

FRIENDLY SOCIETIES ACT 1989 No. 232

NEW SOUTH WALES



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FRIENDLY SOCIETIES ACT 1989 No. 232

NEW SOUTH WALES



Act No. 232, 1989

An Act to provide for the registration, incorporation and administration of friendly societies; to confer and impose functions on friendly societies and associated persons and bodies; to repeal the Friendly Societies Act 1912; and for other purposes. [Assented to 21 December 1989]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Friendly Societies Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Section 130 and Schedule 3 commence on the date of assent.

Definitions

3. (1) In this Act:

"accounting records" includes:

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

"accounts" means:

- (a) surplus and deficit accounts, including revenue accounts, management accounts and profit and loss accounts; and
- (b) balance sheets; and
- (c) notes (other than auditors' reports and directors' reports) that are attached to or intended to be read with any surplus and deficit account or balance sheet;

"Advisory Committee" means the Friendly Societies Advisory Committee constituted under section 86;

"association" means an association of friendly societies registered under section 20;

"bank" means:

- (a) a bank within the meaning of the Banking Act 1959 of the Commonwealth; or
- (b) a bank that is constituted by a law of a State or the Commonwealth;

"benefit" means an amount payable to a member of a friendly society, or a dependant of a member, from a fund of the society established for the purpose of paying the benefit;

"benefit fund" means a fund, or a combined benefit fund, established by a friendly society to enable a contributor to the fund, or a dependant of a contributor:

- (a) to receive the benefit or benefits for which the fund is established; and
- (b) to share in any surplus in the fund;

"board" means the board of directors of a friendly society;

"business document", in relation to a friendly society, means a document that is issued, signed or endorsed by or on behalf of the society and is:

- (a) a business letter, statement of account, invoice or order for goods or services; or
- (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (c) a receipt or letter of credit issued by the society;

"chairperson" means the chairperson elected by the directors of a friendly society to preside at meetings of the directors and at general meetings of the society;

"combined benefit fund" means a fund established by a friendly society for the provision of more than one benefit;

"company" has the same meaning as it has in the Companies (New South Wales) Code;

"corporation" has the same meaning as it has in the Companies (New South Wales) Code;

"dependant", in relation to a member of a friendly society, means:

- (a) the spouse of the member; or
- (b) a person (including a former spouse of the member) who is wholly or partly financially dependant on the member when a benefit becomes payable by virtue of the membership; or
- (c) a person who, in accordance with the rules of the society, is related to the member;

Deputy Registrar" means the Deputy Registrar of Friendly Societies holding office under section 84;

"director", in relation to a friendly society, includes:

- (a) a person who occupies or acts in the position of a director of the society, whether or not the person is called a director and whether or not the person is validly appointed or duly authorised to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors of the society are accustomed to act;

"foreign society" means:

- (a) an organisation that is registered under, or subject to, a law in force in another State, or in a Territory, that regulates organisations similar to friendly societies; or
- (b) any organisation that operates in another State, or in a Territory, and, in the opinion of the Registrar, has objects and powers similar to those of a friendly society; or
- (c) an organisation that is constituted in New South Wales and, in the opinion of the Registrar, is controlled by, or is operating in conjunction with, an organisation referred to in paragraph (a) or (b);

"friendly society" means a corporation constituted by section 9 or Schedule 3;

"inspector" means a person employed under section 88 as an inspector;

"investigator" means a person appointed under section 90 as an investigator of the affairs of a friendly society;

"officer", in relation to a friendly society, means:

- (a) a director or secretary of the society, or
- (b) a person who is concerned, or takes part, in the management of the society, whether or not as a director; or
- (c) a receiver, or a receiver and manager, of the property, or part of the property, of the society; or
- (d) an administrator of the society appointed under section 101; or

(e) a liquidator of the society;

"Official Actuary" means an actuary who:

(a) is a Fellow of The Institute of Actuaries of Australia; or

(b) is the holder for the time being of an office,

and is notified as the Official Actuary by an order of the Minister that is published in the Gazette and names the actuary or specifies the office;

"registered" means registered under this Act;

"Registrar" means the Registrar of Friendly Societies holding office under section 84;

"serve", in relation to a document, means serve by post or as provided by the regulations;

"special resolution", in relation to a friendly society, means a resolution passed at a duly convened general meeting of the society:

(a) on a motion of which notice had been given in the notice convening the meeting and in accordance with the rules of the society; and

(b) in favour of which there were no fewer than two-thirds of the valid votes cast on the motion;

"subsidiary", in relation to a friendly society, means a corporation that would be a subsidiary for the purposes of the Companies (New South Wales) Code if the friendly society were a corporation within the meaning of that Code;

"union of associations" means a union of associations registered under section 20.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

Application of Codes relating to companies and securities

4. (1) Except as provided by this section, the Companies (New South Wales) Code and the Securities Industry (New South Wales) Code do not apply to a friendly society.

(2) The only provisions of the Companies (New South Wales) Code and the Securities Industry (New South Wales) Code that apply to a friendly society are provisions that:

- (a) are applied to a society by this Act or by regulations made as permitted by this section; or
- (b) relate to the role of a society in the formation of a company; or
- (c) relate to substantial shareholdings (by or involving a society) in a company; or
- (d) confer and impose functions on a society as a member, or former member, of a corporation; or
- (e) confer or impose functions on a society in its dealings with a corporation (not being dealings in securities of the society).

(3) A friendly society may be an authorized trustee corporation as defined in section 5 (1) of the Companies (New South Wales) Code.

(4) A regulation may apply to friendly societies, with or without modification, a provision of the Companies (New South Wales) Code, or of the Securities Industry (New South Wales) Code, and a provision so applied has effect in accordance with the regulation.

(5) A regulation may not apply a provision, or a modified provision, of either of those Codes if the result would be an inconsistency with the other provisions of this Act.

(6) A regulation made as permitted by this section may create an offence with a maximum penalty not exceeding the maximum penalty for the provision of the Code to which the regulation relates.

(7) This section operates in relation to an association and a union of associations in the same way as it operates in relation to a friendly society.

PART 2 - OBJECTS AND FUNCTIONS

Objects of friendly societies

5. (1) The objects of a friendly society are:

- (a) to provide health and welfare facilities and services for members and their dependants including, but not limited to, hospital, medical, dental, pharmaceutical, optical and physiotherapy benefits; and

- (b) to provide facilities and benefits for the relief and maintenance of members and their dependants in the case of death, sickness, disability, accident, retirement, old age and unemployment; and
- (c) to provide services and benefits for the education of members and their dependants; and
- (d) to provide funeral benefits for members and their dependants; and
- (e) to provide annuities, life insurance and superannuation for members and their dependants; and
- (f) to improve the standard of living of members; and
- (g) to promote the principles of mutual aid and co-operation; and
- (h) to give effect to objects provided for under subsection (2).

(2) The rules of a society may include prescribed objects in addition to those referred to in subsection (1).

Principal functions of friendly society

6. (1) A friendly society may exercise such functions as are necessary to achieve its objects in accordance with this Act.

(2) Without limiting the operation of subsection (1), a friendly society may:

- (a) with the written approval of the Minister administering the Pharmacy Act 1964 and subject to section 27 of that Act - carry on the business of a pharmacist in open shop; or
- (b) if authorised by its rules to do so - provide financial or advisory services for the relief and support of members or their dependants; or
- (c) provide or manage social facilities, social functions and leisure services for members or their dependants; or
- (d) if authorised by its rules to do so - operate a managed fund including an approved deposit fund within the meaning of section 27A (1) of the Income Tax Assessment Act 1936 of the Commonwealth; or
- (e) if authorised by its rules to do so - provide insurance and re-insurance services for members or their dependants; or
- (f) arrange for the provision of legal services to members or their dependants; or

- (g) appoint agents to act on its behalf; or
- (h) act as agent for any person and receive commission as an agent for its members; or
- (i) enter into a joint venture with any other friendly society or foreign society; or
- (j) carry out its objects and exercise its functions at any place outside New South Wales; or
- (k) guarantee the performance of an obligation of a subsidiary corporation or indemnify it against loss; or
- (l) provide management services and any other services to a credit union, a co-operative society, or a building society, with which it is associated; or
- (m) exercise any other prescribed function provided for in its rules.

Subsidiary corporations and societies

7. (1) For the purposes of this Act, a corporation is a subsidiary of a friendly society if the society:

- (a) controls the composition of the board of directors of the corporation (whether or not by the operation of this section); or
- (b) is able to cast, or to control the casting of, a majority of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) holds more than one-half of the issued share capital of the corporation (excluding any part from which has been excluded any right to participate beyond a specified amount in a distribution of either profits or capital).

(2) The composition of the board of directors of a corporation is to be taken to be controlled by a friendly society if the society is able, whether with or without the concurrence of some other person, to appoint or remove a majority of the directors.

(3) For the purposes of subsection(2), a friendly society is to be taken to be able to appoint a person as a director of a corporation if:

- (a) only the society can make the appointment; or
- (b) the appointment must be made because the person is a director or other officer of the society.

(4) In determining whether a corporation is a subsidiary of a friendly society:

- (a) the society is to be treated as not holding any shares, and as not having any powers, that are exercisable by it in a fiduciary capacity, and
- (b) except in the case of shares or powers in relation to which the society, or a subsidiary of the society, is concerned only in a fiduciary capacity, shares held, and powers exercisable, by a nominee of the society or subsidiary are to be treated as being held or exercisable by the society, and
- (c) shares held, and powers exercisable, by any person because of provisions of debentures of the corporation, or of a trust deed relating to debentures of the corporation, are to be disregarded; and
- (d) shares held, and powers exercisable, by a society or its nominee are to be disregarded if they are held or exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.

(5) In this section:

"corporation" means:

- (a) a corporation within the meaning of the Companies (New South Wales) Code; or
- (b) a friendly society.

PART 3 - REGISTRATION AND INCORPORATION

Division 1 - Friendly societies

Application for registration of friendly society

8. (1) Before application may be made for registration of a friendly society, a meeting must be held and there must be presented to the meeting in writing:

- (a) a statement of the proposed objects of the society; and
- (b) a business plan showing how it is proposed to achieve those objects; and

(c) the proposed rules of the society.

(2) Application for registration of the friendly society may not be made unless at the meeting (or at a subsequent or adjourned meeting) the appropriate number of persons 18 years of age or older:

- (a) approved the proposed rules with or without amendment; and
- (b) completed applications for membership; and
- (c) elected the persons to be proposed as the first directors of the society.

(3) Application for registration of the friendly society must be made in the prescribed form and must be lodged with the Registrar not later than 2 months after closure of the meeting or within such extended period as the Registrar may allow.

(4) The application must be signed by the appropriate number of persons who attended the meeting and must be accompanied by:

- (a) 2 copies of the proposed rules signed and certified by those who acted as chairperson and secretary at the meeting; and
- (b) a copy, so signed and certified, of the business plan presented to the meeting; and
- (c) any other prescribed particulars; and
- (d) the prescribed fee.

(5) In this section:

"appropriate number" means:

- (a) at least 100; or
- (b) if the Registrar, before or after the meeting, approves a lower number - at least the number approved by the Registrar;

"person" does not include a corporation.

Registration and incorporation of friendly society

9. (1) The Registrar may, on application being made for registration of a friendly society:

- (a) register the friendly society; or
- (b) refer the application to the Advisory Committee.

(2) The Registrar must register a friendly society if the application for registration has not been referred to the Advisory Committee and the Registrar is satisfied that:

- (a) except in so far as it operates a dispensary, the society will operate principally for the benefit of its members and their dependants; and
- (b) the society will offer a range of benefits to its members and their dependants, whether or not in the case of a dispensary they are offered to others; and
- (c) the rules submitted are not inconsistent with this Act and may reasonably be approved; and
- (d) there are reasonable grounds for believing that the society, if registered, would be successful in achieving its objects; and
- (e) the requirements of this Act have been complied with and compliance is likely to continue; and
- (f) there is no reasonable cause for refusing registration.

(3) If an application for registration of a friendly society is referred to the Advisory Committee, the Registrar must:

- (a) register the society if the Advisory Committee recommends registration; or
- (b) refuse registration if the Advisory Committee recommends refusal.

(4) The Advisory Committee may recommend refusal if it is of the opinion that the society:

- (a) would not be a genuine friendly society; or
- (b) is not designed or intended to serve fairly the interests of its members; or
- (c) proposes to operate in an area in which the benefits that it is designed to provide are adequately provided for by an existing friendly society.

(5) A registered friendly society is a corporation with a corporate name that:

- (a) includes the words "Friendly Society"; and
- (b) is approved by the Registrar.

(6) On registering a friendly society, the Registrar is to issue it with a certificate of incorporation that specifies as the name of the society the name approved by the Registrar.

(7) A member of a friendly society is not, as such a member, under any personal liability to a creditor of the incorporated society.

Change of name of friendly society

10. (1) A friendly society may, with the approval of the Registrar, change its name by special resolution.

(2) A change of name does not take effect until:

- (a) the Registrar has noted the change on the certificate of incorporation of the society, or
- (b) the certificate of incorporation is surrendered to the Registrar and a replacement certificate of incorporation is issued in the new name.

(3) A change of name of a friendly society does not affect:

- (a) its identity, or
- (b) the exercise of any rights, or the enforcement of any obligations, by or against the society or any person; or
- (c) the continuation of any legal proceedings by or against the society.

(4) Any legal proceedings that might have been continued or commenced by or against the society in its former name may be continued or commenced by or against the society in its new name.

(5) A change of name must be advertised as prescribed.

Use of expression "friendly society"

11. (1) A corporation that uses the words "friendly society" or "friendly societies" in any form in its name is guilty of an offence unless it is exempted by subsection (3).

Maximum penalty: 100 penalty units.

(2) If an unincorporated organisation uses the words "friendly society" or "friendly societies" in any form in its name, each member of the controlling body of the organisation is guilty of an offence unless the organisation is exempted by subsection (3).

Maximum penalty: 50 penalty units.

(3) A corporation or unincorporated organisation is exempt from the operation of subsections (1) and (2) if:

- (a) it is a friendly society registered under this Act; or
- (b) it is The Friendly Societies' Association of New South Wales or the Friendly Societies Dispensaries and Pharmacies Association of N.S.W.; or

- (c) it is a foreign society carrying on business in the State with the approval of the Registrar given under section 116; or
- (d) it is exempted by the regulations from the operation of those subsections and complies with any conditions to which the exemption is made subject.

Use of name by friendly society

12. (1) A director of a friendly society who knowingly authorises or permits:

- (a) the use of a seal of the society on which the name of the society does not appear; or
- (b) the issue by or on behalf of the society of a business document that does not bear the name of the society; or
- (c) the carrying on of the business of the society at a place at which the name of the society is not publicly and conspicuously displayed,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) A director of a friendly society who knowingly authorises or permits anything to be done by the society in a name other than:

- (a) its registered name; or
- (b) a business name approved in writing by the Registrar and registered under the Business Names Act 1962,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(3) If:

- (a) the Registrar, in approving a business name for a friendly society, imposes a condition on its use; and
- (b) a director of the society knowingly authorises or permits the society to use the business name in breach of the condition,

the director is guilty of an offence.

Maximum penalty: 5 penalty units.

Registered office of friendly society

13. (1) A friendly society must have a registered office and the rules of the society must state the address at which the registered office is located.

(2) A friendly society must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of the society and identifying the premises as its registered office.

(3) Not later than 14 days after changing the address of its registered office, a friendly society must give the Registrar written notice of the new address.

(4) If a friendly society contravenes a provision of this section, a director of the society who has not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (4): 5 penalty units.

Membership of friendly society

14. (1) On the registration of a friendly society, the persons who signed the application for registration become members of the society.

(2) Other persons (corporations excepted) may be admitted as members of the society as provided by its rules.

(3) If 2 or more friendly societies are amalgamated, the members of the amalgamated society are:

(a) the members of the amalgamating societies; and

(b) other persons admitted as members of the amalgamated society in accordance with its rules.

Minors

15. (1) A person who is younger than 16 may, with the written consent of his or her parents or guardian, enter into a contract for the provision of benefits by a friendly society or accept an assignment of such a contract.

(2) A person who is 16 or older, but younger than 18, may enter into a contract for the provision of benefits by a friendly society or accept an assignment of such a contract.

(3) A person who is 16 or older, but younger than 18, may, with the written consent of his or her parents or guardian, assign, discharge, surrender, or give security over, a contract for the provision of benefits by a friendly society.

(4) Except as provided by subsection (3), a person who is 16 or older, but younger than 18, has the same powers and privileges in relation to

a contract for the provision of benefits by a friendly society as a person who is 18 or older.

Voting rights of members

16. (1) The voting rights of the members of a friendly society that was registered under the Friendly Societies Act 1912 immediately before its repeal are such as are from time to time conferred by the rules of the society.

(2) In the case of any other friendly society, the votes of the members voting on any matter relating to the society are all equal in value.

(3) This section does not prevent a society from limiting to members of a fund of the society the right to vote on matters relating to the fund.

Special decisions requiring postal ballot and approval of Minister

17. (1) In this section:

"special decision" means a decision by a friendly society:

- (a) to apply for registration as a co-operative society under the Co-operation Act 1923; or
- (b) to be wound up otherwise than at the direction of the Registrar; or
- (c) to wind up a benefit fund otherwise than at the direction of the Registrar; or
- (d) to cease to carry on the business of a pharmacist in open shop.

(2) A friendly society may not give effect to a special decision unless:

- (a) it is made by means of a postal ballot of its members conducted in accordance with this section and the regulations; and
- (b) it is approved by the Minister under section 18 after reference of the decision to the Advisory Committee.

(3) The society must, in addition to any other material that may be required in connection with a postal ballot on a special decision, send to each member a statement approved by the Registrar concerning:

- (a) the financial position of the society if the decision would be to wind up the society or, if the decision would be for the winding up of a fund, the financial position of the fund; and

- (b) the interests of the directors in the proposal, including any interests in another organisation concerned in the proposal; and
- (c) any compensation or consideration to be paid to officers or members of the society in connection with the decision; and
- (d) such other matters as the Registrar directs.

(4) If required by the Registrar, there must be sent with the statement a report that is made by an independent person approved by the Registrar and relates to such matters as the Registrar directs.

(5) On the declaration by the returning officer of the result of the ballot, the secretary of the society must make in the minute book kept for general meetings of the society an entry showing:

- (a) the number of formal votes cast in favour of the special decision; and
- (b) the number of formal votes cast against the special decision; and
- (c) the number of informal votes cast.

(6) A special decision is made by a friendly society only if at least three-quarters of the formal votes cast in the postal ballot are in its favour and, if it is approved, the secretary of the society must, within 10 days after the declaration of the result, lodge with the Registrar a copy signed by the secretary of the entry in the minute book.

(7) Compliance by a society with a provision of this section is not required if the Minister so directs by written order.

Special decisions - functions of Advisory Committee and Minister

18. (1) If a friendly society applies to the Minister for approval of a special decision of the society made under section 17, the Minister must, before deciding whether or not to give the approval, refer the special decision to the Advisory Committee for consideration.

(2) In considering a special decision referred to it, the Advisory Committee must take into account:

- (a) the interests of the members of the society or of a class of those members; and

- (b) the interests of members of societies generally; and
- (c) the interests of mutual aid and co-operation.

(3) After considering a special decision, the Advisory Committee must:

- (a) recommend to the Minister that the decision be approved; or
- (b) refuse to make any recommendation to the Minister.

(4) If the Advisory Committee refuses to make a recommendation to the Minister:

- (a) it must give written notice of the refusal to the Minister and the friendly society; and
- (b) the society may, within 14 days after receiving the notice, make representations to the Minister in relation to the refusal.

(5) If the Advisory Committee does not within a reasonable time make, or refuse to make, a recommendation, the Minister may consider the matter without waiting for action by the Advisory Committee.

(6) After considering a special decision of a friendly society and any recommendation of the Advisory Committee, the Minister may approve, or refuse to approve, the special decision.

(7) The Minister is not bound by a recommendation of the Advisory Committee.

(8) In deciding whether to approve, or to refuse to approve, a special decision of a friendly society, the Minister is to have regard to:

- (a) any adverse affect the decision would have on a significant number of members of the society; and
- (b) the public interest; and
- (c) any other matter the Minister considers to be relevant.

Division 2 - Associations and unions of associations

Application for registration of association or union of associations

19. (1) There may be registered under this Division:

- (a) an association of friendly societies having as its members 2 or more friendly societies; or
- (b) a union of associations having as its members 2 or more associations of friendly societies.

(2) Before an application for registration under this Division may be made, a meeting must be held at which each friendly society proposing to form the association, or each association proposing to form the union, must be represented by at least 2 persons.

(3) There must be presented to the meeting, in writing:

- (a) the proposed objects of the association or union; and
- (b) the reasons for believing that, if registered, it would be able to achieve its objects; and
- (c) the proposed rules of the association or union.

(4) Application for registration of the association or union may not be made unless at the meeting (or at a subsequent or adjourned meeting) 2 representatives of each society proposing to form the association, or of each association proposing to form the union:

- (a) approved the proposed rules with or without amendment; and
- (b) completed on behalf of the society or association they represented an application for membership of the association or union; and
- (c) elected the persons to be proposed as the first directors of the association or union.

(5) Application for registration of the association or union must be made in the prescribed form and must be lodged with the Registrar not later than 2 months after closure of the meeting or within such extended period as the Registrar may allow.

(6) The application must be accompanied by:

- (a) a statutory declaration by those who acted as chairperson and secretary at the meeting to the effect that the requirements of this section in relation to the meeting were complied with; and
- (b) a copy of the statement of objects presented to the meeting; and
- (c) 2 copies of the proposed rules of the association or union signed by at least 1 representative of each society or association desiring membership; and
- (d) a list containing the full name, address and occupation of each person elected as a director of the association or union and the name of the society or association of which he or she is a representative; and

- (e) the prescribed fee.

Registration and incorporation

20. (1) The Registrar must, on application, register an association or union of associations if satisfied that:

- (a) the association or union has been formed in accordance with this Act; and
- (b) the rules submitted are not inconsistent with this Act and may reasonably be approved; and
- (c) there are reasonable grounds for believing that the association or union, if registered, would be successful in achieving its objects; and
- (d) there is no reasonable cause for refusing registration.

(2) A registered association, or a registered union of associations, is a corporation with a corporate name approved by the Registrar.

(3) On registering an association or union, the Registrar is to issue it with a certificate of incorporation that specifies as the name of the association or union the name approved by the Registrar.

Functions of association or union of associations

21. (1) An association or union of associations has the functions conferred or imposed on it by or under this Act and by its rules.

(2) If authorised by its rules to do so, an association or union of associations may:

- (a) obtain a loan or other financial accommodation in order to achieve any of its objects; or
- (b) receive money on deposit; or
- (c) enter into, and give effect to, a contract (including a guarantee) or arrangement for the provision of services to its members.

(3) If authorised by its rules to do so, but subject to any regulations relating to liquidity, an association or union of associations may lend money to its members.

(4) An association or union of associations may exercise its functions outside New South Wales.

(5) An association or union of associations must not borrow money from a source outside Australia unless:

- (a) the money is repayable as a fixed amount of Australian currency; or
- (b) the association or union has entered into a foreign exchange forward hedge contract as a hedge against any currency exchange loss that might be incurred in repaying the loan or paying interest on the loan; or
- (c) it has taken such other measures as may be provided by the regulations.

(6) With such modifications as may be provided by the regulations, the provisions of sections 147 and 151, and of Division 9 of Part IV, of the 'Companies (New South Wales) Code apply to a mortgage or charge given by an association or union of associations and so apply as if:

- (a) a reference in those provisions to a company were a reference to an association or union of associations; and
- (b) a reference in those provisions to the Commission were a reference to the Registrar.

(7) Subsection (6) does not apply to:

- (a) a mortgage, charge, or encumbrance that is over specific land and is registered under the Real Property Act 1900 or Division 1 of Part 23 of the Conveyancing Act 1919; or
- (b) a mortgage, charge or encumbrance over a specific lease, claim or tenement under the laws relating to mining.

(8) If an association or union of associations contravenes subsection (5), a director of the association or union who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 100 penalty units.

(9) Regulations may be made for or with respect to:

- (a) the holding of assets of an association, or of a union of associations, as liquid assets; or
- (b) determination of the value of assets of an association or of a union of associations; or
- (c) other matters relating to liquid assets of an association or of a union of associations.

Division 3 - Rules

Definition

22. In this Division:

"registered organisation" means:

- (a) a friendly society; or
- (b) an association; or
- (c) a union of associations.

Rules of registered organisation

23. (1) The rules of a registered organisation must provide for the matters specified in Schedule 2 and for any other matters that the Registrar may from time to time require by written notice to the organisation.

(2) The rules of a registered organisation have effect as a contract that is executed under seal and requires:

- (a) the organisation; and
- (b) each member of the organisation; and
- (c) each person claiming through the organisation or a member of the organisation,

to observe the rules.

(3) This section does not limit the matters in respect of which provision may be made by the rules of a registered organisation.

Alteration of rules of registered organisation

24. (1) A proposed alteration of the rules of a registered organisation is ineffective unless:

- (a) it is made by special resolution of the members or in accordance with subsection (2); and
- (b) it is not inconsistent with this Act or the regulations or with any other Act or any law; and
- (c) it is certified and registered as prescribed.

(2) A proposed alteration may be made by resolution of the directors of the registered organisation if:

- (a) the alteration is authorised or required by or under this Act or any other Act or any law; or

(b) the Registrar is satisfied that approval of the alteration by the members of the organisation is not necessary and alteration by the directors would be appropriate.

(3) If the Registrar does not refer an application for registration of an alteration to the Advisory Committee and is satisfied:

- (a) that approval of the application would be reasonable; and
- (b) that, except for certification and registration, the proposed alteration is not ineffective as provided by subsection (1); and
- (c) that there is no reasonable cause why the alteration should not be registered,

the Registrar must certify and register the alteration as prescribed.

(4) The Registrar may refer to the Advisory Committee an application for alteration of the rules of a registered organisation and the Advisory Committee may:

- (a) recommend registration of the alteration; or
- (b) if of the opinion that the alteration would not be in the best interests of the members of the organisation - recommend that registration be refused.

(5) The Registrar must give effect to the recommendation of the Advisory Committee.

(6) If the rules of a registered organisation are altered, it must give written notice of the alteration to its members as soon as practicable before, but not later than, the date on which notice is given of the annual general meeting of the organisation that next succeeds the alteration.

(7) If a registered organisation contravenes subsection (6), a director of the organisation who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (7): 10 penalty units.

PART 4 - MANAGEMENT OF FRIENDLY SOCIETIES

Division 1 - Directors and officers

Directors

25. (1) The business and operations of a friendly society are to be managed and controlled by a board of at least 5 directors each of whom is a member of the society.

(2) The directors must elect one of their number as the chairperson to preside at meetings of the directors and general meetings of the society.

(3) Subject to any restrictions imposed by this Act or by the rules of the society, the board may exercise the functions of the society as if they had been conferred or imposed by a general meeting of the society.

(4) The directors must meet:

- (a) as often as is necessary for the proper and effective conduct of the business of the society; and
- (b) in any case, but without limiting the operation of paragraph (a), at least once every 3 months.

(5) A director carrying on the business and operations of a society in accordance with a resolution of the board does so as agent of the society.

(6) A defect in the qualifications or appointment of a director does not invalidate anything done by the director before discovery of the defect.

Disqualification from acting as director

26. (1) In this section:

"convicted person" means a person who, within or outside the State:

- (a) has been convicted of an offence referred to in section 227 (2) of the Companies (New South Wales) Code; or
- (b) has been convicted on indictment of an offence in connection with the promotion, formation or management of a friendly society, co-operative society, credit union or permanent building society; or

(c) has been convicted of an offence under section 33;
"insolvent under administration" has the same meaning as it has in the Companies (New South Wales) Code.

(2) A convicted person who acts as a director of a friendly society:

(a) within 5 years after conviction; or

(b) if sentenced to imprisonment - within 5 years after release from imprisonment,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) An insolvent under administration who acts as a director of a friendly society is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(4) For the purposes of this section:

(a) a reference to a person acting as a director of a friendly society includes a reference to a person directly or indirectly taking part, or being concerned, in the management of the society; and

(b) a certificate by a prescribed authority as to the date of release of a person from imprisonment is evidence of the matter certified.

Prohibition by Supreme Court against acting as director

27. (1) On application by the Registrar, the Supreme Court may, by order, prohibit a person from acting as a director of a friendly society for a stated period not exceeding 5 years.

(2) An order may not be made under subsection (1) unless the Supreme Court is satisfied:

(a) that the person against whom the order is sought was, at some time not earlier than 7 years before being given notice of the application, a director of a friendly society or other corporation to which this section applies as provided by subsections (3)-(5); and

(b) that the manner of management of the affairs of the friendly society or other corporation of which the person was a director was responsible for its being of a kind defined by those subsections.

(3) This section applies to a friendly society:

- (a) that was, or is being, wound up because it could not pay its debts as and when they became due; or
- (b) that is the subject of an order under section 383 of the Companies (New South Wales) Code (as applied by Part 9 of this Act) staying or terminating a winding up to which it was subject because it could not pay its debts as and when they became due; or
- (c) for which an administrator has been appointed under Part 8.

(4) This section applies to a corporation that is not a friendly society and that:

- (a) was, or is being wound up because it could not pay its debts as and when they became due; or
- (b) is the subject of an order under section 383 of the Companies (New South Wales) Code (as applied by Part 9 of this Act) staying or terminating a winding up to which it was subject because it could not pay its debts as and when they became due; or
- (c) has been, or is, under official management or a similar form of administration.

(5) This section applies to a friendly society or other corporation:

- (a) that has ceased to carry on business because it could not pay its debts as and when they became due; or
- (b) that is the subject of an unsatisfied levy of execution; or
- (c) that has entered into a compromise or scheme of arrangement with its creditors; or
- (d) for which a receiver, or a receiver and manager, of any or all of its property has been appointed, whether or not the appointment has been terminated.

(6) A person who fails to comply with an order under subsection (1) is guilty of an offence.

Maximum penalty - subsection (6): 50 penalty units or imprisonment for 12 months, or both.

Prohibition by Registrar against acting as director

28. (1) The Registrar may serve on a director of a friendly society a written notice calling on the director to show cause, within a

reasonable time stated in the notice, why the director should not be prohibited from acting as a director.

(2) The notice must state:

- (a) the grounds on which it is served and, except in relation to a conviction, the reasons why the Registrar considers that the grounds exist; and
- (b) that the director may, within the time stated in the notice, lodge with the Registrar written representations for reference to the Advisory Committee or may arrange with the Registrar a time and place to be heard by the Advisory Committee.

(3) The only grounds on which a notice may be served are any one or more of the following:

- (a) that, in the opinion of the Registrar, the director is incapable of managing his or her own affairs;
- (b) that, in the opinion of the Registrar, the director has not exercised the functions of a director efficiently, or has not exercised them honestly, or has not exercised them fairly;
- (c) that the director has been convicted not earlier than 5 years before service of the notice of an offence against this Act, the Co-operation Act 1923, the Permanent Building Societies Act 1967 or the Credit Union Act 1969, or an offence against the Friendly Societies Act 1912 before its repeal.

(4) If a director served with a notice under this section fails within the time stated in the notice or within such further time as the Registrar may allow:

(a) to make representations to the Advisory Committee; or
(b) to arrange to be heard by the Advisory Committee,

the Registrar may, by order served on the director, prohibit the director from acting as a director of a friendly society.

(5) If the director makes written representations to the Advisory Committee, or is heard by the Advisory Committee, the Registrar may, after considering the recommendation of the Advisory Committee:

- (a) take no further action; or
- (b) by order served on the director, prohibit the director from acting as a director of a friendly society.

(6) An order under this section must state the period during which it is to operate, being:

- (a) an indefinite period; or
- (b) a specified period (which may be determined as provided by the order).

(7) A person who fails to comply with an order under this section is guilty of an offence.

Maximum penalty - subsection (7): 50 penalty units or imprisonment for 12 months, or both.

Age of directors

29. (1) The provisions of section 226 (1)-(6) of the Companies (New South Wales) Code apply in relation to a person of or over 72 years of age being appointed, or acting, as a director of a friendly society in the same way as they apply in relation to such a person being appointed, or acting, as a director of a public company.

(2) If a director of a friendly society vacates office at the conclusion of the annual general meeting of the society commencing next after the director attains the age of 72 years, the vacancy is not to be taken into account in determining whether other directors retire.

(3) This section does not affect the operation of a rule of a friendly society that:

- (a) prevents a person from being appointed as a director of the society; or
- (b) requires a director to vacate office before attaining the age of 72 years.

(4) A minor is incapable of being appointed as a director of a friendly society.

Circumstances in which director ceases to hold office

30. (1) Unless sooner vacated, the office of a director of a friendly society is vacated 3 years after appointment as a director but the director may, if eligible, be reappointed.

(2) The office of a director of a friendly society is vacated if the director:

- (a) ceases to be a member of the society; or
- (b) is prohibited from acting as a director by an order of the Supreme Court under section 27 or an order of the Registrar under section 28; or

- (c) becomes an insolvent under administration; or
- (d) becomes a temporary patient, or a continued treatment patient, within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (e) is removed from office as referred to in subsection (3); or
- (f) is convicted of an offence that involves fraud or dishonesty and is punishable on conviction with imprisonment for at least 3 months; or
- (g) is a convicted person referred to in section 26; or
- (h) is absent from 3 consecutive meetings of the board without the leave of the board; or
- (i) resigns the office by instrument in writing given to the chairperson of the board.

(3) A director of a friendly society may be removed from office by a resolution of a general meeting of the society passed:

- (a) except as provided by paragraph (b) - by a simple majority; or
- (b) if the rules of the society require a greater majority for the passing of such a resolution - by the majority provided for in the rules.

(4) In this section:

"insolvent under administration" has the same meaning as it has in the Companies (New South Wales) Code.

Management contracts

31. (1) A director of a friendly society who knowingly authorises or permits the society to enter into a management contract is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A management contract made with a friendly society after the commencement of this section is void.

(3) An assignment, transfer or renewal of a management contract is void if the contract was made before the commencement of this section.

(4) A management contract made before the commencement of this section becomes void 2 years after the commencement of this section.

(5) The avoidance of a management contract by this section does not confer any right to payment of compensation by the friendly society with which the contract was made.

(6) This section does not apply to arrangements made with the approval of the Registrar for the management of a dispensary.

(7) In this section:

"management contract", in relation to a friendly society, means a contract or other arrangement to which the society is a party and under which control of the affairs of the society is vested in a person who is not:

- (a) a director of the society or an employee of the society who is appointed by, or with the authority of, the directors; or
- (b) a person exercising functions in relation to the society as auditor, banker, legal advisor, actuary, tax agent, computer specialist or advertising agent; or
- (c) a person belonging to a class of persons prescribed by the regulations as persons not to be regarded as controlling the affairs of the society.

Disclosure of interest

32. (1) A director of a friendly society who:

- (a) has in any way, directly or indirectly, an interest in a contract or proposed contract with the society; and
- (b) does not, as soon as practicable after becoming aware of the relevant facts, declare the nature of the interest in accordance with this section,

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) A director need not declare an interest that consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the friendly society, if the interest of the corporation may properly be regarded as not being a material interest.

(3) Unless the rules of a friendly society provide otherwise, a director is not to be taken to be interested or to have been at any time interested in any contract or proposed contract only because:

- (a) the director has guaranteed or joined in guaranteeing the repayment of any loan to the friendly society and the contract or proposed contract relates to the loan; or
- (b) the director is a director of a corporation that is related to the friendly society, and the contract has been or will be made with that corporation, for its benefit, or on its behalf.

(4) In the case of a proposed contract, the declaration must be made:

- (a) at the first meeting of the directors at which the question of entering into the contract is considered; or
- (b) at the next meeting of the directors, if the director was not present at that first meeting; or
- (c) if the director was not interested at the date of that first meeting - at the next meeting of the directors held after the director becomes interested in the proposed contract.

(5) If a director becomes interested in a contract after it is made, the declaration must be made at the first meeting of directors held after the director becomes interested in the contract.

(6) A general notice in writing that is given to all the other directors by a director, and that states that the director is an officer or member of a specified corporation, or a member of a specified firm, and is to be regarded as interested in any contract that might, after the date of the notice, be made with that corporation or firm is a sufficient declaration of interest in relation to any contract that is made or proposed to be made with that corporation or firm if:

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm; and
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of that interest in the corporation or firm is not greater than is stated in the notice; and

(c) the notice is given at a meeting of the directors, or the director takes reasonable steps to ensure that it is read at the next meeting of the directors after it is given.

(7) A director who holds an office, or possesses property, because of which duties or interests might be directly or indirectly created in conflict with the duties and interests as director is guilty of an offence unless the fact of the conflict and its nature and extent are declared as provided by subsection (8).

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(8) A declaration by a director of a conflict of interest under subsection (7) must be made:

(a) if the conflict arose on the director becoming a member of the board - at the first meeting of the board held after the director became a member; or

(b) if the conflict arose after the director became a member of the board - at the first meeting of the board held after the director became aware of the conflict.

(9) This section has effect in addition to any law that:

(a) restricts the interest of a director in a contract with the friendly society; or

(b) affects the obligations of a director to account for any profit arising from such a contract; or

(c) prohibits a director from holding office, or possessing property, involving duties or interests that are in conflict with duties or interests as a director.

(10) A declaration that is made under this section must be recorded in the minutes of the meeting at which it is made.

(11) A director must not vote on any question in which the director has an interest that must be disclosed under this section and a vote cast in contravention of this subsection does not count.

Duties and liabilities of officers and employees

33. (1) An officer of a friendly society who fails to act honestly in exercising the functions of such an officer is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) If an officer of a friendly society fails to act honestly in exercising the functions of such an officer:

- (a) with the intention of deceiving or defrauding the society or its members; or
- (b) with the intention of deceiving or defrauding a creditor of the society or of any other person; or
- (c) for any other fraudulent purpose,
the officer is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(3) If an officer of a friendly society fails to act honestly in exercising the functions of such an officer and, as a result:

- (a) the society is, or its members are, deceived or defrauded; or
- (b) a creditor of the society or of any other person is deceived or defrauded,

the officer is guilty of an offence.

Maximum penalty: 50 penalty units.

(4) A person who:

- (a) is, or was, an officer or employee of a friendly society; and
- (b) in order to gain a direct or indirect advantage (whether or not for another person) or to cause loss or damage to the society, improperly uses information acquired by virtue of being, or having been, an officer or employee of the society,

is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(5) A person who:

- (a) holds a position as an officer or employee of a friendly society; and
- (b) improperly uses the position to gain a direct or indirect advantage (whether or not for another person) or to cause loss or damage to the society,

is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(6) An officer or employee of a friendly society who fails to exercise the functions of such an officer or employee with due care and diligence is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) If the Court that convicts a person of an offence under this section decides that the friendly society concerned has suffered loss or damage as a result of the offence, the Court may, whether or not a penalty is imposed for the offence, order the convicted person to pay compensation to the society for the loss or damage.

(8) An order under subsection (7):

- (a) may not be made by a Local Court for an amount in excess of the amount of a debt that could be recovered in the Court; and
- (b) whether made by a Local Court or the Supreme Court, may be enforced as if it were a judgment for a debt of the same amount entered by the Court making the order.

(9) The friendly society in relation to which an offence under this section is committed may recover, as an unpaid debt due to the society by the offender (whether or not convicted for the offence):

- (a) any profit made by the offender; and
- (b) any loss suffered by the society,
as a result of the commission of the offence.

(10) This section does not prevent the taking of any other proceedings relating to a duty imposed on, or a liability incurred by, a person as an officer or employee of a friendly society.

Loans to directors and related persons

34. (1) If authorised to do so by a general meeting, a friendly society may lend money to a director, or to a person who bears a prescribed relationship to a director, even though the loan is not made in the ordinary course of business and is not subject to the terms normally imposed by the society.

(2) Except as provided by subsection (1), a friendly society may not lend money.

- (a) to a director unless the loan is made in the ordinary course of business, is subject to the terms normally imposed by the society and is approved by a majority of at least two-thirds of the directors present and voting on the matter at a meeting of the board at which a quorum is present; or
- (b) to a person who bears a prescribed relationship to a director unless the loan is made in the ordinary course of business and is subject to the terms normally imposed by the society.

(3) A director of a friendly society who borrows from the society money that the society has no power to lend is guilty of an offence.

Maximum penalty: 50 penalty units.

(4) For the purposes of this section, a concessional rate of interest for a borrower from a friendly society is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the society specified in the rules as being entitled to the concession.

(5) If a director of a friendly society accepts in payment of a debt owed to the director by a member of the society any proceeds of a loan made to the member by the society, this section has effect as if the loan had been made to the director.

(6) In this section, a reference to:

- (a) the lending of money to a director; or
- (b) the borrowing of money by a director; or
- (c) a debt owed to a director,

includes a reference to a lending or borrowing by the director, or a debt owed to the director, jointly with another person.

Liability of, and indemnity for, officers and employees

35. (1) Except as provided by subsection (2) or (3), a rule of, or contract with, a friendly society is void if it purports to:

- (a) exempt an officer or employee of the society from any liability to the society for negligence, default, breach of duty or breach of trust; or
- (b) indemnify an officer or employee of the society against any such liability.

(2) A friendly society may indemnify an officer or employee of the society against any liability incurred by the officer or employee:

- (a) in defending civil proceedings that relate to the affairs of the society and result in judgment in favour of the officer or employee; or
- (b) in defending criminal proceedings that relate to the affairs of the society and result in the officer or employee being acquitted; or
- (c) in connection with an application in proceedings referred to in paragraph (a) or (b) in which relief is, under this Act, granted to the officer or employee by the court.

(3) Subsection (1):

- (a) except as provided by paragraph (b), does not apply to a contract of insurance unless the premiums are paid by the friendly society; and
- (b) does not apply to compulsory professional indemnity insurance even if the premiums are paid by the friendly society.

Fidelity insurance

36. (1) A friendly society must at all times maintain with an insurer an adequate fidelity insurance indemnity that covers the society against misuse or misappropriation of money by an officer or employee who has charge of the money.

(2) A friendly society must, if required by the Registrar to do so, increase its fidelity insurance indemnity under subsection (1) to an amount, and before a date, fixed by the Registrar.

(3) The Registrar may impose a condition in relation to the fidelity insurance indemnity for a friendly society, or in relation to an increase in such an indemnity, and the society must comply with such a condition.

(4) If a friendly society contravenes this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (4): 10 penalty units for each day on which the offence is committed.

Meetings

37. (1) Meetings of a friendly society must be held in the State and in accordance with the rules of the society.

(2) An annual general meeting of a friendly society must be held within 5 months after the end of the financial year for the society.

Division 2 - Records

Registers

38. (1) A friendly society must keep in the English language:

- (a) a register of members; and
- (b) a register of directors; and
- (c) a register of loans to, and securities given by, the society; and
- (d) a register of investments made by the society; and
- (e) a register of land vested in, or leased to, the society; and
- (f) a register of nominations by members of persons to whom the society is required by this Act to pay money on the death of the member; and
- (g) a register of loans made by, and securities taken by, the society.

(2) The regulations may require a friendly society to keep other registers.

(3) The registers must be kept in the manner that is, and must include the particulars that are, required by the regulations.

(4) A member of a friendly society may:

- (a) inspect the register of members, or the register of directors, during the office hours of the society or by arrangement with the secretary of the society; and
- (b) may make copies of entries in the register, free of charge unless the rules of the society require payment of an inspection fee.

(5) The entries in the register of members, and the register of directors, of a friendly society that are made as required by the regulations are evidence of the matters to which they relate.

(6) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (6): 50 penalty units.

Minute books

39. (1) Minutes of the proceedings at each meeting of the directors of a friendly society must be entered in a book kept for the purpose.

(2) Minutes of the proceedings at each general meeting of a friendly society must be entered in a book kept for the purpose.

(3) The minutes of a meeting of directors must be in the English language and must be entered before:

- (a) the day that is 1 month after the meeting; or
- (b) the day on which the next meeting of directors is held, whichever is the earlier day.

(4) The minutes of a general meeting of a society must be in the English language and must be entered before:

- (a) the day that is 1 month after the meeting; or
- (b) the day on which the next general meeting of the society is held, whichever is the earlier day.

(5) The minutes of a meeting must be signed:

- (a) by the chairperson who presided at the meeting; or
- (b) in the case of a meeting of directors - the chairperson who presides at the next meeting of directors; or
- (c) in the case of a general meeting - by the chairperson who presides at the next general meeting; or
- (d) if the matter arises before the next meeting referred to in paragraph (b) or (c) and the chairperson who presided at the meeting is unavailable - by a director who attended the meeting.

(6) If action to be taken on the authority of a minute would involve the expenditure of money, the minute does not take effect until it has been signed as provided by subsection (5).

(7) A minute that is entered in the book kept for the purpose is evidence:

- (a) of the proceedings to which it relates; and
- (b) that the meeting concerned was duly convened; and
- (c) if it records the appointment of officers, auditors or actuaries - that the appointment is valid.

(8) If a provision of this section is contravened in relation to a friendly society, a director of the society who had not taken reasonable

precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 5 penalty units.

(9) A member of a friendly society may inspect, and make copies of, the minutes of a general meeting of the society:

- (a) during the office hours of the society, or
- (b) by arrangement with the secretary of the society, on payment of any fee required by the rules of the society.

Division 3 - Accounts and audit

Keeping and auditing of accounts of friendly society and subsidiaries

40. (1) A friendly society must, subject to any exemptions in force under subsection (5):

- (a) keep accounts and accounting records as required by the regulations; and
- (b) ensure that each subsidiary of the society keeps accounts and accounting records as required by the regulations; and
- (c) ensure that the accounts and accounting records kept by each subsidiary of the society are audited as required by the regulations.

(2) If a friendly society contravenes subsection (1), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A director of a friendly society who fails to make such disclosures as may be required by the regulations in relation to the auditing of accounts of the society is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) Without limiting the generality of the other provisions of this section, regulations may be made for or with respect to:

- (a) the qualifications and functions of auditors of the accounts of a friendly society; and
- (b) the appointment of auditors, the holding of office by them, their remuneration and their removal; and

- (c) the submission of group accounts by a friendly society, and
- (d) requiring the accounts of a friendly society to be kept in accordance with any accounting standard (with or without modifications specified by the regulations) adopted and in force for the purposes of Part VI of the Companies (New South Wales) Code; and
- (e) requiring submission of the accounts of a friendly society to the Accounting Standards Review Board established by the Ministerial Council for Companies and Securities; and
- (f) requiring the adoption by a friendly society of the same financial year for all subsidiaries of the friendly society; and
- (g) the adoption, with or without modification, of any provisions of Part VI (accounts and audit) of the Companies (New South Wales) Code (including provisions conferring jurisdiction on the Supreme Court) or other provisions of that Code concerned with accounts and audit; and
- (h) the duties of directors of a society in relation to the preparation, the auditing and the laying before meetings of members, of accounts of the society and of the corporations of which the society is the holding society, including the reports to be prepared by directors in relation to those accounts; and
- (i) the sending to members of the prescribed information in relation to accounts.

(5) A friendly society need not comply with a provision of regulations made for the purposes of this section if:

- (a) it is exempted by written order of the Registrar from compliance with the provision; and
- (b) it complies with any conditions to which the exemption is subject as stated in the order.

(6) Expressions used in this section, and in the regulations made for the purposes of this section, have in relation to a friendly society the same meanings as they have in Part VI of the Companies (New South Wales) Code in relation to a company or corporation within the meaning of the Code.

Reports by auditor

41. (1) If the auditor of a friendly society is satisfied:

- (a) that the society has contravened this Act, the regulations or the rules of the society; and
- (b) that the contravention has not, or will not, be sufficiently dealt with by making a comment in the auditor's report or by notifying the directors of the society,

the auditor must, without delay, give a written report on the matter to the Registrar.

(2) An auditor of a friendly society who qualifies a report on the affairs of the society must, in addition to giving the report to the directors, give to the Registrar without delay a copy of the report and a copy of the accounts, and of any group accounts, of the society.

(3) An auditor or former auditor of a friendly society must give the Registrar any information or explanation relating to the affairs of the society that the Registrar requires and the auditor is able to give.

Liability of, and indemnity for, auditors

42. (1) Except as provided by subsection (2), a rule of, or contract with, a friendly society is void if it purports to:

- (a) exempt an auditor of the society from any liability to the society for negligence, default, breach of duty or breach of trust; or
- (b) indemnify an auditor of the society against any such liability.

(2) A friendly society may indemnify an auditor of the society against any liability incurred by the auditor:

- (a) in defending civil proceedings that result in judgment in favour of the auditor; or
- (b) in defending criminal proceedings in which the auditor is acquitted.

Qualified privilege in proceedings for defamation

43. (1) An auditor of a friendly society has qualified privilege in proceedings for defamation in respect of:

- (a) any oral or written statement made by the auditor in the course of exercising functions as auditor of the society; and
- (b) the giving to the Registrar of a notice or report, or a copy of any accounts or group accounts.

(2) Any person has qualified privilege in proceedings for defamation in respect of the publishing of:

- (a) a document that is prepared by an auditor of a friendly society in the course of exercising functions as auditor of the society and is required by or under this Act to be lodged with the Registrar, whether or not the requirement has been complied with; and
- (b) any oral or written statement made by such an auditor in the course of exercising functions as auditor of the society.

(3) This section does not limit or otherwise affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

Preparation for annual general meeting

44. (1) At least 14 days before each of its annual general meetings, a friendly society must lodge with the Registrar, and have available at the registered office of the society for inspection by members at any reasonable time, a copy of:

- (a) the accounts of the society and any group accounts; and
- (b) the prescribed information relating to each fund of the society; and
- (c) the directors' statement; and
- (d) the directors' report; and
- (e) the auditor's report; and
- (f) the latest actuary's report.

(2) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (2): 50 penalty units.

Division 4 - Actuarial valuations

Appointment of actuary

45. (1) A friendly society must:

- (a) within 1 month after constituting a fund of a kind for which the regulations require the appointment of an actuary - appoint a

qualified person as actuary for the society in relation to the fund; and

- (b) within 1 month after the occurrence of a vacancy in the office of actuary for such a fund - appoint a qualified person as actuary for the society in relation to the fund; and
- (c) within 1 month after appointing an actuary for a fund - give the Registrar written notice of the kind of fund and of the name and business address of the person appointed.

(2) The same actuary may be appointed for more than one fund.

(3) If a friendly society contravenes subsection (1), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 5 penalty units.

(4) A purported appointment, as actuary for a fund of a society, of a person who is not a qualified person has no effect.

(5) A friendly society may appoint an actuary despite a contravention of subsection (1) but only if the appointment has not been made under subsection (6).

(6) If a friendly society has not appointed an actuary as required by subsection (1), the Registrar may make the appointment, whether or not at the request of a member of the society.

(7) In this section:

"qualified person", in relation to an appointment as actuary for a fund of a friendly society, means a person who:

- (a) is a Fellow of The Institute of Actuaries of Australia; and
- (b) had, immediately before the appointment, been continuously practising in Australia as an actuary for the last preceding period of 5 years; and
- (c) is not indebted to the society for more than \$5,000, excluding the amount of any loan made to the person for the acquisition of a principal place of residence; and
- (d) consents to the appointment.

Vacation of office of actuary

46. The actuary for a fund of a friendly society vacates office as actuary.

- (a) on ceasing to be a qualified person under section 45; or
- (b) by resigning with the consent of the Registrar; or
- (c) if removed from office by resolution of a general meeting of the society after being given reasonable notice of intention to move the resolution and a reasonable opportunity to make oral or written representations to the meeting.

Investigations and valuations by actuary

47. (1) A friendly society must from time to time arrange for the actuary for a fund of the society to:

- (a) investigate the financial position of the fund; and
- (b) value the assets and liabilities of the society in relation to the fund; and
- (c) give the society a written report on the investigation and valuation.

(2) In the case of a friendly society that, immediately before the repeal of the Friendly Societies Act 1912, was registered under that Act, the first investigation and valuation under subsection (1) must be carried out:

- (a) as at the date in respect of which it would have been required if that Act had not been repealed; or
- (b) as at a date that is not more than 3 years after that repeal, whichever is the earlier date or, if the regulations provide for a different date, as at the date provided by the regulations.

(3) In the case of any other friendly society, the first investigation and valuation under subsection (1) must be carried out as at a date that is not more than 3 years after the beginning of the financial year for the society during which it was registered or, if the regulations provide for a different date, the date prescribed by the regulations.

(4) The period between the dates as at which successive investigations and valuations under subsection (1) are to be made must not exceed 3 years or, if the regulations provide for a different period, the period prescribed by the regulations.

(5) A friendly society must:

- (a) arrange for an investigation and valuation if required by the Registrar to do so, whether or not it is due under the other provisions of this section; and

(b) immediately after receiving the report, send it to the Registrar.

(6) In making a valuation for the purposes of this section, an actuary must have regard to such matters as may be prescribed by the regulations.

(7) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (7): 10 penalty units.

Distribution of surplus

48. (1) A friendly society must not:

- (a) pay, apply or allocate any part of the assets of a benefit fund as bonuses to members of the fund; or
- (b) transfer any part of the assets of a benefit fund to another benefit fund or to a management fund,

except in accordance with this section or Division 2 of Part 5.

(2) A friendly society may:

(a) with the approval of the Registrar given on the advice of an actuary for the society; and

(b) in a manner authorised by the rules of the society, pay, allocate or transfer a surplus in a benefit fund that is disclosed in the latest actuarial valuation under this Division.

(3) Subsection (2) does not prevent a friendly society from distributing assets of a benefit fund that consist of bonuses included in the latest actuarial valuation under this Division as liabilities of the society.

(4) If a friendly society contravenes subsection (1), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) In this section:

"bonuses", in relation to a friendly society, means bonuses that:

- (a) were attached to policies of the society immediately before the commencement of this section; or

(b) become attached to policies of the society as a result of an allocation of a surplus under this section;

"surplus", in relation to a benefit fund of a friendly society, means the amount by which the balance of the fund exceeds the net liability of the society in respect of the benefits payable from the fund.

Powers of actuary

49. (1) An actuary for a friendly society:

- (a) may, at any reasonable time, inspect the accounts and other records, including registers, of the society or a subsidiary of the society, or
- (b) may require from an officer of the society any information or explanation that the actuary needs for making a valuation under this Division; or
- (c) at the expense of the society, may require an officer of, or actuary for, a subsidiary of the society to provide any information or explanation that the actuary needs for making a valuation under this Division.

(2) An actuary for a friendly society must:

- (a) be given the same notice of a general meeting of the society as is required to be given to a member of the society, and
- (b) be permitted to attend the meeting; and
- (c) be given an opportunity to speak at the meeting.

(3) If a friendly society contravenes subsection (2), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (3): 10 penalty units.

Obstruction of actuary

50. (1) A responsible person for a friendly society, or for a subsidiary of a friendly society, who:

- (a) refuses or fails, without lawful excuse, to allow an actuary for the society to inspect any accounting or other records, including registers, of the society or subsidiary that are in the custody, or under the control, of the responsible person; or

(b) refuses or fails, without lawful excuse, to give any information or explanation when required to do so under section 49; or
(c) in any other way hinders, obstructs or delays an actuary in the exercise of functions as an actuary for the society,
is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) In this section:

"responsible person" means:

(a) in relation to a friendly society - an officer of the society, or
(b) in relation to a subsidiary of a friendly society - an officer of, or an actuary for, the subsidiary.

Reports by actuary

51. (1) If an actuary for a friendly society is satisfied:

(a) that the society has contravened this Act, the regulations or the rules of the society; and
(b) that the contravention will not be sufficiently dealt with by making a comment in the actuary's report or by notifying the directors of the society,

the actuary must, without delay, give a written report on the matter to the Registrar.

(2) An actuary for a friendly society must, in addition to giving a report to the directors, give a copy of the report to the Registrar without delay.

(3) An actuary or former actuary for a friendly society must give the Registrar any information or explanation relating to the affairs of the society that the Registrar requires and the actuary is able to give.

Liability of actuaries

52. (1) Except as provided by subsection (2), a rule of, or contract with, a friendly society is void if it purports to:

(a) exempt an actuary for the society from any liability to the society for negligence, default, breach of duty or breach of trust; or

- (b) indemnify an actuary for the society against any such liability.

(2) A friendly society may indemnify an actuary for the society against any liability incurred by the actuary.

- (a) in defending civil proceedings that result in judgment in favour of the actuary, or
- (b) in defending criminal proceedings in which the actuary is acquitted.

Qualified privilege in proceedings for defamation

53. (1) An actuary for a friendly society has qualified privilege in proceedings for defamation in respect of:

- (a) any oral or written statement made by the actuary in the course of exercising functions as actuary for the society, and
- (b) the giving to the Registrar of a notice or report, or a copy of any accounts or group accounts.

(2) Any person has qualified privilege in proceedings for defamation in respect of the publishing of:

- (a) a document that is prepared by an actuary for a friendly society in the course of exercising functions as actuary for the society and is required by or under this Act to be lodged with the Registrar, whether or not the requirement has been complied with; and
- (b) any oral or written statement made by such an actuary in the course of exercising functions as actuary for the society.

(3) This section does not limit or otherwise affect any right, privilege or immunity that an actuary or other person has, apart from this section, as defendant in proceedings for defamation.

PART 5 - FUNDS

Division 1 - Raising and investment of funds

Raising of funds

54. (1) A friendly society must not:

(a) obtain financial accommodation or otherwise raise money, or
(b) give security for the repayment of money,
except as provided by its rules.

(2) A friendly society must not borrow money from a source outside Australia unless:

(a) the money is repayable as a fixed amount of Australian currency, or
(b) the society has entered into a foreign exchange forward hedge contract as a hedge against any currency exchange loss that might be incurred in repaying the loan or paying interest on the loan; or
(c) the society has taken such other measures as may be provided by the regulations.

(3) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (3): 100 penalty units.

Security for loans

55. (1) With such modifications as may be provided by the regulations, the provisions of sections 147 and 151, and of Division 9 of Part IV, of the Companies (New South Wales) Code apply to a mortgage or charge given by a friendly society and so apply as if:

(a) a reference in the provisions to a company were a reference to a friendly society; and
(b) a reference in the provisions to the Commission were a reference to the Registrar.

(2) Subsection (1) does not apply to:

(a) a mortgage, charge or encumbrance that is over specific land and is registered under the Real Property Act 1900 or Division 1 of Part 23 of the Conveyancing Act 1919; or
(b) a mortgage, charge or encumbrance over a specific lease, claim or tenement under the laws relating to mining.

Investment of funds

56. (1) Unless prohibited under subsection (2) from doing so, a friendly society may, to the extent authorised by its rules, invest its funds:

- (a) as provided by the Trustee Act 1925 for the investment of trust funds except that, in the case of a loan referred to in section 18 of that Act, the maximum amount may be calculated in accordance with the regulations instead of as required by that section; or
- (b) by way of a loan to a subsidiary of the society; or
- (c) by way of a loan secured by a debenture charged on the property of a friendly society, an association or a union of associations; or
- (d) by way of a loan secured by a debenture charged on the property of a society registered under the Co-operation Act 1923, a credit union registered under the Credit Union Act 1969, an association registered under either of those Acts or a union of associations so registered; or
- (e) by way of deposit with a society registered under the Co-operation Act 1923, a credit union registered under the Credit Union Act 1969, an association registered under either of those Acts or a union of associations so registered; or
- (f) by way of a loan to a member of the society on the security of the interest of the member in the society; or
- (g) in securities that are listed on the official list of a stock exchange in Australia and meet the guidelines prescribed by the regulations; or
- (h) as provided by the regulations.

(2) The Registrar may, by written notice served on a friendly society, direct the society to refrain from:

- (a) investing any of its funds outside Australia; or
- (b) investing more than a specified amount, or a specified proportion, of its funds in specified securities, or a specified class of securities, referred to in subsection (1) (g); or
- (c) dealing with securities as stated in the notice.

(3) If a friendly society contravenes a direction in force under subsection (2), a director of the society who had not taken reasonable

precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (3): 100 penalty units.

Directors of friendly society responsible for subsidiaries

57. (1) A subsidiary of a friendly society must not carry on an activity for which its rules, or its memorandum and articles, do not provide.

(2) If a subsidiary of a friendly society contravenes this section, a director of the friendly society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (2): 100 penalty units.

Division 2 - Benefit funds

Establishment of benefit fund

58. (1) A friendly society must:

- (a) unless paragraph (b) applies, establish and maintain under an appropriate name a benefit fund for each class of benefit provided by it; or
- (b) if required by the Registrar to do so, establish and maintain, as specified by the Registrar, a combined benefit fund for more than one class of benefit provided by it.

(2) Immediately after it establishes a benefit fund, a friendly society must give to the Registrar written notice of:

- (a) the establishment of the fund and the date of its establishment; and
- (b) the class, or classes, of benefit in respect of which the fund is established.

(3) A friendly society must not:

- (a) establish a benefit fund otherwise than in accordance with its rules; or
- (b) establish and maintain a benefit fund otherwise than by means of contributions or donations, or both.

(4) A friendly society must not:

- (a) enter into an agreement for provision of a benefit; or
- (b) operate a benefit fund,

unless the rules of the society limit the amount of the benefit to be provided under the agreement, or from the fund, and that limit does not exceed the prescribed amount or an amount determined in accordance with the regulations.

(5) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (5): 20 penalty units.

Payments to and from benefit funds

59. (1) A friendly society must pay into a benefit fund all amounts received by the society in respect of a class of benefit for which the fund was established.

(2) A friendly society must not pay benefits otherwise than from a benefit fund.

(3) A friendly society must not use any assets of a benefit fund to meet liabilities or expenses of the society other than:

- (a) liabilities and expenses referable to the kind of benefit for which the fund is maintained; and
- (b) liabilities charged on the assets immediately before the commencement of this section.

(4) Subsection (3) does not apply to a use of assets:

- (a) that is authorised by this Act or by the Registrar on the advice of the Official Actuary; or
- (b) to pay a rate of allowance for commission or rebate, or for management or investment expenses, that does not exceed the rate fixed by the Official Actuary.

(5) A friendly society must not mortgage or charge assets of a benefit fund for the purposes of a different benefit fund.

(6) A contravention of subsection (5) does not invalidate a mortgage or charge unless the Registrar by written order served on the parties to the mortgage or charge declares that it does.

(7) An order made under subsection (6) in relation to a contravention:

- (a) may not be made unless the Registrar is satisfied that such an order would not prejudice any rights that were acquired in good faith and without notice of the contravention; and
- (b) does not affect any liability to a penalty that may be imposed because of the contravention.

(8) A friendly society must:

- (a) if it has a combined benefit fund - keep the assets of the fund separate from the other assets of the society, or
- (b) if it has more than one benefit fund - keep the assets of each of them separate from the assets of the others and of the society,

unless the Registrar otherwise directs by written order served on the society.

(9) A friendly society must pay into a benefit fund the income received from investment of the assets of the fund.

(10) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention:

- (a) is liable as a trustee in accordance with subsection (11); and
- (b) is guilty of an offence.

Maximum penalty - subsection (10) (b): 50 penalty units.

(11) A director of a friendly society who contravenes a provision of this section in relation to a benefit fund is under the same liability as the director would be:

- (a) if the director were a trustee under a trust for the execution of this section; and
- (b) if a member of the benefit fund affected by the contravention were a beneficiary under the trust,

whether or not the director has been charged with, or convicted for, the offence.

Directions by Registrar

60. (1) The Registrar may, by written order served on a friendly society, direct the society:

- (a) to transfer to a fund of the society money of the society that is not part of a fund; or
- (b) to transfer money from one fund to another; or
- (c) to amalgamate specified funds; or
- (d) to wind up a specified fund.

(2) If a friendly society contravenes a direction in force under this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (2): 50 penalty units.

Division 3 - Benefits

Assignment of benefits

61. (1) An assignment of a contract for the provision by a friendly society of:

- (a) life insurance benefits; or
- (b) superannuation benefits; or
- (c) a benefit in the form of an annuity; or
- (d) any other benefit prescribed by the regulations as a benefit for the purposes of this section,

is not an assignment for the purposes of section 12 of the Conveyancing Act 1919 and may be made only as provided by this section.

(2) An assignment of a contract referred to in subsection (1) is ineffective unless it is made by a written instrument that:

- (a) is in a form provided for by the rules of the friendly society responsible for the benefit; and
- (b) is registered by the society in accordance with this section.

(3) The society must register the assignment on receipt of:

- (a) 2 copies of the instrument of assignment; and
- (b) any fee that is required by the rules of the society and does not exceed a maximum fixed by the Registrar.

(4) On registration of the instrument of assignment, an officer of the society authorised for the purpose must:

- (a) insert the date of registration in both copies of the instrument; and
- (b) sign both copies; and
- (c) send one copy to the assignee.

(5) A copy of an instrument of assignment signed and dated as provided by this section is conclusive evidence of registration of the instrument and of the date of registration.

(6) As between the friendly society and a person claiming under the assigned contract, a copy of the instrument of assignment is conclusive evidence that the assignee:

- (a) became the owner of the contract on the date of registration free from all interests other than any lien or charge in favour of the society; and
- (b) is, while owner of the contract, entitled to receive the benefit to which the contract relates and to give a valid discharge for the benefit.

(7) While owner of a contract assigned under this section, the assignee:

- (a) has the powers of the assignor under the contract; and
- (b) is subject to the liabilities of the assignor under the contract; and
- (c) may sue on the contract in the name of the assignee.

(8) An assignment under this section of a contract with a friendly society:

- (a) does not confer membership of the society on the assignee unless the rules of the society so provide and the assignee is not a corporation; and
- (b) does not deprive the assignor of membership of the society unless the rules of the society so provide.

(9) The receipt of the assignee of a contract with a friendly society is a good discharge for money paid by the society under the contract.

(10) If the assignee of a contract with a friendly society discharges or surrenders the contract, or gives the society security over the contract:

- (a) the discharge, surrender or security is valid even if another person has an interest in the contract; and

- (b) the society need not inquire into the circumstances of the assignment or the consideration for it; and
- (c) the society is not affected by any express, implied or constructive notice of an interest of another person in the contract.

Payment to nominee of deceased member

62. (1) A member of a friendly society who is aged 16 or more and who has a contract with a friendly society under which the society agrees to pay.

- (a) life insurance benefits; or
- (b) superannuation benefits; or
- (c) a benefit in the form of an annuity; or
- (d) any other benefits prescribed by the regulations for the purposes of this section,

may nominate a person to whom any benefits that are payable on the death of the member are to be paid in accordance with subsection (5).

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

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

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

(4) A nomination:

- (a) may be revoked or varied in the same way as it is made; and
- (b) is revoked on the death of the nominee.

(5) On receiving satisfactory proof of the death of the member, the friendly society is liable to pay to the nominee any benefits that are payable on that death and do not exceed the amount fixed by the Registrar by order published in the Gazette and in force at the time of death.

(6) A nomination made by a member of a friendly society for the purposes of this section ceases to have effect on the marriage or divorce of the member.

Payment on death of child under 10

63. (1) A friendly society must not pay, or agree to pay, on the death of a child under 10 years of age, any amount that exceeds, or when added to any amount payable by another friendly society on the death of the child exceeds, the amount fixed by the Registrar.

(2) If a friendly society contravenes this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (2): 20 penalty units.

Division 4 - Actuarial certification of contribution rates

Exemptions

64. (1) The Registrar may, by written order served on a friendly society, exempt the society from compliance with such of the provisions of this Division as are specified in the order.

(2) An exemption may be general or may be limited to benefits or benefit funds specified in the order.

Contribution rates

65. (1) A friendly society must not pay a benefit to which this section is applied by the regulations unless the rate of contribution required for the benefit has been approved by an actuary as suitable for that kind of benefit.

(2) If required by the Registrar to do so, a friendly society must provide the Registrar with:

- (a) a report by an actuary as to the suitability of a contribution rate; and
- (b) if the actuary decides that the contribution rate is unsuitable - a report by the actuary approving a rate of contribution that the actuary considers to be suitable.

(3) A friendly society the subject of a requirement under subsection (2) must not pay any benefit of the kind to which the requirement relates until the actuary has approved a suitable rate of contribution for the benefit.

(4) In approving a suitable rate of contribution for a benefit, an actuary is to have regard to the maximum rates of allowance for any commission or rebate, and for management and investment expenses:

- (a) that are proposed to be paid or allowed for that kind of benefit; and
- (b) that are fixed from time to time by the Registrar on the advice of the Official Actuary.

(5) If a friendly society contravenes a provision of this section, each director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (5): 50 penalty units.

Commissions or rebates in respect of benefits

66. (1) If an actuary ("the original actuary") has approved a rate of contribution for a benefit payable by a friendly society, the society must not, except with the approval of an actuary, pay or allow in respect of that kind of benefit a commission or rebate at a rate that is higher than the prescribed rate.

(2) If a friendly society contravenes this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) In this section:

"prescribed rate" means:

- (a) the maximum rate of commission or rebate to which the original actuary had regard when approving the rate of contribution for a benefit; or
- (b) the maximum rate of commission or rebate that, immediately before the commencement of this section, was payable by the friendly society in respect of the benefits for which the original actuary had approved the rate of contribution,

whichever is the higher rate of commission or rebate.

Division 5 - Surrender and alteration of benefits

Definitions

67. In this Division:

"applicable benefit" means:

- (a) a single premium endowment benefit; or
- (b) any other prescribed benefit.

Surrender of benefit

68. (1) A member of a friendly society who has contributed for an applicable benefit may, by application to the society, surrender all or part of the benefit.

(2) On application being made under subsection (1), the society is indebted to the applicant for an amount equal to the surrender value of the benefit or part:

- (a) that is calculated in a manner that the Official Actuary has informed the society is the approved manner of making the calculation for that kind of benefit; or
- (b) that, if the society has not been so informed in relation to the benefit, is calculated by an actuary (whether or not the Official Actuary),

and is reduced by such proportion of any amount owing to the society as is determined by the directors in each case.

(3) If the Registrar, on application by a friendly society, considers that a payment by the society under this section would be prejudicial to:

- (a) the financial stability of the society; or
- (b) the interests of the members of the society,

the Registrar may, by order served on the society, suspend or vary the obligation of the society to make the payment.

(4) An order under subsection (3) may be made to have effect only if conditions specified in the order (which may include conditions as to duration) are complied with.

Alteration of benefit

69. (1) A friendly society may alter an applicable benefit for which a member is contributing:

- (a) on the application of the member; or
- (b) as provided by its rules if contributions by the member are overdue.

(2) A person aggrieved by a decision to alter an applicable benefit may apply to the Official Actuary for a review of the decision.

(3) The Official Actuary may uphold, vary or revoke the decision reviewed and a decision by the Actuary to vary or revoke the decision reviewed must be given effect by the society.

Division 6 - Operating standards

Definitions

70. In this Division:

"fund" means a fund of a friendly society that is:

- (a) a benefit fund; or
- (b) a management fund; or
- (c) any other fund prescribed by the regulations as being a fund to which this Division applies;

"liquid assets" means assets prescribed by the regulations as liquid assets;

"operating standards" means the requirements of regulations made under this Division.

Operating standards may be prescribed

71. (1) Regulations may be made for or with respect to the maintenance by a friendly society, or in a specified fund of a friendly society, of:

- (a) a minimum value of unencumbered assets; or
- (b) minimum values of specified classes of unencumbered assets.

(2) Without affecting the generality of subsection (1), regulations may be made for the purposes of that subsection by reference to:

- (a) different classes of assets; or
- (b) proportions of assets; or
- (c) the activities of the society; or
- (d) any other factors.

(3) Regulations may be made for or with respect to:

- (a) the holding of assets of a friendly society or a fund as liquid assets; or

- (b) the value or kind of assets of a friendly society or a fund that are to be held as liquid assets; or

- (c) other matters relating to liquid assets of a friendly society.

(4) Regulations may be made for or with respect to:

- (a) the classification of assets of a friendly society or a fund; or

- (b) determination of the value of assets of a friendly society or a fund; or

- (c) the adjustment of the value of the assets of a friendly society or a fund in order to determine their value at a later time; or

- (d) the adjustment of the value of assets shown in the latest balance sheet of a friendly society in order to determine their value at a later time.

(5) In this section:

"unencumbered assets" means assets prescribed by the regulations as unencumbered assets.

Failure to maintain operating standards

72. (1) A friendly society must maintain the operating standards applicable to the society.

(2) A friendly society that fails to maintain the operating standards applicable to the society must take all reasonable steps to revert to those standards.

(3) A friendly society that fails to maintain the operating standards applicable to the society must take all reasonable steps necessary to prevent aggravation of the failure.

(4) If a friendly society contravenes a provision of this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (4): 20 penalty units.

Information or report for Registrar

73. (1) If the Registrar serves on a friendly society a notice:

- (a) requiring the society to provide the Registrar within a specified time with specified information relating to its operating standards; or

(b) requiring the society to provide the Registrar within a specified time with a report that is made by a person having prescribed qualifications and contains the prescribed information relating to the operating standards of the society,
the society must comply with the requirement.

(2) The Registrar may not, under subsection (1) require any information, or a report, relating to anything that occurred more than 3 years before service of notice of the requirement.

(3) If a friendly society contravenes this section, a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (3): 20 penalty units.

PART 6 - TRANSFER OF ENGAGEMENTS AND AMALGAMATION OF SOCIETIES

Division 1 - Transfer of engagements

Society may transfer engagements

74. (1) A friendly society may, by special resolution, decide to transfer all of its engagements to another society that, in accordance with subsection (2), undertakes to fulfil them.

(2) A friendly society may:

- (a) by special resolution; or
- (b) with the consent of the Registrar - by ordinary resolution; or
- (c) with the consent of the Registrar - by ordinary resolution of the board,

undertake to fulfil the engagements of another friendly society or a foreign society.

(3) Before holding a meeting to consider a motion for a special resolution under subsection (1), a friendly society must, unless exempted from doing so by written order of the Registrar, send by post to each of its members a statement that has been approved by the Registrar and relates to:

- (a) the financial position of the societies involved;
- (b) the interest in the transfer of each of the directors of the societies involved; and

- (c) the compensation or other consideration to be paid to directors, or other officers, of the societies involved; and
- (d) the payments to be made to the members of the societies involved; and
- (e) such other matters as the Registrar may direct.

(4) The statement referred to in subsection (3) must be sent so that it will, in the ordinary course of post, reach each member of the society not later than the notice convening the meeting at which the motion for the special resolution is to be considered.

(5) This section applies in relation to a transfer of the engagements of a particular fund of a friendly society in the same way as it would apply in relation to a transfer of all the engagements of the society and so applies as if a reference in the other provisions of this section:

- (a) to the engagements of the society were a reference to the engagements relating to the fund; and
- (b) to a member of the society were a reference to a member of the fund; and
- (c) to the financial position of the society were a reference to the financial position of the fund.

Registrar may direct transfer of engagements

75. (1) If satisfied that any grounds referred to in subsection (2) exist in relation to a friendly society, the Registrar may, with the consent of the Minister given after consulting the Advisory Committee, by order served on the society, direct the society to transfer within a stated time:

(a) all of its engagements; or
(b) the engagements of a specified fund of the society,
to a friendly society named in the order whose directors have, by ordinary resolution, consented to the transfer.

(2) The grounds referred to in this subsection in relation to a friendly society are:

- (a) that the society has been registered for more than 6 months and has not commenced to carry on business; or
- (b) that the society has not carried on business during the period of 6 months that last preceded the serving of the order; or
- (c) that registration of the society was obtained by mistake or fraud; or

- (d) that the liabilities of the society exceed the value of its assets; or
- (e) that the society has been notified by the Registrar of a contravention by it of this Act or its rules and has failed to remedy the contravention within a time allowed by the Registrar; or
- (f) that the transfer of engagements would be in the best interests of the members or creditors of the society.

(3) A friendly society may, within 7 days after receiving a direction under this section, make a submission to the Advisory Committee in relation to the direction.

(4) The Advisory Committee must, as soon as practicable, report to the Minister on a submission made to it under subsection (3).

(5) After considering the report of the Advisory Committee on such a submission, the Minister is to:

- (a) confirm the order for a transfer of engagements; or
- (b) direct the Registrar to revoke the order.

(6) An order of the Registrar under this section:

- (a) takes effect 7 days after being served on the society unless the society makes a submission under subsection (3); or
- (b) if the society makes a submission under subsection (3) and the order is confirmed by the Minister - takes effect when the Registrar serves on the society written notice of confirmation of the order.

Registrar's duties on transfer of engagements

76. (1) If the Registrar is satisfied:

- (a) that a transfer of all of the engagements of a friendly society has been effected in accordance with this Division; and
- (b) that the rules of the transferee society are adequate to give effect to the transfer,

the Registrar must cancel both the registration of the transferor society and its certificate of incorporation.

(2) If the Registrar is satisfied:

- (a) that a transfer of the engagements of a fund of a friendly society has been effected in accordance with this Division; and

(b) that the rules of the transferee society are adequate to give effect to the transfer,
the Registrar must issue to the transferor society and the transferee society a certificate confirming the transfer.

Division 2 - Amalgamation of societies

Societies may amalgamate

77. (1) Two or more friendly societies may, by special resolution of each of them, decide to amalgamate to form one society.

(2) Before holding a meeting to consider a motion for a special resolution under subsection (1), a friendly society that is a party to a proposed amalgamation must, unless exempted from doing so by written order of the Registrar, send by post to each of its members a statement that has been approved by the Registrar and relates to:

- (a) the financial position of the societies involved; and
- (b) the interest in the amalgamation of each of the directors of the societies involved; and
- (c) the compensation or other consideration to be paid to directors, or other officers, of the societies involved; and
- (d) the payments to be made to the members of the societies involved; and
- (e) such other matters as the Registrar may direct.

(3) The statement referred to in subsection (2) must be sent so that it will, in the ordinary course of post, reach each member of the society not later than the notice convening the meeting at which the motion for the special resolution is to be considered.

Notice of proposed amalgamation to be published

78. (1) A friendly society that proposes to be a party to an amalgamation must, at least 14 days before the meeting called to consider the motion for the amalgamation:

- (a) publish in a daily newspaper circulating generally in the State a notice referred to in subsection (2); and
- (b) for a period of at least 14 days immediately preceding the meeting, have available for inspection during office hours at the

registered office of the society a copy of the statement sent to members under section 77.

(2) The notice required to be published under subsection (1) is a notice to the effect:

- (a) that an amalgamation of the assets, liabilities and undertakings of the societies (naming the societies) is proposed; and
- (b) that a copy of the statement circulated to the members of the society under section 77 may be inspected during office hours at the registered office of any of the societies named.

Foreign society may amalgamate with other societies

79. This Division applies to an amalgamation of a foreign society with a friendly society or friendly societies as if the foreign society were a friendly society but so applies only if the new society formed by the amalgamation would not be a foreign society.

Registration of amalgamated society

80. (1) If each society involved in an amalgamation under this Division has surrendered to the Registrar its certificate of incorporation and the Registrar is satisfied:

- (a) that the requirements of this Division in relation to the amalgamation have been satisfied; and
- (b) that the rules of the amalgamated society will be adequate to give effect to the amalgamation,

the Registrar must register the amalgamated society as a friendly society.

(2) An amalgamated society registered as a friendly society is a corporation with a corporate name that:

- (a) includes the words "Friendly Society"; and
- (b) is approved by the Registrar.

(3) On registration of the amalgamated society, the Registrar is to:

- (a) issue it with a certificate of incorporation that specifies as the name of the society the name approved by the Registrar; and
- (b) cancel the registration and certificates of incorporation of the amalgamating societies.

Division 3 - General

Definitions

81. In this Division:

"acquiring society" means:

- (a) a friendly society to which engagements of another friendly society, or of a foreign society, have been transferred under Division 1; or
- (b) the friendly society registered on an amalgamation under Division 2;

"divesting society" means:

- (a) a friendly society or foreign society by which engagements have been transferred to another society under Division 1; or
- (b) each of the friendly societies (including a foreign society) that have joined each other in an amalgamation under Division 2.

Consequences of transfers of engagements and amalgamations

82. (1) On a transfer of all the engagements of a friendly society taking effect under Division 1 or on an amalgamation taking effect under Division 2:

- (a) the members of the divesting society become members of the acquiring society; and
- (b) the assets of the divesting society become assets of the acquiring society without the need for a conveyance, transfer, assignment or other assurance; and
- (c) the rights and liabilities of the divesting society become rights and liabilities of the acquiring society; and
- (d) the obligations of the divesting society become obligations of the acquiring society; and
- (e) all proceedings before a court or tribunal by or against the divesting society that, immediately before the transfer or amalgamation, were pending or in the course of being heard become proceedings by or against the acquiring society; and
- (f) to the extent to which an act, matter or thing done or omitted to be done by the divesting society had any force or effect immediately before the transfer or amalgamation, it becomes

an act, matter or thing done or omitted to be done by the acquiring society; and

- (g) a reference in an instrument of any kind to the divesting society becomes a reference to the acquiring society; and
- (h) time that had commenced to run in relation to the divesting society becomes time that had commenced to run in relation to the acquiring society.

(2) Subsection (1) applies in relation to a transfer under Division 1 of the engagements of a fund of a friendly society as if:

- (a) references in subsection (1) (a) and (b) to the divesting society were references to the fund; and
- (b) the references in subsection (1) (c), (d), (g) and (h) to the divesting society were references to the divesting society in relation to the fund; and
- (c) the reference in subsection (1) (e) to proceedings by or against the divesting society were a reference to proceedings by or against the divesting society in relation to the fund; and
- (d) the reference in subsection (1) (f) to an act, matter or thing done or omitted by the divesting society were an act, matter or thing done or omitted by the divesting society in relation to the fund.

(3) An instrument that is executed as a consequence of an amalgamation of societies under this section and to give it effect:

- (a) is not liable to duty under the Stamp Duties Act 1920; and
- (b) if it is registrable, may be registered without payment of a registration fee.

Obligations of officers

83. (1) An officer of a friendly society or a foreign society who:

- (a) fails to take all reasonable steps available to the officer in order to give effect to a transfer of engagements under Division 1 or an amalgamation under Division 2; or
- (b) by a wilful act or omission is the cause of a failure by another officer to take similar steps,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) For the purposes of subsection (1) but without limiting its generality, there is a failure to take reasonable steps in relation to a transfer of all the engagements of a friendly society (including a transfer by direction under section 75) if the certificate of incorporation of the society is not surrendered to the Registrar within a reasonable time after the making of the decision, or the giving of the direction, to effect the transfer.

PART 7 - ADMINISTRATION

Division 1 - The Registrar

Registrar and Deputy Registrar

84. Unless a different appointment is made under the Public Sector Management Act 1988:

- (a) the person who is the registrar of co-operative societies under the Co-operation Act 1923 is the Registrar of Friendly Societies; and
- (b) the person who is the deputy registrar of co-operative societies under that Act is the Deputy Registrar of Friendly Societies.

Extension or abridgement of time

85. (1) Whether or not the time for exercising a function under this Act or the rules of a friendly society has expired, the Registrar may, conditionally or unconditionally, grant an extension or abridgement of the time.

(2) This section does not limit the operation of section 81 of the Supreme Court Act 1970 or the operation of any rules of court relating to an extension or abridgement of time.

Division 2 - Friendly Societies Advisory Committee

Constitution of Advisory Committee

86. (1) There is constituted by this Act a Friendly Societies Advisory Committee consisting of:

- (a) the Registrar; and
- (b) such other members as are appointed by the Minister.

(2) The number of members appointed by the Minister must be not fewer than 5 and not more than 9 or, if the regulations provide for some other maximum number, the maximum number prescribed by the regulations.

(3) A deputy for a member (other than the Registrar) may be appointed by the Minister to attend any meeting of the Advisory Committee at which the member is unable to be present.

(4) A member, or deputy member, of the Advisory Committee who is appointed by the Minister holds office at the pleasure of the Minister.

(5) The Deputy Registrar is the deputy for the Registrar.

(6) Appointments of members and deputy members of the Advisory Committee must be made so that, at a meeting at which all members (including the Registrar or Deputy Registrar) are present, there is a majority comprising officers of friendly societies.

(7) The person to preside at a meeting of the Advisory Committee is:

- (a) the Registrar; or
- (b) in the absence of the Registrar - the Deputy Registrar; or
- (c) in the absence of both the Registrar and the Deputy Registrar - a member of the Committee elected for the purpose by those present at the meeting.

(8) A meeting of the Advisory Committee may be convened by the Registrar or Deputy Registrar or by any 2 members.

(9) A member of the Advisory Committee other than:

- (a) a member of the Legislative Council or the Legislative Assembly; or
- (b) the Registrar, Deputy Registrar or a member who is a person appointed or employed under the Public Sector Management Act 1988,

is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Functions of Advisory Committee

87. The Advisory Committee:

- (a) may make recommendations to the Minister for the more effective operation of friendly societies;
- (b) may recommend to the Minister the making of regulations; and
- (c) must report to the Minister, and make recommendations, in relation to such matters affecting friendly societies and the provision of benefits as are referred to it by the Minister; and
- (d) must report to the Registrar, and make recommendations, in relation to such matters as are referred to it by the Registrar; and
- (e) may exercise such other functions as are conferred or imposed on it by or under this Act.

Division 3 - Inspectors

Appointment and functions of inspectors

88. (1) Inspectors may be employed under the Public Sector Management Act 1988 for the purpose of carrying out inspections relating to the operations of friendly societies.

(2) An inspector carrying out an inspection under subsection (1):

- (a) may exercise such of the functions of an investigator holding an inquiry under Division 4 as the Registrar directs; and
- (b) may exercise those functions as if the inspector were an investigator and the inspection were such an inquiry.

Division 4 - Investigations

Definitions

89. In this Division:

"affairs", in relation to a friendly society, includes:

- (a) the promotion, formation, membership, control, transactions, dealings, business and property of the society; and

- (b) loans made to the society; and
- (c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the society or who are, or have been, able to control or influence materially the policy of the society; and
- (d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the society;

"costs", in relation to an inquiry under this Division includes:

- (a) the expenses of, and incidental to, the inquiry; and
- (b) the expenses payable by the Registrar in any proceedings instituted by the Registrar under this Division in the name of the friendly society the subject of the inquiry; and
- (c) so much of the remuneration of a servant of the Crown as is determined by the Treasurer to be attributable to matters connected with the inquiry;

"involved person", in relation to an inquiry into the affairs of a friendly society, means:

- (a) an officer of the society; or
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or actuary, or in any other capacity, for the society; or
- (c) a person who has, or at any time had, in his or her possession any property of the society; or
- (d) a person who is indebted to the society; or
- (e) a person who is capable of giving information relating to the affairs of the society; or
- (f) a person whom an investigator believes on reasonable grounds to be a person referred to in paragraphs (c)-(e).

Appointment of investigators

90. (1) The Registrar may appoint a person or persons to hold an inquiry into the affairs of a friendly society if:

- (a) the Registrar considers that it is desirable to do so for the protection of the public or of the members or creditors of the society; and

(b) the Minister consents.

(2) The Registrar may vary the terms and conditions of appointment of an investigator if the Minister and the investigator agree to the variation.

(3) In the course of an inquiry into the affairs of a friendly society, an investigator may inquire into the affairs of a subsidiary of the society that, if the subsidiary were the society, would be affairs of the society.

(4) An inquiry into the affairs of a subsidiary of a friendly society may be conducted as if the subsidiary were the society.

Powers of investigators

91. (1) An investigator inquiring into the affairs of a friendly society may, by giving an involved person a notice in the prescribed form, require the person:

- (a) to produce any document of which the person has custody or control and which relates to those affairs; or
- (b) to give the investigator all reasonable assistance in connection with the inquiry, or
- (c) to appear before the investigator for examination on oath.

(2) An investigator may administer an oath to an involved person given a notice under subsection (1).

(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.

(4) If:

- (a) an investigator takes possession of a document under this section; and
- (b) another person would be entitled to inspect the document if it were returned to its former custody,

the investigator must permit the person to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

Examination of involved person

92. (1) A legal practitioner acting for an involved person:

- (a) may attend an examination of the involved person by an investigator; and
- (b) may, to the extent that the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.

(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor the answer is admissible in evidence in any criminal proceedings other than:

- (a) proceedings under section 94 for giving a false or misleading answer to the question; or
- (b) proceedings on a charge of perjury in respect of the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the prescribed allowance and the prescribed expenses.

Privileged communications

93. (1) An involved person who is a legal practitioner may refuse to produce a document to an investigator if:

- (a) the document is a privileged communication between the legal practitioner as such and another person; and
- (b) the other person does not agree to its production; and
- (c) subsection (2) does not apply.

(2) If the friendly society to which the document relates is under official management or is being wound up, the legal practitioner must produce the document if the official manager or the liquidator agrees to its production.

(3) A legal practitioner is guilty of an offence if he or she:

- (a) refuses to 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 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 - subsection (3): 10 penalty units.

Offences by involved person

94. (1) An involved person who:

- (a) refuses or fails to comply with a lawful requirement of an investigator without showing reasonable cause for the refusal or failure; or
- (b) knowingly gives an investigator false or misleading information; or
- (c) when appearing before an investigator, refuses to take an oath or knowingly makes a false or misleading statement,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) If an investigator considers that a refusal or failure by a person to comply with a requirement of the investigator is an offence under subsection (1) (a), the investigator may certify the refusal or failure to the Supreme Court.

(3) If an investigator acts under subsection (2) in relation to an involved person, the Supreme Court may:

- (a) order the involved person to comply with the requirement of the investigator within a stated period; or
- (b) instead of, or in addition to, making an order under paragraph (a) punish the involved person as for a contempt of the Court if satisfied that there was no lawful excuse for the refusal or failure to comply with the requirement of the investigator.

Offences relating to documents

95. If an inquiry into the affairs of a friendly society is being held under this Division, a person who:

- (a) conceals, destroys, mutilates or alters a document relating to the society; or

(b) sends, or causes to be sent, out of the State any document or other property that belongs to, or is under the control of, the society,

is guilty of an offence unless it is proved that the person charged did not intend to defeat, delay or obstruct the inquiry.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Record of examination

96. (1) Except as provided by section 92 (which relates to self-incrimination) a record of an examination may be used in proceedings against the person examined but this subsection does not preclude the admission of other written or oral evidence.

(2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.

(3) The Registrar may provide a legal practitioner with a copy of a record of examination made by an investigator if the Registrar is satisfied that the legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the friendly society to which the record relates.

(4) A legal practitioner who:

(a) uses a copy of a record of examination otherwise than in connection with the preparation for, institution of, or conduct of, legal proceedings; or
(b) publishes or communicates the record or any part of it for any other purpose,

is guilty of an offence.

Maximum penalty - subsection (4): 10 penalty units.

Report of investigator

97. (1) An investigator may, and if directed by the Registrar to do so must, make interim reports to the Registrar on an inquiry being held by the investigator.

(2) As soon as practicable after the end of an inquiry, the investigator must report to the Registrar:

(a) the opinion of the investigator in relation to the affairs of the friendly society the subject of the inquiry; and

(b) the facts on which the opinion is based.

(3) An investigator's report may include a recommendation as to whether:

- (a) an order should be made under section 100 (3) (under which the Registrar may order a friendly society to pay the costs of the inquiry); or
- (b) an application should be made under section 100 (4) or (5) (under which a court may order a person to pay the costs of the inquiry); or
- (c) such an order and such an application should both be made.

(4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under section 91.

(5) If a document accompanies a report in accordance with subsection (4), the Registrar:

- (a) may retain the document for such period as the Registrar considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry; and
- (b) may retain the document for any further period that the Registrar considers to be necessary to enable legal proceedings to be instituted and prosecuted; and
- (c) may permit the use of the document for any legal proceedings instituted as a result of the inquiry; and
- (d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and
- (e) may permit inspection of the document by another person while it is in the possession of the Registrar but only if the Registrar considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

Proceedings following inquiry

98. (1) If legal proceedings are to be, or have been, instituted by the Registrar as a result of an inquiry under this Division, the Registrar may, by order in writing, require a person who, in relation to the inquiry, was an involved person to give all such assistance in connection with the proceedings as the person is reasonably able to give.

(2) The Supreme Court may, on the application of the Registrar, order a person to comply with an order under subsection (1) if the person has refused or failed to do so.

(3) If the Registrar considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a friendly society for the recovery of:

- (a) damages in respect of fraud or other misconduct in connection with the affairs of the society, or
- (b) property of the society,

the proceedings may be instituted and prosecuted in the name of the society.

Admission of investigator's report as evidence

99. (1) A document certified by the Registrar as a copy of a report of an inquiry under this Division is admissible as evidence of any facts found by the investigator to exist.

(2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 92.

Costs of inquiry

100. (1) The costs of an inquiry under this Division are to be paid out of money appropriated by Parliament.

(2) At the direction of the Treasurer, the Registrar must act under one or more of subsections (3), (4) and (5).

(3) The Registrar may, by order served on a friendly society, direct the society to pay to the Crown all or part of the costs of an inquiry under this Division into the affairs of the society.

(4) If proceedings are instituted by the Registrar under section 98 in the name of a friendly society, the court may, in the course of the proceedings and on the application of the Registrar, order that all or part of the costs of the inquiry that led to the proceedings be paid to the Crown by a specified party to the proceedings.

(5) If a person is convicted of an offence in proceedings certified by the Registrar to be the result of an inquiry into the affairs of a friendly society, the convicting court may, on the application of the Registrar made at the time of the conviction or not more than 14 days later, order

the convicted person to pay to the Crown all or part of the costs of the inquiry.

(6) An order under this section must state:

- (a) the amount to be paid; and
- (b) the time or times for payment; and
- (c) the manner of payment.

(7) An amount that has not been paid by a person in accordance with an order under this section is recoverable from the person as a debt due to the Crown.

PART 8 - APPOINTMENT OF ADMINISTRATOR AND SUSPENSION OF OPERATIONS

Division 1 - Appointment and functions of administrator

Registrar may appoint administrator of friendly society

101. (1) The Registrar may, with the approval of the Minister, by order appoint an administrator to conduct the affairs of a friendly society if satisfied that any of the grounds referred to in subsection (2) exist.

(2) The grounds for appointment of an administrator of a friendly society are:

- (a) that the society has been registered for more than 6 months and has not commenced to carry on business; or
- (b) that the society has not carried on business during the period of 6 months that last preceded the appointment; or
- (c) that the registration of the society was obtained by fraud or mistake; or
- (d) that the liabilities of the society exceed the value of its assets; or
- (e) that the society has fewer than 100 members; or
- (f) that the society has been notified by the Registrar of a contravention by it of this Act or its rules and has failed to remedy the contravention within a time allowed by the Registrar; or
- (g) that it would be in the best interests of the members or creditors of the society to appoint an administrator.

Effect of appointment of administrator

102. (1) On the appointment of an administrator to conduct the affairs of a friendly society:

- (a) the directors of the society vacate office; and
- (b) the administrator may terminate any or all contracts of employment with the society or contracts for the provision to it of administrative or secretarial services.

(2) Subsection (1) does not authorise an administrator to ignore any law or industrial award relating to the giving of notice or the making of termination payments.

(3) The administrator may exercise all the functions of the directors of the friendly society.

(4) The administrator is entitled to remuneration determined by the Registrar.

(5) The expenses of and incidental to the administration of the affairs of a friendly society, including remuneration of the administrator, are payable by the society.

Protection against liability

103. (1) An administrator of a friendly society is not liable for any loss or damage sustained by the society or any other person in respect of anything done or omitted by the administrator during his or her term of office:

- (a) in the course of exercising functions as administrator; or
- (b) in good faith in the purported exercise of functions as administrator.

(2) Subsection (1) does not apply if the loss or damage was due to:

- (a) wilful misconduct of the administrator; or
- (b) a wilful contravention of this Act or the rules of the society by the administrator; or
- (c) negligence of the administrator.

(3) The friendly society is not liable for any loss or damage sustained by any person because a contract is terminated under section 102.

(4) Whether or not the administrator is liable, neither the Minister nor the Registrar is liable for any loss or damage sustained by the society or any other person because anything is done or omitted to be

done by the administrator in the course of conducting, or purporting to conduct, the affairs of the society during the administrator's term of office.

Termination of appointment of administrator

104. (1) The Registrar may terminate the appointment of an administrator of a friendly society if action in relation to the society is taken under:

- (a) section 106 (which applies Parts X and XI of the Companies (New South Wales) Code); or
- (b) section 107 or 108 (relating to winding up under Part XII of the Companies (New South Wales) Code or by order of the Registrar).

(2) Except for the purpose of appointing a different administrator, the Registrar may not terminate the appointment of an administrator unless new directors of the friendly society have been:

- (a) elected in accordance with the rules of the society; or
- (b) appointed by the Registrar.

(3) Directors elected or appointed under subsection (2):

- (a) take office when the appointment of the administrator is terminated; and
- (b) remain in office until the next annual general meeting of the society.

(4) This section does not limit any other power of the Registrar to terminate the appointment of an administrator of a friendly society.

Division 2 - Suspension of operations of friendly society

Direction to suspend operations

105. (1) With the consent of the Minister, the Registrar may, by written order served on a friendly society, direct the society not to do any one or more of the following:

- (a) borrow money;
- (b) accept new members;
- (c) without the consent of the Registrar - accept a contribution, pay or surrender a benefit, or otherwise dispose of or deal with the assets of the society.

(2) If a friendly society contravenes a direction in force under subsection (1), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty - subsection (2): 200 penalty units.

PART 9 - OFFICIAL MANAGEMENT AND WINDING UP

Application of Parts X and XI of Companies (New South Wales) Code

106. The provisions of Parts X and XI of the Companies (New South Wales) Code apply (with any necessary modifications) in relation to a friendly society, an association and a union of associations in the same way as they apply in relation to a company and so apply as if references in those provisions to the Commission were references to the Registrar.

Winding up of friendly society

107. (1) Subject to section 17 (which requires a postal ballot for a decision to wind up a friendly society), a friendly society, an association or a union of associations may be wound up:

- (a) voluntarily; or
- (b) by the Supreme Court; or
- (c) by order of the Registrar under section 108.

(2) The provisions of Part XII of the Companies (New South Wales) Code apply (with any necessary modifications) in relation to a winding up of a friendly society, an association or a union of associations voluntarily or by the Supreme Court in the same way as they apply in relation to such a winding up of a company and so apply as if a reference in those provisions to the Commission were a reference to the Registrar.

(3) Subsection (2) applies in relation to a winding up of a friendly society by order of the Registrar in the same way as it would apply if the society were being wound up voluntarily except that the liquidator is to be appointed by the Registrar.

Registrar may order winding up of friendly society

108. (1) If satisfied that any grounds referred to in subsection (2) exist in relation to a friendly society, the Registrar may, with the

consent of the Minister given after consulting the Advisory Committee, by order published in the Gazette:

- (a) direct that the friendly society (naming the society) be wound up; and
- (b) appoint a person to be liquidator of the society.

(2) The grounds referred to in this subsection in relation to a friendly society are:

- (a) that the society has been registered for more than 6 months and has not commenced to carry on business; or
- (b) that the society had not carried on business during the period of 6 months that last preceded the consent of the Minister to the winding up; or
- (c) that registration of the society was obtained by mistake or fraud; or
- (d) that the liabilities of the society exceed the value of its assets; or
- (e) that the society has fewer than 100 members; or
- (f) that the society has been notified by the Registrar of a contravention by it of this Act or its rules and has failed to remedy the contravention within a time allowed by the Registrar; or
- (g) that winding up would be in the best interests of the society; or
- (h) that the society has failed to comply with a direction to transfer its engagements that has taken effect under section 75.

(3) A winding up by an order under this section takes effect on publication of the order in the Gazette.

(4) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the publication of an order under this section have been complied with.

(5) A liquidator appointed by an order under this section is entitled to receive fees, allowances and expenses fixed by the Registrar.

Disposal of surplus on winding up

109. Any surplus on the winding up of a friendly society is to be transferred:

- (a) to another friendly society, or to an association of friendly societies, nominated for the purpose by a special resolution of the society being wound up; or
- (b) if there has been no such nomination - to another friendly society, or to an association of friendly societies, as directed by order of the Registrar published in the Gazette.

Cancellation of registration

110. The Registrar must cancel the registration of a friendly society that is dissolved on being wound up.

PART 10 - GENERAL

Evidence

111. (1) A certificate of incorporation of a friendly society issued under this Act is conclusive evidence that the society is incorporated under this Act.

(2) If a function under this Act is conferred or imposed on the Registrar as a consequence of something being done, or omitted to be done, within a specified period, the Registrar may certify:

- (a) that the thing had, or had not, been done within that period; or
- (b) that the thing had, or had not, been done by a specified date.

(3) A certificate given by the Registrar under subsection (2) is evidence of the matters stated in the certificate.

Registration of special resolution

112. A special resolution of a friendly society does not have effect unless:

- (a) a copy of the resolution signed by the chairperson and secretary of the society is lodged with the Registrar during the period of 1 month that next succeeds the meeting at which the resolution is passed; and
- (b) the Registrar is satisfied that the resolution is not inconsistent with this Act and registers the copy.

Delegation

113. (1) The Minister may delegate to a person any of the functions of the Minister under this Act, other than this power of delegation.

(2) The Registrar may delegate any of the functions of the Registrar under this Act, other than this power of delegation.

Exclusion of Insurance Act 1902

114. The Insurance Act 1902 does not apply to a contract made in accordance with this Act between a friendly society and a member of the society.

Advertising

115. (1) A person who by advertisement seeks members for a proposed friendly society is guilty of an offence unless the advertisement had the prior approval of the Registrar.

Maximum penalty: 50 penalty units.

(2) A friendly society must not publish an advertisement relating to benefit funds unless:

(a) the advertisement has the prior written approval of the Registrar; or

(b) the Registrar has by written order exempted the society from the operation of this section while the order is in force and any conditions to which the order is subject have been complied with.

(3) The Registrar may limit the duration of an order made under subsection (2).

(4) If the Registrar considers that an advertisement published by a friendly society or by a person seeking members for a proposed friendly society:

(a) is not a correct statement of fact; or

(b) in the opinion of the Registrar, is not in the public interest; or

(c) is not in accordance with any guidelines that have been laid down by the Registrar and of which the society or person has been informed,

the Registrar may serve on the society or person a written notice requiring the society or person to cease publication of the advertisement.

(5) A person (other than a friendly society) who contravenes the requirement of a notice served on the person under subsection (4) is guilty of an offence.

Maximum penalty: 50 penalty units.

(6) If a friendly society contravenes subsection (2) or the requirement of a notice served on the society under subsection (4), a director of the society who had not taken reasonable precautions aimed at preventing such a contravention is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) This section applies in relation to an association and a union of associations in the same way as it applies in relation to a friendly society.

Foreign societies

116. (1) A foreign society that, within the State and without the prior approval of the Registrar:

- (a) solicits for membership; or
- (b) seeks contributions, donations or investments; or
- (c) provides services (other than prescribed services) to a member resident in the State,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) Application by a foreign society for an approval of the Registrar for the purposes of this section may be made to the Registrar in the prescribed form accompanied by the prescribed fee.

(3) The Registrar must give an approval applied for under this section by a foreign society if satisfied that:

- (a) there are reasonable grounds for believing that, if the approval is given, the foreign society will comply with the condition imposed by subsection (4); and

(b) there is no reasonable cause for refusing the approval.

(4) It is a condition of an approval given by the Registrar under this section that the foreign society to which the approval relates will comply with such of the provisions of an appropriate law for a foreign society as, with such modifications as may be prescribed, are applied to a foreign society by a regulation made for the purposes of this section.

(5) If a foreign society fails to comply with a condition of an approval under this section, whether imposed by subsection (4) or under this subsection, the Registrar may:

- (a) impose a condition of the approval requiring the foreign society to refrain from advertising within the State; or
- (b) impose a condition of the approval requiring the foreign society to refrain from accepting any more members from within the State; or
- (c) cancel the approval by notice published in the Gazette.

(6) In this section:

"appropriate law", in relating to a foreign society, means:

- (a) this Act or a regulation; or
- (b) a law of another State, or of a Territory, under which the foreign society is registered, or to which it is subject or under which it operates as an organisation having objects and powers similar to those of a friendly society,

as for the time being in force.

Dispensing with probate or letters of administration

117. (1) If a member of a friendly society dies and an amount not exceeding the amount prescribed by the regulations is payable by the society as a consequence of the death, the amount may be paid to a person who:

- (a) appears to the society to be entitled to a grant of probate of the will, or letters of administration of the estate, of the deceased; and
- (b) gives such security as the society may require; and
- (c) provides such evidence as the society may require in relation to the death, and to the entitlement of the person to probate or letters of administration, as the society may require.

(2) If the deceased member was entitled to the equity of redemption of property mortgaged to the society, this section extends to any surplus (not exceeding the prescribed amount referred to in subsection (1)) arising on a sale by the society as mortgagee.

(3) The operation of this section is subject to section 122 of the Stamp Duties Act 1920.

(4) The receipt of a person to whom money is paid under this section by a friendly society is a sufficient discharge for the society in relation to the money paid.

Review of decision by Registrar

118. (1) A person affected by a decision of the Registrar under this Act may apply to the Registrar for a review of the decision.

(2) On receiving an application for review of a decision, the Registrar must give the applicant a reasonable opportunity:

- (a) to make written representations to the Registrar; or
- (b) to appear before, and make representations to, the Registrar at a time and place to be arranged with the Registrar.

(3) After considering any representations made by the applicant, the Registrar may confirm, vary or revoke the decision.

(4) If the decision when made required the approval or consent of the Minister, the Registrar may not vary or revoke the decision without the approval or consent of the Minister.

(5) An applicant for a review may appeal to the Supreme Court against the decision on the review made by the Registrar.

Search warrants

119. (1) In this section:

"authorised justice" means:

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Attorney General's Department.

(2) A member of the Police Force, an inspector or an investigator may apply to an authorised justice for the issue of a search warrant if the member of the Police Force, inspector or investigator has reasonable grounds for believing:

- (a) that an offence under this Act is being, or has been, committed on any premises; or
- (b) that on any premises there are records that relate to the question of whether or not an offence under this Act is being, or has been, committed.

(3) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force, or an inspector or investigator named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of the commission of an offence under this Act; and
- (c) if an inspector or investigator is named in the warrant - to exercise the functions of that office.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(5) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the Police Force may accompany an inspector or investigator executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector or investigator under this Act.

Service of documents

120. (1) A document may be served on a friendly society by post or by leaving it at the registered office of the society with a person who appears to be aged 16 or more.

(2) A document may be served on a foreign society by post or by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign society carries on business in New South Wales.

(3) For the purpose of serving a document under this section by post, it is properly addressed if:

- (a) in the case of a friendly society, it is addressed to the registered office of the society; or
- (b) in the case of a foreign society, it is addressed to a place in New South Wales where the foreign society carries on business.

(4) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a friendly society or a foreign society in any other way.

Reciprocal arrangements

121. (1) If a reciprocal arrangement with another State or a Territory is in force, the Registrar:

- (a) may, at the request of the appropriate official of the State or Territory, provide the official with information or documents relating to a friendly society; and
- (b) may request the appropriate official of the State or Territory to provide the Registrar with documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a friendly society.

(2) In this section, a reference to a reciprocal arrangement with another State or a Territory is a reference to an arrangement made between the Minister and a representative of the government of the other State or the Territory under which it is agreed:

- (a) that the Registrar will comply with a request referred to in subsection (1) (a); and
- (b) that a request made by the Registrar to an official designated in the arrangement as the appropriate official for the purposes of subsection (1) (b) will be complied with.

Inspection of documents

122. (1) On payment of the prescribed fee, the Registrar is to:

- (a) make available for inspection a document registered or lodged with the Registrar under this Act; and
- (b) if required, provide a certified copy of such a document, unless it is a document referred to in subsection (2).

(2) Subsection (1) does not apply to:

- (a) a document prepared for the purposes of Part 4 (which relates to the management of friendly societies and includes such matters as the keeping and auditing of accounts); or
- (b) a document prepared for the purposes of Part 7 (which includes such matters as an inquiry into the affairs of a society); or

- (c) a document, or a class of documents, excepted by the regulations from the operation of subsection (1).

Secrecy

123. (1) A person:

- (a) who is, or at any time was, engaged in the administration of this Act or the former Act; and
- (b) who, except as provided by this section, records, makes use of or divulges any information obtained in the course of that administration,

is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply to:

- (a) the recording, making use or divulging of information in the course of the administration of this Act; or
- (b) the recording or making use of information for the purpose of divulging it as permitted by subsection (3) or (4); or
- (c) the divulging of information as permitted by subsection (3) or (4).

(3) Information may be divulged:

- (a) for the purposes of criminal proceedings; or
- (b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) in accordance with a reciprocal arrangement under section 121.

(4) Information may be divulged to:

- (a) the Minister; or
- (b) the Treasurer; or

- (c) the Chief Commissioner of Stamp Duties; or
- (d) the Chief Commissioner of Pay-roll Tax; or
- (e) the Chief Commissioner of Land Tax; or
- (f) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or
- (g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty; or
- (h) a person seeking information under a reciprocal arrangement entered into under section 121; or
- (i) a member of the Police Force exercising functions as such; or
- (j) a person nominated by a person referred to in paragraphs (a)-(g).

(5) For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person exercises, or at any time exercised, a function as:

- (a) the Registrar holding office under this Act or the former Act; or
- (b) a member of the Advisory Committee constituted under this Act or the former Act; or
- (c) an inspector appointed under section 88 or under section 69 of the former Act; or
- (d) an investigator appointed under section 90; or
- (e) a person appointed or employed for the purposes of this Act or the former Act.

(6) In this section:

"divulge", in relation to information, means:

- (a) communicate the information verbally; or
- (b) make available a document containing the information; or
- (c) make available anything from which, by electronic process or otherwise, the information may be obtained; or

(d) communicate the information in any other manner;
"former Act" means the Friendly Societies Act 1912.

Obstruction

124. A person who obstructs or hinders the Registrar, an inspector or an investigator in the exercise of a function under this Act is guilty of an offence.

Maximum penalty: 50 penalty units.

False or misleading statements

125. (1) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement knowing it to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A person who, from a document required for the purposes of this Act or lodged with the Registrar omits, or authorises the omission of, anything knowing that the omission makes the document misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement that is false or misleading in a material particular is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

Maximum penalty: 50 penalty units.

(4) If an omission makes a document required for the purposes of this Act or lodged with the Registrar misleading in a material respect, a person who made or authorised the omission is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

Maximum penalty: 50 penalty units.

Proceedings for offences

126. (1) Proceedings for an offence under this Act may be instituted at any time before the expiration of the period of 3 years that next succeeds the alleged commission of the offence.

(2) Proceedings for an offence under this Act are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Supreme Court in its summary jurisdiction.

(3) The maximum penalty that may be imposed by a Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

127. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order the matter "section 119 of the Friendly Societies Act 1989;".

Amendment of Friendly Societies Dispensaries Enabling Act 1945 No. 11, s. 2 (Dispensaries - open shops)

128. The Friendly Societies Dispensaries Enabling Act 1945 is amended:

- (a) by omitting from section 2 (1) the matter "Friendly Societies Act, 1912, as amended by subsequent Acts", and by inserting instead the matter "Friendly Societies Act 1989";
- (b) by omitting from section 2 (2A) the matter "Friendly Societies Act, 1912" and by inserting instead the matter "Friendly Societies Act 1989".

Repeals

129. Each Act listed in Schedule 1 is repealed.

Transitional provisions

130. Schedule 3 has effect.

Regulations

131. (1) The Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required

or permitted to be prescribed or that is necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for or with respect to:

- (a) the making of applications for the exercise of a function by the Registrar, including the use of a form approved by the Registrar; and
- (b) fees to be paid in connection with the administration of this Act; and
- (c) model rules for friendly societies and their adoption by a society.

(3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units including, where a friendly society contravenes a regulation, an offence by a director of the society who had not taken reasonable precautions aimed at preventing such a contravention.

SCHEDULE 1 - REPEALS

(Sec. 129)

Friendly Societies Act 1912 No. 46

Friendly Societies (Amendment) Act 1976 No. 64

**SCHEDULE 2 - RULES TO BE MADE FOR REGISTERED
ORGANISATION**

(Sec. 23)

Name and address

1. The name of the registered organisation and the address of its registered office.

Objects

2. The objects of the registered organisation.

Funds and investments

3. The methods of raising funds and making investments.

Management of funds

4. The management of funds of the registered organisation, including the drawing and signing of cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for and on behalf of the registered organisation.

Admission of members

5. The method and conditions of admission of members and the payment to be made or the interest to be acquired before rights of membership may be exercised.

**SCHEDULE 2 - RULES TO BE MADE FOR REGISTERED
ORGANISATION - *continued***

Cessation of membership

6. The circumstances in which membership ceases.

Directors

7. The number of directors, the qualifications of directors, the manner of appointing or electing them and matters relating to their remuneration, removal and replacement.

Functions and meetings of directors

8. The functions of directors, the notice to be given of a meeting of the directors, the quorum for the meeting and the procedure at the meeting.

Chairperson

9. The election and functions of the chairperson for a meeting of the directors.

General meetings

10. The intervals between general meetings of the registered organisation, the manner of calling special and general meetings, the required notices of meetings and the quorum for meetings.

Procedure at general meetings

11. The procedure at meetings of the registered organisation including the rights of members in voting at meetings and the majority that is necessary for carrying resolutions.

Charges payable by members

12. The charges that are payable by a member to the registered organisation in respect of membership including, but without being limited to, any charges on admission to membership or for working expenses.

**SCHEDULE 2 - RULES TO BE MADE FOR REGISTERED
ORGANISATION - *continued***

Settlement of disputes

13. The manner of settling disputes between the registered organisation and any of its members or any person who claims by or through a member under the rules.

Rules

14. The manner of altering or revoking rules of the registered organisation and the manner of adding to the rules.

Seal

15. The custody and use of the seal of the registered organisation.

SCHEDULE 3 - TRANSITIONAL PROVISIONS

(Sec. 130)

Part 1 - Preliminary

Regulations

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the repeal of the Friendly Societies Act 1912 or later.

(3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before that date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before that date of publication.

(4) If the regulations so provide, a provision referred to in subclause (1) has effect despite any other clause of this Schedule.

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

Part 2 - Provisions consequent on enactment of this Act

Definitions

2. In this Part:

"continuing society" means the corporation that, in accordance with clause 3, is a continuation of a former society;

"former Act" means the Friendly Societies Act 1912;

"former society" means:

(a) a friendly society that, immediately before the repeal of the former Act, was registered under the former Act; and

(b) the branches (if any) of the society;

"trustees", in relation to a former society, means the trustees (including branch trustees) of the former society holding office under the former Act before its repeal.

Dissolution of former society and incorporation of continuing society

3. (1) On the repeal of the former Act, a former society is dissolved and there is constituted by this Act in its place a corporation that is a continuation of the former society.

(2) The Registrar must, as soon as possible, issue a continuing society with a certificate of incorporation.

(3) The corporate name of a continuing society is:

(a) the same as the name registered under the former Act as the name of the former society if that name includes the words "Friendly Society"; or

(b) in any other case, a name that includes the words "Friendly Society" and is specified in the certificate of incorporation issued under this clause.

Members, assets, rights and liabilities of continuing society

4. (1) On the dissolution of a former society and the incorporation of the continuing society:

(a) the rules of the former society become the rules of the continuing society; and

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

- (b) the members of the former society become the members of the continuing society; and
- (c) the assets vested in the trustees of the former society as trustees become assets of the continuing society without the need for a conveyance, transfer, assignment or other assurance; and
- (d) the rights and liabilities of the trustees of the former society as trustees become rights and liabilities of the continuing society; and
- (e) the obligations of the trustees of the former society as trustees become obligations of the continuing society; and
- (f) proceedings before a court or tribunal by or against the trustees of the former society as trustees that, immediately before the incorporation of the continuing society, were pending or in the course of being heard become proceedings by or against the continuing society; and
- (g) to the extent to which an act, matter or thing done or omitted to be done on behalf of the former society had any force or effect immediately before the incorporation of the continuing society, it becomes an act, matter or thing done or omitted to be done by the continuing society; and
- (h) the members of the committee of the former society become directors of the continuing society and hold office as such until directors of the continuing society are elected in accordance with its rules; and
- (i) a reference in any instrument to the former society or to the trustees of the former society as trustees becomes a reference to the continuing society; and
- (j) time that had commenced to run in relation to the former society or its trustees as trustees becomes time that had commenced to run in relation to the continuing society.

(2) An instrument that is executed as a consequence of this clause and to give it effect:

- (a) is not liable to duty under the Stamp Duties Act 1920; and
- (b) if it is registrable, may be registered without payment of a registration fee.

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

Continuation of Advisory Committee

5. On the repeal of the former Act, the persons who, immediately before the repeal, were the members of the Advisory Committee constituted under the former Act are constituted as the Friendly Societies Advisory Committee under section 86.

Inspectors

6. An inspector who, immediately before the commencement of section 88, holds office under the Public Sector Management Act 1988 for the purposes of the former Act holds office on that commencement under the Public Sector Management Act 1988 as an inspector for the purposes of this Act.

Approval relating to foreign society

7. (1) Application for an approval under section 116 may be made by a foreign society before publication of the proclamation commencing that section.

(2) If such an application is made, the Registrar may, before the commencement of section 116:

- (a) make a decision on the application as if section 116 were in force; or
- (b) inform the applicant that the matter is under consideration.

(3) A decision given under subclause (2) (a) has effect on the commencement of section 116, whether or not the decision is given after the Registrar has acted under subclause (2) (b).

(4) If the Registrar acts under subclause (2) (b) and a decision on the application is not given before the commencement of section 116, that section does not apply to the applicant until the Registrar has dealt with the application.

(5) For the purposes of:

- (a) making an application under section 116 before its commencement; and

SCHEDULE 3 - TRANSITIONAL PROVISIONS - *continued*

(b) acting under this clause before that commencement, a reference in this clause and that section to the Registrar is to be taken to be a reference to the Registrar holding office under the former Act.

Subventions

8. On the repeal of the former Act and despite the repeal, Part 8 of that Act continues to apply to a continuing society in the same way as it applied in relation to the former society.

Transitional adoption of model rules

9. If regulations are made prescribing model rules of a friendly society, the board of a continuing society may adopt all or any of them as rules of the society pending their adoption by the society as prescribed by the regulations.

References to former Act

10. A reference to the former Act in any other Act or in an instrument not made under this Act has effect as a reference to this Act.

Effect of Interpretation Act 1987

11. Section 130 and this Schedule have effect in addition to, and do not derogate from, the operation of section 30 of the Interpretation Act 1987.

*[Minister's second reading speech made in -
Legislative Assembly on 15 November 1989
Legislative Council on 23 November 1989]*