section commits an offence.

Maximum penalty for subsection (3)—\$5 000.

Special general meeting

250.(1) The board of a society may convene a special general meeting of the society.

(2) The board of a society must immediately proceed to convene a special general meeting of the society if required to do so by not less than the number of members prescribed for that purpose by the society's rules.

Quorum

251.(1) A general meeting of a society must not deal with an item of business unless a quorum is present.

(2) Subsection (1) does not apply to an item of business that may be dealt with by postal voting under the society's rules.

(3) A quorum is as prescribed by the society's rules.

Notice of meeting

252.(1) Subject to subsection (2)—

(a) written notice of an annual general meeting must be given personally or by post to each member of the society at least 14 days before the date of the meeting; and

(b) written notice of a special general meeting must be given personally or by post to each member of the society at least 7 days before the date of the meeting.

(2) If the society's rules so provide, notice of an annual general meeting or special general meeting may be given to the members of the society by advertisement published in a newspaper circulating generally—

(a) in the area of this State in which the society operates; and

(b) if the society operates in another State, or other States—in the other State or States.

(3) Notice of a general meeting of a society must be displayed in a conspicuous place at the registered office and each other office of the society over a period of at least—

(a) in the case of an annual general meeting—14 days immediately before the date of the meeting; and

(b) in the case of a special general meeting—7 days immediately before the date of the meeting.

(4) The failure by a member of a society to receive notice of a general meeting required to be given to the member by this Code does not invalidate the meeting.

(5) A society that fails to give notice of an annual general meeting, or a

special general meeting, or to display notice of an annual general meeting in accordance with this section commits an offence and is liable on conviction to a maximum penalty of \$5 000.

Voting

253.(1) Subject to subsection (2), a member of a society is not entitled to exercise more than 1 vote on any question arising for determination by the society's members.

(2) A member of a building society may, in accordance with the society's rules, exercise up to 1 vote for each permanent share in the society held by the member.

(3) Subsection (1) does not prevent a member of a society who has been appointed to represent a corporate member of the society from voting both as a member and in that other capacity.

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

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

Example—

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

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

(5) The SSA must not register rules of the type referred to in

subsection (4) unless it approves the minimum amount or amounts specified in the rules.

Proxy votes

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

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

(2) 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.

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

Special resolutions

255.(1) For the purposes of this Code, a special resolution is a resolution passed by a majority of not less than two-thirds of the votes cast by those members who, being entitled to vote—

- (a) in any case—are present, either personally or by proxy, at a meeting at which a motion for the passing of the resolution is moved and vote on the resolution; or
- (b) in the case of a merger or transfer of engagements under Part 7 (Mergers and transfers of engagements)—vote on the resolution by a postal ballot conducted in accordance with the regulations.

(2) In the case of a special resolution passed at a meeting, unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Subject to subsection (4), written notice of a proposed special

resolution, setting out its terms, must be given personally or by post to each member of the society who is entitled to vote on the resolution at least 21 days before the date of the meeting or close of the postal ballot.

(4) If the rules of the society so provide, notice of a proposed special resolution, containing the text or a summary of the motion for the passing of the resolution, may be given to the members of the society entitled to vote on the resolution by advertisement published in a newspaper circulating generally—

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

(5) A purported special resolution in relation to which notice has not been given in accordance with subsection (3) or (4) is of no effect.

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

(6) A society must, within 1 month after a special resolution has been passed, submit the resolution to the SSA for registration.

(7) A special resolution is of no effect until registered.

(8) The SSA must register a special resolution of a society if satisfied that—

- (a) the special resolution is not contrary to—
 - (i) the financial institutions legislation; or
 - (ii) the standards; and
- (b) there is no good reason why the special resolution should not be registered.

(9) This section applies in relation only to those matters that are required by this Code or a society's rules to be passed or approved by a special resolution.

Minutes

256. A society must cause full and accurate minutes to be kept of every

meeting of its board, and of every meeting of its members.

Maximum penalty—\$25 000.

Division 3—Registers and inspection

Registers

257.(1) A society must keep such registers as are prescribed.

Maximum penalty—\$25 000.

(2) Subject to this section, all registers required to be kept by a society (whether under this section or any other provision of this Code) must be kept at the registered office of the society and be kept in such way, and contain such particulars, as may be prescribed.

Maximum penalty—\$5 000.

(3) With the written consent of the SSA, all or any of the registers may be kept at an office of the society other than its registered office.

(4) A society may, as authorised by its rules, make an entry in any of its registers or accounts to indicate that money deposited with it is held in trust, but is not to be regarded as being affected by notice of any trust in relation to the money whether or not any such entry is made.

Register of directors etc.

258.(1) In this section—

“**securities**” does not include deposits or withdrawable shares.

(2) In determining for the purposes of this section whether a person has a relevant interest in a security issued by a body corporate, section 189 (What constitutes a “relevant interest” in shares) applies as if a reference in that section to a share were a reference to a security.

(2A) A society must keep a register of its directors, principal executive officer and secretaries in accordance with subsections (3) to (4).

Maximum penalty—\$25 000.

(3) The register must show in relation to each director of the society—

Financial Institutions Code 1992

- (a) the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any) of the director; and
- (b) particulars of directorships held by the director in bodies corporate (other than related bodies corporate 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
- (c) securities issued by the society in which the director has a relevant interest, and the nature and extent of the interest; and
- (d) securities issued by a body corporate that is related to the society, being securities in which the director has a relevant interest, and the nature and extent of that interest; and
- (e) particulars of rights or options of the director, or of the director and another person, in relation to the acquisition or disposal of securities issued by the society or a body corporate that is related to the society; and
- (f) particulars of contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of securities issued by the society or a body corporate that is related to the society.

(3A) The register must show in relation to the principal executive officer and each secretary the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any), of the principal executive officer or secretary.

(4) A society need not show in its register in relation to a director particulars of securities issued by a body corporate that is related to the society and is a wholly owned subsidiary of the society.

Financial Institutions Code 1992

(5) A society must, within 7 days after receiving notice from a director under section 241(1)(a) (General duty to make disclosure), enter in its register, in relation to the director, the particulars specified in subsection (3) of this section, including the number and description of securities, rights, options and contracts to which the notice relates and, in relation to securities, rights or options acquired or contracts entered into after he or she became a director—

- (a) the price or other consideration for the transaction (if any) because of which an entry is required to be made in the register; and
- (b) the date of—
 - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
 - (ii) if there was no transaction, the happening of the event because of which an entry is required to be made in the register.

Maximum penalty—\$25 000.

(6) A society must, within 3 days after receiving a notice from a director under section 241(1)(b) (General duty to make disclosure), enter in its register the particulars of the change specified in the notice.

Maximum penalty—\$25 000.

(7) A society is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be on inquiry as to, the right of a person to or in relation to a security issued by the society.

(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.

(8) A register kept by a society under this section must be open for inspection—

- (a) by any member of the society, without fee; and
- (b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

(9) A society must produce its register at the start of each annual general meeting of the society and keep it open and accessible during the meeting to all persons attending the meeting.

Maximum penalty—\$5 000.

(10) It is a defence to a prosecution for failing to comply with subsection (3) or (5) in relation to particulars relating to a director if the defendant proves that the failure was due to the failure of a director to comply with section 241 (General duty to make disclosure) in relation to those particulars.

Register of members

259.(1) A society must keep a register of members of the society and enter in the register—

- (a) the names and addresses of the members; and
- (b) the date of admission to membership; and
- (c) any other prescribed information.

Maximum penalty—\$25 000.

(2) The register of members is evidence of membership of the society.

(3) A member is entitled to have access only to the part of the register of members in which particulars of his or her membership are entered.

(4) Subject to subsection (3), a society may refuse to allow a person to have access to the register of members unless the person satisfies the society that the person requires access for the purpose of—

- (a) calling a meeting of members or a particular class of members; or

(b) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with subsection (4), to have access to the register of members, the society may require the person to enter into a contract with the society under which the person undertakes—

(a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and

(b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) If a society's register of members includes the numbers of certificates or other documents evidencing the holdings of its members of shares (if any) allocated to them, nothing in subsections (3) to (5) requires—

(a) a person to be allowed to see the numbers when inspecting the register; or

(b) a copy of the register, or a part of it, sent to a person to contain those numbers.

Register of holders of permanent shares

260.(1) A building society must keep a register of holders of permanent shares in the building society and enter in that register—

(a) the names and addresses of those holders; and

(b) the date of every allotment of any permanent shares to holders and the number of permanent shares comprised in each allotment; and

(c) the date of entry of a transfer or transmission of any permanent shares to holders and the number of permanent shares comprised in each transfer or transmission; and

(d) any other prescribed information.

Maximum penalty—\$25 000.

(2) The register of holders of permanent shares in a building society is evidence of ownership of permanent shares in the building society.

(3) A holder of permanent shares in a society is entitled to have access

only to the part of the register of holders of permanent shares in which particulars of his or her shareholding are entered.

(4) Subject to subsection (3), a society may refuse to allow a person to have access to the register of holders of permanent shares unless the person satisfies the society that the person requires access for the purpose of—

- (a) calling a meeting of permanent shareholders; or
- (b) making an offer to acquire permanent shares; or
- (c) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with subsection (4), to have access to the register of holders of permanent shares, the society may require the person to enter into a contract with the society under which the person undertakes—

- (a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and
- (b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) Nothing in subsections (3) to (5) requires—

- (a) a person to be allowed to see the numbers of the certificates that have been issued evidencing the holding of permanent shares; or
- (b) a copy of the register, or part of it, sent to a person to contain those numbers.

Power of Court to rectify register of holders of permanent shares

261.(1) If—

- (a) an entry is omitted from the register of holders of permanent shares; or
- (b) an entry is made in the register without sufficient cause; or
- (c) an entry wrongly exists in the register; or
- (d) there is an error or defect in an entry in the register; or
- (e) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having ceased to be a holder of

permanent shares;

the person aggrieved, or any member or the building society, may apply to the Court for rectification of the register and the Court may refuse the application or may order rectification of the register and payment by the building society of any damages sustained by any party to the application.

(2) On an application under this section, the Court may decide—

- (a) any question relating to the right of a person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises between—
 - (i) a holder, or alleged holder, of permanent shares on the one hand and another holder, or alleged holder, of permanent shares on the other hand; or
 - (ii) a holder, or alleged holder, of permanent shares on the one hand and the building society on the other hand; and
- (b) generally any question necessary or expedient to be decided in relation to the rectification of the register.

(3) If a building society is required by this Code to lodge a return containing a list of holders of permanent shares with the SSA, the Court, when making an order for rectification of the register, is to by its order direct a notice of the rectification to be so lodged.

Register of options

262.(1) A building society must keep a register of options granted to persons to take up permanent shares in the building society.

Maximum penalty—\$25 000.

(2) A building society must, within 14 days after the grant of an option to take up permanent shares in the building society, enter in the register the following particulars—

- (a) the name and address of the holder of the option;
- (b) the date on which the option was granted;
- (c) the number and description of the shares in relation to which the option was granted;

- (d) the period during which, the time at which or the occurrence on the happening of which the option may be exercised;
- (e) the consideration (if any) for the grant of the option;
- (f) the consideration (if any) for the exercise of the option or the way in which that consideration is to be ascertained or determined;
- (g) such other particulars as are prescribed.

Maximum penalty—\$25 000.

(3) The register must be kept open for inspection—

- (a) by any member of the building society—without fee; and
- (b) by any other person—on payment for each inspection of the amount (if any) prescribed by the society's rules.

Maximum penalty—\$5 000.

(4) A building society must keep, at the place where the register is kept, a copy of every instrument by which an option to take up permanent shares in the building society is granted and, for the purposes of subsection (3) and section 263(4) (Inspection), those copies are taken to be part of the register.

Maximum penalty—\$25 000.

(5) Failure by a building society to comply with any of the provisions of this section in relation to an option does not affect any rights in relation to the option.

Inspection

263.(1) A society must keep at its registered office available for inspection without fee by members of the society, persons eligible for membership of the society and its creditors—

- (a) a copy of this Code and the regulations; and
- (b) a copy of the AFIC Code and the regulations in force for the purposes of that Code; and
- (c) a copy of the rules of the society; and
- (d) a copy of the last accounts of the society, together with a copy of the report of the auditor on those accounts; and

Financial Institutions Code 1992

(e) a copy of the last directors' report under section 274 (Directors' reports).

(2) A society must keep a copy of its rules available for inspection without fee by members of the society at each office of the society.

(3) A society must, on request by a member of the society, give the member particulars of his or her financial position with the society as a member, shareholder, depositor or borrower.

(4) Subject to the regulations and to sections 259(4) (Register of members), and 260(4) (Register of holders of permanent shares), a member may request a society to give him or her a copy of a register or any part of a register kept by the society under this Code and, where such a request is made, the society must send the copy to the member—

- (a) if the society requires payment of an amount prescribed by the rules—within 21 days after payment of the amount is received by the society or within such longer period as the SSA approves; or
- (b) in any other case—within 21 days after the request is made or within such longer period as the SSA approves.

Maximum penalty—\$5 000.

Location of registers on computers

263A.(1) This section applies despite anything in this Division to the contrary.

(2) This section applies if—

- (a) a society records, otherwise than in writing, matters (the “**stored matters**”) this Division requires to be contained in a register; and
- (b) the record of stored matters is kept at a place (the “**place of storage**”) other than the place (the “**place of inspection**”) where the register is, apart from this section, required to be kept; and
- (c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and
- (d) the society has served the SSA with a notice—
 - (i) stating that this section is to apply to—

- (A) unless sub-subparagraph (B) applies—the register; or
 - (B) if the stored matters are only some of the information that is required to be contained in the register—the register and matters that are of the same kind as the stored matters; and
- (ii) specifying the situation of the place of storage and the place of inspection.

(3) The society is taken to have complied with the requirements of this Division about the location of the register, but only as far as the register is required to contain the stored matters.

(4) However, if—

- (a) the situation of the place of storage or the place of inspection changes; and
- (b) the society does not serve notice of the change within 14 days after the change;

this section, as it applies to the society because of the serving of the notice mentioned in subsection (2)(d), ceases to apply at the end of the 14 days.

Form and evidentiary value of registers

263B.(1) A register that is required by this Division to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or loose-leaf book; or
- (b) by recording or storing matters using a mechanical, electronic or other device; or
- (c) in another way approved by the SSA.

(2) Subsection (1) does not authorise a register to be kept or prepared by a mechanical, electronic or other device unless—

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
- (b) a reproduction of the matters is kept in written form approved by the SSA.

(3) A society must take all reasonable precautions, including the

precautions (if any) prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any register or part of a register required by this Division to be kept or prepared by the society.

(4) If a society records or stores matters using a mechanical, electronic or other device, a duty imposed by this Division to make a register containing the matters available for inspection or to provide copies of the whole or a part of a register containing the matters is taken to be a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) A regulation may provide for how up-to-date the information contained in an instrument prepared for subsection (4) must be.

(6) If—

- (a) because of this Code, a register that this Division requires to be kept or prepared is evidence of a matter; and
- (b) the register, or part of the register, is kept or prepared by recording or storing matters (including the matter) using a mechanical, electronic or other device;

a written reproduction of the matter as so recorded or stored is evidence of the matter.

(7) A writing purporting to reproduce a matter recorded or stored using a mechanical, electronic or other device is taken to be a reproduction of the matter unless the contrary is established.

Division 4—Accounts

Financial year

264.(1) The financial year of a society is the period from 1 July to the following 30 June.

(2) If a society is registered (otherwise than as a result of a merger) on a day falling between 1 January and 30 June in any year, its first financial year may, if the society so elects, extend to 30 June in the following year.

(3) Despite subsection (1), but subject to subsection (4), if at the commencement of this section the financial year of a society is a period other than that specified in subsection (1), the society may retain that period as its financial year.

(4) If the SSA by written notice given to the society directs it to comply with subsection (1), the society must do so within 2 years of receiving the notice.

Maximum penalty for subsection (4)—\$5 000.

Financial years of groups

265.(1) Subject to—

- (a) this section; and
- (b) where the entity is formed or incorporated outside Australia—any law in force in the entity's place of formation or incorporation;

a society's directors must do whatever is necessary to ensure that the financial year of each entity that the society controls coincides with the financial year of the society.

(2) Subsection (1) must be complied with in relation to a particular entity within 12 months after—

- (a) if the society controlled the entity at the commencement of this section—that commencement; or
- (b) if the society is taken to control the entity by virtue of a regulation made under this Code or an applicable accounting standard—the date of the regulation or accounting standard taking effect; or
- (c) in any other case—the society began to control the entity.

Accounting records to be kept

266.(1) A society must—

- (a) keep accounting records that correctly record and explain the transactions (including any transactions as trustee) and the financial position of the society; and
- (b) keep the accounting records in a way that will enable—

- (i) true and fair accounts of the society to be prepared periodically; and
- (ii) the accounts of the society to be conveniently and properly audited in accordance with this Part; and
- (c) retain the accounting records for a period of 7 years after the completion of the transactions to which they relate; and
- (d) keep accounting records in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language; and
- (e) keep the accounting records at such a place or places as its directors think fit.

(2) If any of the accounting records of a society are kept at a place outside this State, the society must keep at a place within this State determined by the directors such information as would enable true and fair accounts, and any documents or reports required by this Part to be attached to the accounts, to be prepared.

Maximum penalty—\$75 000.

Inspection of accounting records

267.(1) A society must make its accounting records available at all reasonable times for inspection without fee by any director of the society and by any other person authorised or permitted under the financial institutions legislation to inspect the accounting records.

Maximum penalty—\$75 000.

(2) The Court may, on application by a director of a society, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the society.

(3) A registered company auditor who inspects accounting records under a Court order must not disclose to a person other than the director on whose application the order was made any information acquired during the inspection.

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

(4) The cost of an inspection conducted under a Court order must be met by the society.

Profit and loss account and balance sheet

268. The directors of a society must, before the day on which notice of an annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 249 (Annual general meeting) to be held, not less than 3 weeks before the end of the period, cause to be prepared—

- (a) a profit and loss account for the last financial year giving a true and fair view of the profit or loss of the society for that financial year; and
- (b) a balance sheet as at the end of the last financial year giving a true and fair view of the state of affairs of the society as at the end of that financial year.

Group accounts

269. If at the end of a financial year of a society, the society is a holding society, the directors of the society must, before the day on which notice of the next annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 249 (Annual general meeting) to be held, cause to be made out—

- (a) a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the society and the entities it controlled from time to time during that financial year (even if the society did not control the same entities during all of that financial year); and
- (b) a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs as at the year's end, of the economic entity constituted by the society and the entities that it controls at the year's end;

so far as such a true and fair view of the profit and loss and state of affairs concern members of the holding society.

Audit

270.(1) The directors of a society must take reasonable steps to ensure that the accounts and group accounts of the society are audited as required by this Part before the day before which the accounts are required by this Division to have been prepared.

(2) The directors of a society must cause to be attached to, or endorsed on, the accounts or group accounts the auditor's report given to the directors under Division 5 (Audit).

Directors to ascertain certain matters

271. Before the profit and loss account and balance sheet are prepared, the directors of a society must take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the society and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in documents of the society at an amount that, having regard to its value to the society as a going concern, exceeds the amount that it would have been reasonable for the society to spend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the amount of that asset.

Requirements applying to accounts and group accounts

272.(1) The directors of a society must ensure that the accounts and group accounts—

- (a) comply with the prescribed requirements; and
- (b) comply with applicable accounting standards.

(2) AFIC may, by Gazette notice, declare an accounting standard to be an applicable accounting standard in relation to the accounts of a society and group accounts, subject to any modifications that are specified in the notice.

(3) AFIC may, by Gazette notice, vary or revoke a notice under subsection (2).

(4) If accounts or group accounts prepared in accordance with subsection (1) would not otherwise give a true and fair view of the matters required by this section to be dealt with in those accounts, the directors of the society must add such information and explanations as will give a true and fair view of those matters.

Directors' statement

273.(1) The directors of a society must cause to be attached to any accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether in the opinion of the directors—

- (a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the society for the financial year; and
- (b) the balance sheet is drawn up so as to give a true and fair view of the state of affairs of the society as at the end of the financial year; and
- (c) as at the date of the statement, there are reasonable grounds to believe that the society will be able to pay its debts as and when they fall due.

(2) The directors of a society that is a holding society must cause to be attached to group accounts required to be laid before an annual general

Financial Institutions Code 1992

meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of—

- (a) the profit or loss of the society and the entities it controlled during all or part of the last financial year; and
- (b) the state of affairs of the society and the entities it controlled as at the end of the last financial year;

so far as they concern members of the society.

(3) The directors of a society—

- (a) must, in forming an opinion as to the matters mentioned in subsection (1)(a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen and information that has become available, since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts; and
- (b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

(4) The directors of a society that is a holding society—

- (a) must, in forming an opinion as to the matters mentioned in subsection (2)(a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen, or information that has become available, since—
 - (i) in the case of circumstances or information relating to the society—the end of the financial year of the society to which the group accounts relate; or
 - (ii) in the case of circumstances or information relating to an

entity controlled by the society—the end of the financial year of the entity to which the group accounts relate;

being circumstances or information that would, if the group accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those group accounts; and

- (b) must, if adjustments have not been made in those group accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of those group accounts, or of an amount or particular in those group accounts, include in the statement such information and explanations as will prevent those group accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

Directors' reports

274.(1) The directors of a society, other than a society to which subsection (2) applies, must, before (but not more than 3 weeks before) the day before which the accounts for its last financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating the names of the directors in office at the date of the report and specifying for each director—
- (i) the qualifications, experience and special responsibilities (if any) of the director; and
 - (ii) the number, type and class of any securities for which the society is required to keep particulars, for the director, under section 258 (Register of directors etc.); and
 - (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 1 (Directors and officers) since the commencement of this section or the date on which particulars were last given under this paragraph; and
- (ab) stating that—

Financial Institutions Code 1992

- (i) the society keeps a register under section 258 containing information about the directors, including details of each director's interests (if any) in securities (if any) issued by the society; and
- (ii) the register is open for inspection—
 - (A) by any member of the society, without fee; and
 - (B) by any other person, on payment of the amount (if any) prescribed by the society's rules; and
- (b) stating—
 - (i) the principal activities of the society during its last financial year and any significant change in the nature of those activities that happened during that financial year; and
 - (ii) the net amount of the profit or loss of the society for that financial year after provision for income tax; and
 - (iii) the amount (if any) that the directors recommend should be paid by way of dividend or, in relation to permanent shares, interest out of revenue, and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2); and
- (c) containing a review of the operations of the society during that financial year and of the results of those operations; and
- (d) giving particulars of any significant change in the state of affairs of the society that happened during that financial year; and
- (e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the society; or
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the society;in financial years subsequent to that financial year; and

- (f) referring to—
 - (i) likely developments in the operations of the society; and
 - (ii) the expected results of those operations;in financial years subsequent to that financial year.

(2) The directors of a society that is a holding society in relation to a financial year must, before (but not more than 3 weeks before) the day before which the group accounts for that financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating the names of the directors in office at the date of the report and specifying for each director—
 - (i) the qualifications, experience and special responsibilities (if any) of the director; and
 - (ii) the number, type and class of any securities for which the society is required to keep particulars, for the director, under section 258 (Register of directors etc.); and
 - (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 1 (Directors and officers) since the commencement of this section or the date on which particulars were last given under this paragraph; and
- (ab) stating that—
 - (i) the society keeps a register under section 258 containing information about the directors, including details of each director's interests (if any) in securities (if any) issued by the society; and
 - (ii) the register is open for inspection—
 - (A) by any member of the society, without fee; and
 - (B) by any other person, on payment of the amount (if any) prescribed by the society's rules; and
- (b) stating—

Financial Institutions Code 1992

- (i) the principal activities of the entities in the group during that financial year and any significant change in the nature of those activities that happened during that period (even if the entities were not part of the group during all of the financial year); and
 - (ii) the net amount of the consolidated profit or loss of the entities in the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than an entity in the group; and
 - (iii) the amount (if any) that the directors of the society recommend should be paid by way of dividend or, in relation to permanent shares, interest out of revenue, and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1); and
- (c) containing a review of the operations of the group during that financial year and of the results of those operations; and
- (d) giving particulars of any significant change in the state of affairs of the group that happened during that financial year; and
- (e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
- (i) the operations of the group; or
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the group;
- in financial years subsequent to that financial year; and
- (f) referring to—
- (i) likely developments in the operations of the group; and
 - (ii) the expected results of those operations;
- in financial years subsequent to that financial year.
- (3)** If, in the opinion of the directors of a society, it would prejudice the

Financial Institutions Code 1992

interests of the society if any particular information required under subsection (1)(f) or (2)(f) were to be included in a report—

- (a) the information need not be so included; and
- (b) the report must contain a statement that some, or all (as the case may require) of the information required under subsection (1)(f) or (2)(f) has not been included in the report.

(4) If a society, or an entity controlled by a holding society, has at any time granted to a person an option to have issued to him or her shares in the society or entity, the directors must state in the report—

- (a) in the case of an option granted by a holding society, or an entity controlled by a holding society, the name of the body granting the option; and
- (b) in the case of an option granted during the financial year or since the end of the financial year—
 - (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that society or entity, that the option was so granted; and
 - (ii) the number and classes of shares in relation to which the option was granted; and
 - (iii) the date of expiration of the option; and
 - (iv) the basis upon which the option is or was to be exercised; and
 - (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other body corporate; and
- (c) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option; and
- (d) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other

body corporate.

(5) If any of the particulars required by subsection (4) have been stated in a previous report, they may be stated by reference to that report.

(6) The report must set out whether or not, during the financial year or since the end of the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that—

- (a) the director; or
- (b) a firm of which the director is a member; or
- (c) an entity in which the director has a substantial financial interest;

has made (during that or any other financial year) with—

- (d) the society; or
- (e) an entity that the society controlled, or a body corporate that was related to the society, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).

(7) If so, the report must set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

(8) Subsections (6) and (7) do not apply to—

- (a) a benefit included in the aggregate amount of emoluments received or due and receivable, by directors shown in accordance with the regulations in force for the purposes of section 272(1)(a) (Requirements applying to accounts and group accounts); or
- (b) the fixed salary of a full-time employee of—
 - (i) the society; or
 - (ii) an entity that the society controlled, or a body corporate that was related to the society, at a relevant time.
- (c) the provision of financial accommodation to a director that—
 - (i) does not contravene section 243 (Financial accommodation to directors and associates); and
 - (ii) is shown in the society's accounts in accordance with applicable accounting standards.

(9) If there is attached to or included with a report of the directors laid before a society at its annual general meeting a statement, report or other document relating to the affairs of the society or any of the entities controlled by the society, not being a statement, report or document required by this Code to be laid before the society in general meeting, the statement, report or other document, for the purposes of section 396 (False or misleading information), is taken to be part of that first mentioned report.

(10) To avoid doubt, if a society controlled a particular entity during part, but not all, of the financial year, the report need not relate to the entity's operations or state of affairs during a period during which the society did not control the entity or to the result of those operations.

Directors of holding society must obtain information from entities controlled by the society

275.(1) In this section—

“reporting officers”, in relation to an entity, means—

- (a) in the case of a body corporate—the body corporate's directors;
or
- (b) in any other case—the entity's officers.

(2) Subject to subsection (5), the directors of a holding society must not cause the group accounts, or the statement under section 273 (Directors' statement) or the report under section 274 (Directors' reports) relating to them, to be prepared unless the directors have available to them sufficient information, in relation to each entity controlled by the society, to enable them to ensure—

- (a) that the group accounts will give a true and fair view of—
 - (i) the profit or loss of the holding society and the entities it controlled during all or part of the last financial year; and
 - (ii) the state of affairs of the holding society and the entities it controlled as at the end of the last financial year;so far as they concern members of the holding society; and
- (b) that neither the statement nor the report will be false or misleading in a material particular.

(3) Without limiting subsection (2), to ensure that the group accounts meet the requirements of the subsection, the directors must take, in relation to each entity controlled by the society, the reasonable steps that they are required to take under section 271 (Directors to ascertain certain matters) in relation to the society.

(4) The reporting officers of an entity controlled by a holding society during all or part of, or at the end of, a particular financial year must, at the request of the directors of the holding society, give to the holding society all the information that is required by the directors of the holding society for the preparation of the group accounts, the statement and the report.

(5) If the directors of a holding society, after taking all steps that are reasonably available to them, are unable to obtain from the reporting officers of the entity controlled by the holding society the information required for the preparation of the group accounts, the statement and the report, within the period within which they are respectively required by this Division to be prepared—

- (a) the directors of the holding society must cause the group accounts, statement and report to be prepared without incorporating or including the information relating to that entity, but—
 - (i) they must include in the group accounts, statement or report, as the case requires, a description of the nature of the information that has not been obtained, and must include such qualifications and explanations as are necessary to prevent the group accounts, statement or report from being misleading; and
 - (ii) they may qualify accordingly that part of the statement that is made under section 273(2)(a) (Directors' statement); and
- (b) if the directors of the holding society have caused the group accounts, statement and report to be prepared in accordance with paragraph (a), they must, within 1 month after receiving any of that information from the reporting officers of the entity—
 - (i) lodge with the SSA a statement setting out or summarising the information and containing such qualifications and explanations by the directors of the group accounts, statement or report as are necessary having regard to the

information received from the reporting officers of the entity; and

- (ii) send a copy of that statement to each member of the society or, if the rules of the society so provide, make copies of the statement available to the members of the society at the registered office and each other office of the society.

Accounts and reports to be laid before annual general meeting

276.(1) The directors of a society must cause to be laid before each annual general meeting of the society—

- (a) a copy of the accounts made out in accordance with section 268 (Profit and loss account and balance sheet) for the last financial year of the society; and
- (b) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was not a holding society—a copy of the directors' report made out in accordance with section 274 (Directors' reports) in relation to that financial year; and
- (c) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was a holding society—a copy of the group accounts made out in accordance with section 269 (Group accounts) in relation to that financial year and a copy of the directors' report made out in accordance with section 274 (Directors' reports) in relation to that financial year; and
- (d) a copy of any auditor's report required by section 270 (Audit) to be attached to or endorsed upon the accounts or group accounts; and
- (e) a copy of the statement by the directors required by section 273 (Directors' statement) to be attached to the accounts or group accounts.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to members of the society at the registered office and at each other office of the society from the day before which those documents are required under

this Division to have been prepared until the holding of the annual general meeting.

Contravention of Division

277.(1) A director of a society who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division commits an offence.

Maximum penalty—

- (a) if the offence is committed with intent to deceive or defraud creditors of the society or creditors of any other person or for a fraudulent purpose—\$100 000 or imprisonment for 15 years, or both; or
- (b) in any other case—\$25 000.

(2) In any proceeding against a person for an offence against subsection (1) arising out of the accounts of a society or the group accounts of a holding society not complying with an applicable accounting standard, the onus of proving that the accounts would not, if prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts lies on that person.

(3) In any proceeding for an offence against subsection (1) arising out of an omission from the accounts of a society or the group accounts of a holding society, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by this Division to be dealt with in those accounts.

(4) If, after the end of the period within which any accounts of a society or any report of the directors of a society is or are required under this Division to be prepared, the SSA, by written notice to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with the requirements of this Division, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not prepared within that period.

Division 5—Audit**Qualifications of auditors**

278.(1) In this section—

“**officer of a society**” includes a receiver who is not also a manager.

(2) For the purposes of subsections (4) and (5), a person is taken to be an officer of a society if—

- (a) the person is an officer of an entity controlled by the society or a body corporate related to the society; or
- (b) except if the SSA directs that this paragraph not apply in relation to the person—the person has, at any time during the last 12 months, been an officer or promoter of the society or of an entity that is controlled by the society.

(3) For the purposes of this section, a person is not taken to be an officer of a society by reason only of—

- (a) being or having been the liquidator of the society or of an entity controlled by the society; or
- (b) having been appointed as auditor of the society or of an entity controlled by the society or, for any purpose relating to taxation, a public officer of a body corporate; or
- (c) being or having been authorised to accept, on behalf of the society or an entity controlled by the society, service of process or any notices required to be served on the society or entity.

(4) Subject to this section, a person must not—

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or
- (c) prepare a report required by the financial institutions legislation to be prepared by a registered company auditor or by an auditor of a society;

if—

- (d) the person is not a registered company auditor; or

Financial Institutions Code 1992

- (e) the person is not ordinarily resident in this State; or
- (f) the person is indebted in an amount exceeding \$5 000 to the society or to a related body corporate; or
- (g) the person—
 - (i) is an officer of the society; or
 - (ii) is a partner, employer or employee of an officer of the society; or
 - (iii) is a partner or employee of an employee of an officer of the society.

Maximum penalty—\$25 000.

(5) Subject to this section, a firm must not—

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or
- (c) prepare a report required by the financial institutions legislation to be prepared by a registered company auditor or by an auditor of a society;

unless—

- (d) at least 1 member of the firm is—
 - (i) a registered company auditor; and
 - (ii) ordinarily resident in this State; and
- (e) if the business name under which the firm is carrying on business is not registered under the law of this State relating to business names—there has been lodged with the SSA a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and
- (f) neither the firm nor the member of the firm responsible for conducting the audit, or signing the report, is indebted in an amount exceeding \$5 000 to the society or to a related body corporate; and
- (g) no member of the firm is—

Financial Institutions Code 1992

- (i) an officer of the society; or
 - (ii) a partner, employer or employee of an officer of the society; or
 - (iii) a partner or employee of an employee of an officer of the society; and
- (h) no officer of the society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(6) The appointment of a firm as auditor of a society is taken to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, as at the date of the appointment.

(7) If a firm that has been appointed as auditor of a society is reconstituted because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or new members, or both—

- (a) a person who was an auditor of the society by virtue of subsection (6) and who has so retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor of the society as from the day of that retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 281 (Removal and resignation of auditors) does not apply to that resignation; and
- (b) a person who is a registered company auditor and who is so admitted to the firm is taken to have been appointed as an auditor of the society as from the date of admission to the firm; and
- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the society;

but nothing in this subsection affects the operation of subsection (5).

(8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a society by virtue of the appointment of the firm as auditor of the society is not affected by the dissolution of the firm.

(9) A report or notice that purports to be made or given by a firm appointed as auditor of a society is not taken to be duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(10) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a society, or prepares a report required by the financial institutions legislation to be prepared by an auditor of a society, each member of the firm commits an offence.

Maximum penalty—\$25 000.

(11) A person must not—

- (a) if appointed auditor of a society—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the society; or
- (b) if a member of a firm that has been appointed auditor of a society—knowingly disqualify the firm while the appointment continues from acting as auditor of the society.

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

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

Appointment of auditors

279.(1) In this section, a reference to the appointment of a person or firm as auditor of a society includes a reference to the appointment of persons, firms, or a person or persons and a firm or firms, as auditors of the society.

(2) Within 1 month of incorporation, the directors of a society must appoint, unless the society at a general meeting has appointed, a person or firm as auditor of the society.

(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.

(3) A person or firm appointed as auditor under subsection (2) holds office, subject to this Division, until the first annual general meeting of the

society.

(4) A society must—

- (a) at its first annual general meeting appoint a person or firm as auditor of the society; and
- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor, appoint a person or firm to fill the vacancy.

(5) A person or firm appointed as auditor under subsection (4) holds office—

- (a) until death or removal or resignation from office in accordance with section 281 (Removal and resignation of auditors); or
- (b) until ceasing to be capable of acting as auditor because of section 278(4) or (5) (Qualifications of auditors).

(6) Within 1 month after a vacancy, other than a vacancy caused by the removal of an auditor from office, happens in the office of auditor of the society, if there is no surviving or continuing auditor of the society, the directors must, unless the society at a general meeting has appointed a person or firm to fill the vacancy, appoint a person or firm to fill the vacancy.

(7) While a vacancy in the office of auditor continues, the surviving or continuing auditor (if any) may act.

(8) A society must not, and the directors of a society must not, appoint a person or firm as auditor of the society unless the person or firm has, before the appointment, consented by written notice given to the society or to the directors to act as auditor and has not withdrawn consent by written notice given to the society or to the directors.

(9) A notice given by a firm must be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(10) A purported appointment of a person or firm as auditor of a society in contravention of subsection (8) has no effect.

(11) If an auditor of a society is removed from office at a general meeting in accordance with section 281 (Removal and resignation of auditors)—

- (a) the society may at that meeting (without adjournment), by a resolution passed by a majority of its members as, being entitled so to do, vote in person, immediately appoint as auditor a person or firm to whom has been sent a copy of the notice of nomination in accordance with section 280 (Nomination of auditors); or
- (b) if a resolution is not passed, or could not be passed only because a copy of the notice of nomination had not been sent to a person, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the society may, at the adjourned meeting, by ordinary resolution, appoint as auditor a person or firm notice of whose nomination for appointment as auditor has been received by the society from a member of the society at least 14 clear days before the date of the adjourned meeting.

(12) If after the removal from office of an auditor, the society fails to appoint another auditor under subsection (11)—

- (a) the society must, within 7 days after the failure, notify the SSA of the failure; and
- (b) the SSA must, unless there is another auditor of the society whom the SSA believes is able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor a person or firm that has consented to be appointed.

(13) Subject to subsection (12), if a society does not appoint an auditor when required by this Division to do so, the SSA may, on the written application of a member of the society, appoint as auditor of the society a person or firm that has consented to be appointed.

(14) A person or firm appointed as auditor of a society under subsection (6), (11), (12) or (13) holds office, subject to this Division, until the next annual general meeting of the society.

(15) A director of a society must take all reasonable steps to comply with, or to secure compliance with, subsection (2) or (6).

Maximum penalty—\$25 000.

(16) A society that contravenes subsection (8) commits an offence.

Maximum penalty—\$5 000.

(17) A society that contravenes subsection (4) or (12) commits an offence.

Maximum penalty—\$25 000.

Nomination of auditors

280.(1) Subject to this section, a society must not appoint a person or firm as auditor of the society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless written notice of nomination of the person or firm as auditor was given to the society by a member—

- (a) before the meeting was convened; or
- (b) not less than 3 weeks before the meeting.

(2) A purported appointment of a person or firm as auditor of the society in contravention of subsection (1) has no effect.

(3) If a society contravenes subsection (1), the society and any officer of the society who is in default each commits an offence.

Maximum penalty—\$25 000.

(4) If notice of nomination of a person or firm for appointment as auditor is received by the society, whether for appointment at a meeting or an adjourned meeting mentioned in section 279(11) (Appointment of auditors) or at an annual general meeting, the society must not less than 7 days before the meeting or at the time notice of the meeting is given—

- (a) send a copy of the notice of nomination to each person or firm nominated and to each auditor of the society; and
- (b) cause a copy of the notice of nomination to be displayed in a conspicuous place at the registered office and each other office of the society until the day of the meeting.

Maximum penalty—\$5 000.

Removal and resignation of auditors

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) If notice of a special resolution to remove an auditor is given, the society must immediately send a copy of the notice to the auditor and to the SSA.

Maximum penalty—\$50 000.

(3) Within 7 days after receiving a copy of the notice, the auditor may make written representations of not more than a reasonable length to the society and request that a copy of the representations be displayed by the society in a conspicuous place at the registered office and each other office of the society until the day of the meeting at which the resolution is to be considered.

(4) Unless the SSA on the application of the society orders otherwise, the society must display a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, if a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

Maximum penalty—\$50 000.

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

- (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.

(6) An auditor of a society may, by written notice given to the society, resign if the auditor—

- (a) by written notice given to the SSA, has applied for consent to the resignation and stated the reasons for the application; and
- (b) at or about the same time as the auditor gave the notice to the SSA, has given written notice of the application to the society; and
- (c) has received the consent of the SSA to the resignation.

(7) The SSA must, as soon as practicable after receiving a notice from an auditor, notify the auditor and the society whether it consents to the resignation.

Financial Institutions Code 1992

(8) A statement made by an auditor in an application to the SSA for consent to the resignation or in answer to an inquiry by the SSA relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceeding against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor.

(9) A certificate by the SSA that a statement was made in the application or in the answer to an inquiry by the SSA is conclusive evidence that the statement was so made.

(10) Subject to subsection (11), the resignation of an auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation; or
- (b) on the date on which the SSA gives its consent to the resignation; or
- (c) on the date (if any) fixed by the SSA for the purpose;

whichever is the later.

(11) If, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of section 278(5)(d) (Qualifications of auditors) of acting as auditor of a society, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the society) give reasonable notice to the society of his or her retirement or withdrawal and, upon receipt of the notice by the society, the office of auditor becomes vacant.

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

(12) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor, the society must—

- (a) give a notice of the resignation, retirement or withdrawal in the prescribed form to the SSA; and
- (b) if there is a trustee for the holders of securities issued by the society, give to the trustee a copy of the notice given to the SSA.

Maximum penalty—\$50 000.

Effect of winding-up on office of auditor

282. An auditor of a society ceases to hold office if—

- (a) a special resolution is passed for the voluntary winding-up of the society; or
- (b) an order is made by the Court for the winding-up of the society; or
- (c) the SSA issues a certificate under section 341 (Winding-up on certificate of SSA) in relation to the society.

Fees and expenses of auditors

283. A society must pay the reasonable fees and expenses of an auditor, including the auditor's expenses in giving a report required to be given by this Code.

Auditor's report

284.(1) An auditor of a society must report to the members on the accounts required to be laid before the society at the annual general meeting and on the society's accounting records and other records relating to those accounts and, if the society is a holding society for which group accounts are required, must also report to the members on the group accounts.

(2) The auditor must state in the report—

- (a) whether the accounts and any group accounts are in the auditor's opinion properly prepared—
 - (i) so as to give a true and fair view of the matters required by sections 268 (Profit and loss account and balance sheet) and 269 (Group accounts) to be dealt with in the accounts or group accounts; and
 - (ii) in accordance with the financial institutions legislation; and
 - (iii) in accordance with applicable accounting standards; and
- (b) if, in the auditor's opinion, the accounts or group accounts have not been prepared in accordance with a particular applicable accounting standard—

Financial Institutions Code 1992

- (i) whether, in the auditor's opinion, the accounts or group accounts, as the case may be, would, if prepared in accordance with that standard, have given a true and fair view of the matters required by sections 268 (Profit and loss account and balance sheet) and 269 (Group accounts) to be dealt with in those accounts; and
 - (ii) if, in the auditor's opinion, the accounts or group accounts would not, if so prepared, have given a true and fair view of those matters—the reasons for that opinion; and
 - (iii) if the directors have caused a statement to be attached to the accounts or group accounts giving particulars of the quantified financial effect on those accounts of the failure to so prepare the accounts—the auditor's opinion of those particulars; and
 - (iv) in a case to which neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts of the failure to so prepare those accounts; and
- (c) in the case of group accounts—
- (i) the names of each entity that the society controlled during all or part of, or at the end of, the financial year but for which the auditor has not acted as auditor; and
 - (ii) if there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of an entity controlled by the society of which he or she has not acted as auditor, and he or she has not examined the auditor's report (if any) on those accounts—the name of that entity; and
 - (iii) if the auditor's report on the accounts of an entity controlled by the society was made subject to any qualification, or included any comment made under subsection (4)—the name of that entity and particulars of the qualification or comment; and
- (d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without

regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and

- (e) if the auditor is not satisfied as to any matter mentioned in paragraph (a) or (b)—the reasons for not being so satisfied.

(3) The auditor of a society has a duty to form an opinion on each of the following matters—

- (a) whether the auditor has obtained all the information and explanations that he or she required;
- (b) whether proper accounting records and other records, including registers, have been kept by the society as required by the financial institutions legislation;
- (c) whether the returns received from offices of the society other than the registered office are adequate;
- (d) if the society is a holding society—
 - (i) whether the accounts of the entities controlled by the society that are to be consolidated with other accounts are, in form and content, appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether the auditor has received satisfactory information and explanations as required by him or her for that purpose; and
 - (ii) whether the procedures and methods used by the society and by each of the entities it controls in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation.

(4) The auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in relation to any matter mentioned in subsection (3).

(5) The auditor must give the auditor's report to the directors of the society in sufficient time to enable the society to comply with the requirements of section 270 (Audit) in relation to that report.

(6) The auditor's report—

- (a) must be attached to or endorsed on the accounts or group accounts; and

- (b) if a member so requires—must be read before the society at the annual general meeting; and
- (c) must be open to inspection by a member at any reasonable time.

(7) The auditor must, when giving the auditor's report, also give to the directors of the society a report as to—

- (a) the adequacy, in the auditor's opinion, of the systems adopted by the society—
 - (i) to ensure compliance with the requirements of Division 3 (Characteristics) of Part 3 (Principles, objects and characteristics of societies); and
 - (ii) to monitor and manage risks associated with its financial activities; and
- (b) any other matter of a kind prescribed in a standard made for the purpose of this subsection.

(8) An auditor must, at the time at which the auditor gives the directors of a society a report under subsection (7), give a copy of the report to the SSA.

(9) An auditor of a society who contravenes this section commits an offence.

Maximum penalty for subsection (9)—\$5 000.

Powers and duties of auditor

285.(1) An auditor of a society has a right of access at all reasonable times to the accounting records and other records and registers of the society.

(2) The auditor is entitled to require from any officer of the society any information and explanation that the auditor requires for the audit.

(3) An auditor of a holding society for which group accounts are required has a right of access at all reasonable times to the accounting records and other records and registers of each entity that the society controlled during all or part of, or at the end of, any relevant financial year even if the holding society no longer controls the entity.

(4) The auditor is entitled to require from any officer or auditor of any

entity controlled by the holding society, at the expense of the holding society, any information and explanation in relation to the affairs of the entity that the auditor requires for the purpose of reporting on the group accounts.

(5) An auditor of a society, or an agent authorised by the auditor in writing for the purpose—

- (a) is entitled to attend any general meeting of the society; and
- (b) is entitled to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive; and
- (c) is entitled to be heard at any general meeting that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor; and
- (d) is entitled so to be heard even though—
 - (i) the auditor retires at that meeting; or
 - (ii) a resolution to remove the auditor from office is passed at that meeting.

(6) If an auditor becomes aware that the society or the directors has or have not complied with section 249 (Annual general meeting), or the provisions of section 276 (Accounts and reports to be laid before annual general meeting) relating to the laying of accounts or group accounts before the annual general meeting of the society, the auditor must immediately inform the SSA by written notice and, if accounts or group accounts have been prepared and audited, send to the SSA a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

(7) Except in a case to which subsection (6) applies, if an auditor, while performing duties as auditor of a society, is satisfied that—

- (a) there has been a contravention of the financial institutions legislation; and
- (b) the circumstances are such that, in the auditor's opinion, the matter has not been, or will not be, adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the society;

the auditor must immediately report the matter to the SSA by written notice.

(8) If an auditor of a society or holding society—

- (a) is not satisfied that the accounts or group accounts comply with a particular applicable accounting standard; or
- (b) is of the opinion that the accounts or group accounts do not comply with a particular applicable accounting standard;

the auditor must report the matter to the SSA in writing within 7 days after giving to the directors of the society or holding society his or her report under section 284 (Auditor's report).

(9) If an auditor sends to the SSA a report on the accounts or group accounts under subsection (8), the SSA may, by written notice to the society or holding society, require it to give a copy of the accounts or group accounts to the SSA within 7 days after service of the notice.

(10) In addition to any other report that an auditor, or former auditor, of a society is required to give to the SSA, an auditor, or former auditor, of a society must give to the SSA any report in relation to the affairs of the society that the SSA requires and the auditor, or former auditor, is able to give.

(11) An auditor, or former auditor, of a society who contravenes this section commits an offence.

Maximum penalty for subsection (11)—\$5 000.

Final audit on merger, etc.

286.(1) If—

- (a) a society is dissolved as part of a merger, or transfer of engagements, under Part 7 (Mergers and transfers of engagements); or
- (b) a society converts to a company;

the auditor of the society must prepare a report containing prescribed statements and information relating to the accounts and accounting records of the society for the financial year up to the date of dissolution of the society or the date approved by the SSA for the conversion, as the case may be, and for the preceding financial year if an auditor's report has not been

prepared relating to the accounts of the society for that year.

(2) The provisions of section 285 (Powers and duties of auditor) relating to the rights of access of an auditor to the records of a society and any entity controlled by a society apply in relation to a report under this section as if it were a report required under section 284 (Auditor's report).

(3) A report under this section in relation to the accounts of a society dissolved as part of a merger, or transfer of engagements must be given by the auditor to the directors of the merged society, or transferee society, as the case may be, within 2 months after the date of the merger or transfer and the directors of the merged society or transferee society must in turn, within 3 months after the date of the merger or transfer, send each auditor's report together with the accounts of each society dissolved as part of the merger or transfer to the SSA.

(4) A report under this section in relation to the accounts of a society that is converted to a company must be given by the auditor to the directors of the company within 2 months after the date approved by the SSA for the conversion and the directors must in turn, within 3 months after the date approved for the conversion, send the auditor's report together with the accounts of the society to the SSA.

(5) An auditor of a society who contravenes this section commits an offence.

Maximum penalty—\$5 000.

(6) A director of a society, or of a company, must take all reasonable steps to ensure that a report required by this section to be sent to the SSA by the directors of a society or company is so sent.

Maximum penalty for subsection (6)—\$5 000.

Auditors and entities controlled by societies

287.(1) Despite the fact that an entity controlled by the society may be exempt from appointing an auditor under the Corporations Law, a society must ensure that the accounts and accounting records of an entity controlled by the society are audited in accordance with this Part.

Maximum penalty—\$75 000.

(2) If an entity controlled by a society has not appointed an auditor to

audit its accounts and accounting records under this Part, the auditor of the holding society is also auditor of the entity.

Obstruction of auditor

288.(1) An officer of a society must not—

- (a) fail without lawful excuse—
 - (i) to allow an auditor of the society access, in accordance with this Part, to any accounting records and other records and registers of the society that are in the custody or control of the officer; or
 - (ii) to give any information or explanation as and when required under this Part; or
- (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

(2) An officer or auditor of an entity controlled by a society must not—

- (a) refuse or fail without lawful excuse—
 - (i) to allow an auditor of a holding society that controls the entity, or has controlled but no longer controls it, access, in accordance with this Part, to any accounting records and other records and registers of the entity in the custody or control of that officer or auditor; or
 - (ii) to give any information or explanation as and when required under this Part; or
- (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

Qualified privilege

289.(1) In this section—

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

“qualified privilege” means that a person—

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

(2) An auditor of a society has qualified privilege in relation to—

- (a) any oral or written statement made by the auditor while exercising functions as auditor of the society; and
- (b) the giving to the SSA of a notice or report, or a copy of any accounts or group accounts.

(3) A person has qualified privilege in relation to the publishing of—

- (a) a document that is prepared by an auditor of a society while exercising functions as auditor of the society and is required under the financial institutions legislation to be lodged with the SSA or AFIC, whether or not the requirement has been complied with; and
- (b) any oral or written statement made by the auditor while exercising functions as auditor of the society.

(4) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Division 6—Returns and relief

Returns

290.(1) A society must lodge returns with the SSA in accordance with the regulations.

Maximum penalty—\$5 000.

(2) The SSA may, by written notice, require a society to lodge such further returns that the SSA requires.

(3) A further return must contain the information required by the notice and must be lodged as often as is required by the notice.

(4) Without limiting the effect of this section, the information that may be required in a further return may comprise or include information relating to—

- (a) an entity controlled by the society; and
- (b) a body corporate or other entity formed or acquired outside Australia by an entity controlled by the society; and
- (c) a body corporate or other entity (whether within or outside Australia) with which—
 - (i) the society; or
 - (ii) an entity controlled by the society; or
 - (iii) a body corporate or other entity mentioned in paragraph (b);

has invested funds.

(5) The SSA may, by written notice, require a society to lodge with a return or further return a report by a registered company auditor, or other person of a specified class, on specified matters to which the return relates.

(6) A society that fails to comply with a requirement of a notice given to it under this section commits an offence.

Maximum penalty—\$100 000.

Relief from requirements as to accounts and audit

291.(1) The directors of a society may apply to the SSA in writing for an order relieving the directors, the society or the auditor of the society from compliance with any specified requirements of Division 4 (Accounts) or 5 (Audit) (other than section 266 (Accounting records to be kept)).

(2) An application under subsection (1) must be accompanied by a written statement made in accordance with a resolution of the directors of the society, signed by not less than 2 directors and stating the reasons for seeking the order.

(3) The SSA may require the directors making the application to supply such information relating to the operations of the society, and of any entity controlled by the society, as the SSA thinks necessary for the purpose of determining the application.

(4) The SSA may make an order unconditionally or subject to any conditions it considers appropriate.

(5) Notice of an order under subsection (4) must be given to the society.

(6) The SSA may, if it considers it appropriate, make an order in relation to a specified class of societies relieving the directors of a society included in that class, a society included in that class or the auditor of a society included in that class, from compliance with any specified requirements of Division 4 (Accounts) or 5 (Audit) (other than section 266 (Accounting records to be kept)).

(7) The SSA may make an order under subsection (6) unconditionally or subject to any conditions it considers appropriate.

(8) Notice of an order under subsection (6) must be published in the Gazette.

(9) The SSA must not make an order in relation to a society, or a class of societies, under this section unless the SSA is of the opinion, in relation to each requirement of this Code specified in the order, that compliance with the requirement—

- (a) would render accounts or group accounts, or a report required in relation to those accounts, misleading; or
- (b) would be inappropriate to the circumstances of the society, or of the societies included in that class; or
- (c) would impose unreasonable burdens on—
 - (i) the society, an officer of the society or the auditor of the society; or
 - (ii) the societies, or officers or auditors of the societies, included in that class;

as the case may be.

(10) An order under this section may be limited in its effect to a period specified in the order.

(11) The SSA may, on application by the directors of a society or on its own initiative, revoke or suspend an order under this section.

(12) A revocation or suspension does not take effect—

- (a) in the case of an order under subsection (4)—until written notice of the revocation or suspension is given to the society; or
- (b) in the case of an order under subsection (6)—until notice of the revocation or suspension is published in the Gazette.

PART 7—MERGERS AND TRANSFERS OF ENGAGEMENTS

Division 1A—Preliminary

Definitions

291A. In divisions 1 and 2—

“certificate of confirmation” means a certificate given by the SSA to confirm a transfer of engagements.

“transferee society” means a society to whom another society is to transfer, or has transferred, its engagements under this Part.

“transferor society” means a society that is to transfer, or has transferred, its engagements under this Part.

Division 1—Mergers and transfers of engagements between societies of the same type

Interpretation—societies of the same type

292. For the purposes of this Division societies are of the same type if—

- (a) all the societies involved are building societies; or
- (b) all the societies involved are credit unions.

Application for registration of merger or transfer of engagements between societies of the same type

293.(1) If 2 or more societies of the same type propose to consolidate all or any of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements.

(2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the SSA has determined that it may be approved by the society's board.

(3) A society that is to approve the proposed merger, or transfer of engagements, by special resolution must send to each of its members a statement approved by the SSA specifying—

- (a) the financial position of each of the societies as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and
- (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
- (b) any interest that any officer of any of the societies has in the proposed merger, or transfer of engagements; and
- (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of a society in relation to the proposed merger, or transfer or engagements; and
- (d) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements; and
- (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements; and
- (f) any other matter specified by the SSA.

(4) The statement mentioned in subsection (3) must be sent to the members of the society so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later

than—

- (a) where the resolution is to be decided at a meeting—21 days before the date of the meeting; or
- (b) where the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with subsection (3).

(6) The SSA may grant an exemption, or approve a statement, subject to any conditions it considers appropriate.

(7) An application for the registration of a merger or transfer of engagements under this Division must be made in the way and form required by the SSA.

(8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

SSA may register merged society

294.(1) If, in relation to an application under this Division by societies for registration of a proposed merger, the SSA is satisfied that—

- (a) the societies involved have complied with section 293 (Application for registration of merger or transfer of engagements between societies of the same type); 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 all applicable standards; and
- (d) the certificates of incorporation of the societies involved in the merger have been surrendered to the SSA; and
- (e) there is no good reason why the merged society and its rules should not be registered;

the SSA must—

- (f) register the merged society; and
- (g) register its rules; and
- (h) authorise it to operate as a building society or, as the case may be, credit union; and
- (i) cancel the registration of the societies involved in the merger.

(2) On registering the merged society, the SSA must issue to the 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.

(3) A merger takes effect on the issue of the certificate of incorporation under subsection (2).

Certificate of confirmation (voluntary transfer)

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

(2) For a total transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

- (a) the societies have complied with section 293; and
- (b) the rules, or proposed rules, of the transferee society are adequate; and
- (c) the certificate of incorporation of the transferor society has been—
 - (i) surrendered to the SSA; or
 - (ii) lost or destroyed; and
- (d) there is no good reason why the transfer should not take effect.

(3) For a partial transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

- (a) the societies have complied with section 293; and

- (b) the rules, or proposed rules, of the societies are adequate; and
- (c) there is no good reason why the transfer should not take effect.

SSA may direct a transfer of engagements between societies of the same type

296.(1) The SSA may, by written notice given to a society, direct it to totally or partially transfer its engagements to another society of the same type (the “**transferee society**”) if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The SSA must give a copy of the direction to the transferee society.

(2A) For a total transfer of engagements, the direction must specify that the transferor society must surrender its certificate of incorporation to the SSA or satisfy the SSA that its certificate has been lost or destroyed.

(3) The SSA must not direct a society to transfer its engagements under this section unless—

- (a) the SSA is of the opinion that—
 - (i) the society has contravened the financial institutions legislation or the society’s rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
 - (ii) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
 - (iii) the affairs of the society are being conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to 1 or both of the societies as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members, depositors or creditors of the society that is to be directed to transfer its engagements; or
- (c) the SSA has certified, in relation to the society, that any of the events mentioned in section 341(1)(a), (b), (c) or (g) (Winding-up on certificate of SSA) has happened.

Society to comply with direction

297.(1) A society must take all reasonable steps to comply with a direction under this Division to transfer its engagements.

Maximum penalty—\$100 000.

(2) An officer of a society must not—

- (a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements; or
- (b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

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

Certificate of confirmation (transfer by direction)

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

(2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation indicating that the certificate takes effect when it is issued.

(3) If the transfer does not take effect immediately—

- (a) the direction must specify the day when the SSA proposes to issue the certificate of confirmation; and
- (b) when the SSA is satisfied that the societies have complied with the direction, it must issue a certificate of confirmation.

Who receives the certificate of confirmation

298A. The SSA must give a certificate of confirmation—

- (a) for a partial transfer—to each of the societies; or
- (b) for a total transfer—to the transferee society.

When transfer of engagements takes effect

298B. A transfer of engagements takes effect—

- (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.

Cancellation of registration after total transfer

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

Effect of merger

299.(1) This section applies on a merger of societies under this Division taking effect.

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

(3) Without limiting subsection (2)—

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

Effect of transfer of engagements

300.(1) This section applies on a transfer of engagements under this Division taking effect.

- (2) However, for a partial transfer, this section applies—
- (a) subject to the terms on which the transfer takes place; and
 - (b) only to the extent necessary to give effect to the transfer.
- (3) The transferee society is the successor of the transferor society.
- (4) Without limiting subsection (3)—
- (a) the members of the transferor society become members of the transferee society; and
 - (b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and
 - (c) in all documents (including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and
 - (d) a legal proceeding by or against the transferor society that is not finished when the 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.

Division 2—Mergers and transfers of engagements between societies of different types

Interpretation—societies of different types

301. For the purposes of this Division, societies are of different types if—

- (a) one of the societies involved is a building society; and
- (b) the other society, or at least 1 of the other societies, involved is a credit union.

Application for registration of merger or transfer of engagements between societies of different types

302.(1) If societies of different types propose to consolidate all or any of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements.

(2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the SSA has determined that it may be approved by the society's board.

(3) A society that is to approve the proposed merger, or transfer of engagements, by special resolution must send to each of its members a statement approved by the SSA specifying—

- (a) the financial position of each of the societies as shown in financial statements prepared as at a date that is not more than 6 months before the date of the statement; and
- (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
- (b) any interest that any officer of any of the societies has in the proposed merger, or transfer of engagements; and
- (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of a society in relation to the proposed merger, or transfer of engagements; and
- (d) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements; and
- (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements; and
- (f) in the case of a merger—whether the merged society is to operate as a building society or a credit union; and
- (g) any other matter specified by the SSA.

(4) The statement referred to in subsection (3) must be sent to the members of the society so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than—

- (a) where the resolution is to be decided at a meeting—21 days before the date of the meeting; or
- (b) where the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with subsection (3).

(6) The SSA may grant an exemption, or approve a statement, subject to any conditions it considers appropriate.

(7) An application for the registration of a merger or transfer of engagements under this Division must be made in the way and form required by the SSA.

(8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

Cancellation of building society's permanent shares

302A.(1) A building society must cancel its permanent shares before—

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

(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.

SSA may register merged society

303.(1) If, in relation to an application under this Division by societies for registration of a proposed merger, the SSA is satisfied that—

- (a) the societies involved have complied with section 302 (Application for registration of merger or transfer of engagements between societies of different types); 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 all applicable standards; and
- (d) the certificates of incorporation of the societies involved in the merger have been surrendered to the SSA; and
- (e) there is no good reason why the merged society and its rules should not be registered;

the SSA must—

- (f) register the merged society; and
- (g) register its rules; and
- (h) authorise it to operate as a building society, or as the case may be, credit union; and
- (i) cancel the registration of the societies involved in the merger.

(2) On registering the merged society, the SSA must issue to the 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.

(3) A merger takes effect on the issue of the certificate of incorporation under subsection (2).

Certificate of confirmation (voluntary transfer)

304.(1) This section applies to a transfer of engagements following an

application under section 302 (Application for registration of merger or transfer of engagements between societies of different types).

(2) For a total transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

- (a) the societies have complied with section 302; and
- (b) the rules, or proposed rules, of the transferee society are adequate; and
- (c) the certificate of incorporation of the transferor society has been—
 - (i) surrendered to the SSA; or
 - (ii) lost or destroyed; and
- (d) there is no good reason why the transfer should not take effect.

(3) For a partial transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

- (a) the societies have complied with section 302; and
- (b) the rules, or proposed rules, of the societies are adequate; and
- (c) there is no good reason why the transfer should not take effect.

SSA may direct a transfer of engagements between societies of different types

305.(1) The SSA may, by written notice given to a society, direct it to totally or partially transfer its engagements to another society of a different type (the “**transferee society**”) if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The SSA must give a copy of the direction to the transferee society.

(2A) For a total transfer of engagements, the direction must specify that the transferor society must surrender its certificate of incorporation to the SSA or satisfy the SSA that its certificate has been lost or destroyed.

(3) The SSA must not direct a society to transfer its engagements under this section unless—

- (a) the SSA is of the opinion that—
 - (i) the society has contravened the financial institutions

legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or

- (ii) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
 - (iii) the affairs of the society are being conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to 1 or both of the societies as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members, depositors or creditors of the society that is to be directed to transfer its engagements; or
- (c) the SSA has certified, in relation to the society, that any of the events mentioned in section 341(1)(a), (b), (c) or (g) (Winding up on certificate of SSA) has happened.

(4) The SSA must not give a direction under this section unless, having regard to the interests of members, depositors and creditors of the society being directed, the SSA considers that it would not be appropriate to direct a transfer of engagements under section 296 (SSA may direct a transfer of engagements between societies of the same type).

Society to comply with direction

306.(1) A society must take all reasonable steps to comply with a direction under this Division to transfer its engagements.

Maximum penalty—\$100 000.

- (2) An officer of a society must not—
- (a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements; or
 - (b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

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

Certificate of confirmation (transfer by direction)

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

(2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation indicating that the certificate takes effect when it is issued.

(3) If the transfer does not take effect immediately—

- (a) the direction must specify the day when the SSA proposes to issue the certificate of confirmation; and
- (b) when the SSA is satisfied that the societies have complied with the direction, it must issue a certificate of confirmation.

Who receives the certificate of confirmation

307A. The SSA must give a certificate of confirmation—

- (a) for a partial transfer—to each of the societies; or
- (b) for a total transfer—to the transferee society.

When transfer of engagements takes effect

307B. A transfer of engagements takes effect—

- (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.

Cancellation of registration after total transfer

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

Effect of merger and transfer of engagements

308. Sections 299 (Effect of merger) and 300 (Effect of transfer of

engagements) apply to and in relation to a merger of societies, and a transfer of engagements between societies, under this Division.

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.

Division 4—Payment out of Credit Unions Contingency Fund

SSA may direct payment out of fund

317.(1) If a credit union merges with a building society and the merged society is a building society, the SSA may direct that there be paid from the Credit Unions Contingency Fund to the merged society the amount standing to the credit of the credit union in that fund immediately before the merger took effect.

(2) If a credit union transfers the whole of its engagement to a building society, the SSA may direct that there be paid from the Credit Unions Contingency Fund to the building society the amount standing to the credit of the credit union in that fund immediately before the transfer of engagements took effect.

(3) If a credit union merges with, or transfers the whole of its engagements to, a society incorporated in another participating State, the SSA may direct that there be paid from the Credit Unions Contingency Fund under this Code—

- (a) where the merged society, or as the case may be, transferee society, is a credit union under the financial institutions legislation of that State—to the Credit Unions Contingency Fund established under that legislation; and
- (b) where the merged society, or as the case may be, transferee society, is a building society under the financial institutions legislation of that State—to that building society;

the amount standing to the credit of the credit union in the first mentioned fund immediately before the merger, or transfer of engagements, took

effect.

(4) A direction given by the SSA under this section has effect according to its tenor.

PART 8—CONVERSIONS

Division 1—Building societies

Interpretation

318. In this Division, a reference to a proposal by a society that is a building society to convert to a credit union means a proposal that the society be authorised to operate as a credit union.

Building society may convert to company or credit union

319. Subject to its rules, a building society may apply to the SSA for approval of a proposal that it convert to a company or credit union.

Proposal to convert by building society to be approved by members

320.(1) Before a building society applies to the SSA for approval to convert, the proposal and the memorandum of association and articles of association (if any) or the rules proposed for the company or credit union must be approved—

- (a) in a postal ballot conducted in accordance with the regulations in which not less than 20% (or in the case of a society whose rules specify a greater percentage, that greater percentage) of the members of the building society have voted; and
- (b) by not less than 75% of the members who have voted; and
- (c) where the building society has issued shares of more than 1 class—by members who have voted and who hold not less than 75% of the shares in each class held by all the members who

have voted.

(2) Before a building society applies to the SSA for approval to convert, the building society must send to each of its members—

- (a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed memorandum of association and articles of association (if any) or the rules of the proposed company or credit union; and
- (b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and
- (c) a statement, the contents of which have been approved by the SSA, relating to—
 - (i) the financial position of the building society; and
 - (ii) the reasons for the proposal to convert; and
 - (iii) any interest that its officers may have in the conversion; and
 - (iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and
 - (v) any payments to be made to its members arising out of the conversion; and
- (d) any other matters that the SSA directs.

(3) The part of a statement under subsection (2)(c)(i) must include—

- (a) the profit and loss account of the building society for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the building society for that period; and
- (b) a balance sheet as at the end of the last day of the period to which the profit and loss account relates, giving a true and fair view of the state of affairs of the building society on that day; and
- (c) a report prepared by the auditor of the building society containing prescribed statements and information relating to the accounts of the society for the period to which the profit and loss account relates.

(4) The documents mentioned in subsection (2), and the ballot papers to be used in the postal ballot, must be sent to the members of the building society so that they will in the ordinary course of post reach each member who is entitled to vote not later than 21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with subsection (2) or (3).

(6) The SSA may grant an exemption, or approve a summary or statement, subject to any conditions it considers appropriate.

SSA may direct as to percentage

321.(1) If—

- (a) a postal ballot is conducted for the purpose of section 320(1) (Proposal to convert by building society to be approved by members); and
- (b) the percentage of members of the building society who are required to vote in the postal ballot is 20%; and
- (c) less than 20% of members of the building society vote in the postal ballot;

the SSA may, by written notice given to the building society, direct that for the purpose of the postal ballot, the subsection is taken to have had effect as if the percentage specified by the SSA in the notice had been substituted for the 20% at all relevant times.

(2) The SSA must not give a notice to a building society under subsection (1) unless the SSA is of the opinion that it is in the interests of the public, and of members and depositors of the building society, to do so.

(3) A notice under subsection (1) has effect according to its tenor.

Application by building society to SSA for approval of proposal

322.(1) An application for conversion by a building society must be made in the prescribed form and must be accompanied by—

- (a) 2 copies of the proposed memorandum of association and articles

of association (if any) or the rules of the proposed company or credit union; and

- (b) a copy of the register of members of the building society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and
- (c) a statement setting out the day and terms on which the conversion of the building society to a company or credit union is proposed to take effect; and
- (d) any other documents or information that the SSA requires.

(2) In determining whether or not to approve the proposal to convert, the SSA must have regard to—

- (a) the public interest; and
- (b) the interests of the members and depositors of the building society to which the proposal relates; and
- (c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and
- (d) whether, in the case of a proposal for conversion of a building society to a company, the company would be subject to prudential regulation similar to that applying to the building society; and
- (e) proposals for the payment of expenses associated with the proposal; and
- (f) any other relevant matter.

(3) The SSA—

- (a) may approve the proposal to convert subject to any conditions it considers appropriate; or
- (b) may refuse to approve the proposal.

Conversion of building society to company

323. If—

- (a) a proposal by a building society that it convert to a company is

approved by the SSA; and

- (b) the company is formed and incorporated in accordance with any conditions of the SSA's approval; and
- (c) any other conditions of the approval relating to the transfer of membership, issuing of shares or any other matter are complied with;

then, on the day the society is registered as a company under the Corporations Law—

- (d) the property of the building society vests in the company without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and
- (e) the debts and liabilities of the building society become debts and liabilities of the company; and
- (f) the society's personality merges in that of the company.

Conversion of building society to credit union

324. If—

- (a) a proposal by a society (being a building society) that it convert to a credit union is approved by the SSA; and
- (b) the proposed rules of the proposed credit union are registered by the SSA; and
- (c) the conditions of the approval, including any relating to the issuing of shares, are complied with;

then, by virtue of this section, on the day approved by the SSA for the conversion, the society is authorised to operate as a credit union and the rules of the society are those registered under paragraph (b).

Division 2—Credit unions

Interpretation

325. In this Division, a reference to a proposal by a society that is a credit

union to convert to a building society means a proposal that the society be authorised to operate as a building society.

Credit union may convert to building society

326. Subject to its rules, a credit union may apply to the SSA for approval of a proposal that it convert to a building society.

Proposal to convert by credit union to be approved by members

327.(1) Before a credit union applies to the SSA for approval to convert, the proposal and the rules proposed for the building society must be approved by not less than 75% of members of the credit union who vote in a postal ballot conducted in accordance with the regulations.

(2) Before a credit union applies to the SSA for approval to convert, the credit union must send to each of its members—

- (a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed rules of the proposed building society; and
- (b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and
- (c) a statement, the contents of which have been approved by the SSA, relating to—
 - (i) the financial position of the credit union; and
 - (ii) the reasons for the proposal to convert; and
 - (iii) any interest that its officers may have in the conversion; and
 - (iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and
 - (v) any payments to be made to its members arising out of the conversion; and
- (d) any other matters that the SSA directs.

(3) The part of a statement under subsection (2)(c)(i) must include—

- (a) the profit and loss account of the credit union for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the credit union for that period; and
- (b) a balance sheet as at the end of the last day of the period to which the profit and loss account relates, giving a true and fair view of the state of affairs of the credit union on that day; and
- (c) a report prepared by the auditor of the credit union containing prescribed statements and information relating to the accounts of the credit union for the financial year up to that day.

(4) The documents mentioned in subsection (2), and the ballot papers to be used in the postal ballot, must be sent to the members of the credit union so that they will, in the ordinary course of post, reach each member who is entitled to vote not later than 14 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with subsection (2) or (3).

(6) The SSA may grant an exemption or approve a summary or statement, subject to any conditions it considers appropriate.

Application by credit union to SSA for approval of proposal

328.(1) An application for conversion by a credit union must be made in the prescribed form and must be accompanied by—

- (a) 2 copies of the proposed rules of the proposed building society; and
- (b) a copy of the register of members of the credit union verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and
- (c) a statement setting out the day and terms on which the conversion of the credit union to a building society is proposed to take effect; and
- (d) any other documents or information that the SSA requires.

(2) In determining whether or not to approve the proposal to convert, the SSA must have regard to—

- (a) the public interest; and
- (b) the interests of the members and depositors of the credit union to which the proposal relates; and
- (c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and
- (d) proposals for the payment of expenses associated with the proposal; and
- (e) any other relevant matter.

(3) The SSA—

- (a) may approve the proposal to convert subject to any conditions it considers appropriate; or
- (b) may refuse to approve the proposal.

Conversion of credit union to building society

329. If—

- (a) a proposal by a society (being a credit union) that it convert to a building society is approved by the SSA; and
- (b) the proposed rules of the proposed building society are registered by the SSA; and
- (c) the conditions of the approval, including any relating to the issuing of shares, are complied with;

then, by virtue of this section, on the day approved by the SSA for the conversion, the society is authorised to operate as a building society and the rules of the society are those registered under paragraph (b).

Division 3—Directed conversion to company**SSA may direct conversion**

330.(1) The SSA may by written notice given to a society direct it to convert to a company.

(2) The SSA must not direct a society to convert to a company unless—

- (a) the SSA is of the opinion that—
 - (i) the society has contravened the financial institutions legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
 - (ii) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
 - (iii) the affairs of the society are being conducted in an improper or financially unsound way; or
- (b) after making such inquiries in relation to the society as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members, depositors or creditors that the society convert to a company; or
- (c) the SSA has certified, in relation to the society, that any of the events mentioned in section 341(1)(a), (b), (c) or (g) (Winding up on certificate of SSA) has happened.

(3) The SSA must not direct a society to convert to a company unless the SSA is satisfied that on the conversion taking effect, the company will be able to carry on banking business in Australia lawfully.

Society to comply with direction

331.(1) A society must take all reasonable steps to comply with a direction to convert to a company.

Maximum penalty—\$100 000.

(2) An officer of a society must not—

- (a) fail to take all reasonable steps to secure compliance by the society with a direction to convert to a company; or
- (b) by a wilful act or omission be the cause of a failure by the society to convert to a company.

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

Day on which conversion to take effect

332. A society must give the SSA written notice of the day on which the conversion of the society to a company is proposed to take effect.

Conversion of society to company

333. If—

- (a) a society is directed by the SSA to convert to a company; and
- (b) the company is formed and incorporated;

then, on the day the society is registered as a company under the Corporations Law—

- (c) the property of the society vests in the company without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and
- (d) the debts and liabilities of the society become debts and liabilities of the company; and
- (e) the society's personality merges in that of the company.

Division 4—General

Surrender of certificate of incorporation etc.

334.(1) A building society that proposes to convert to a credit union must surrender its certificate of incorporation and its authority to operate as a building society to the SSA.

(2) A credit union that proposes to convert to a building society must surrender its certificate of incorporation and its authority to operate as a

credit union to the SSA.

(3) On the conversion of a society to a building society or a credit union, the SSA may—

- (a) amend the society's certificate of incorporation, or issue a new certificate, so as to indicate that the conversion has happened; and
- (b) where the society was a building society—cancel its authority to operate as a building society and issue to it an authority to operate as a credit union; and
- (c) where the society was a credit union—cancel its authority to operate as a credit union and issue to it an authority to operate as a building society.

(4) A building society that proposes, or is directed, to convert to a company must surrender its certificate of incorporation and its authority to operate as a building society to the SSA.

(5) A credit union that is directed to convert to a company must surrender its certificate of incorporation and its authority to operate as a credit union to the SSA.

(6) On the conversion of a society to a company, the SSA must cancel the registration of the society.

(7) A society that contravenes this section commits an offence.

Maximum penalty for subsection (7)—\$5 000.

Conversion of society to building society or credit union does not result in its dissolution

335. The conversion of a society to a building society or a credit union does not result in the dissolution of the society, or affect any right or obligation of the society or of any member or other person or render defective any legal proceeding by or against the society.

Certificate of SSA

336.(1) The SSA may, on application by the company, building society or credit union resulting from a conversion and production of any evidence that the SSA requires, issue to the company, building society or credit union

a certificate stating that a conversion under this Part has taken effect.

(2) A certificate issued by the SSA under subsection (1) is conclusive evidence as to the matters so certified and that the conditions of any approval have been complied with.

PART 9—EXTERNAL ADMINISTRATION

Division 1—Arrangements and reconstructions

Schemes of arrangement and reconstruction

337.(1) Part 5.1 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), the provisions of Part 5.1 of the Corporations Law apply as if—

- (a) a reference to a company were a reference to a society; and
- (b) a reference to the Commission were a reference to the SSA; and
- (c) a reference to a shareholder were a reference to a member.

Division 2—Receivers and managers

Receivers and managers

338.(1) Part 5.2 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting subsection (1), a reference in Part 5.2 of the Corporations Law to the Commission is taken to be a reference to the SSA.

Division 4—Winding-up**Winding-up**

340.(1) A society may be wound-up voluntarily or by the Court or on a certificate of the SSA.

(2) Subject to this Division, a society may be wound-up in the way and circumstances in which a company may be wound-up under the Corporations Law.

Winding-up on certificate of SSA

341.(1) In the case of a winding-up on a certificate of the SSA, the society may be wound-up if the SSA certifies that any of the following events has happened—

- (a) that the number of members is reduced to less than 25;
- (b) that the society has not started business within a year of registration or has suspended or ceased to carry on business for a period of more than 6 months;
- (c) that an event (to be specified in the certificate) has happened on the happening of which the regulations or the society's rules provide that the society is to be wound up;
- (d) that the registration of the society has been obtained by mistake or fraud;
- (e) that the society exists for an illegal purpose;
- (f) that the society has, after notice by the SSA of any contravention of this Code or the society's rules, failed, within the time specified in the notice, to remedy the contravention or has committed any further contravention of a kind specified in the notice;
- (g) that there are, and have been for a period of 1 month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum as provided by the society's rules;
- (h) that, because of an investigation under this Code into the affairs of the society, it is in the interests of the public or, members,

depositors or creditors that the society should be wound-up.

(2) The SSA must not so certify unless—

- (a) the event has been proved to its satisfaction; and
- (b) in the case of an event mentioned in subsection (1)(d), (e), (f) or (h)—AFIC has been informed of the happening of the event.

(3) If the SSA so certifies, the SSA may appoint a person to be the liquidator of the society.

(4) The liquidator appointed by the SSA may be employed in the office of the SSA and, if so, need not be a registered liquidator under the Corporations Law.

(5) The liquidator, unless employed in the SSA's office, is entitled to receive an amount of remuneration that the SSA considers appropriate, having regard to the rate of payment that normally would apply for such an appointment.

(6) Any vacancy in the office of a liquidator appointed under subsection (3) must be filled by a person appointed by the SSA for the purpose.

(7) A winding-up on a certificate of the SSA is taken to commence at the date of the certificate of the SSA.

(8) The liquidator must, within 14 days after the appointment, give notice of the appointment by Gazette notice.

Application of Corporations Law to winding-up

342.(1) Subject to this Division, Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7B (other than section 588G) and 5.9 of the Corporations Law apply, with all necessary modifications and any modifications prescribed by regulation, to the winding-up or dissolution of a society or to a defunct or dissolved society.

(2) In the application of Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7B (other than section 588G) and 5.9 of the Corporations Law to the winding-up of a society, any reference in those provisions—

- (a) to a special resolution—is a reference to a special resolution within the meaning of this Code; and

- (b) to the Commission—is a reference to the SSA; and
- (c) to a voluntary winding-up—includes a reference to a winding-up of a society on a certificate of the SSA.

Voluntary winding-up

343.(1) If a society is to be wound-up voluntarily, a person employed in the office of the SSA may be appointed liquidator.

(2) If a society is being wound-up voluntarily and a vacancy happens in the office of liquidator, a person employed in the office of the SSA may be appointed liquidator to fill the vacancy.

(3) An appointment under subsection (1) or (2) is not effective unless made with the written approval of the SSA.

(4) A person appointed as liquidator under this section need not be a registered liquidator under the Corporations Law.

(5) The remuneration payable in relation to a liquidator appointed under this section must be paid to the SSA.

Vacancy in office of liquidator on voluntary winding-up

344. Where—

- (a) a society is being wound-up voluntarily; and
- (b) the liquidator was not appointed under section 343 (Voluntary winding-up); and
- (c) a vacancy happens in the office of liquidator that, in the SSA's opinion, is unlikely to be filled in the way provided by Part 5.5 of the Corporations Law;

the SSA may appoint as liquidator, a person qualified under that Part for such appointment.

Remuneration of liquidator on voluntary winding-up

345. Despite anything in this Code or in the Corporations Law, the remuneration paid to the liquidator of a society wound-up voluntarily must not exceed the amount fixed by the SSA.

Cancellation of registration

346. As soon as is practicable after the society is dissolved or taken to be dissolved, the SSA must register the dissolution and cancel the registration of the society.

PART 10—SPECIAL INVESTIGATIONS**Interpretation**

347.(1) In this Part—

“**officer**”, in relation to a society, includes—

- (a) a person who acts, or who at any time acted, as banker, solicitor, auditor or in any other capacity for the society; and
- (b) a person who—
 - (i) has, or has at any time had, in his or her possession any property of the society; or
 - (ii) is indebted to the society outside the normal trading terms of the person’s membership; or
 - (iii) is capable of giving information concerning the affairs of the society; and
- (c) if an investigator has reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (b)—that person.

(2) A reference in this Part to a society includes—

- (a) if the SSA has given consent under section 349 (Investigation of affairs of related body corporate)—a reference to a related body corporate; and
- (b) other than in that section—a reference to a services corporation.

(3) Where 2 or more investigators have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a society, each of those investigators may exercise the powers or perform the

functions under this Part independently of the other investigator or investigators.

Appointment of investigators

348.(1) The SSA may appoint an investigator to investigate the affairs of a society if the SSA considers that it is desirable to do so—

- (a) for the protection of the public, or of the members, depositors or creditors of the society or of the holders of debentures of the society; or
- (b) in the public interest.

(2) The SSA may appoint a person as investigator only if the person has, in the SSA's opinion, the appropriate expertise for the position (whether because of training or otherwise).

(3) The SSA must, in the instrument appointing an investigator, specify full particulars of the appointment including—

- (a) the matters into which the investigations are to be made, being all the affairs or particular affairs of the society; and
- (b) the terms and conditions (if any) to which the appointment is subject.

(4) The SSA—

- (a) may, in the instrument appointing an investigator, specify the period in relation to which the investigation is to be made; and
- (b) may, at any time by written notice given to an investigator, vary—
 - (i) particulars specified in the instrument of appointment, being particulars mentioned in subsection (3)(a) or (b); or
 - (ii) the period in relation to which the investigation is to be made.

(5) The SSA may, by written notice given to an investigator, terminate the appointment at any time.

Investigation of affairs of related body corporate

349. If an investigator thinks it necessary, for the purposes of the investigation of affairs of a society, to investigate affairs of a body corporate that is or has at any relevant time been a related body corporate of the society, the investigator may with the written consent of the SSA investigate affairs of that body.

Powers of investigators

350.(1) An investigator may, by giving written notice to an officer of a society the affairs of which are being investigated under this Part, require the officer—

- (a) to produce to the investigator all documents of the society and other documents relating to affairs of the society as are in the custody or under the control of the officer; and
- (b) to give to the investigator all reasonable assistance in connection with the investigation; and
- (c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation.

(3) An investigator must not exercise his or her powers under subsection (1) in relation to an officer of a body corporate the affairs of which he or she is investigating under section 349 (Investigation of affairs of related body corporate) unless he or she has given to the officer of the body corporate a certificate stating that he or she is investigating affairs of the body corporate under that section and that the officer is an officer of the body corporate.

(4) Where documents are produced to an investigator under this Part, the investigator may take possession of the documents for such period as he or she considers necessary for the purpose of the investigation.

(5) During that period, the investigator must permit a person who would be entitled to inspect any 1 or more of those documents, if they were not in the possession of the investigator, to inspect at all reasonable times such of those documents as that person would be so entitled to inspect.

Examination of officers

351.(1) If affairs of a society are being investigated under this Part, an officer of the society must not—

- (a) fail to comply with a requirement of an investigator under section 350 (Powers of investigators) to the extent to which he or she is able to comply with it; or
- (b) in purported compliance with such a requirement, knowingly give information that is false or misleading in a material particular; or
- (c) when appearing before an investigator for examination under such a requirement—
 - (i) make a statement that is false or misleading in a material particular; or
 - (ii) fail to be sworn or make an affirmation.

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

(2) A legal practitioner acting for the officer—

- (a) may attend the examination; and
- (b) may, to the extent that the investigator permits—
 - (i) address the investigator; and
 - (ii) examine the officer;

in relation to matters in relation to which the investigator has questioned the officer.

(3) A person who complies with the requirement of an investigator under this section does not incur any liability to any person merely because of that compliance.

(4) A person required to attend for examination under this Part is entitled to such allowances and expenses as are prescribed.

Self-incrimination

352.(1) An officer is not excused from—

- (a) answering a question put to the officer by an investigator; or

- (b) producing a document to an investigator;

on the ground that the answer or production of the document might tend to incriminate the officer.

(2) 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.

Privileged communications

353.(1) An officer who is a legal practitioner may refuse to give information or produce a document to an investigator if—

- (a) the information or document is a privileged communication between the legal practitioner as such and another person; and
- (b) the other person does not agree to its being given or its production; and
- (c) subsection (2) does not apply.

(2) If the society to which the information or document relates is under official management or is being wound up, the legal practitioner must give the information or produce the document if the official manager or the liquidator agrees to its being given or to its production.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

- (3) A legal practitioner commits an offence if he or she—
- (a) refuses to give information or produce a document to an investigator on the ground that it is a privileged communication between the legal practitioner and another person who has not agreed to its being given or to its production; and
 - (b) knows the name of that other person and the residential or other address at which the person might be found; and
 - (c) fails to comply with a request by the investigator to supply the investigator with that name and address in writing.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

Failure of officer to comply with requirement of investigator

354.(1) If an officer of a society fails to comply with a requirement of an investigator appointed to investigate affairs of the society, the investigator may, unless the officer proves that the officer had a lawful excuse for the failure, certify the failure by signed writing to the Court.

(2) If an investigator gives a certificate under subsection (1), the Court may inquire into the case and—

- (a) order the officer to comply with the requirements of the investigator within a period fixed by the Court; or
- (b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator—punish the officer in like way as if the officer had been guilty of contempt of the Court and may also make an order under paragraph (a).

Recording of examination

355.(1) An investigator may cause to be made a record of the questions asked and the answers given at an examination under this Part.

(2) Except as provided by section 352 (Self-incrimination), a record of the examination of any person under this Part may be used in evidence in any legal proceeding against the person.

(3) A copy of the record of the examination of any person must be given

without fee to the person upon the written request of the person.

(4) Nothing in this section affects or limits the admissibility of other written or oral evidence.

(5) The SSA may give a copy of the record of any examination made under this section to a legal practitioner who satisfies the SSA that he or she is acting for a person who is conducting, or is in good faith contemplating, legal proceedings in relation to affairs being investigated by an investigator under this Part.

(6) A legal practitioner to whom a copy of a record is given under subsection (5) must—

- (a) use the record only in connection with the institution or preparation of, and in the course of, legal proceedings; and
- (b) not publish or communicate the record or any part of it for any other purpose.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

(7) If a report is made under section 357 (Report of investigator), any record made under this section relating to that report must be given with the report.

Delegation of powers by investigator

356.(1) An investigator may delegate the investigator's powers under this Part except—

- (a) the power to administer oaths or affirmations; and
- (b) the power to examine on oath or affirmation.

(2) A delegate must produce the instrument of delegation for inspection on request by an officer of a society the affairs of which are being investigated under this Part.

Report of investigator

357.(1) An investigator may, and if so directed by the SSA must, make interim reports to the SSA.

(2) On the completion or termination of the investigation, the investigator

must report to the SSA the investigator's opinion in relation to the affairs the investigator has investigated, together with the facts on which the opinion is based.

(3) An investigator may, when making a report under this section, give to the SSA any documents of which the investigator has taken possession under section 350(4) (Powers of investigators).

(4) The SSA—

- (a) may retain the documents for such period as it considers to be necessary to enable a decision to be made as to whether or not any legal proceeding ought to be instituted because of the investigation; and
- (b) may retain the documents for such further period as it considers to be necessary to enable any such proceeding to be instituted and prosecuted; and
- (c) may permit other persons to inspect the documents while they are in its possession; and
- (d) may permit the use of the documents for the purposes of any legal proceeding instituted as a result of the investigation; and
- (e) must permit a person who would be entitled to inspect any of the documents if they were not in the possession of the SSA to inspect at all reasonable times such of the documents as the person would be so entitled to inspect.

(5) Subject to subsection (6), a copy of a final report must, and a copy of the whole or any part of an interim report may if the SSA considers it appropriate, be forwarded by the SSA to the registered office of the society to which it relates.

(6) The SSA is not bound to give a society or any other person a copy of a report, or any part of a report, by an investigator if the SSA is of the opinion that there is good reason for not divulging the contents of the report or part.

(7) The SSA may, if it is of the opinion that it is in the public interest to do so, cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this Part to be forwarded to the SSA with the report to which the record relates,

a copy of the record may, subject to section 355 (Recording of examination), be given to such persons and on such conditions as the SSA considers appropriate.

Proceedings following investigation

358.(1) If from a report under section 357 (Report of investigator) or from the record of an examination under this Part, the SSA is of the opinion that an offence may have been committed by a person and that a prosecution ought to be instituted, the SSA must cause a prosecution to be instituted and prosecuted.

(2) The SSA may, by written notice given before or after the institution of a prosecution under subsection (1), require an officer of the society the affairs of which were investigated (not being an officer who is or, in the opinion of the SSA, is likely to be, a defendant in the proceeding) to give all assistance in connection with the prosecution or proposed prosecution that he or she is reasonably able to give.

(3) If a person to whom a notice is given under subsection (2) fails to comply with the requirement specified in the notice, the Court may on the application of the SSA, direct that person to comply with the requirement.

(4) If from a report of an investigator made under section 357 (Report of investigator) or from the record of an examination under this Part, the SSA is of the opinion that proceedings ought in the public interest to be brought by a society the affairs of which were investigated by the investigator, for the recovery of damages in relation to fraud, misfeasance or other misconduct in connection with affairs of the society, or for the recovery of property of the society, the SSA may cause proceedings to be instituted accordingly in the name of the society.

Admission of investigator's report in evidence

359.(1) A document certified by the SSA as a copy of an investigator's report is admissible in legal proceedings as evidence of—

- (a) the investigator's report of his or her opinion for the purposes of Division 4 (Winding-up) of Part 9 (External administration); and
- (b) any facts or matters found by the investigator to exist.

(2) The court before which legal proceedings are brought against a society or other person for or in respect of matters dealt with in an investigator's report under section 357 (Report of investigator) may order that a copy of the report be given to that society or person.

(3) Nothing in this section operates to diminish the protection given to witnesses by law.

Expenses of investigation

360.(1) Subject to this section, the expenses of and incidental to an investigation under this Part (including the costs incurred and payable by the SSA in a proceeding brought by it in the name of a society) must be paid by the SSA.

(2) If the SSA is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a society under this Part (including the costs incurred and payable by it in a proceeding brought by it in the name of a society) should be paid by the society, the SSA may—

- (a) by order direct that the whole, or part of, the expenses be so paid; or
- (b) if they have been paid under subsection (1)—direct the society to reimburse the SSA; or
- (c) in either case—direct the society to reimburse the SSA in relation to the remuneration of any employee of the SSA concerned with the investigation.

(3) An order under subsection (2) may specify—

- (a) the amount of the expenses to be paid or reimbursed; and
- (b) the time or times and the way in which the payment or reimbursement of the expenses is to be made.

(4) If an order has been made by the SSA under subsection (2), the society named in the order, to the extent specified in the order, is liable to pay the expenses or reimburse the SSA in relation to the expenses.

(5) An amount for which the society is liable under an order under subsection (2) may be recovered as a debt due to the SSA in a court having jurisdiction for the recovery of debts up to the amount concerned.

(6) An investigator may include in the report a recommendation whether—

- (a) an order under subsection (2) should be made; or
- (b) an application under subsection (7) for a like order should be made; or
- (c) both an order and an application should be made.

(7) An application may be made to a court by or on behalf of the SSA for the court to make the same order as the SSA is empowered to make under subsection (2).

(8) The court may make an order with respect to the application or its subject matter as it considers appropriate.

(9) Subsections (3), (4) and (5) apply to an order by the court as if it were an order made by the SSA.

(10) An application under subsection (7) may be made—

- (a) during proceedings in the court instituted in the name of the society under section 358(4) (Proceedings following investigation); or
- (b) on, or within 14 days after, a conviction by the court in proceedings certified by the SSA for the purposes of the application to have been instituted as a result of an investigation under this Part of affairs of a specified society.

Offences

361. A person who—

- (a) conceals, destroys, mutilates or alters a document of or relating to a society the affairs of which are being investigated under this Part; or
- (b) sends, causes to be sent or conspires with another person to send, out of this State such a document or any property belonging to or under the control of the society;

commits an offence.

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

Defence

362. In a prosecution for an offence against section 361 (Offences), it is a defence if the person charged proves that he or she did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

PART 11—FOREIGN SOCIETIES**Definition**

363. In this Part—

“**applicable standard**” includes a standard relating to the registration of societies as foreign societies in a participating State.

Registration

364.(1) A body corporate that is a society under the financial institutions legislation of another participating State and that proposes to carry on business as a society in this State may apply to the SSA in the prescribed way to be registered as a foreign society.

(2) An application for registration as a foreign society must be accompanied by—

- (a) a certificate, 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
- (b) the documents prescribed for the purpose of the section of the financial institutions legislation of that participating State that corresponds with section 369(3) (Society proposing to register as foreign society); and
- (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
- (d) such other documents or information as are prescribed.

(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.

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.

Application of Code to foreign societies

365. The prescribed provisions of this Code apply, with all necessary modifications and any prescribed modifications, to a foreign society as if the foreign society were a society.

SSA to be notified of certain changes

366. Within 1 month of any alteration or change affecting—

- (a) the address of the registered office of a foreign society in the

participating State in which it is incorporated; or

- (b) the name under which a foreign society carries on business in the participating State in which it is incorporated;

the foreign society must lodge with the SSA particulars of the change or alteration accompanied by such documents as may be prescribed.

Cessation of business

368.(1) A foreign society must, within 7 days of ceasing to carry on business as a society in this State, notify the SSA in writing of that fact.

Maximum penalty—\$25 000.

(2) On notifying the SSA that it has ceased to carry on business as a society in this State, a foreign society is no longer obliged to comply with this Part.

(3) Unless the SSA has been notified in writing that the foreign society has resumed carrying on business as a society in this State, the SSA must, 1 year after receiving a notification under subsection (1), cancel the registration of the foreign society.

Society proposing to register as foreign society

369.(1) A society that proposes to apply to be registered as a foreign society in another participating State may apply to the SSA for a certificate stating that 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) 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.

(3) If the SSA issues the certificate, it must also give to the society the prescribed documents.

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).

PART 12—ASSOCIATIONS

Formation of associations

370. A body proposed to be an association may be formed by 2 or more financial institutions.

Objects of associations

371. The objects of an association are such of the following as are authorised by the rules of the association—

- (a) to promote the interests of, and strengthen co-operation among, financial institutions;
- (b) to render services, other than financial or commercial services, to its members;
- (c) to act on behalf of its members;
- (d) to advocate and promote practices and reforms that may be conducive to objects of the association;
- (e) to co-operate with other bodies with similar objects;
- (f) to promote the formation of societies;
- (g) to encourage the formulation, adoption and observance by societies of standards and conditions governing the carrying on of their business;
- (h) to perform such other functions as may be prescribed.

Registration

372.(1) Two or more financial institutions may apply to the SSA, in accordance with the regulations, for a body to be registered under this Code

as an association.

(2) The application must be accompanied by—

- (a) the proposed rules of the body; and
- (b) such other documents as are prescribed; and
- (c) such evidence as the SSA requires—
 - (i) that the body is eligible for registration as an association; and
 - (ii) that the body, if registered, will be able to comply with the financial institutions legislation and all applicable standards.

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

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

(5) A body is eligible for registration as an association only if—

- (a) the body's application for registration complies with this Code; and
- (b) the proposed rules of the body are not contrary to the financial institutions legislation; and
- (c) the objects of the body are appropriate for an association; and
- (d) there are reasonable grounds for believing that the body will, if registered, be able to carry out its objects successfully; and
- (e) there is no good reason why the body should not be registered.

Certificate of incorporation

373.(1) On registering an association under this Part, the SSA must issue a certificate of incorporation to the association.

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

Effect of incorporation

374. On the issue under this Part of a certificate of incorporation to an association, the association is a body corporate with perpetual succession and—

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

Membership

375.(1) The members of an association are the financial institutions by which the association is formed, and any other financial institutions that are admitted to membership of the association under its rules.

(2) A body corporate that is a society under the financial institutions legislation of another participating State may be admitted to membership of an association.

Share capital

376. The share capital (if any) of an association must be divided into shares in accordance with its rules.

Meetings

377.(1) Meetings of the members of an association must be convened and conducted under the association's rules.

- (2)** A member of an association is, at any such meeting, entitled—
- (a) to be represented; and
 - (b) to exercise voting rights;

under the rules.

(3) An association must cause full and accurate minutes to be kept of every meeting of its board and of the members of the association.

Application of Code to associations

378. The prescribed provisions of this Code apply, with all necessary modifications and any prescribed modifications, to an association as if the association were a society.

PART 13—REVIEW OF DECISIONS**Reviewable decisions**

379.(1) Every decision of the SSA made under the financial institutions legislation is a reviewable decision.

(2) Subsection (1) does not apply to—

(a) a decision under—

- (i) section 69 (Application of variation under standards); or
- (ii) Subdivision 1 (Enforcement powers) of Division 2 (Specific powers) of Part 2 (Functions and powers of SSA); or
- (iii) section 87 (Special meeting and inquiry); or
- (iv) section 89 (Power to suspend operations); or
- (v) section 90 (Appointment of administrator); or
- (vi) Subdivision 6 (Levies, compulsory loans and funds) of Division 2 (Specific powers) of Part 2 (Functions and powers of SSA); or
- (vii) section 107 (Power to control advertising); or
- (viii) section 121 (Control of foreign currency transactions); or
- (ix) section 164 (Issue of preference shares); or
- (x) section 296 (SSA may direct a transfer of engagements between societies of the same type); or
- (xi) section 305 (SSA may direct a transfer of engagements between societies of different types); or
- (xii) Division 3 (Directed conversion to company) of Part 8

(Conversions); or

(xiii) Part 10 (Special investigations); or

(b) a decision under section 88 (Intervention by SSA) other than—

(i) a decision to remove an individual director; or

(ii) a decision to remove an auditor; or

(iii) a decision directing a financial body to change any practice if the practice is not dealt with by a standard; or

(c) a decision prescribed by a regulation made for the purposes of this subsection.

(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.

Application for review of decisions

380.(1) A person whose interests are affected by a reviewable decision may apply to the Appeals Tribunal for review of the decision.

(2) The Appeals Tribunal has power to review any decision in relation to which application is duly made to it under the financial institutions legislation for review of the decision.

Application of AFIC Code

381.(1) The AFIC Code applies to the review of reviewable decisions by the Appeals Tribunal.

(2) Without limiting subsection (1), the AFIC Code applies to—

(a) the parties to proceedings before the Appeals Tribunal; and

(b) the conduct of proceedings before the Appeals Tribunal; and

(c) the places where the Appeals Tribunal may sit; and

- (d) the powers of the Appeals Tribunal and its members; and
- (e) payment of costs; and
- (f) appeals from decisions of the Appeals Tribunal; and
- (g) the operation and implementation of decisions that are the subject of review or appeal; and
- (h) the protection and immunity of members of the Appeals Tribunal, persons representing parties before the Tribunal and persons summoned to attend or appearing before the Tribunal; and
- (i) offences in relation to the Appeals Tribunal and proceedings of the Tribunal.

SSA to review certain decisions

382.(1) A person whose interests are affected by a decision of the SSA made under the financial institutions legislation (other than a decision to cancel the certificate of approval of an auditor or to refuse to consent to the resignation of an auditor) may, by written notice given to the SSA, request the SSA to review the decision.

(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.

(2) The SSA must comply with a request under subsection (1).

(3) When reviewing a decision, the SSA must give the person who requested the review an opportunity to appear before the SSA and make a submission in relation to the decision.

(4) The SSA may confirm, vary or reverse the decision.

(5) Section 380 (Application for review of decisions) applies whether or not a person has requested a review of a decision under this section.

PART 14—MISCELLANEOUS

Division 1—Evidence

Certificates etc.

383.(1) In a proceeding, a document that appears to be a certificate of registration, certificate of incorporation or other certificate, or an authority, issued by the SSA under this Code, or a copy of any such document appearing to be certified as such by the SSA, is evidence of the matters stated in the certificate, authority or copy.

(2) Judicial notice must be taken of the imprint of the SSA's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

(3) A copy of, or extract from, a document lodged with, created by or otherwise held by the SSA, and certified to be a true copy or extract under the SSA's seal—

- (a) is as admissible in a proceeding as the original document; and
- (b) has the same validity in evidence as the original document or the extracted part of the original document.

(4) In a proceeding, a certificate of the SSA stating that a requirement of this Code specified in the certificate—

- (a) had, or had not, been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with at a date specified in the certificate but not before that date;

is evidence of the matters specified in the certificate.

Rules

384. A printed copy of the rules of a financial body appearing to be certified by the body's secretary to be a true copy of its registered rules is evidence of the rules.

Registers

385.(1) The registers kept under this Code are evidence of the particulars directed or authorised by or under this Code to be inserted.

(2) A copy of an entry in a register is, if apparently certified by the secretary of the financial body concerned to be a true copy of the entry in question, evidence of the particulars to which the entry relates.

Minutes

386.(1) An entry in the minutes purporting to be—

- (a) a minute of the business transacted at a meeting of a financial body or its board; and
- (b) signed by the chairperson of the meeting at which the business was transacted or a subsequent meeting;

is evidence that the business as recorded was transacted at the meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a financial body to the effect that a resolution was carried or was lost is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

Entries

387. A copy of an entry in a book of a financial body regularly kept in the course of business is, if certified by statutory declaration of the secretary to be a true copy of the entry, admissible in evidence in any case where, and to the same extent as, the original entry itself is admissible.

*Division 2—Offences***Defaults by financial bodies**

388.(1) A financial body must comply with a lawful requirement under the financial institutions legislation to give information to the SSA or another person.

(2) If a financial body contravenes subsection (1), the financial body and

any officer of the financial body who is in default each commit an offence.

Maximum penalty for subsection (2)—\$100 000 or imprisonment for 15 years, or both.

Restrictions on powers

389.(1) A financial body must not contravene a restriction imposed on its powers, or in relation to its exercise of its powers, under the financial institutions legislation.

Maximum penalty—\$100 000.

(2) Without limiting subsection (1), a financial body must not—

- (a) accept as a member a person who is not eligible for membership under the body's rules; or
- (b) raise money on loan or receive money on deposit except as authorised and within the limits imposed by the financial institutions legislation or, subject to that legislation, the body's rules.

(3) If a financial body contravenes this section, any officer of the body who is in default commits an offence.

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

Offences by officers

390.(1) In this section and sections 391 (Incurring debts not likely to be paid) and 392 (Powers of Court)—

“appropriate officer” means—

- (a) in relation to a financial body that is being wound-up—the liquidator; and
- (b) in relation to a financial body that is under the management of an administrator—the administrator; and
- (c) in relation to a financial body the affairs of which are being investigated under Part 10 (Special investigations)—the person nominated as the appropriate officer in the particular case by the SSA; and

Financial Institutions Code 1992

- (d) in relation to a financial body in relation to which a receiver or manager of all or any of the body's property has been appointed, whether by the Court or under the powers contained in any instrument—the receiver or manager; and
- (e) in relation to a financial body that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts—the SSA.

“financial body to which this section applies” means a financial body—

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10 (Special investigations); or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts.

“the relevant day” means—

- (a) in relation to a financial body that is being wound-up—the day on which under this Code the winding-up has started or is taken to have started; and
- (b) in relation to a financial body that is under the management of an administrator—the day on which the administrator is appointed; and
- (c) in relation to a financial body the affairs of which are being investigated under Part 10 (Special investigations)—the day on which the investigator under that Part was appointed; and
- (d) in relation to a financial body in relation to which a receiver or manager has been appointed—the day on which the receiver or manager was appointed; and
- (e) in relation to a financial body that is, within the meaning of subsection (2), unable to pay its debts—the day on which the execution or other process was returned unsatisfied in whole or in

part; and

- (f) in relation to a financial body that has, within the meaning of subsection (2), ceased to carry on business—the day on which a letter was first sent to the body or a notice was first published in the Gazette in relation to the body.

(2) For the purposes of subsection (1), a financial body is taken to have ceased to carry on business if the SSA—

- (a) has sent to the financial body by post a letter under section 572(1) of the Corporations Law as applied by Division 4 (Winding-up) of Part 9 (External administration) and has not, within 1 month of sending the letter, received an answer to the effect that the financial body is carrying on business; or
- (b) has published in the Gazette a notice under section 572(3) of that Law as so applied.

(3) An officer, or former officer, of a financial body to which this section applies who—

- (a) does not to the best of the person's knowledge and belief fully and truly disclose to the appropriate officer—
 - (i) all the property of the financial body; and
 - (ii) how and to whom and for what consideration and when the body disposed of any part of its property, except such part as has been disposed of in the ordinary course of the body's business; or
- (b) does not deliver up to the appropriate officer, or as the appropriate officer directs—
 - (i) all the property of the financial body in the person's custody or under the person's control and that the person is required by law to deliver up; or
 - (ii) all documents in the person's custody or under the person's control belonging to the body and that the person is required by law to deliver up; or
- (c) within 5 years before the relevant day or at any time on or after that day—

Financial Institutions Code 1992

- (i) has concealed any part of the body's property to the value of \$100 or more, or has concealed a debt due to or from the body; or
 - (ii) has fraudulently removed part of the body's property to the value of \$100 or more; or
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of a document affecting, or relating to, the body's property or affairs; or
 - (iv) has made, or has been privy to the making of, a false entry in any document affecting or relating to the body's property or affairs; or
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making an omission in a document affecting or relating to the body's property or affairs; or
 - (vi) by a false representation or other fraud, has obtained on credit for or on behalf of the body, property that the body has not subsequently paid for; or
 - (vii) has obtained on credit for or on behalf of the body, under the false pretence that the body is carrying on business, property that the body has not subsequently paid for; or
 - (viii) has pawned, pledged or disposed of any of the body's property that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the body's business; or
- (d) knowingly makes any material omission in any statement relating to the body's affairs; or
 - (e) knowing or believing that a false debt has been proved by any person, fails for a period of 1 month to inform the appropriate officer of the knowledge or belief; or
 - (f) prevents the production of any document affecting or relating to the body's property or affairs; or
 - (g) within 5 years before the relevant day, or at any time on or after

that day, has attempted to account for any part of the body's property by making entries in the body's documents showing fictitious transactions, losses or expenses; or

- (h) within 5 years before the relevant day, or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the body's creditors or any of them to an agreement relating to the body's affairs or to the winding-up;

commits an offence.

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

(4) It is a defence to a charge—

- (a) under subsection (3)(a), (b) or (d) or subsection (3)(c)(i), (vii) or (viii), if the accused person proves that the person had no intent to defraud; and
- (b) under subsection (3)(c)(iii) or (iv) or subsection (3)(f), if the accused person proves that the person had no intent to conceal the state of affairs of the financial body or to defeat the law.

(5) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under subsection (3)(c)(viii), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

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

Incurring debts not likely to be paid

391.(1) If an officer of a financial body to which this section applies was knowingly a party to the contracting of a debt by the body and had at the time the debt was contracted, no probable or reasonable grounds of expectation, after taking into consideration the body's other liabilities (if any) at the time, of the body being able to pay the debt, the officer commits an offence.

Maximum penalty—\$25 000.

- (2) If any business of a financial body to which this section applies has

been carried on with intent to defraud the body's creditors or creditors of another person or for any fraudulent purpose, a person who was knowingly a party to the carrying on of the business in that way commits an offence.

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

Powers of Court

392.(1) If a person has been convicted of an offence under section 391 (Incurring debts not likely to be paid), the Court on the application of the SSA or a prescribed person may declare that the person is personally responsible without any limitation of liability—

- (a) in the case of a conviction under section 391(1) (Incurring debts not likely to be paid)—for the payment to the financial body of an amount equal to the whole of the debt to which the conviction relates or such part of the debt as the Court considers appropriate; and
- (b) in the case of a conviction under section 391(2) (Incurring debts not likely to be paid)—for the payment to the financial body of the amount required to satisfy all or any of the body's debts as the Court considers appropriate.

(2) In relation to a financial body to which a conviction mentioned in subsection (1) relates—

- (a) the appropriate officer; and
- (b) a creditor of the body authorised by the SSA to make an application under subsection (1);

are prescribed persons for the purposes of that subsection.

(3) If the Court makes a declaration under subsection (1) in relation to a person it may—

- (a) give such further directions as it considers proper for the purpose of giving effect to the declaration and, in particular, may order that the liability of the person under the declaration is a charge on—
 - (i) a debt or obligation due from the financial body to the person; or
 - (ii) any charge or any interest in any charge on any of the body's

assets held by or vested in the person or any body corporate or person on the person's behalf or any person claiming as assignee from or through the person liable or any body corporate or person acting on the person's behalf; or

(b) from time to time make such further order as is necessary for the purpose of enforcing a charge imposed under this subsection.

(4) This section has effect despite the fact that the person concerned is criminally liable in relation to the matters on the ground on which the declaration is made.

(5) On the hearing of an application under subsection (1), the appropriate officer or other applicant may give evidence or call witnesses.

(6) In subsection (3)—

“**assignee**” includes any person to whom or in whose favour, by the direction of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the matters on which the conviction or declaration was made.

Inducement to be appointed as liquidator or official manager

393. A person must not give, or agree or offer to give, to a member or creditor of a financial body valuable consideration with a view to securing the person's appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the liquidator or official manager of the financial body.

Maximum penalty—\$75 000 or imprisonment for 10 years, or both.

Falsification of records

394.(1) An officer of a financial body must not destroy, mutilate, alter or falsify a document or security, or make or be privy to the making of any false or fraudulent entry in a document, belonging to the body with intent to defraud or deceive a person.

(2) A person who, having a duty to record information in the documents of a financial body, fails to record the information in the documents—

- (a) with intent to defraud another person; or
- (b) knowing that the failure will render other matter contained in the documents false or misleading in a material particular;

commits an offence.

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

Frauds by officers

395. An officer of a financial body who—

- (a) by false pretence, or by means of another fraud, induces a person to give credit to the body; or
- (b) with intent to defraud creditors of the financial body, makes or causes to be made a gift or transfer of, or charge on, or causes or connives at the levying of any execution against, the body's property; or
- (c) with intent to defraud the body's creditors, conceals or removes part of the body's property within 2 months before, or after, the date of any unsatisfied judgment or order for payment of money obtained against the body;

commits an offence.

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

False or misleading information

396. A person must not make available, or give, information in a return, report, certificate, accounts or other document required by or for the purposes of the financial institutions legislation or a standard—

- (a) that the person knows is false or misleading in a material particular; or
- (b) that has omitted from it a matter or thing the omission of which makes the information misleading in a material particular.

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

Power to examine defaulting officers

397.(1) In this section—

“financial body to which this section applies” means a financial body—

- (a) that has been, or is being, wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10 (Special investigations); or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

(2) For the purposes of subsection (1), a financial body has ceased to carry on business in the circumstances mentioned in section 390(2) (Offences by officers).

(3) This section applies if it appears to the SSA that an officer or former officer of a financial body to which this section applies has conducted himself or herself in such a way that the officer or former officer has rendered himself or herself liable to action by the body in relation to the performance of the person’s duties as an officer of the body.

(4) The SSA, or a person who is authorised by it in that behalf, may apply *ex parte* to the Court for an order that the officer or former officer must attend before the Court on a day appointed by the Court to be examined as to the person’s conduct and dealings as an officer of the financial body.

(5) An examination under this section—

- (a) must not be held in open court unless the Court otherwise orders; and
- (b) may, if the Court so directs and subject to the rules, be held before any District Court Judge named for the purpose by the Court, and the powers of the Court in relation to the conduct of

the examination under this section may be exercised by such a Judge.

(6) The Court, on making the order under subsection (4) or at any subsequent time, on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it considers appropriate.

(7) The applicant and, with the leave of the Court, a creditor or member of the financial body, may take part in the examination either personally or by a legal practitioner.

(8) The person examined—

- (a) must be examined on oath; and
- (b) must answer all questions that the Court or, if the examination is to be held before a District Court Judge, that Judge puts or allows to be put; and
- (c) is not entitled to refuse to answer a question that is relevant or material to the examination on the ground that the answer might tend to incriminate the person.

(9) The answer to a question put to a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if—

- (a) before answering the question, the person claims that answering the question might tend to incriminate the person; and
- (b) answering the question might in fact tend to incriminate the person.

(10) A person ordered to be examined under this section may be represented by a legal practitioner who is at liberty to put to the person examined any questions for the purpose of enabling the person to explain or qualify any answer given.

(11) Notes of the examination—

- (a) must be reduced to writing; and
- (b) must be read over to and signed by the person examined; and
- (c) may, subject to subsection (9), be used in evidence in a legal proceeding against the person examined; and

- (d) may be inspected and copied by the person examined, the SSA or applicant or, with the consent of the Court, by a creditor or member of the financial body.

(12) The Court or, if the examination is held before a District Court Judge, that Judge may adjourn the examination from time to time.

(13) If the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or another person who with the consent of the Court takes part in the examination.

Power of Court to assess damages against certain persons

398.(1) In this section—

“financial body to which this section applies” means a financial body—

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under Part 10 (Special investigations); or
- (d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

“prescribed person” means—

- (a) a liquidator or provisional liquidator of the financial body concerned; or
- (b) if the financial body concerned is under the management of an administrator—the administrator or a member of the body; or
- (c) a person authorised by the SSA to apply under subsection (3).

(2) For the purposes of subsection (1), a financial body has ceased to

carry on business in the circumstances mentioned in section 390(2) (Offences by officers).

(3) If, on application by the SSA or a prescribed person, the Court is satisfied that a person who has taken part in the formation, promotion, administration, management or winding-up of a financial body to which this section applies—

- (a) has misapplied or retained or become liable or accountable for property of the financial body; or
- (b) has been guilty of negligence, default, breach of trust or breach of duty in relation to the financial body and that the body has suffered, or is likely to suffer, loss or damage as a result;

the Court may make 1 or both of the orders mentioned in subsection (4).

(4) The orders that may be made under subsection (3) are—

- (a) an order directing the person to pay money or transfer property to the financial body; and
- (b) an order directing the person to pay to the financial body the amount of the loss or damage.

(5) This section applies to the receipt of any money or property by an officer or former officer of the financial body, whether by way of salary or otherwise, that appears to the Court to have been unfair or unjust to the body or its members.

(6) This section applies despite the fact that the person concerned may be criminally liable in relation to the matters in relation to which the order is sought.

(7) If the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

False copies of rules

399. A person must not—

- (a) give to a member of a financial body or a person intending or applying to become a member, a copy of any rules or any

alterations of the rules other than those that have been duly registered, representing that they are binding on the body's members; or

- (b) make any alteration in any of the rules of the financial body after they have been duly registered and circulate them representing that they have been duly registered.

Maximum penalty—\$25 000.

Fraud or misappropriation

400. A person must not—

- (a) by false representation or imposition obtain possession of property of a financial body; or
- (b) having property of a financial body in the person's possession, withhold or misapply that property, or wilfully apply part of the property, to purposes other than those specified or authorised in the body's rules or by or under the financial institutions legislation.

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

Commissions

401.(1) An officer of a financial body must not accept a commission, fee or reward, whether pecuniary or otherwise, from a person for or in connection with that person's transaction with the body.

Maximum penalty—\$5 000.

(2) An officer of a financial body who commits an offence against subsection (1) is indebted to the body for double the value or amount of the commission, fee or reward.

Financial bodies to comply with standards

402.(1) A financial body must comply with all applicable standards.

Maximum penalty—\$25 000.

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

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

Maximum penalty—\$25 000.

Officers and other persons in default

403. If this Code provides that an officer of a financial body or other body corporate who is in default commits an offence, the reference to the officer who is in default is, in relation to a contravention of, or an offence against, this Code, a reference to an officer of the financial body or other body corporate (including a person who subsequently ceased to be such an officer) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.

Division 3—Proceedings

Proceedings for offences

404.(1) A proceeding for an offence against this Code may be brought by—

- (a) the SSA; or
- (b) a person authorised in writing by the SSA.

(2) A proceeding may be started within—

- (a) for an alleged offence not punishable by imprisonment—2 years; and
- (b) for an alleged offence punishable by imprisonment—5 years;

after the alleged offence is committed or, with the consent of the Minister, at any later time.

Reciprocity in relation of offences

405. If a person does or omits to do anything in this State and the person, if the person had done or omitted to do the thing in another participating State, would have committed an offence against the provision of a law of

that State that corresponds with a provision of this Code, the person commits an offence against that provision of this Code.

Continuing offences

406.(1) If—

- (a) under this Code anything is required or directed to be done within a particular period or before a particular time; and
- (b) failure to do the thing within the period or before the time constitutes an offence; and
- (c) the thing is not done within the period or before the time;

then—

- (d) the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done; and
- (e) if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time—the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues; and
- (f) the penalty applicable to each such separate and further offence is \$500.

(2) If—

- (a) under this Code anything is required or directed to be done but no period within which or time by which the thing is to be done is specified; and
- (b) failure to do the thing constitutes an offence; and
- (c) a person is convicted of an offence in relation to a failure to do the thing;

the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues and the penalty applicable to each such separate and further offence is \$500.

Injunctions

407.(1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Code; or
- (b) attempting to contravene this Code; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Code; or
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene this Code; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Code; or
- (f) conspiring with others to contravene this Code;

the Court may, on the application of the SSA or a person whose interests have been, are or would be affected by the conduct, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring that person to do anything.

(2) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Code, the Court may, on the application of—

- (a) the SSA; or
- (b) a person whose interests have been, are or would be affected by the failure to do the thing;

grant an injunction, requiring the person to do the thing.

(3) If an application is made for an injunction under subsection (1) or (2), the Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that the subsection applies.

(4) The Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

Financial Institutions Code 1992

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(7) The power of the Court to grant an injunction requiring a person to do a thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do the thing; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(8) If the SSA applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In a proceeding under this section against a person, the Court may make an order under section 247 (Prohibition on transfer of money) in relation to the person.

(10) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

(11) The Court's powers under this section are in addition to its other powers.

Penalty notices

408.(1) If the SSA or a person authorised by it has reason to believe that

Financial Institutions Code 1992

a person (including a financial body) has committed a prescribed offence, the SSA or authorised person may serve on the person a notice in accordance with the regulations—

- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and
- (b) setting out the prescribed penalty in relation to the prescribed offence; and
- (c) stating—
 - (i) in the case of a prescribed offence constituted by a failure to do a particular thing—
 - (A) that the obligation to do the thing continues despite the service of the notice or the payment of the prescribed penalty; and
 - (B) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the thing, no further action will be taken against the person in relation to the prescribed offence; and
 - (C) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the thing, a proceeding may be instituted against the person; or
 - (ii) in the case of a prescribed offence that is not constituted by a failure to do a particular thing—
 - (A) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
 - (B) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person.

(2) Subsection (1) does not authorise the SSA or an authorised person—

- (a) to serve on a person more than 1 notice under that subsection in relation to an alleged commission by the person of a particular prescribed offence; or
- (b) to serve on a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against the person for the offence under section 404 (Proceedings).

(3) If a notice under subsection (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice and does the thing—no proceedings may be instituted against the person in relation to the prescribed offence; or
- (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice, but has not done the thing—no proceedings may be instituted against the person in relation to the prescribed offence, but the obligation to do the thing continues; or
- (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, but has done the thing—a proceeding may be instituted against the person in relation to the prescribed offence; or
- (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the thing—the obligation to do the thing continues, and a proceeding may be instituted against the person in relation to the prescribed offence.

(4) If a notice under subsection (1) is served on a person in relation to a prescribed offence, that is not constituted by a failure to do a particular thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in relation to the prescribed offence; or
- (b) if, at the end of the period specified in the notice, the person has

not paid the prescribed penalty to the authority specified in the notice—a proceeding may be instituted against the person in relation to the prescribed offence.

(5) The payment of an amount by a person under a notice served on the person under this section in relation to a prescribed offence is not to be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

Power to grant relief

409.(1) This section applies to a person who is—

- (a) an officer of a financial body; or
- (b) an auditor of a financial body, whether or not the auditor is an officer of the body; or
- (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise; or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty in relation to a financial body.

(2) If, in a civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, it appears to the court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate.

(3) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in relation to any negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, the person may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under subsection (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

Division 4—Other matters**Secrecy**

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.

Powers about money of members who have died

411.(1) If a member of a society dies, the society may, without production of probate of the will or letters of administration of the estate, apply an amount held by the society that was deposited or paid up on a withdrawable share by the deceased person—

- (a) in payment of the deceased person's funeral expenses or debts; or
- (b) in payment to the executor of the deceased person's will; or
- (c) in payment to anyone else who is, in the society's opinion, entitled to the amount, having regard to the will of the deceased person or, if there is no will, the laws of intestacy.

(2) No action lies against a society for—

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

PART 15—TRANSITIONAL**Continuing societies and associations**

414.(1) A continuing building society continues in existence and is taken to be—

- (a) registered under this Code as a society; and
- (b) authorised under this Code to operate as a building society.

(2) A continuing credit union continues in existence and is taken to be—

- (a) registered under this Code as a society; and
- (b) authorised under this Code to operate as a credit union.

(3) A continuing association continues in existence and is taken to be registered as an association under this Code.

(4) If the name of a continuing building society or continuing credit union that is taken to be registered under this Code as a society did not,

immediately before the commencement of this section, include the word 'Limited' or the abbreviation 'Ltd.' at the end of its name, the name under which the society is taken to be registered under this Code includes the word 'Limited' at the end of the name.

(5) Section 141 (Change of name does not affect identity) applies to a change of name of a society having effect under subsection (4).

Application for certificate of incorporation or authority to operate

415.(1) On application by a society to which section 414 applies, the SSA must issue to the society—

- (a) a certificate of incorporation stating that the society is incorporated under this Code; and
- (b) a written authority to operate either as a building society or credit union, as the case requires.

(2) The SSA need not issue a certificate of incorporation to a society under subsection (1) unless the society—

- (a) surrenders to the SSA its certificate of incorporation under a previous law or a corresponding previous enactment; or
- (b) satisfies the SSA that the certificate has been lost or destroyed.

Rules

416.(1) The rules of a continuing society or continuing association, in force immediately before the commencement of this section, become its rules under this Code.

(2) The rules have effect subject to this Code.

Building society started to have been formed under previous law

417.(1) If, before the commencement of this section, the formation of a body as a permanent building society under the relevant previous law has started, but the body has not been registered under the relevant previous law as a permanent building society—

- (a) the relevant previous law continues to apply to the formation of

the body as a permanent building society; and

- (b) an application may be made under section 115 (Registration) of this Code for the body to be registered under this Code as a society and authorised to operate as a building society.

(2) For the purpose of the application, the reference in section 115(2)(b)(i) of this Code to section 114 (Formation of societies) is taken to be a reference to the corresponding provision of the relevant previous law.

(3) The body may be registered under this Code if its rules are not contrary to the relevant previous law, even though they are contrary to the financial institutions legislation.

(4) On registration, the rules have effect subject this Code.

(5) For the purposes of this section, the formation of a body as a permanent building society under the relevant previous law is taken to have started if a meeting has been called for the purpose of forming the permanent building society.

Credit union started to have been formed under relevant previous law

418.(1) If, before the commencement of this section, the formation of a body as a credit union under the relevant previous law has started but the body has not been registered under the relevant previous law as a credit union—

- (a) the relevant previous law continues to apply to the formation of the body as a credit union; and
- (b) an application may be made under section 115 (Registration) of this Code for the body to be registered under this Code as a society and authorised to operate as a credit union.

(2) For the purpose of the application, the reference in section 115(2)(b)(i) of this Code to section 114 (Formation of societies) is taken to be a reference to the corresponding provision of the relevant previous law.

(3) The body may be registered under this Code if its rules are not contrary to the relevant previous law, even though they are contrary to the financial institutions legislation.

(4) On registration, the rules have effect subject this Code.

(5) For the purposes of this section, the formation of a body as a credit union under the relevant previous law is taken to have started if a meeting has been called for the purpose of forming the credit union.

(6) In this section—

“**credit union**” includes credit society and credit cooperative.

Subsidiaries

419. A continuing society that, immediately before the commencement of this section, is the holder of a subsidiary because of the lawful investment of its funds may continue to hold the subsidiary and is taken to do so with the approval of the SSA.

Directors

420.(1) An existing term of office of a director of a continuing society that is not due to end until 3 years or more after the commencement of this section ends at the start of the third annual general meeting of the society after the commencement.

(2) Subsection (1) does not, by implication, prevent the office of the director becoming vacant at an earlier time.

Annual general meeting

421. If—

- (a) the time within which a continuing society must hold its annual general meeting under the relevant previous law has been extended under the law; and
- (b) the extension of time is in force immediately before the commencement of this section;

the extension of time is taken to have been allowed by the SSA under section 249(2) of this Code.

Special resolutions

422. A special resolution passed by a continuing society under the relevant previous law, and not registered under the law before the commencement of this section, may be registered by the SSA under this Code.

Registers

423. A register kept by the Registrar under the relevant previous law may be incorporated in a register kept by the SSA under this Code.

Winding-up

424. If—

- (a) under the relevant previous law, a certificate has been issued for the winding-up of a continuing society; and
- (b) immediately before the commencement of this section, a person has not been appointed liquidator of the society because of the certificate;

the certificate is taken to have been issued by the SSA under section 341 of this Code and the society may be wound-up accordingly.

Continuing foreign societies

425.(1) A continuing foreign society is taken to be registered as a foreign society under Part 11 of this Code.

(2) The SSA must within 2 months after the commencement of this section ask the SSA of the participating State in which the foreign society is incorporated (the “**home State**”), whether the foreign society is complying with all applicable standards under the financial institutions legislation of the home State.

(3) If the SSA of the home State advises the SSA that the foreign society is not complying with all applicable standards, the SSA must cancel the foreign society’s registration under Part 11 of this Code unless the SSA of the home State—

- (a) recommends that the registration continue; and
- (b) advises the SSA of the time allowed by the SSA of the home State under the financial institutions legislation of that State, for the foreign society to comply with all applicable standards.

(4) If the SSA of the home State extends the time mentioned in subsection (3)(b) under the financial institutions legislation of that State, the SSA of the home State must advise the SSA.

(5) If the SSA of the home State does not respond to the SSA's request under subsection (2) within 6 months after the commencement of this section, the SSA must cancel the foreign society's registration under Part 11 of this Code.

(6) The SSA may of its own initiative extend the time mentioned in subsection (5).

(7) The SSA may act under subsection (6) even though the time to be extended has ended.

(8) A foreign society to which subsection (1) applies must—

- (a) if the foreign society is also one to which subsection (3) applies—give to the SSA the certificate mentioned in section 364(2)(a) of this Code within 2 months after the end of the time mentioned in subsection (3)(b) or any extension of that time; or
- (b) in any other case—give to the SSA the certificate mentioned in section 364(2)(a) of this Code within 6 months after the commencement of this section.

(9) If a foreign society contravenes subsection (8), its registration as a foreign society is cancelled.

Shareholding restrictions

426.(1) Subject to subsection (2), Division 5 (Shareholding restrictions) of Part 5 (Shares, other securities and charges) applies to shares issued by a continuing building society under the relevant previous law in the same way as it applies to shares issued by a society under this Code.

(2) Section 194(1) (Consequences of exceeding maximum permissible

shareholding) does not apply to a continuing building society unless a standard relating to the maximum permissible shareholding in continuing building societies is in force.

Provision of financial or commercial services by continuing association

427.(1) If, immediately before the commencement of this section, a continuing association is, in accordance with its objects, rendering financial or commercial services to a continuing credit union, it may continue to do so for a period determined by the SSA.

(2) The period must not extend for more than 2 years after the commencement.

(3) Before the SSA determines a period it must consult with AFIC on the matter.

(4) Subsection (1) applies despite section 371(b) (Objects of associations).

(5) Subsection (1) applies subject to any written direction given to the association by the SSA.

Transfer of engagements by continuing association of credit unions to special services provider

428.(1) An association that, immediately before the commencement of this section, was a continuing association of credit unions may transfer its engagements to a special services provider.

(2) Division 1 of Part 7 applies, with all necessary modifications and any prescribed modifications, to the transfer of engagements as if—

- (a) the association and the special services provider were societies of the same type; and
- (b) AFIC were the SSA.

(3) The voting on a special resolution in relation to the transfer of engagements must be by poll.

(4) If the special resolution is passed, a credit union that votes against the resolution may, by written notice given to AFIC, elect not to become a member of the special services provider.

(5) The notice must be given to AFIC before the transfer of engagements takes effect.

(6) The credit union must give a copy of the notice to the association and the special services provider.

(7) If a credit union elects under subsection (4) and the transfer of engagements takes effect, the special services provider must, subject to subsection (8), pay the credit union an amount determined in a way approved by AFIC for the purpose.

(8) The amount payable to a credit union under subsection (7) is payable by specified instalments fixed by AFIC.

(9) Instalments are, when they are due and payable, debts due and payable by the special services provider to the credit union, and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(10) If the special services provider to which an association proposes to transfer its engagements provides treasury services to credit unions, the association may transfer to the special services provider any equitable mortgages or charges that it holds over the assets of a credit union.

(11) Subsection (10) has effect despite the terms of the equitable mortgage or charge.

Documents

429. A certificate or other document, relating to a continuing association or continuing society, issued or registered by, filed or lodged with or given to the Registrar under the relevant previous law has effect as if it were a certificate or other document issued or registered by, filed or lodged with or given to the SSA under this Code.

Security over prime liquid assets

430.(1) If, immediately before the commencement of this section, a continuing society has given security in relation to more than 50% of the value of its assets that satisfy the prime liquid assets requirement for the society (as defined by a standard made for the purposes of section 45(4)(a) (Restrictions on making determination) of the AFIC Code) the security is,

to the extent that it exceeds that percentage, void as against the society.

(2) For the purpose of subsection (1), security in favour of a special services provider to facilitate the provision of liquidity support by the special services provider must be disregarded.

Standards under AFIC (Queensland) Code

432. Standards made before the commencement of this section under Part 4 of the AFIC Code set out in section 20 of the AFIC Act are taken to have been made under Part 4 of this Code.

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

433.(1) In this section—

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

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

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

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

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

Financial Institutions Code 1992

have been, authorised if otherwise operated in accordance with this Code; and

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

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

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

Matters relating to register of directors, principal executive officer and secretaries

434. Within 1 month beginning on the commencement of this section, a society must—

- (a) make the entries in the register of its directors, principal executive officer and secretaries that it would have been required to make; and

- (b) lodge with the SSA the returns that it would have been required to lodge;

had section 258(2A), (3A) and (7A) been in force from the commencement of this Code.

Maximum penalty—\$500.

PART 16—VALIDATION

Validation of Amendment Regulation

435.(1) In this section—

“**Amendment Regulation**” means the *Financial Institutions Amendment Regulation (No. 1) 1992* of Queensland.

“**Queensland Act**” means the *Financial Institutions (Queensland) Act 1992* of Queensland.

(2) For the purpose of applying the Amendment Regulation as a regulation in force for the purposes of this Code, it is declared that the Amendment Regulation is taken to be, and always to have been, as valid as it would be, and have been, if it had been made on the recommendation of the Ministerial Council as required by section 8(2) of the Queensland Act.

(3) Without limiting subsection (2)—

- (a) the Amendment Regulation is taken to be, and always to have been, a regulation in force under Part 3 of the Queensland Act; and
- (b) all acts, matters and things done before the commencement of this section in reliance on the Amendment Regulation are taken to be as lawfully done as they would be if they had been done after that commencement.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	378
3	Key	378
4	Table of earlier reprints	379
5	Tables in earlier reprints	379
6	List of legislation	379
7	List of annotations	380

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 October 1998. Future amendments of the Financial Institutions Code 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 11 of 1992	1 July 1992
2	to Act No. 25 of 1993	27 July 1993
3	to Act No. 27 of 1994	27 July 1994
4	to Act No. 74 of 1994	25 January 1995
4A	to Act No. 33 of 1997	9 February 1998

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	3

6 List of legislation

Financial Institutions Code

[This is the Code set out in section 30 of the **Financial Institutions (Queensland) Act 1992**]

date of assent 27 March 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (1992 SL No. 168)

as amended by—

Financial Institutions Legislation Amendment Act 1992 No. 11 pts 1, 3

date of assent 6 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (1992 SL No. 168)

Financial Institutions Legislation Amendment Act 1993 No. 25 pts 1–2

date of assent 2 June 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1993 (1993 SL No. 229)

Financial Institutions Legislation Amendment Act 1994 No. 27 pts 1, 3

date of assent 28 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (1994 SL No. 222)

Financial Institutions Legislation Amendment Act (No. 2) 1994 No. 74

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (1994 SL No. 450)

Financial Institutions Legislation Amendment Act 1997 No. 33 ss 1–2(1), (3) pt 4

date of assent 18 July 1997

ss 1–2, 51 commenced on date of assent (see s 2(3))

s 112 (so far as it inserts a new section 364C) commenced 19 July 1998
(automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 October 1997 (1997 SL No. 318)

7 List of annotations**PART 1—PRELIMINARY****Definitions****s 3**def “**approved holder**” ins 1997 No. 33 s 38(1)def “**certificate of confirmation**” ins 1994 No. 27 s 6def “**certified**” ins 1997 No. 33 s 38(1)def “**national business names register**” ins 1994 No. 27 s 6def “**residential building**” ins 1992 No. 11 s 6

sub 1994 No. 27 s 6

def “**residential development**” ins 1992 No. 11 s 6

sub 1994 No. 27 s 6

def “**services corporation**” amd 1997 No. 33 s 38(2)def “**transferee society**” ins 1994 No. 27 s 6def “**transferor society**” ins 1994 No. 27 s 6**Interpretation—meaning of “associate”****s 4**

amd 1994 No. 27 s 7

Division 3—General interpretative provisions**Subdivision 8—Offences under relevant Codes****sdiv hdg** amd 1993 No. 25 s 4**Division 5—Application and adoption of Corporations Law****div hdg** sub 1994 No. 74 s 4**Definitions****s 64A**

ins 1994 No. 74 s 4

Corporations Law applying under its own force**s 65**

sub 1994 No. 74 s 4

amd 1997 No. 33 s 39

Corporations Law adopted under a regulation**s 65A**

ins 1994 No. 74 s 4

Adopted provisions of Corporations Law**s 65B**

ins 1994 No. 74 s 4

Functions of SSA

s 66 amd 1997 No. 33 s 40

Public office of SSA and inspection of documents

s 71 amd 1994 No. 27 s 8; 1997 No. 33 s 41

Reproductions and transparencies

s 71A ins 1997 No. 33 s 42

Records kept by devices

s 71B ins 1997 No. 33 s 42

Material given in written form

s 71C ins 1997 No. 33 s 42

Certified copies etc. are evidence

s 71D ins 1997 No. 33 s 42

Obtaining information from certain document registers

s 71E ins 1997 No. 33 s 42

Use in a proceeding of information from SSA database

s 71F ins 1997 No. 33 s 42

PART 2—FUNCTIONS AND POWERS OF SSA**Division 2—Specific powers****Subdivision 1—Services corporations**

sdiv hdg sub 1997 No. 33 s 43

SSA may declare body as services corporation

s 74A ins 1997 No. 33 s 43

Societies may subscribe for shares in services corporations

s 74B ins 1997 No. 33 s 43

Applications for approval

s 74C ins 1997 No. 33 s 43

Persons dealing with societies contravening s 74B(2)

s 74D ins 1997 No. 33 s 43

Subdivision 1A—Enforcement powers

sdiv hdg ins 1997 No. 33 s 43

Obtaining evidence

s 76 amd 1994 No. 27 s 9; 1997 No. 33 s 44

Offence related warrant may be granted by telephone

s 84 amd 1997 No. 33 s 45

Appointment of administrator

s 90 amd 1994 No. 27 s 10; 1997 No. 33 s 46

Rules of society after s 91 no longer applies

s 91A ins 1997 No. 33 s 47

Supervision Fund

s 94 amd 1997 No. 33 s 48

Credit Unions Contingency Fund

s 97 amd 1993 No. 25 s 5; 1994 No. 27 s 11; 1997 No. 33 s 49

Contributions by credit unions

s 98 amd 1997 No. 33 s 50

Refunds of contributions

s 98A ins 1994 No. 27 s 12

Distribution of retained earnings of Credit Unions Contingency Fund

s 99A ins 1997 No. 33 s 51

Payment out of Credit Unions Contingency Fund

s 103 amd 1993 No. 25 s 6; 1994 No. 27 s 13

Payment of administration levy and supervision levy out of Credit Unions Contingency Fund

s 103A ins 1993 No. 25 s 7

Subdivision 6A—Contingency fund agreements

sdiv hdg ins 1994 No. 27 s 14

SSA may enter into contingency fund agreement

s 105A ins 1994 No. 27 s 14

Restrictions on entering into contingency fund agreement

s 105B ins 1994 No. 27 s 14

Things for inclusion in contingency fund agreement

s 105C ins 1994 No. 27 s 14

Consequences of entering into contingency fund agreement

s 105D ins 1994 No. 27 s 14
amd 1997 No. 33 s 52

Restriction on initial advertisements

s 106 amd 1997 No. 33 s 53

Primary objects of building societies

s 110 sub 1992 No. 11 s 7

Level of assets of building society associated with primary objects

s 112 amd 1992 No. 11 s 8; 1993 No. 25 s 8; 1997 No. 33 s 54

Level of financial accommodation provided by credit union restricted

s 113 amd 1993 No. 25 s 9

PART 4—SOCIETIES**Registration**

s 115 amd 1997 No. 33 s 55

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

div hdg ins 1997 No. 33 s 56

Application of division

s 115A ins 1997 No. 33 s 56

Registration of building society as wholly owned society

s 115B ins 1997 No. 33 s 56

Offence

s 115C ins 1997 No. 33 s 56

Division 1B—Incorporation

div hdg ins 1997 No. 33 s 56

Certificate of incorporation

s 116 amd 1997 No. 33 s 57

Effect of incorporation

s 117 amd 1997 No. 33 s 58

Division 2—Legal capacity and powers

div hdg sub 1997 No. 33 s 59

Interpretation

s 117A ins 1997 No. 33 s 59

Purpose of sections 118 and 119

s 117B ins 1997 No. 33 s 59

Legal capacity

prov hdg sub 1997 No. 33 s 60(1)

s 118 amd 1993 No. 25 s 10; 1997 No. 33 s 60

Restrictions on societies

s 119 amd 1994 No. 27 s 15
sub 1997 No. 33 s 61

Persons having dealings with societies

s 119A ins 1997 No. 33 s 61

Constructive notice not presumed

s 119B ins 1997 No. 33 s 61

Control of certain financial transactions

s 120 amd 1997 No. 33 s 62

Purchase of overseas plant and equipment

s 121A ins 1997 No. 33 s 63

Rules

s 122 amd 1997 No. 33 s 64

Model rules

s 123 om 1997 No. 33 s 65

Alteration of rules by board of directors

s 127 sub 1997 No. 33 s 66

Members

s 131 amd 1994 No. 27 s 16

Joint members

s 133 amd 1997 No. 33 s 67

Corporate membership

s 134 amd 1994 No. 27 s 17

Financial accommodation to, and deposits from, members and others

s 138 amd 1993 No. 25 s 11; 1994 No. 27 s 18

Dormant accounts

s 138A ins 1994 No. 27 s 19
 sub 1997 No. 33 s 68

Name

s 139 amd 1994 No. 27 s 20; 1997 No. 33 s 69

Abbreviations etc. of society's name

s 140 sub 1994 No. 27 s 21
 amd 1997 No. 33 s 70

SSA may direct change of name

s 142 om 1994 No. 27 s 22

Other State supervisory authorities may object to proposed name

s 143 om 1994 No. 27 s 22

Use of words 'building society', 'credit society', 'credit union' or 'credit co-operative'

s 144 amd 1994 No. 27 s 23; 1997 No. 33 s 71

Unregistered society not to trade or carry on business

s 144A ins 1997 No. 33 s 72

Publication of name

s 145 amd 1994 No. 27 s 24; 1997 No. 33 s 73

Seal

s 146 amd 1994 No. 27 s 25

Registered office

s 147 amd 1994 No. 27 s 26

Power to make certain payments

s 155 amd 1994 No. 27 s 27

Conversion of shares to deposits (special resolution)

prov hdg sub 1997 No. 33 s 74(1)

s 159 amd 1997 No. 33 s 74(2)

Conversion of shares to deposits (by direction)

s 159A ins 1997 No. 33 s 75

Withdrawable shares to rank equally with deposits on winding-up

s 160 sub 1997 No. 33 s 76

Charge on withdrawable shares or deposit account

s 161 amd 1994 No. 27 s 28
 sub 1997 No. 33 s 77

Calls and effect on non-compliance with calls on permanent shares

s 172 amd 1994 No. 27 s 29

Sale of permanent shares forfeited for non-payment of call

s 173 amd 1997 No. 33 s 78

Exceptions

s 179 amd 1994 No. 27 s 30

Application of certain provisions of Code to redeemable preference shares

s 184 amd 1997 No. 33 s 79

Exceptions

s 195 amd 1994 No. 27 s 31

Substantial shareholding and substantial shareholders

s 196 amd 1994 No. 74 s 5

Power to obtain information

s 197 amd 1994 No. 74 s 6

Power of SSA to exempt etc. from Division 5

s 199 amd 1993 No. 25 s 12

Interpretation—disclosure statement includes supplementary statement

s 201 om 1994 No. 74 s 7

Disclosure statement required in relation to issue of securities

s 202 om 1994 No. 74 s 7

Registration of disclosure statement

s 203 om 1994 No. 74 s 7

Disclosure statements not to include certain statements

s 204 om 1994 No. 74 s 7

Supplementary disclosure statements

s 205 om 1994 No. 74 s 7

Disclosure statement stale 6 months after issue

s 206 om 1994 No. 74 s 7

Civil liability in relation to disclosure statements

s 207 om 1994 No. 74 s 7

Indemnity for certain persons against civil liability

s 208 om 1994 No. 74 s 7

Application of Corporations Law

s 214 om 1994 No. 74 s 8

Restricted application of this Division

s 216A ins 1994 No. 74 s 9

Loss or destruction of documents

s 219 amd 1994 No. 74 s 10

Election or appointment of directors

s 234 amd 1997 No. 33 s 80

Qualifications of directors

s 238 amd 1994 No. 27 s 32; 1997 No. 33 s 81

Vacation of office

s 239 amd 1994 No. 27 s 33; 1997 No. 33 s 82

Removal of directors

s 239A ins 1994 No. 27 s 34

Declaration of interest

s 240 amd 1994 No. 27 s 35; 1997 No. 33 s 83

General duty to make disclosure

s 241 amd 1994 No. 27 s 36

Certain financial accommodation to officers prohibited

s 242 sub 1994 No. 27 s 37

Financial accommodation to directors and associates

s 243 amd 1994 No. 27 s 38; 1997 No. 33 s 84

Society not to indemnify director

s 244A ins 1997 No. 33 s 85

Voting

s 253 amd 1994 No. 27 s 39

Proxy votes

s 254 sub 1994 No. 27 s 40
amd 1997 No. 33 s 86

Special resolutions

s 255 amd 1994 No. 27 s 41; 1997 No. 33 s 87

Register of directors etc.

s 258 amd 1993 No. 25 s 13; 1994 No. 27 s 42; 1997 No. 33 s 88

Register of members

s 259 amd 1994 No. 74 s 11; 1997 No. 33 s 89

Register of holders of permanent shares

s 260 amd 1994 No. 74 s 12; 1997 No. 33 s 90

Location of registers on computers

s 263A ins 1994 No. 74 s 13

Form and evidentiary value of registers

s 263B ins 1994 No. 74 s 13

Directors' reports

s 274 amd 1994 No. 27 s 43; 1997 No. 33 s 91

Qualifications of auditors

s 278 amd 1997 No. 33 s 92

Appointment of auditors

s 279 amd 1997 No. 33 s 93

Nomination of auditors

s 280 amd 1997 No. 33 s 94

Removal and resignation of auditors

s 281 amd 1997 No. 33 s 95

PART 7—MERGERS AND TRANSFERS OF ENGAGEMENTS**Division 1A—Preliminary**

div hdg ins 1994 No. 27 s 44

Definitions

s 291A ins 1994 No. 27 s 44
 amd 1997 No. 33 s 96

Application for registration of merger or transfer of engagements between societies of the same type

s 293 amd 1997 No. 33 s 97

Certificate of confirmation (voluntary transfer)

s 295 sub 1994 No. 27 s 45

SSA may direct a transfer of engagements between societies of the same type

s 296 amd 1994 No. 27 s 46

Certificate of confirmation (transfer by direction)

s 298 sub 1994 No. 27 s 47
 amd 1997 No. 33 s 98

Who receives the certificate of confirmation

s 298A ins 1994 No. 27 s 47

When transfer of engagements takes effect

s 298B ins 1994 No. 27 s 47
 sub 1997 No. 33 s 99

Cancellation of registration after total transfer

s 298C ins 1994 No. 27 s 47

Effect of merger

s 299 sub 1994 No. 27 s 48

Effect of transfer of engagements

s 300 sub 1994 No. 27 s 49
 amd 1997 No. 33 s 100

Application for registration of merger or transfer of engagements between societies of different types

s 302 amd 1997 No. 33 s 101

Cancellation of building society's permanent shares

s 302A ins 1994 No. 27 s 50
 amd 1997 No. 33 s 102

Certificate of confirmation (voluntary transfer)

s 304 sub 1994 No. 27 s 51

SSA may direct a transfer of engagements between societies of different types

s 305 amd 1994 No. 27 s 52

Certificate of confirmation (transfer by direction)

s 307 sub 1994 No. 27 s 53
amd 1997 No. 33 s 103

Who receives the certificate of confirmation

s 307A ins 1994 No. 27 s 53

When transfer of engagements takes effect

s 307B ins 1994 No. 27 s 53
sub 1997 No. 33 s 104

Cancellation of registration after total transfer

s 307C ins 1994 No. 27 s 53

Division 3—Mergers and transfers of engagements involving foreign societies

div hdg sub 1997 No. 33 s 105

Definitions for div 3

s 309 sub 1997 No. 33 s 105

Proposal for merger or transfer of engagements

s 310 sub 1997 No. 33 s 105

SSA may register merged society

s 311 sub 1997 No. 33 s 105

Certificate of confirmation for total transfer

s 312 sub 1997 No. 33 s 105

Certificate of confirmation for partial transfer

s 313 sub 1994 No. 27 s 54; 1997 No. 33 s 105

Who receives the certificate of confirmation

s 313A ins 1994 No. 27 s 54
om 1997 No. 33 s 105

When transfer of engagements takes effect

s 313B ins 1994 No. 27 s 54
om 1997 No. 33 s 105

When transfer of engagements takes effect

s 314 sub 1994 No. 27 s 55; 1997 No. 33 s 105

Effect of merger

s 315 sub 1994 No. 27 s 56; 1997 No. 33 s 105

Effect of transfer of engagements

s 316 sub 1997 No. 33 s 105

Surrender of certificate of incorporation

s 316A ins 1997 No. 33 s 105

Division 3A—Effect of mergers and transfers of engagements involving only foreign societies**div hdg** ins 1997 No. 33 s 105**Definitions for div 3A****s 316B** ins 1997 No. 33 s 105**Effect of merger of foreign societies****s 316C** ins 1997 No. 33 s 105**Effect of transfer of engagements between foreign societies****316D** ins 1997 No. 33 s 105**Proposal to convert by building society to be approved by members****s 320** amd 1994 No. 27 s 57**PART 9—EXTERNAL ADMINISTRATION****Schemes of arrangement and reconstruction****s 337** amd 1997 No. 33 s 106**Division 3—Official management****div 3 (s 339)** om 1997 No. 33 s 107**Winding-up on certificate of SSA****s 341** amd 1994 No. 27 s 58; 1997 No. 33 s 108**Application of Corporations Law to winding-up****s 342** amd 1993 No. 25 s 14; 1997 No. 33 s 109**Appointment of investigators****s 348** amd 1994 No. 27 s 59**Powers of investigators****s 350** amd 1994 No. 27 s 60**Self-incrimination****s 352** amd 1997 No. 33 s 110**Registration****s 364** amd 1994 No. 27 s 61; 1997 No. 33 s 111**Agents****s 364A** ins 1997 No. 33 s 112**End of appointment of foreign societies' agents****s 364B** ins 1997 No. 33 s 112**Liability of agents****s 364C** ins 1997 No. 33 s 112**Office of foreign society****s 364D** ins 1997 No. 33 s 112**Service of documents****s 364E** ins 1997 No. 33 s 112**SSA to be notified of certain changes****s 366** ins 1997 No. 33 s 113

Balance sheets

s 367 om 1997 No. 33 s 114

Society proposing to register as foreign society

s 369 amd 1997 No. 33 s 115

SSA to provide certain documents

s 369A ins 1997 No. 33 s 116

Effect of incorporation

s 374 amd 1997 No. 33 s 117

Reviewable decisions

s 379 amd 1997 No. 33 s 118

SSA to review certain decisions

s 382 amd 1997 No. 33 s 119

Certificates etc.

s 383 amd 1994 No. 27 s 62

Financial bodies to comply with standards

s 402 amd 1994 No. 27 s 63

Secrecy

s 410 sub 1997 No. 33 s 120

Powers about money of members who have dieds 411 sub 1994 No. 27 s 64
amd 1997 No. 33 s 121**Limitation of doctrine of ultra vires**

s 412 om 1997 No. 33 s 122

Abolition of doctrine of constructive notice

s 413 om 1997 No. 33 s 122

Security over prime liquid assets

s 430 amd 1993 No. 25 s 15

Society must offer membership in certain circumstances

s 431 om 1994 No. 27 s 65

**Providing financial accommodation to, or accepting deposits from,
non-members**s 433 ins 1993 No. 25 s 16
sub 1994 No. 27 s 66**Matters relating to register of directors, principal executive officer and
secretaries**

s 434 ins 1993 No. 25 s 16

PART 16—VALIDATION

pt hdg ins 1993 No. 25 s 17

Validation of Amendment Regulation

s 435 ins 1993 No. 25 s 17

**SCHEDULE 1—MATTERS TO BE PROVIDED FOR IN RULES OF
BUILDING SOCIETIES**

om 1997 No. 33 s 123

**SCHEDULE 2—MATTERS TO BE PROVIDED FOR IN RULES OF CREDIT
UNIONS****sch hdg** amd 1994 No. 27 s 67
om 1997 No. 33 s 123