

FRIENDLY SOCIETIES BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to replace the Friendly Societies Act 1912 with a modern statute that has regard to the increasing expansion of the activities of friendly societies.

Among the changes to be made is the constitution of a society (including an existing society) as a corporation with a board of directors instead of it being an unincorporated association administered by a committee and having its property vested in trustees.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (with certain exceptions) on a day or days to be appointed by proclamation.

Clause 3 defines expressions used in the proposed Act.

Clause 4 limits the operation of the Companies (New South Wales) Code and the Securities Industry (New South Wales) Code in their application to a friendly society and related organisations.

PART 2 - OBJECTS AND FUNCTIONS

Clause 5 lists the objects of a friendly society and enables a society to include in its rules other objects for which provision is made by the regulations.

Clause 6 provides for the exercise by a society of functions necessary to achieve its objects and specifies some of these functions.

Friendly Societies 1989

Clause 7 specifies the matters that would determine whether a corporation is, for the purposes of the proposed Act, a subsidiary of a friendly society.

PART 3 - REGISTRATION AND INCORPORATION

Division 1 - Friendly societies

Clause 8 provides for the holding of a meeting to consider the formation of a friendly society, the matters that must be considered at the meeting and the manner of application to the Registrar of Friendly Societies for registration of the proposed society.

Clause 9 provides for the registration, or refusal of registration, of a proposed friendly society and for a registered friendly society to be constituted as a corporation.

Clause 10 deals with the procedure for a change of name by a friendly society.

Clause 11 limits the use of the words "friendly society" or "friendly societies" in the name of a corporation or other organisation.

Clause 12 deals with the obligations of the directors of a friendly society in relation to the use of the name of the society.

Clause 13 imposes obligations on the directors of a friendly society with respect to the registered office of the society.

Clause 14 defines the persons who comprise the membership of a friendly society.

Clause 15 deals with the rights of minors who are members of a friendly society.

Clause 16 sets out the voting rights of members of a friendly society.

Clause 17 requires a friendly society to conduct a postal ballot of its members before applying to the Minister for approval:

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

Clause 18 provides for the functions of the Minister and the Friendly Societies Advisory Committee following a decision on a postal ballot under proposed section 17.

Division 2 - Associations and unions of associations

Clause 19 provides for the holding of a meeting to consider the formation of an association by 2 or more friendly societies or a union of associations comprising 2 or more associations.

Clause 20 authorises the Registrar to register an association or union of associations and constitutes a registered association or union as a corporation.

Friendly Societies 1989

Clause 21 specifies the functions of an association or union of associations.

Division 3 - Rules

Clause 22 defines a friendly society, an association or a union of associations as being a registered organisation for the purposes of the proposed Division.

Clause 23 specifies requirements that must be complied with by the rules of a registered organisation and gives effect to the rules as a contract between the organisation and its members.

Clause 24 provides for the alteration of rules of a registered organisation.

PART 4 - MANAGEMENT OF FRIENDLY SOCIETIES

Division 1 - Directors and officers

Clause 25 deals with the constitution and functions of the board of directors of a friendly society and requires the board to elect one of their number as chairperson.

Clause 26 penalises certain convicted or insolvent persons who act as directors of a friendly society.

Clause 27 enables the Registrar to apply to the Supreme Court for an order prohibiting a person from acting as a director of a friendly society and specifies the grounds on which the Court may make such an order.

Clause 28 specifies the grounds on which, and the procedure by means of which, the Registrar may prohibit a director of a friendly society from acting as such.

Clause 29 adopts, in relation to a director of a friendly society, the provisions of the Companies (New South Wales) Code relating to the upper age limit for a director under the Code.

Clause 30 specifies the circumstances in which a director of a friendly society vacates office and the manner in which such a director may be removed from office.

Clause 31 penalises a director of a friendly society who knowingly authorises or permits the society to enter into a contract under which management of the affairs of the society is conferred on a person not associated with the society.

Clause 32 deals with the obligation of a director of a friendly society to disclose any conflict of interest and nullifies a vote by the director on any matter in relation to which the director has a conflicting interest.

Clause 33 penalises dishonest conduct, and certain other conduct, by an officer of a friendly society in the same way as similar conduct is penalised under the Companies (New South Wales) Code.

Clause 34 controls the lending of money by a friendly society to a director of the society.

Clause 35, with some qualifications, renders void a rule of, or contract with, a friendly society that would exempt an officer or employee from, or indemnify an

Friendly Societies 1989

officer or employee against, liability for negligence, default, breach of duty or breach of trust.

Clause 36 requires a friendly society to maintain adequate fidelity insurance.

Clause 37 obliges a friendly society to hold meetings in accordance with its rules, including an annual general meeting which must be held not later than 5 months after the end of its financial year.

Division 2 - Records

Clause 38 requires a friendly society to keep the registers specified in the provision and confers rights of inspection on the members of the society.

Clause 39 deals with the keeping of minutes of meetings of a friendly society and its directors.

Division 3 - Accounts and audit

Clause 40 requires a friendly society and its subsidiaries to keep the accounts and accounting records prescribed by the regulations and have them audited in accordance with the regulations.

Clause 41 requires an auditor of a friendly society to make certain reports to the Registrar.

Clause 42, with some qualifications, renders void a rule of, or contract with, a friendly society that would exempt an auditor of the society from, or indemnify an auditor against, liability for negligence, default, breach of duty or breach of trust.

Clause 43 confers qualified privilege in proceedings for defamation in respect of publication of certain matters by an auditor and others.

Clause 44 requires the directors of a friendly society to have certain information available for inspection by members of the society at least 14 days before each annual general meeting of the society.

Division 4 - Actuarial valuations

Clause 45 requires a friendly society to appoint an actuary for the funds of the society and in default of such an appointment, enables the Registrar to appoint the actuary.

Clause 46 provides for vacation of office by the actuary for a friendly society.

Clause 47 requires a friendly society to arrange for actuarial valuations of its funds.

Clause 48 regulates the distribution by a friendly society of a surplus in a fund of the society.

Clause 49 confers powers on the actuary for a friendly society in relation to the inspection of records and the obtaining of information and explanations.

Clause 50 penalises obstruction of an actuary exercising the functions conferred by the proposed Act.

Friendly Societies 1989

Clause 51 deals with the making of reports to the Registrar by an actuary.

Clause 52, with some qualifications, renders void a rule of, or contract with, a friendly society that would exempt an actuary for the society from, or indemnify an actuary against, liability for negligence, default, breach of duty or breach of trust.

Clause 53 confers qualified privilege in proceedings for defamation in respect of publication of certain matters by an actuary and others.

PART 5 - FUNDS

Division 1 - Raising and investment of funds

Clause 54 controls the borrowing of money, and the giving of security, by a friendly society.

Clause 55 applies to the giving of a mortgage or charge by a friendly society the provisions of the Companies (New South Wales) Code relating to the giving of a mortgage or charge by a company.

Clause 56 deals with the manner in which a friendly society may invest its funds.

Clause 57 imposes an obligation on the directors of a friendly society to monitor the activities of a subsidiary of the society.

Division 2 - Benefit funds

Clause 58 requires the establishment by a friendly society of a benefit fund for each class of benefit provided by it or, if the Registrar so requires, a combined fund for all of them.

Clause 59 imposes obligations in relation to payments to and from a benefit fund of a friendly society.

Clause 60 enables the Registrar to direct transfers of money between funds of a friendly society and the amalgamation or winding up of benefit funds.

Division 3 - Benefits

Clause 61 provides for the only manner in which a contract with a friendly society for the provision of benefits, including life insurance benefits, superannuation benefits or a benefit in the form of an annuity, may be assigned.

Clause 62 enables a member of a friendly society who is 16 or older to nominate a person to receive benefits payable by the society on the death of the member if the benefits do not exceed an amount fixed by the Registrar.

Clause 63 enables the Registrar to fix the maximum total amount payable by friendly societies on the death of a child under 10 years of age.

Division 4 - Actuarial certification of contribution rates

Clause 64 enables the Registrar to exempt a friendly society from compliance with provisions of the proposed Division.

Friendly Societies 1989

Clause 65 requires the contribution rates for a benefit payable by a friendly society to be contribution rates approved by an actuary in relation to the benefit.

Clause 66 controls the payment by a friendly society of a commission or rebate in respect of contributions for a benefit.

Division 5 - Surrender and alteration of benefits

Clause 67 defines an applicable benefit for the purposes of the proposed Division.

Clause 68 enables a member of a friendly society to surrender all or part of an applicable benefit for which the member has contributed.

Clause 69 deals with the alteration of an applicable benefit.

Division 6 - Operating standards

Clause 70 defines expressions used in the proposed Division.

Clause 71 authorises the making of regulations requiring the maintenance by a friendly society, or in a fund of the society, of minimum values of unencumbered assets and the making of regulations with respect to the holding by a friendly society of liquid assets.

Clause 72 imposes obligations on the directors of a friendly society in relation to compliance by the society with the requirements of regulations made for the purposes of the proposed Division.

Clause 73 enables the Registrar to monitor compliance by a friendly society with the requirements of regulations made for the purposes of the proposed Division.

PART 6 - TRANSFER OF ENGAGEMENTS AND AMALGAMATION OF SOCIETIES

Division 1 - Transfer of engagements

Clause 74 provides a procedure enabling a friendly society to transfer to another friendly society all of its engagements or all the engagements of a fund of the society.

Clause 75 enables the Registrar, on certain grounds and with the consent of the Minister given after consulting the Advisory Committee, to direct a transfer of engagements.

Clause 76 requires the Registrar, on a transfer of all the engagements of a friendly society, to cancel the registration of the transferor society and its certificate of incorporation or, on a transfer of the engagements of a fund of a society, to issue a certificate of confirmation of the transfer.

Division 2 - Amalgamation of societies

Clause 77 provides a procedure enabling 2 or more friendly societies to amalgamate.

Clause 78 specifies the publicity required to be given in relation to a proposed amalgamation of friendly societies.

Friendly Societies 1989

Clause 79 enables a foreign society to join in an amalgamation of friendly societies but only if the amalgamated society would not be a foreign society. A foreign society is a society that is similar to a friendly society and is constituted under the law of another State or a Territory.

Clause 80 provides for the registration of an amalgamation of societies, the incorporation of the amalgamated society, the cancellation of the certificates of incorporation of the amalgamating societies and the issue of a certificate of incorporation of the amalgamated society.

Division 3 - General

Clause 81 defines expressions used for the purposes of the proposed Division.

Clause 82 describes the effects of transfers of engagements and amalgamations.

Clause 83 requires an officer of a friendly society or a foreign society to take all reasonable steps to give effect to a transfer of engagements or amalgamation affecting the society.

PART 7 - ADMINISTRATION

Division 1 - The Registrar

Clause 84 appoints the registrar, and the deputy registrar, of co-operative societies holding office under the Co-operation Act 1923 as the Registrar, and the Deputy Registrar, of Friendly Societies under the proposed Act unless a different appointment is made under the Public Sector Management Act 1988.

Clause 85 enables the Registrar to grant an extension or abridgement of time for the exercise of a function under the proposed Act or the rules of a friendly society.

Division 2 - Friendly Societies Advisory Committee

Clause 86 constitutes the Friendly Societies Advisory Committee consisting of the Registrar and not fewer than 5 other members appointed by the Minister.

Clause 87 specifies the functions of the Advisory Committee.

Division 3 - Inspectors

Clause 88 provides for the appointment of inspectors for the purpose of carrying out inspections relating to the operations of friendly societies.

Division 4 - Investigations

Clause 89 defines expressions used for the purposes of the proposed Division.

Clause 90 enables the Registrar, with the consent of the Minister, to appoint an investigator to inquire into the affairs of a friendly society.

Clause 91 enables an investigator to require a person (defined as an involved person) to produce a document, assist the investigator or appear before the investigator for examination on oath.

Clause 92 enables a legal practitioner acting for an involved person to attend an examination of the involved person by an investigator and address the investigator. It requires an involved person to answer questions despite the possibility of self-incrimination but excludes truthful answers from admission in evidence in any criminal proceedings.

Clause 93 enables a legal practitioner for an involved person to refuse, in certain circumstances, to produce to an investigator a document that is a privileged communication between the solicitor and the involved person but requires the solicitor to provide the investigator with the name and address of the person entitled to the privilege.

Clause 94 penalises an involved person who refuses or fails to comply with a lawful requirement of an investigator, gives false or misleading information, refuses to take an oath or, on examination by an investigator, knowingly makes a false or misleading statement.

Clause 95 penalises a person who conceals, disposes of, or alters, a document relating to a friendly society under investigation unless it is proved that there was no intention to defeat, delay or obstruct the inquiry.

Clause 96 enables a record of the examination of an involved person to be used in legal proceedings unless it involves self-incrimination as provided by clause 92.

Clause 97 provides for the making of reports to the Registrar by an investigator.

Clause 98 obliges an involved person to assist the Registrar in relation to legal proceedings that the Registrar has instituted, or proposes to institute, as a result of an investigation.

Clause 99 provides for the admission of an investigator's report as evidence of facts found by the investigator to exist.

Clause 100 deals with the manner in which the costs of an inquiry by an investigator are to be met.

PART 8 - APPOINTMENT OF ADMINISTRATOR AND SUSPENSION OF OPERATIONS

Division 1 - Appointment and functions of administrator

Clause 101 enables the Registrar, with the consent of the Minister, to appoint an administrator to conduct the affairs of a friendly society.

Clause 102 deals with the consequences of an appointment of an administrator for a friendly society, including vacation of office by the directors of the society.

Clause 103 protects an administrator from liability for loss or damage sustained in respect of anything done in the exercise of the functions of the administrator unless it was the result of the wilful misconduct, or the negligence, of the administrator.

Clause 104 enables the Registrar to terminate the appointment of an administrator of the affairs of a friendly society.

Friendly Societies 1989

Division 2 - Suspension of operations of friendly society

Clause 105 enables the Registrar, with the consent of the Minister, to direct a friendly society not to borrow money, accept new members or, without the consent of the Registrar, accept a contribution, pay or surrender a benefit, or otherwise deal with the assets of the society.

PART 9 - OFFICIAL MANAGEMENT AND WINDING UP

Clause 106 applies Part X of the Companies (New South Wales) Code (relating to receivers and managers) and Part XI of that Code (relating to official management) to a friendly society, an association and a union of associations.

Clause 107 enables a friendly society, an association or a union of associations to be wound up voluntarily, or by the Supreme Court, or by order of the Registrar under proposed section 108, in the same way as a company may be wound up under Part XII of the Companies (New South Wales) Code.

Clause 108 provides for the winding up of a friendly society by order of the Registrar if certain grounds exist and the Minister consents.

Clause 109 provides for the disposal of any surplus resulting from the winding up of a friendly society.

Clause 110 requires the Registrar to cancel the registration of a friendly society that is dissolved on being wound up.

PART 10 - GENERAL

Clause 111 makes a certificate of incorporation of a friendly society conclusive evidence of the incorporation of the society. It also makes a certificate by the Registrar as to something done or omitted within a specified time evidence as to the matters certified.

Clause 112 requires a special resolution of a friendly society to be registered before it is effective and requires a copy of the resolution to be lodged for registration within 1 month after being passed.

Clause 113 confers a power of delegation on the Minister and the Registrar.

Clause 114 excludes the operation of the Insurance Act 1902 in relation to a contract between a friendly society and a member of the society.

Clause 115 controls advertising by a friendly society and a person seeking members of a proposed friendly society.

Clause 116 controls the operations of foreign societies within the State.

Clause 117 enables a friendly society, in certain circumstances, to pay a benefit on the death of a member without requiring production of probate or letters of administration.

Clause 118 enables a person affected by a decision of the Registrar to require the Registrar to review the decision and, if dissatisfied with the result of the review, to appeal to the Supreme Court.

Friendly Societies 1989

- Clause 119 provides for the issue of search warrants.
- Clause 120 provides for the manner of service of documents under the proposed Act.
- Clause 121 enables reciprocal arrangements to be made with other States, and the Territories, for the exchange of information in relation to friendly societies and similar organisations.
- Clause 122 provides for the inspection, and the provision of copies, of documents registered under the proposed Act.
- Clause 123 imposes obligations of secrecy on persons who are, or were, engaged in the administration of the proposed Act or the Friendly Societies Act 1912.
- Clause 124 penalises a person who obstructs or hinders the Registrar, or an inspector, or an investigator exercising functions under the proposed Act.
- Clause 125 imposes penalties in relation to false or misleading statements.
- Clause 126 requires proceedings for offences under the proposed Act to be taken before a Local Court or before the Supreme Court in its summary jurisdiction but limits the penalty that may be imposed by a Local Court.
- Clause 127 makes a consequential amendment to the Search Warrants Act 1985.
- Clause 128 makes a consequential amendment to the Friendly Societies Dispensaries Enabling Act 1945.
- Clause 129 repeals the Friendly Societies Act 1912 and an unrepealed amending Act.
- Clause 130 gives effect to Schedule 3 which contains transitional provisions.
- Clause 131 authorises the making of regulations for the purposes of the proposed Act.

SCHEDULE 1 - REPEALS

This Schedule specifies the Friendly Societies Act 1912 and the Friendly Societies (Amendment) Act 1976 as the Acts to be repealed.

SCHEDULE 2 - RULES TO BE MADE FOR FRIENDLY SOCIETY

This Schedule sets out matters that must be dealt with in the rules of a friendly society as required by proposed section 23. A society is at liberty to include other rules.

Friendly Societies 1989

SCHEDULE 3 - TRANSITIONAL PROVISIONS

Part 1 - Preliminary

Clause 1 authorises the making of regulations of a savings or transitional nature.

Part 2 - Provisions consequent on enactment of this Act

Clause 2 defines expressions used in proposed Schedule 3 including "former Act" (the Friendly Societies Act 1912), "former society" (a friendly society registered under the former Act) and "continuing society" (a friendly society incorporated by clause 3).

Clause 3 dissolves a former society on the repeal of the former Act and constitutes in its place a corporation that is a continuation of the former society.

Clause 4 provides for the transfer from a former society to the continuing society of membership, assets, liabilities and related rights and obligations.

Clause 5 continues the Friendly Societies Advisory Committee constituted under the former Act as the Friendly Societies Advisory Committee constituted under the proposed Act.

Clause 6 provides for an inspector holding office for the purposes of the former Act to continue in office as an inspector under the proposed Act.

Clause 7 enables a foreign society to apply before the commencement of proposed section 116 for the approval of the Registrar that, after that commencement, would be required in relation to certain operations of the society in New South Wales.

Clause 8 continues subventions operating under Part 8 of the former Act immediately before its repeal.

Clause 9 enables the directors of a continuing society to adopt prescribed model rules pending their consideration by a general meeting of the society.

Clause 10 provides for the references in other Acts and instruments to the former Act to be read as references to the proposed Act.

Clause 11 provides that proposed section 130 and this Schedule do not affect the operation of the Interpretation Act 1987 (which provides for savings on the repeal of an Act).