

Queensland



FRIENDLY SOCIETIES ACT 1991

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SCHEDULE 1

SCHEDULE 2

Queensland



Friendly Societies Act 1991

Act No. 38 of 1991

**An Act relating to the formation and regulation of friendly societies
and for other purposes**

[Assented to 12 June 1991]

No. 38, 1991

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART 1—PRELIMINARY

Short title

1.1 This Act may be cited as the *Friendly Societies Act 1991*.

Commencement

1.2(1) Section 1.1, this section and section 13.9 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

Definitions

1.3(1) In this Act, unless the contrary intention appears—

“**accounting records**” include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) 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;

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“advertisement” includes—

- (a) any method of conveying information to the public (whether in writing or pictorially or otherwise, including by any circular, leaflet, newspaper, publication or other document, by any placard, poster or sign or by any public announcement made by means of producing or transmitting light or sound); and
- (b) an investor information memorandum; and
- (c) the promotion or sponsorship of an activity or the sponsorship of a person, which has the effect of inviting investment in a friendly society or a proposed friendly society;

“annual general meeting”, in relation to a friendly society, means a meeting of the society required to be held by section 4.19;

“bank” means—

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

“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;

“books” includes any register or other record of information and any accounts or accounting records however compiled, recorded or stored and also includes any document;

“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—

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(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” means a company incorporated or taken to be incorporated under the Corporations Law of Queensland;

“corporation” means any body corporate whether formed or incorporated within or outside the State but does not include—

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

(b) a corporation sole;

“Court” means the Supreme Court of Queensland or a Judge of that Court;

“declared law” means a law of another State or of a Territory, being a law in respect of which a declaration referred to in subsection (2) is in force;

“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;

“director”, in relation to a friendly society, has the meaning expressed in section 28;

“document” includes—

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(a) any paper or other material on which there is writing or printing or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and

(b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced; and

(c) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device;

“executive officer”, in relation to a friendly society, means any person, by whatever name called, and whether or not he or she is a director of the society, who is concerned or takes part in the management of the society;

“expert” in relation to a matter means any person whose profession or reputation gives authority to a statement made by that person in relation to that matter;

“foreign friendly society” means a friendly society formed and registered or taken to be formed and registered under a declared law;

“friendly society” means a corporation constituted by section 3.2 or Part 13;

“holding friendly society” means a friendly society of which a corporation is a subsidiary;

“insolvent under administration” has the same meaning it has in the Corporations Law of Queensland;

“investigator” means a person appointed under section 8.15;

“investor information memorandum” means a written notice or other instrument—

(a) inviting applications for investment in a friendly society or proposed friendly society; or

(b) offering investment in a friendly society or proposed friendly society;

“issue” includes circulate, distribute and disseminate;

“member”, in relation to a friendly society, means an individual admitted to

membership of a society in accordance with the rules of the society;

“officer”, in relation to a friendly society, means—

- (a) a director, secretary or executive officer of the society; or
- (b) a receiver, or receiver and manager, of the property or part of the property of the society; or
- (c) an administrator of the society; or
- (d) a liquidator of the society;

“persons claiming through a member” includes the beneficiaries, executors, administrators and assigns of a member, and also the member’s nominees where nomination is allowed under this Act;

“principal executive officer”, in relation to a friendly society, means the principal executive officer of the society for the time being, by whatever name called, and whether or not the person is a director;

“property” includes real and personal property and any estate, share or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“publish” includes issue;

“Registrar” means the Registrar of Commercial Acts, Brisbane, appointed under the *Administration of Commercial Laws Act 1962*;

“related body corporate”, in relation to a friendly society, means a body corporate that would be related to the society for the purposes of the Corporations Law of Queensland if the society were a company within the meaning of that Law;

“reproduction”, in relation to a document, has the meaning given in Part VII of the *Evidence Act 1977*;

“rules” means the rules of a friendly society for the time being in force;

“special resolution” has the meaning given in section 4.23;

“spouse” includes de facto spouse;

“State 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 State Actuary by an order of the Minister that is published in the Gazette and names the actuary or specifies the office;

“**subsidiary**”, in relation to a friendly society, means a body corporate that would be a subsidiary for the purposes of the Corporations Law of Queensland if the friendly society were a company within the meaning of that Law;

“**transparency**”, in relation to a document, has the meaning given in Part VII of the *Evidence Act 1977*.

(2) The Governor in Council may by Order in Council declare a law of another State or of a Territory to be a declared law for the purposes of this Act and may in like manner vary or revoke such a declaration.

Application of Corporations Law of Queensland

1.4(1) Except as provided by this section, the Corporations Law of Queensland does not apply to a friendly society.

(2) The only provisions of the Corporations Law of Queensland 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 authorised trustee corporation as defined in section 9 of the Corporations Law of Queensland.

(4) A regulation may apply to friendly societies, with or without modification, a provision of the Corporations Law of Queensland, 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

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the Corporations Law of Queensland 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 Corporations Law of Queensland to which the regulation relates.

Relief from requirements

1.5(1) The directors of a friendly society may apply to the Registrar in writing for an order relieving them, officers of the society, the society or the auditor or actuary of the society from compliance with any specified provisions of Divisions 1, 4 and 5 of Part 4, Division 4 of Part 5 and Divisions 1 and 2 of Part 6 and the Registrar may make such an order either unconditionally or subject to conditions specified in the order.

(2) The Registrar may require the directors making the application to supply such information relating to the operations of the friendly society as the Registrar thinks necessary for the purpose of determining the application.

(3) Notice of an order under subsection (1) must be served on the friendly society to which it relates.

(4) The Registrar may make an order under subsection (1) that is limited to a specific period and may from time to time either on application by the directors, or without any such application, revoke, vary or suspend the operation of the order.

(5) The Registrar must not make an order under subsection (1) in relation to a friendly society unless, in relation to the provision of this Act specified in the order, the Registrar is of the opinion that compliance with the provision—

- (a) would be inappropriate in the circumstances of the society; or
- (b) would impose unreasonable burdens on the society, an officer of the society or the auditor or actuary of the society.

PART 2—OBJECTS AND FUNCTIONS

Objects

2.1 A friendly society may be formed for all or any of the following objects—

- (a) the provision of health and welfare facilities and services for members or their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical, physiotherapy and speech therapy;
- (b) the provision of facilities and benefits for the relief and maintenance of members or their dependants in the case of birth, death, sickness, disability, accident, retirement, old age and unemployment;
- (c) the provision of annuities, life insurance and superannuation benefits for members or their dependants;
- (d) the provision of services and benefits for the education of members and their dependants;
- (e) any other object prescribed by the regulations.

Principal functions of a friendly society

2.2(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) provide financial or advisory services for the relief or support of members or their dependants; and
- (b) operate a managed fund including an approved deposit fund within the meaning of section 27A(1) of the *Income Tax Assessment Act 1973* of the Commonwealth; and
- (c) provide or manage social facilities, social functions and leisure services for members or their dependants; and
- (d) provide insurance and reinsurance services for members or their

dependants; and

(e) arrange for the provision of legal services to members or their dependants; and

(f) have a corporation as its subsidiary; and

(g) appoint agents to act on behalf of the friendly society; and

(h) act as an agent for members and receive commissions in that capacity; and

(i) act as an agent for any person providing a service to members and receive commissions in that capacity; and

(j) enter into a joint venture with any other friendly society or foreign friendly society; and

(k) co-operate with any other friendly society; and

(l) carry out its objects and exercise its powers at any place outside the State; and

(m) exercise any other function prescribed by the regulations.

(3) A friendly society that has as an object the provision of health and welfare facilities and services for members or their dependants may, despite anything contained in this Act or in any other Act or law—

(a) sell or supply medical requisites; and

(b) dispense or sell medicines;

to members of the public generally, whether members of the society or not, in the same manner and to the same extent as a pharmacist registered under the *Pharmacy Act 1976* may do so if the practice of the society is under the actual personal supervision of a pharmacist registered under that Act.

PART 3—REGISTRATION AND INCORPORATION

Division 1—Friendly Societies

Application for registration of friendly society

3.1(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 individuals 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.

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(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.

Registration and incorporation

3.2(1) If the Registrar is satisfied—

- (a) that the friendly society has complied with the provisions of this Act in respect of matters precedent to the registration of the society and incidental to its registration; and
- (b) that the proposed rules of the society conform with the requirements of this Act, are adequate for the proper conduct and operation of the society and are such as may be reasonably registered; and
- (c) that the experience and educational qualifications of every proposed executive officer of the society are adequate having regard to the duties likely to be performed by the officer and the business plan;

and is of the opinion—

- (d) that there are reasonable grounds for believing that the society, if registered, will be able to carry out its objects successfully; and
- (e) that there is no reasonable cause why the society and its proposed rules should not be registered;

the Registrar must register the society and its proposed rules.

(2) Upon registration of the friendly society, the persons who are the members of the society, together with such persons as may from time to time become members of the society, become a corporation by the name by which the society is registered.

(3) The corporation—

- (a) has perpetual succession and a common seal; and
- (b) may acquire, hold, mortgage, lease and otherwise deal with and

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dispose of property; and

(c) is, in its corporate name, capable of suing and being sued; and

(d) has power to enter into contracts; and

(e) has the powers, rights and functions otherwise conferred, imposed or prescribed by or under this Act or, subject to this Act, conferred, imposed or prescribed by the rules of the society.

(4) 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 by which it is registered.

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

(6) The expenses of and incidental to the formation of a friendly society may be paid out of capital or income.

Conditions

3.3(1) If the Registrar is of the opinion that it is necessary or desirable to do so in the interests of members or creditors of a friendly society or in the public interest, the Registrar may, by notice in writing served on the society, restrict the society to providing specified benefits or classes of benefit.

(2) A notice served under subsection (1) is not effective unless it is served within 7 working days after the society is registered.

(3) If at any time the Registrar is of the opinion that a requirement imposed on a society under this section is no longer necessary or should be varied the Registrar may, by notice in writing served on the society, withdraw the requirement or, as the case may be, vary it.

(4) If a friendly society contravenes a requirement imposed on it under this section, an officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Undesirable name not permitted

3.4(1) Except with the consent of the Minister, a friendly society must not be registered by a name that is a name, or a name of a kind, that the

Minister has directed the Registrar not to accept for registration.

(2) Notification of each direction given by the Minister and referred to in subsection (1) must be published in the Gazette.

Certain words to be included in name

3.5(1) A friendly society must have the words “Friendly Society”, without abbreviation, as part of its name.

(2) Subsection (1) does not apply to a friendly society that was registered as a society under the *Friendly Societies Act 1913* immediately before the commencement of section 12.25, if the society is exempted in writing by the Registrar.

Common seal of friendly society to be inscribed with name

3.6 The common seal of a friendly society is of no effect unless the registered name of the society is inscribed on the seal in legible letters.

Publication of name of friendly society

3.7(1) Every friendly society must—

(a) display in a conspicuous position in letters easily legible on the outside of every office or place in which the business of the society is carried on—

(i) its registered name; and

(ii) in the case of its registered office—the words “Registered Office”; and

(b) have its registered name stated in legible characters in all notices, advertisements and other official publications of the society and in every business document of the society.

(2) The Registrar, on application from a friendly society, may approve the use of an abbreviated form of name of the society to be used subject to such conditions as the Registrar may impose in place of the full name of the society as required by subsection (1).

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Use of name by friendly society

3.8(1) A director of a friendly society must not authorise or permit the society to use any name other than—

- (a) its registered name; or
- (b) an abbreviated name approved by the Registrar under section 3.7(2); or
- (c) a business name approved in writing by the Registrar and registered in respect of the society under the *Business Names Act 1962*.

(2) An officer of a friendly society, or a person acting on its behalf, must not use a seal that purports to be the seal of the society and on which the society's registered name does not appear.

(3) An officer of a friendly society, or a person acting on its behalf, must not—

- (a) issue or authorise the issue of any notice, advertisement or other official publication of the society; or
- (b) sign or authorise to be signed on behalf of the society any business document of the society;

wherein, in respect of the society, a name referred to in subsection (1) (a) or (b) does not appear.

(4) A person who contravenes this section commits an offence.

Change of name of friendly society

3.9(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—

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- (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.

(6) In the case of any estate or interest in land registered in the name of a friendly society before its change of name—

- (a) the Registrar of Titles, where the *Real Property Act 1861* applies to such estate or interest; or
- (b) the person or authority charged with registering instruments of title to or dealings with such estate or interest, where that Act does not apply;

may, without any authority other than this Act and without payment of any fee—

- (c) make or cause to be made any necessary recordings in the appropriate register or other record of titles or dealings; and
- (d) do and execute all such acts, matters and things as may be necessary and proper;

to give full effect to the change of name of the society.

Use of words “friendly society”

3.10(1) No person or body of persons, whether incorporated or unincorporated, other than a friendly society, or a foreign friendly society registered under Part 11, may—

- (a) trade or carry on business under any name or title of which the words “friendly society” or the words “friendly societies” or any other words importing a similar meaning, form part; or
- (b) in any manner hold out that it is, or its trade or business is that of,

a friendly society, or a foreign friendly society registered under Part 11.

(2) Subsection (1) does not apply to a foreign friendly society for the period of one month after it commences to trade or carry on business in the State.

(3) For the purposes of subsection (2), a foreign friendly society which immediately before the date of commencement of this section was trading or carrying on business in the State and, on that date, continues to trade or carry on business in the State is taken to have commenced to trade or carry on business in the State on that date.

(4) Any society or corporation formed or incorporated outside the State (other than a foreign friendly society) that desires to trade or carry on business in the State may apply in the prescribed form to the Registrar for exemption from the provisions of subsection (1) and that subsection does not apply to any such society or corporation in respect of which the Registrar has granted exemption while that exemption subsists.

(5) The Registrar may grant an exemption for the purposes of subsection (4) for such time and upon such conditions as the Registrar thinks fit and may revoke the exemption or vary the conditions.

(6) The Registrar must not grant an exemption for the purposes of subsection (4) unless satisfied that the society or corporation will be able to trade or carry on business in the State in accordance with the principles contained in this Act for the carrying on of the business of a friendly society.

(7) Any person contravening this section and, in the case of a corporation or an unincorporated body of persons contravening this section, any director or other person having the control and management of the affairs of the corporation or body of persons contravening, each commit an offence.

(8) In subsection (1)—

“trade or carry on business” includes—

- (a) the establishing or using of an office for the receipt of monies; or
- (b) advertising for or otherwise seeking the payment of monies; or
- (c) the making of loans or the payment of benefits to persons residing in the State;

whether by servants or agents or otherwise.

Registered office

3.11(1) A friendly society must have a registered office within the State to which all communications and notices may be addressed.

(2) The persons making application for registration of a friendly society must lodge with the Registrar a notice in the prescribed form of the address of the proposed registered office.

(3) Notice in the prescribed form of a change in the situation of the registered office of a friendly society must be lodged by the society with the Registrar not later than 14 days after the day on which the change occurred.

(4) The situation of the registered office of a friendly society—

(a) in a case to which paragraph (b) does not apply—is the place notice of the address of which has been lodged with the Registrar under subsection (2);

(b) if a notice of change of address has been lodged with the Registrar under subsection (3)—is from the date on which the notice is lodged, the place the address of which is specified in the notice.

(5) In the application of subsection (4) to a friendly society that has lodged more than one notice of change of address under subsection (3), a reference in paragraph (b) of subsection (4) to a notice is to be construed as a reference to the notice last lodged.

(6) The situation of the registered office of a friendly society that was registered as a society under the *Friendly Societies Act 1913* immediately before the commencement of section 12.25 is, unless and until a notice is lodged with the Registrar in relation to the society under subsection (3), the place that was, immediately before the commencement of this section, its registered office for the purpose of that Act.

Service of documents

3.12(1) A document may be served on a friendly society by leaving it at, or by sending it by post to, its registered office.

(2) Without limiting the operation of subsection (1), a document may be

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served on a friendly society by delivering a copy of the document personally to each of 2 directors of the society who reside in the State or by sending a copy of the document by post to each of 2 such directors at the address of those directors last known to the person sending the copy of the document.

(3) Where a liquidator of a friendly society has been appointed, a document may be served on the society by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged with the Registrar.

Minors

3.13(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.

Division 2—Rules

Rules of friendly society

3.14(1) The rules of a friendly society 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 served on the society.

(2) The rules of a friendly society have effect as a contract that is

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executed under seal and requires—

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

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 friendly society.

(4) Where there is any inconsistency between a rule of a friendly society and a provision of this Act the latter prevails and the former is, to the extent of the inconsistency, invalid.

Model rules

3.15(1) Model rules for friendly societies may be prescribed.

(2) A friendly society may adopt as the whole or part of its rules the whole or any part of the model rules, with or without modification.

Alteration of rules

3.16(1) A proposed alteration of the rules of a friendly society 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 with any other Act or any law; and
- (c) it is registered as prescribed.

(2) A proposed alteration may be made by resolution of the directors of the friendly society 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 society is not necessary and alteration by the directors

would be appropriate.

(3) If the Registrar is satisfied—

- (a) that approval of the application for registration of an alteration would be reasonable; and
- (b) that, except for 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 register the alteration as prescribed.

(4) If the rules of a friendly society are altered, it must give written notice of the alteration to its members not later than the date on which notice is given of the annual general meeting of the society that next succeeds the alteration.

(5) The notice referred to in subsection (4) must be given to members personally or in such other manner as the Registrar approves.

(6) If a friendly society contravenes subsection (4), any officer of the society who is in default commits an offence.

When Registrar may refuse to register rules

3.17 The Registrar may refuse registration of a rule or an alteration of a rule that, in the Registrar's opinion—

- (a) is inconsistent with this Act or any other Act or law;
- (b) provides insufficient contributions or excessive benefits; or
- (c) would adversely affect the financial position of a friendly society;
or
- (d) adversely affects the rights of members or any class of members;
or
- (e) imposes any inequitable provision relating to the settlement of disputes.

Supplying copies of rules

3.18 A friendly society must, on payment of any fee required by the rules, supply a copy of its rules to any member who requests them.

PART 4—MANAGEMENT***Division 1—Directors and Officers*****Definition of director**

4.1(1) Subject to subsection (2), a reference to a director, in relation to a friendly society, includes a reference to—

- (a) a person occupying or acting in the position of director of the society, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and
- (b) a person in accordance with whose directions or instructions the directors of the society are accustomed to act.

(2) A person is not a person in accordance with whose directions or instructions a friendly society's directors are accustomed to act merely because the directors act on advice given by the person in the proper performance of the functions attaching to the person's professional capacity or to the person's business relationship with the directors.

Consent of person to appointment as director

4.2 A person may not be appointed as director of a friendly society unless the person has consented to the appointment in writing.

Directors

4.3(1) The business and operations of a friendly society are to be managed and controlled by a board of at least 5 and not more than 9 directors each of whom is a member of the society and the majority of

whom must be resident in the State.

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

(3) Subject to any restrictions imposed by this Act or by the rules of the friendly 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 friendly 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 friendly 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.

Age of directors

4.4(1) The provisions of section 228 (1) to (7) inclusive of the Corporations Law of Queensland 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

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years.

(4) A person under the age of 18 years is incapable of being appointed as a director of a friendly society.

Disqualification from acting as director

4.5(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 229 (3) of the Corporations Law of Queensland; 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 society or building society; or
- (c) has been convicted of an offence under section 4.14.

(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;

commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

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

Penalty—100 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 *prima facie* evidence of the matter certified.

Circumstances in which director ceases to hold office

4.6(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 Court under section 4.11 or an order of the Registrar under section 4.12; or
- (c) becomes an insolvent under administration; or
- (d) is admitted into and detained in a hospital, as a patient or otherwise, for treatment for mental illness under the *Mental Health Services Act 1974* or becomes a protected person within the meaning of Part VI of the *Public Trustee Act 1978*; 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 4.5; 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.

Disclosure of interest

4.7(1) A director of a friendly society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the

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society (not being a contract with respect to the payment of a benefit) must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the director's interest to the board in accordance with this section.

(2) The requirements of subsection (1) do not apply in any case where the interest of a director of a friendly society consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the society if the interest of the director may properly be regarded as not being a material interest.

(3) In the case of a proposed contract, the declaration required by this section to be made by a director must be made—

- (a) at the meeting of the board at which the question of entering into the contract is first taken into consideration; or
- (b) if the director was not present at the meeting referred to in paragraph (a), at the next meeting of the board held thereafter; or
- (c) if the director was not at the date of the meeting referred to in paragraph (a) interested in the proposed contract, at the next meeting of the board held after he or she becomes interested in the proposed contract;

as the case may require.

(4) Where the director becomes interested in a contract after it is made, the declaration must be made at the first meeting of the board held after the director becomes interested in the contract.

(5) For the purposes of this section, a general notice in writing given to all the other directors by a director to the effect 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 board, or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board after it is given.

(6) A director of a friendly society who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director, must, in accordance with subsection (7), declare at a meeting of the board the fact and the nature, character and extent of the conflict.

(7) A declaration required by subsection (6) in relation to the holding of an office or the possession of any property must be made by a person—

(a) where the person holds the office or possesses the property as mentioned in subsection (6) when the person becomes a director—at the first meeting of the board held after—

(i) the person becomes a director; or

(ii) the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge, whichever is later; or

(b) where the person begins to hold the office or comes into possession of the property as mentioned in subsection (6) after the person becomes a director—at the first meeting of the board held after the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge.

(8) Nothing in this section is to be taken to prejudice the operation of any rule of law, or any provision in the society's rules, restricting directors of a friendly society from having any interest in contracts with the society or affecting the obligations of a director to account for any profit arising from any such contract or prohibiting a director from holding offices or possessing property involving duties or interests in conflict with duties or interests as a director.

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

(10) 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.

(11) A director who contravenes this section commits an offence.

Secretary

4.8(1) The board of a friendly society must appoint an individual who has attained the age of 18 years and who is resident in the State to be the secretary of the society.

(2) If the office of secretary is vacant or for any other reason the secretary is not capable of acting, any act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary or no assistant or deputy secretary is capable of acting, by or in relation to any officer of the society authorised by the directors to act as secretary either generally or in relation to the doing of that act or thing.

(3) A provision of this Act or the rules requiring or authorising any act or thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

Liability of, and indemnity for, officers and employees

4.9(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) 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.

Remuneration of directors

4.10(1) A director of a friendly society must not be paid any remuneration for services as a director other than the fees, salary or other monetary consideration, concessions and other benefits that are approved at a general meeting of the society.

(2) Despite subsection (1), a director may be paid all travelling and other expenses properly incurred by the director in attending and returning from meetings of the directors, or any committee of the directors, or general meetings of the friendly society or otherwise in connection with its business.

Court may prohibit person from acting as director, etc., in certain circumstances

4.11(1) Unless cause to the contrary is shown, the Court may, on an application by the Registrar and on being satisfied as to the matters referred to in subsection (2), make an order prohibiting a person specified in the order from acting as a director of, or from being concerned or taking part in the management of, a friendly society during such period, not exceeding 5 years, after the date of the order as is specified in the order.

(2) The Court must not make an order under subsection (1) unless it is satisfied—

(a) that the person to whom the application for the order relates was given notice of the application; and

(b) that, within the period of 7 years before notice of the application

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was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of this section, that person was a director of, or was concerned or took part in the management of—

(i) a friendly society—

(A) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due; or

(B) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 482 of the Corporations Law of Queensland as applied to the winding up by Part 10; or

(C) in respect of which an administrator has been appointed under this Act because it was unable to pay all its debts in full; or

(ii) a corporation other than a friendly society—

(A) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due; or

(B) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 482 of the Corporations Law of Queensland or an equivalent previous enactment; or

(C) that has been or is under official management or a like form of administration; or

(iii) a friendly society or other corporation—

(A) that has ceased to carry on business because it was unable to pay its debts as and when they became due; or

(B) in respect of which a levy of execution was not satisfied; or

(C) in respect of the property or part of the property of

which a receiver, or a receiver and manager, has been appointed, whether by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated; or

(D) that has entered into a compromise or scheme of arrangement with its creditors; and

(c) that the manner in which the affairs of the friendly society or other corporation had been managed was wholly or partly responsible for any of the events referred to in paragraph (b) in relation to the society or, as the case may be, other corporation.

(3) A person who contravenes an order under this section commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

(4) Subsection (3) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

Prohibition by Registrar against acting as director

4.12(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 or may arrange with the Registrar a time and place to be heard by the Registrar.

(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

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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-operative and Other Societies Act 1967*, the *Building Societies Act 1985*, the *Credit Societies Act 1986* or the *Friendly Societies Act 1913*.

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

- (a) to make representations to the Registrar; or
- (b) to arrange to be heard by the Registrar;

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

(5) If a director who makes written representations to, or is heard by, the Registrar fails to show the requisite cause to the Registrar's satisfaction, the Registrar may 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 not more than 5 years.

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

Penalty—50 penalty units or imprisonment for 12 months, or both.

Acting as director after office vacated

4.13 A person who knowingly purports to exercise the powers of a director of a friendly society after that person's office as director has been vacated and any director of a society who knowingly permits or suffers any person to exercise the powers of a director after that person's office as director has been vacated commits an offence.

Duty and liability of officers

4.14(1) An officer of a friendly society who fails to act honestly in

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exercising the functions of such an officer commits an offence.

Penalty—

(a) where paragraph (b) does not apply—100 penalty units or 12 months imprisonment, or both; or

(b) where the offence was committed with intent to deceive or defraud the society, members or creditors of the society or creditors of any other person or for any other fraudulent purpose—350 penalty units or imprisonment for 5 years, or both.

(2) An officer of a friendly society who fails to exercise a reasonable degree of care and diligence in exercising the functions of such an officer commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

(3) An officer of a friendly society—

(a) who does; or

(b) aids, abets, counsels or procures or by act or omission is in any way directly or indirectly concerned in or party to the doing of;

any act or thing that is directed to an object that is not an object of the society, commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

(4) An officer or employee of a friendly society or a former officer or employee of a friendly society who makes improper use of information acquired by virtue of his or her position as an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the society commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(5) An officer or employee of a friendly society who makes improper use of his or her position as an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the society commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(6) Where—

(a) a person is convicted of an offence under this section; and

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(b) the court is satisfied that the friendly society has suffered loss or damage as a result of the act or omission that constituted the offence;

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the society of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

(7) Where a person contravenes a provision of this section in relation to a friendly society, the society may, whether or not the person has been convicted of an offence under this section in relation to that contravention, recover from the person as a debt due to it by action in any court of competent jurisdiction—

(a) if that person or any other person made a profit as a result of the contravention—an amount equal to that profit; and

(b) if it has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

(8) This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a friendly society and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Management contracts

4.15(1) A friendly society must not enter into a management contract.

(2) If a management contract is entered into in contravention of subsection (1), any officer of the society who is in default commits an offence.

Penalty—200 penalty units or imprisonment for 2 years, or both.

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

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

(5) A management contract made before the commencement of this section becomes void—

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(a) where paragraph (b) does not apply—9 months after that commencement;

(b) where the Registrar in a particular case determines that the contract is to become void at some later time—at that later time.

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

(7) Upon a management contract, to which a friendly society is a party, becoming void under subsection (5) all books and records held by any other party to the contract that relate to the affairs and activities of the society belong to the society and the other party must, within 14 days of the avoidance, take all practical steps necessary to transfer the control of the books and records to the society.

(8) A person who contravenes subsection (7) commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(9) A person required to transfer the control of any books or records to a friendly society under subsection (7) who—

(a) conceals, destroys, mutilates or alters the books or records; or

(b) sends, attempts to send or conspires with another person to send the books or records out of the State;

commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

(10) It is a defence to a prosecution alleging an offence against subsection (9) to prove that the person charged did not act with intent to defraud any person.

(11) If monies are paid to a person by a friendly society under a management contract entered into in contravention of subsection (1), then, despite subsections (3) and (4), the person is liable to repay the monies to the society and they may be recovered by the society from the person by action as for a debt in any court of competent jurisdiction.

(12) Where monies are paid to a person as referred to in subsection (11), an officer of the friendly society who wilfully made, authorised or permitted the payment is liable to pay to the society the amount paid and that amount

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may be recovered by the society from the officer by action as for a debt in a court of competent jurisdiction.

(13) Monies may not be recovered under both subsections (11) and (12) in respect of the same payment.

(14) Subsections (1), (3) and (4) do not apply to arrangements made with the approval of the Registrar for the management of a pharmacy.

(15) 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, fund manager, 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.

Loans to directors and related persons

4.16(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) If a friendly society contravenes subsection (2), any officer of the society who is in default commits an offence.

Penalty—

(a) where paragraph (b) does not apply—100 penalty units or imprisonment for 12 months, or both; or

(b) where the offence was committed with intent to deceive or defraud the society, members or creditors of the society or creditors of any other person or for any other fraudulent purpose—350 penalty units or imprisonment for 5 years, or both.

(4) Where a friendly society makes a loan in contravention of this section, the directors are jointly and severally liable to indemnify the society against any loss arising from the making of the loan.

(5) It is a defence to a proceeding instituted in respect of a liability under subsection (4) if it is proved that the defendant had no knowledge of the making of the loan.

(6) Nothing in this section prevents the society from recovering the amount of, or of any interest on, any loan made contrary to this section.

(7) This section is in addition to, and not in derogation of any other law in force.

(8) 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.

(9) 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.

(10) 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.

Returns relating to directors and other officers

4.17(1) A friendly society must lodge with the Registrar—

(a) within one month after a person ceases to be, or becomes, a director of the society, a return in the prescribed form notifying the Registrar of that fact and containing, with respect to each person who is, at the time of lodgment of the return, a director of the society, the particulars required to be specified in the register kept under section 4.26(1)(b); and

(b) within one month after a person becomes the principal executive officer or secretary of the society, a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation (if any) of that person; and

(c) within one month after a person ceases to be the principal executive officer or secretary of the society, a return in the prescribed form notifying the Registrar of that fact.

(2) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

(3) The Registrar may at any time, by notice in writing served on a person who appears to the Registrar to be a director or the principal executive officer or secretary of a friendly society, require the person to lodge with the Registrar, within a period specified in the notice, a notice in the prescribed form stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which the person so ceased.

A person who fails to comply with a notice of the Registrar served under this subsection commits an offence.

(4) A certificate of the Registrar stating that, from any return or notice lodged with the Registrar pursuant to this section, it appears that at any time specified in the certificate, or throughout a period specified in the certificate,

a person was a director or the principal executive officer or secretary of a friendly society is, in any proceedings, to be received as *prima facie* evidence of the facts stated in the certificate.

Fidelity insurance

4.18(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, any officer of the society who is in default commits an offence.

Division 2—Meetings and Voting

Meetings

4.19(1) Every friendly society must, in addition to any other meeting held by it, hold a general meeting to be called the “annual general meeting” within 5 months after the close of its financial year.

(2) The Registrar may, on written application made by a friendly society in accordance with a resolution of the board and signed by a director or the secretary and subject to such conditions as the Registrar thinks fit, extend the period of 5 months referred to in subsection (1).

(3) An application by a friendly society for an extension of time under subsection (2) must be made before the expiration of the period in which the annual general meeting would otherwise be required by subsection (1) to be held.

(4) A friendly society is not in default in holding an annual general

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meeting if that meeting is held within the extended period in which, under subsection (2), it is permitted to be held.

(5) Meetings of a friendly society must be held in the State and, subject to this section, in accordance with the society's rules.

(6) At any meeting of a friendly society no item of business may be transacted unless a quorum of members entitled under the rules to vote is present at the meeting during the time when the meeting is considering that item.

(7) A quorum at any meeting of a friendly society must be constituted as provided for in its rules but must not, unless the Registrar in relation to a particular society otherwise permits, be less than 8 members who are personally present and entitled to vote.

(8) Subject to subsections (9) and (10), notice of every meeting of a friendly society must be—

- (a) given to the Registrar by the sending of written notice thereof to the Registrar; and
- (b) given to all members as at the date of calling the meeting in such manner as is provided for in the rules of the society.

(9) Subject to subsection (10) it is sufficient compliance with the provisions of subsection (8)(b) if the notice is advertised in such a way as to comply in all respects with the requirements prescribed for such advertising.

(10) Not less than—

- (a) in the case of a meeting of a friendly society called for the purpose of passing a special resolution, 21 days notice must be given; and
- (b) in the case of a meeting called for a purpose other than that referred to in paragraph (a), 14 days notice must be given.

(11) If default is made in holding an annual general meeting under this section or in complying with any conditions imposed by the Registrar under subsection (2)—

- (a) any officer of the friendly society who is in default commits an offence; and

(b) the Court may, on the application of any member, order a general meeting to be convened.

Voting

4.20(1) Except as provided by section 4.22 or 4.23 or the rules of the friendly society, every question for decision by a meeting of a society is to be determined by a majority of the votes which the persons present in person at the meeting are entitled to cast and, unless a poll is demanded by at least 5 persons present in person who are entitled to vote on the question, the question is to be determined by a show of hands.

(2) Notwithstanding any provisions of the rules of a friendly society to the contrary, a person may not vote by proxy at a meeting of the society.

(3) In the case of an equality of votes on a show of hands or on a poll at any meeting of a friendly society or of the board, the chairperson of the meeting is, unless the rules of the society provide to the contrary, entitled to exercise a casting vote in addition to any other vote to which he or she may be entitled.

Voting rights of members

4.21(1) The voting rights of the members of a friendly society that was registered as a society under the *Friendly Societies Act 1913* immediately before the commencement of section 12.25 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 friendly society from limiting to members of a fund of the society the right to vote on matters relating to the fund.

Special vote

4.22(1) In this section—

“**special decision**” means a decision by a friendly society—

- (a) to be wound up otherwise than at the direction of the Registrar; or
 - (b) to cease to carry on the business of a pharmacist.
- (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.
- (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; 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.

(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 effect 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.

Special resolution

4.23(1) For the purposes of this Act, a special resolution means a resolution—

- (a) where the voting on the resolution is by show of hands, that is passed by a majority of not less than two-thirds of the number of persons who, being entitled to do so, vote in person; or
- (b) where the voting on the resolution is by poll, that is passed by a majority of not less than two-thirds of the number of votes cast by the persons who, being entitled to do so, cast votes;

at a general meeting of a friendly society of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the provisions of this Act and of the rules of the society.

(2) At a meeting at which a resolution mentioned in this section is submitted, a declaration by the chairperson that the resolution has been carried is, unless a poll is demanded, *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) A friendly society must, within the time prescribed and in the prescribed manner, lodge with the Registrar an application to have a special resolution registered and a special resolution does not take effect until registered by the Registrar.

(4) A certificate of registration of any special resolution given by the Registrar is, in favour of any person lending money to the society on the faith of such a certificate, or in favour of any guarantor of any such loan,

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prima facie evidence that the resolution was duly passed, as the case may be.

(5) In any rules made by a friendly society whether before or after the commencement of this section, “special resolution” means a special resolution as defined in this section.

Division 3—Records

Minute books

4.24(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 friendly 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.

(6) If action to be taken on the authority of a minute would involve the

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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 *prima facie* 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, any officer of the friendly society who is in default commits an offence.

Inspection of minutes

4.25(1) The minutes of each general meeting and of each meeting of the directors of a friendly society must be kept by the society at its registered office.

(2) The minutes of each general meeting of a friendly society must be open for inspection by any member without charge.

(3) A friendly society must supply a member of the society with a copy of the minutes of a general meeting of the society within 21 days of its being requested to do so in writing by the member and payment of any fee required by the rules of the society.

Registers

4.26(1) A friendly society must keep in the English language—

- (a) a register of members; and
- (b) a register of its directors, its principal executive officer and its secretary; 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

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(f) a register of loans made by, and securities taken by, the society; and

(g) a register of assignments.

(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, the principal executive officer and secretary, 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, the principal executive officer and the secretary, of a friendly society that are made as required by the regulations are *prima facie* evidence of the matters to which they relate.

(6) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Division 4—Accounts and Audit

Application of Parts 3.6 and 3.7 of Corporations Law of Queensland

4.27 Parts 3.6 and 3.7 of the Corporations Law of Queensland (except sections 315, 321, 322, 323, 325 and 326) and any prescriptions relevant to those Parts contained in the Corporations Regulations of Queensland apply, with any necessary modification, to and in relation to a friendly society and its directors and the subsidiaries of a friendly society as if, in those Parts and prescriptions—

(a) a reference to the Commission were a reference to the Registrar; and

- (b) a reference to a company, or a corporation or a body corporate (other than a subsidiary of a holding company) were a reference to a friendly society; and
- (c) a reference to a director of a company were a reference to a director of a friendly society; and
- (d) a reference to a holding company were a reference to a holding friendly society; and
- (e) a reference to profit and loss in relation to a company were a reference to surplus or deficit in relation to a friendly society or a fund of a friendly society, as the context requires; and
- (f) a reference to a subsidiary of a company were a reference to a corporation that is a subsidiary of a friendly society; and
- (g) a reference to the period within which a meeting of the company is required by section 245 of that Law to be held were a reference to the period of 5 months after the end of the financial year of the friendly society; and
- (h) a reference to a related body corporate in relation to a company were a reference to a subsidiary of a friendly society; and
- (i) such other specific modifications as are prescribed were made.

Additional accounting requirements

4.28(1) At least 14 days before the annual general meeting, or if an annual general meeting is not held within 5 months after the end of the financial year, at least 14 days before the end of the 5 months, the directors must make sure that there are made out in respect of each fund that is established by the friendly society—

- (a) a separate surplus and deficit account for the last financial year that gives a true and fair view of the surplus or deficit of the fund; and
- (b) a balance sheet as at the end of the last financial year that gives a true and fair view of the state of affairs of the fund as at the end of that financial year.

(2) The requirements of subsection (1) are in addition to the requirements of the provisions of the Corporations Law of Queensland that are applied by

section 4.27.

(3) A director who contravenes subsections (1) commits an offence.

Availability for inspection

4.29(1) At least 14 days before an annual general meeting, a friendly society must lodge with the Registrar, and must make available at its registered office for inspection by members at any reasonable time, a copy of—

- (a) the accounts or group accounts; and
- (b) the directors' statement; and
- (c) the directors' report; and
- (d) the auditor's report; and
- (e) the actuary's report;

required by or under this Act.

(2) A friendly society must, on payment of any fee required by the rules, supply any of those documents to any member who requests them.

(3) The notice of a general meeting that is given to the members of the friendly society must state that the documents will be available at the meeting and that they may be obtained on request before that meeting.

(4) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Auditor must report breaches

4.30(1) If an auditor of a friendly society—

- (a) is satisfied that there has been a contravention of this Act or the rules of the society; or
- (b) becomes aware of a matter that in the opinion of the auditor—
 - (i) constitutes or may constitute a case of fraudulent activity; or
 - (ii) has adversely affected, is adversely affecting or may

adversely affect the viability of the society or the interests of its members or creditors;

the auditor must, without delay, give a written report 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.

(4) A person who contravenes this section commits an offence.

Liability of, and indemnity for, auditors

4.31(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.

Auditors and other persons to enjoy qualified privilege in certain circumstances

4.32(1) An auditor of a friendly society is not, in the absence of ill-will to the person concerned or any other improper motive on his or her part, liable to any action for defamation at the suit of any person 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

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(b) the giving to the Registrar of a notice or report, or a copy of any accounts or group accounts.

(2) A person is not, in the absence of ill-will to the person concerned or any other improper motive on his or her part, liable to any action for defamation at the suit of any person 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 affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Division 5—Actuarial valuations

Application of Division

4.33 This Division applies to and in relation to a benefit fund of a kind prescribed in the regulations.

Appointment of actuary

4.34(1) A friendly society must—

(a) if directed to do so by order in writing of the Registrar served on the society, appoint a qualified person as an actuary for the society or for a benefit fund of the society, within the time specified in the order; and

(b) within 1 month after the occurrence of a vacancy in the office of actuary for the society or for such a fund—appoint a qualified person as actuary for the society or for the fund; and

(c) within 1 month after appointing an actuary for the society or for such a fund—give the Registrar written notice of the name and

business address of the person appointed.

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

(3) If a friendly society fails to comply with a direction of the Registrar under subsection (1)(a) or contravenes subsection (1)(b) or (c), any officer of the society who is in default commits an offence.

(4) A purported appointment, as actuary for a friendly society or for a benefit 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 friendly society or for a benefit fund of the 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 2 years; and
- (c) is not indebted to the society or a subsidiary of the society for more than the prescribed amount, 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

4.35(1) A person appointed as actuary for a friendly society or for a benefit fund vacates office—

- (a) subject to subsection (2), if the person resigns as actuary by notice in writing given to the society; or

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(b) if removed from office by a special resolution passed at a general meeting of the society at which the person was given an opportunity to be heard; or

(c) on ceasing to be a qualified person under section 4.34.

(2) It is not competent to a person appointed under section 4.34 (6) to resign office as actuary without the prior written consent of the Registrar.

Investigations and valuations by actuary

4.36(1) A friendly society must from time to time arrange for the actuary for the society to—

(a) investigate the financial position of the society; and

(b) value the assets and liabilities of the society in relation to each benefit 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 commencement of section 12.25, was registered as a society under the *Friendly Societies Act 1913*, 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 section had not commenced; or

(b) as at a date that is not more than 3 years after that commencement;

whichever is the earlier date or, if the regulations provide for a later 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 later 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 longer 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 any prescribed matters.

(7) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Distribution of surplus

4.37(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 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 this section, any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

(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

4.38(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), any officer of the society who is in default commits an offence.

Obstruction of actuary

4.39(1) A responsible person for a friendly society, or for a subsidiary of

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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 4.38; or
- (c) in any other way hinders, obstructs or delays an actuary in the exercise of functions as an actuary for the society;

commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, 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

4.40(1) If an actuary for a friendly society or for a benefit fund of the society is satisfied—

- (a) that the society has contravened this Act 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 or for a benefit fund of the 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.

(4) A person who contravenes this section commits an offence.

Liability of actuaries

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

(2) A friendly society may indemnify an actuary 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.

Actuaries and other persons to enjoy qualified privilege in certain circumstances

4.42(1) An actuary for a friendly society or for a benefit fund of the society is not, in the absence of ill-will to the person concerned or any other improper motive on the actuary's part, liable to any action for defamation at the suit of any person in respect of—

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

(2) A person is not, in the absence of ill-will to the person concerned or any other improper motive on his or her part, liable to any action for defamation at the suit of any person in respect of the publishing of—

- (a) a document that is prepared by an actuary for a friendly society or for a benefit fund of the society in the course of exercising functions as

actuary 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.

(3) This section does not limit or affect any other right, privilege or immunity that an actuary or other person has as a defendant in an action for defamation.

PART 5—FUNDS

Division 1—Raising and investment of funds

Raising of funds

5.1(1) Except as provided by its rules, a friendly society must not—

- (a) obtain financial accommodation or otherwise raise money; or
- (b) give security for the repayment of money.

(2) A friendly society must not—

- (a) borrow money; or
- (b) undertake to repay money that is borrowed;

in currency other than Australian currency, unless the Registrar otherwise approves.

(3) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Security for loans

5.2 With such modifications as may be necessary and with such other modifications as may be provided by the regulations—

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- (a) Part 3.5 of the Corporations Law of Queensland applies to a charge given by a friendly society; and
 - (b) sections 1047 and 1051 of that Law apply to a debenture issued by a friendly society;

as if, in the Part or sections—

- (c) a reference to a company were a reference to a friendly society; and
- (d) a reference to the Commission were a reference to the Registrar.

Investment of funds

5.3(1) Unless prohibited from doing so under subsection (5), a friendly society may, to the extent authorised by its rules, invest its funds—

- (a) as provided by section 21 of the *Trusts Act 1973*; or
- (b) by way of a loan secured by a debenture charged on the property of a friendly society; or
- (c) by way of a loan to a member of the society on the security of the interest of the member in the society; or
- (d) in prescribed securities, or securities of a prescribed class, that are listed on the official list of a stock exchange in Australia; or
- (e) as provided by the regulations.

(2) A friendly society must not invest any funds in a related body corporate except as prescribed.

(3) A friendly society must not invest any of its funds overseas unless it has obtained the prior approval in writing of the Registrar on such terms and conditions as the Registrar thinks fit.

(4) The Registrar must give the society a reasonable opportunity to make oral or written submissions to the Registrar on the question of whether the approval should be given.

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

- (a) investing more than a specified amount, or a specified proportion

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of its funds in a specified investment, or a specified class of investments; or

(b) dealing with securities as stated in the notice.

(6) If a friendly society contravenes this section or a direction in force under subsection (5), any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Valuation of land

5.4(1) Before a friendly society makes an advance on the security of a mortgage over land, a valuation of the land must be obtained from a registered valuer who is not an officer of the society, or of a subsidiary of the society, and who is engaged independently of the owner of the land.

(2) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Limit on amount of advance

5.5(1) A friendly society must not lend on the security of a mortgage over land if the total of the value of the advance and any amount secured by any prior mortgage exceeds—

(a) 75% of the value of the land, if there is erected on it, or proposed to be erected on it, a house that is to be occupied by the borrower; or

(b) $66\frac{2}{3}\%$ of the value of the land in any other case.

(2) Subsection (1) does not apply if the friendly society obtains an indemnity from a mortgage insurer for at least the value of the amount by which the advance exceeds the relevant percentage that is specified in subsection (1).

(3) In this section “**mortgage insurer**” means—

(a) the Housing Loans Insurance Corporation established by the *Housing Loans Insurance Act 1965* of the Commonwealth; or

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(b) any corporation in respect of which there is in force an approval in writing that is given by the Registrar.

(4) A friendly society must not invest its funds in the purchase of a mortgage unless the society could have made an advance under this Act to the mortgagor of an amount that is equal to the purchase price of the mortgage.

(5) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Officers of friendly society responsible for subsidiaries

5.6(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 any officer of the society who is in default commits an offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Society not to give guarantee

5.7(1) A friendly society must not give a guarantee for or provide a security in relation to a loan made to its subsidiary or to any other corporation.

(2) If a friendly society contravenes subsection (1), any officer of the society who is in default commits an offence.

Penalty—

(a) where paragraph (b) does not apply—100 penalty units or imprisonment for 12 months, or both; or

(b) where the offence was committed for a fraudulent purpose—350 penalty units or imprisonment for 5 years, or both.

(3) Where a friendly society gives a guarantee or provides a security in contravention of this section the directors are jointly and severally liable to indemnify the society against any loss arising from the giving of the guarantee or the providing of the security, as the case may be.

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(4) It is a defence to a proceeding instituted in respect of a liability under subsection (3) if it is proved that the defendant had no knowledge of the giving of the guarantee or the provision of the security as the case may be.

(5) Nothing in this section prevents a friendly society from recovering any amount for which it becomes liable under any guarantee given or in respect of any security provided, contrary to this section.

(6) This section is in addition to, and not in derogation of any other law in force.

Provision for hospitals, etc.

5.8(1) Despite any limitation in the rules, the board may with the approval—

- (a) of a general meeting of a friendly society; and
- (b) of the Registrar and subject to any conditions that the Registrar may impose;

invest the funds of the society or any part thereof in the purchase of land or the erection of buildings for the purpose of providing hospitals, sanatoria, old people's homes, orphanages or dispensaries for members and their dependants.

(2) A friendly society may invest funds in debentures secured on land or buildings and issued by a friendly society or combination of friendly societies for any of the purposes referred to in subsection (1).

Society may subscribe to hospitals, etc.

5.9 A friendly society may subscribe out of its management fund or any other fund expressly provided for the purpose to any hospital, dispensary, old people's home, or charitable or provident institution any annual or other sum necessary to secure to members and their dependants the benefits of such hospital, dispensary, infirmary, old people's home, or charitable or provident institution according to the society's rules.

Division 2—Benefit funds**Establishment of benefit fund**

5.10(1) Unless subsection (2) applies, a friendly society must establish and maintain under an appropriate name a benefit fund for each class of benefit provided by it.

(2) If authorised by the Registrar to do so, a friendly society may establish and maintain, as specified by the Registrar, a combined benefit fund for more than one class of benefit provided by it.

(3) 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.

(4) 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.

(5) 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.

(6) If a friendly society contravenes a provision of this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Payments to and from benefit funds

5.11(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 State 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 State 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

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(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 this section, any officer of the society who is in default—

(a) commits an offence; and

(b) is under the same liability as the officer would be—

(i) if the officer were a trustee under a trust for the execution of this section; and

(ii) if a member of the benefit fund affected by the contravention were a beneficiary under the trust;

whether or not the officer has been charged with, or convicted of, the offence.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Crediting interest on benefit funds

5.12(1) Where benefit funds have been invested by a friendly society in the purchase of land for its own use, interest at a rate not less than such amount per centum as is determined by the Registrar after consultation with the State Actuary on the amount invested must be credited annually to the benefit fund from which the investment was made.

(2) Any surplus thereafter may annually be transferred to a separate property account for meeting future necessary repairs or expenditures only on account of such land or building.

(3) Any portion of the accumulated surplus not required for meeting necessary repairs or expenditures must be transferred to the benefit fund from which the investment was made.

(4) Where, after the payment of such necessary expenses, the balance is insufficient to meet the required rate of interest on benefit funds so invested, the deficiency in interest must be made good from the management fund or

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some other fund not being a benefit fund, or a sufficient levy on the members must be made to meet the deficiency.

Separate accounts

5.13(1) A record of all monies received or paid on account of each fund of a friendly society must be kept and entered in a separate account distinct from the account kept in respect of monies received and paid on account of any other fund.

(2) If a friendly society contravenes this section, any director of the society who is in default commits an offence.

Restoration of money improperly applied

5.14(1) If the Registrar is satisfied that any monies of a friendly society have been appropriated from any fund or account for purposes other than those expressed or directed by this Act or in the rules, the Registrar may, in writing, direct the board to restore such monies to such fund or account within such time as the Registrar specifies in the direction.

(2) Where the board fails to comply with a direction under subsection (1), any director of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Division 3—Benefits

Assignment of benefits

5.15(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;

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is not an assignment for the purposes of section 199 of the *Property Law Act 1974* 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 *prima facie* 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 *prima facie* 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 of nominee of deceased member

5.16(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 benefit prescribed by the regulations as a benefit 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.

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(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 the death and do not exceed the amount fixed by the regulations in force at the time of death.

Dispensing with probate or letters of administration

5.17(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 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.

Procedure in case of gift or consideration of property

5.18(1) If a friendly society receives a gift or consideration of any

securities or other investments that do not constitute ways in which the funds of the society may be invested under section 5.3, the society must, within 3 months or such longer period (if any) as the Registrar in a particular case allows after receipt of the gift or consideration, dispose of it.

(2) If a friendly society that was registered as a society under the *Friendly Societies Act 1913* immediately before the commencement of section 12.25, is at the commencement of this section in possession of a gift or consideration of a type referred to in subsection (1), the society must dispose of it within 3 months or such longer period (if any) as the Registrar in a particular case allows.

(3) Any monies received by a friendly society as a result of a disposal of property under subsection (1) or (2) become funds of the society.

(4) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Division 4—Actuarial certification of contribution rates

Contribution rates

5.19(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

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 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 State Actuary.

(5) If a friendly society contravenes this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Commissions or rebates in respect of benefits

5.20(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, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(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**

5.21 In this Division—

“applicable benefit” means—

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

Surrender of benefit

5.22(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 State 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 State Actuary);

and is reduced by such proportion of any amount owing to the society as is determined by the board 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.

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Alteration of benefit

5.23(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 State Actuary for a review of the decision.

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

Division 6—Operating standards

Definitions

5.24 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;

“unencumbered assets” means assets prescribed by the regulations as unencumbered assets.

Operating standards may be prescribed

5.25(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.

Failure to maintain operating standards

5.26(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.

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(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 this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Information or report for Registrar

5.27(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, any officer of the society who is in default commits an offence.

PART 6—ADVERTISING AND INVESTMENT

Division 1—Approval of advertising

Advertising

6.1(1) A friendly society must not publish an advertisement seeking investment in the society, or authorise another person to publish such an advertisement, except with the prior approval in writing of the Registrar and

on such terms and conditions as the Registrar thinks fit.

(2) A person must not publish an advertisement seeking investment in a proposed friendly society except with the prior approval in writing of the Registrar and on such terms and conditions as the Registrar thinks fit.

(3) The Registrar may, on such terms and conditions as the Registrar thinks fit, by notice in writing served on a friendly society exempt the society from complying with the provisions of subsection (1).

(4) Where a friendly society is exempted from complying with the provisions of subsection (1), and it appears to the Registrar that the exemption is no longer appropriate or should be varied, the Registrar may, by notice in writing served on the society, revoke or vary the exemption.

(5) If a friendly society contravenes this section or fails to comply with any term or condition imposed under this section, any officer of the society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(6) Any person, other than a friendly society, who contravenes or fails to comply with any term or condition imposed under this section, commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Division 2—Investor information memorandum

Form of application for investment to be attached to memorandum

6.2(1) A person must not issue a form of application for investment in a friendly society unless the form is attached to an investor information memorandum and a copy of the memorandum has—

- (a) been lodged with the Registrar and approved by the Registrar under section 6.1; or
- (b) in a case where, by reason of an exemption in respect of the friendly society under section 6.1(3), the memorandum is not required to be approved by the Registrar—been lodged with the Registrar.

(2) If a friendly society contravenes this section, any officer of the society

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who is in default commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(3) Any person, other than a friendly society, who contravenes this section commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

Contents of investor information memorandum

6.3(1) An investor information memorandum—

- (a) must be printed in type of a size not less than the type known as “8 point Times” unless the Registrar, before the issuing of the memorandum, certifies in writing that the type and size are legible and satisfactory; and
- (b) must be dated; and
- (c) must set out particulars as to—
 - (i) the full name and registered office of the friendly society; and
 - (ii) the names of its directors; and
- (d) must include in a prominent position a section containing a summary of the key features of the investment; and
- (e) must contain a statement that no application for investment will be accepted on the basis of the memorandum later than 12 months after its issue; and
- (f) must contain such other matters and reports as the Registrar requires.

(2) Without limiting the generality of subsection (1) (f), the Registrar may require that the investor information memorandum contain any of the following—

- (a) details of the financial performance of funds of the society;
- (b) a description of fees, commissions and expenses charged;
- (c) an explanation of the investment strategy of any fund;

(d) a valuation of fund investments.

(3) The date inserted in an investor information memorandum under subsection (1)(b) is the date of issue of the memorandum.

(4) A condition requiring or binding an applicant to waive compliance with any requirement of this section, or purporting to affect the applicant with notice of any contract, document or matter not specifically referred to in the investor information memorandum is void.

(5) Where an investor information memorandum issued by a friendly society does not comply with subsection (1), any officer of the friendly society who is in default commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(6) Where an investor information memorandum issued by a person, other than a friendly society, does not comply with subsection (1), the person commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(7) A person is not guilty of an offence against subsection (5) or (6) if non-compliance—

(a) was due to a reasonable mistake; or

(b) was due to the person reasonably relying on information supplied by another person.

(8) In subsection (7)(b) “another person” does not include a person who was a servant or agent of the defendant when the investor information memorandum was issued.

(9) Nothing in this section limits or diminishes any liability that a person may incur under any rule of law or any enactment or under this Act apart from subsection (5) or (6).

Order to stop issue of investor information memorandum

6.4(1) Where it appears to the Registrar that any of the circumstances referred to in subsection (2) exist in respect of an investor information memorandum lodged under section 6.2, the Registrar may, by order in writing served on the friendly society, direct that no further investment in respect of that memorandum be accepted and that no further memoranda be

issued.

(2) The circumstances are—

- (a) the investor information memorandum contravenes in a substantial respect any of the requirements of this Division; or
- (b) the memorandum contains a statement, promise, estimate or forecast that is false, misleading or deceptive; or
- (c) the memorandum contains a material misrepresentation.

(3) Subject to subsections (4) and (6), the Registrar must not make an order under subsection (1) unless the Registrar has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the Registrar on the question whether such an order should be made.

(4) If the Registrar considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, the Registrar may make an interim order or interim orders under that subsection without holding a hearing.

(5) Subject to subsection (6) an interim order, unless sooner revoked, has effect until the end of 21 days after the day on which it is made.

(6) At any time during the hearing, the Registrar may make an interim order under subsection (1) that is expressed to have effect until the Registrar makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.

(7) While an order is in force under this section—

- (a) this Division applies as if the investor information memorandum had not been lodged; and
- (b) a person is not entitled to lodge a further memorandum in relation to the investment.

(8) If, while an order is in force under this section, the Registrar becomes satisfied that the circumstances that resulted in the making of the order no longer exist, the Registrar may, by further order in writing, revoke the first mentioned order.

(9) A person who knowingly issues an investor information memorandum in contravention of an order of the Registrar under this

section commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Expert's consent to issue of investor information memorandum containing statement made by expert

6.5(1) An investor information memorandum relating to a friendly society that includes a statement purporting to be made by an expert or to be based on a statement made by an expert must not be issued unless—

- (a) the expert has given, and has not before lodgement with the Registrar of a copy of the memorandum, withdrawn, his or her written consent to the issue of the memorandum with the statement included in the form and context in which it is included; and
- (b) there appears in the memorandum a statement that the expert has given, and has not withdrawn, his or her consent.

(2) A person who knowingly issues an investor information memorandum in contravention of subsection (1) commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Civil liability for untrue statement or non-disclosure in investor information memorandum

6.6(1) Subject to this section, where an investor information memorandum is issued in relation to a friendly society, a person who—

- (a) is a director of the society at the time of the issue of the memorandum; or
- (b) authorised or caused himself or herself to be named and is named in the memorandum as a director or as having agreed to become a director either immediately or after an interval of time; or
- (c) authorised or caused the issue of the memorandum;

is liable to pay compensation to all persons who invest in a fund on the faith of the memorandum for any loss or damage sustained by reason of any untrue statement in the memorandum, or by reason of the non-disclosure in the memorandum of any matter of which he or she had knowledge and

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which he or she knew to be material.

(2) Notwithstanding anything in subsection (1), an expert whose consent to the issue of an investor information memorandum is required and who has given that consent is not, by reason only of having given that consent, liable under subsection (1) as a person who has authorised or caused the issue of the memorandum except in respect of—

- (a) an untrue statement in the memorandum purporting to be made by him or her as an expert; and
- (b) a non-disclosure in the memorandum of any material matter for which he or she is responsible in his or her capacity or purported capacity as an expert.

(3) For the purposes of subsection (1), a person who is named in a memorandum as—

- (a) an auditor, banker, solicitor or actuary of the friendly society or for or in relation to a fund; or
- (b) a person performing any function in a professional, advisory or other capacity not mentioned in paragraph (a) for the friendly society or for or in relation to a fund;

is not, for that reason alone, taken to have authorised the issue of the memorandum.

(4) For the purposes of subsection (1), a statement is taken to be in an investor information memorandum if it is contained in any report or notice that appears on the face of, or is issued with, the memorandum, or is incorporated by reference in the memorandum, whether the reference occurs in the memorandum or in any other document.

(5) Subject to subsection (6), a person, other than a person to whom subsection (7) applies, is not liable under subsection (1) if the person proves—

- (a) that, having consented to become a director of the friendly society, the person withdrew the consent before the issue of the investor information memorandum and that it was issued without the person's authority or consent; or
- (b) that the memorandum was issued without the person's knowledge or consent and—

(i) when the person became aware of the issue of the memorandum, the person forthwith gave reasonable public notice that it was issued without the person's knowledge; or

(ii) the person gave reasonable public notice that the memorandum was issued without the person's consent forthwith after it was issued;

as the case may be; or

(c) that, after the issue of the memorandum and before any investment under the memorandum, the person, on becoming aware of any untrue statement in the memorandum, withdrew his or her consent to the issue of the memorandum and gave reasonable public notice of the withdrawal and of the reason for the withdrawal; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, the person had reasonable grounds to believe, and did until the time of the investment believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation, and the person had reasonable grounds to believe, and did until the time of the issue of the memorandum believe, that the person making the statement was competent to make it and that that person had given the consent required by section 6.5 to the issue of the memorandum and had not withdrawn that consent before the lodging of a copy of the memorandum with the Registrar; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

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(6) Subsection (5) does not apply in the case of a person who is liable, by reason of having given a consent required of the person by section 6.5, as a person who has authorised or caused the issue of the memorandum in respect of an untrue statement purporting to have been made by the person as an expert.

(7) A person who, apart from this subsection, would under subsection (1) be liable, by reason of the person having given a consent required of the person by section 6.5, as a person who has authorised the issue of an investor information memorandum, in respect of an untrue statement purporting to be made by the person as an expert is not liable if the person proves—

(a) that, having given his or her consent under section 6.5 to the issue of the memorandum he or she withdrew it in writing before a copy of the memorandum was lodged with the Registrar; or

(b) that, after a copy of the memorandum was lodged with the Registrar and before any investment under the memorandum, he or she, on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) that he or she was competent to make the statement and had reasonable grounds to believe, and did until the time of the investment believe, that the statement was true.

(8) Where—

(a) an investor information memorandum in relation to a friendly society contains the name of a person as a director of the society, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn his or her consent before the issue of the memorandum, and has not authorised or consented to the issue of the memorandum; or

(b) the consent of a person is required under section 6.5 to the issue of the memorandum and the person either has not given that consent or has withdrawn it before the issue of the memorandum;

the directors of the society, except any without whose knowledge or consent the memorandum was issued, and any other person who authorised or caused the issue of the memorandum are jointly and severally liable to

indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been so inserted in the memorandum or by reason of the inclusion in the memorandum of a statement purporting to be made by him or her as an expert, or in defending himself or herself against any action or other legal proceeding brought against him or her by reason of his or her name having been so inserted in the memorandum or the inclusion in the memorandum of such a statement.

Criminal liability for untrue statement or non-disclosure in investor information memorandum

6.7(1) Where in an investor information memorandum there is any untrue statement or non-disclosure, any person who authorised or caused the issue of the memorandum commits an offence unless the person proves—

- (a) that the statement or non-disclosure was immaterial; or
- (b) that he or she had reasonable grounds to believe, and did until the time of the issue of the memorandum believe, that the statement was true or the non-disclosure was immaterial; or
- (c) where there was in the memorandum a non-disclosure—that the non-disclosure was inadvertent.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(2) For the purposes of subsection (1), a statement is taken to be in an investor information memorandum if it is contained in any report or notice that appears on the face of or is issued with the memorandum, or is incorporated by reference in the memorandum, whether the reference occurs in the memorandum or in any other document.

(3) A person must not be taken for the purposes of this section to have authorised or caused the issue of a memorandum by reason only of having given the consent required by this Division to the inclusion in the memorandum of a statement purporting to be made by the person as an expert.

Division 3—Commissions**Definitions**

6.8 In this Part—

“**adviser**” means a person who makes a securities recommendation to another person in respect of investment with a friendly society;

“**securities**”, in relation to a friendly society, means—

- (a) debentures of the society; and
- (b) prescribed interests within the meaning of the Corporations Law of Queensland made available by the society; and
- (c) units of prescribed interests;

and includes an interest in or arising out of a policy of life insurance;

“**securities recommendation**” means a recommendation in relation to securities or a class of securities, whether made expressly or by implication.

Client to be told if adviser’s interests may influence recommendation

6.9(1) This section applies where an adviser makes a securities recommendation to a person (in this section called the “**client**”) who may reasonably be expected to rely on it.

(2) The adviser must disclose particulars of—

- (a) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the adviser or an associate has received, or will or may receive, in connection with the making of the recommendation or a dealing by the client in securities as a result of the recommendation; and
- (b) any other pecuniary or other interest, whether direct or indirect, of the adviser or an associate, that may reasonably be expected to be capable of influencing the adviser in making the recommendation.

(3) In subsection (2)—

- (a) a reference to a commission or fee does not include a reference to

a commission or fee that the adviser has received, or will or may receive, from the client; and

(b) a reference to an associate is a reference to a person associated with the adviser within the meaning of Division 2 of Part 1.2 of the Corporations Law of Queensland and the reference is to be taken to occur in Chapter 7 of that Law and relate to a matter that is not of a kind referred to in section 12(1)(a), (b) or (c) of that Division.

(4) The disclosure for the purposes of subsection (2)—

(a) if the recommendation is made orally, must be made orally to the client; and

(b) if the recommendation is made in writing, must be set out in writing, in such a way as to be no less legible than the other material in writing.

(5) If, by making the recommendation, the adviser does an act as a representative of another person, then—

(a) without limiting the generality of Division 2 of Part 1.2 of the Corporations Law of Queensland, the other person is an associate for the purposes of subsection (2) of this section; and

(b) subsection (2) of this section does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.

(6) Despite Division 2 of Part 1.2 of the Corporations Law of Queensland and subsection (5) of this section, a person (in this subsection called the “**alleged associate**”) is not an associate for the purposes of subsection (2) of this section merely because of being—

(a) a partner of the adviser otherwise than because of carrying on a securities business in partnership with the adviser; or

(b) a director of a corporation of which the adviser is also a director, whether or not the body carries on a securities business;

unless the adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making securities recommendations.

(7) A person who contravenes this section commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

Defences to alleged contravention of section 6.9 (2)

6.10(1) A failure by a person to disclose particulars of a matter in accordance with section 6.9 (2) is not a contravention of that section if it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation.

(2) A failure by an adviser to disclose particulars of a matter in accordance with section 6.9 (2) is not a contravention of that section if—

(a) it is proved that the adviser had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that—

(i) the individual who made the decision knew nothing about that matter before the end of that period; and

(ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about the matter; and

(b) it is also proved that—

(i) the person in fact knew nothing about that matter before the end of that period; and

(ii) no such advice was so given.

(3) Neither of subsections (1) and (2) limits the generality of the other.

Adviser must have reasonable basis for recommendation

6.11(1) An adviser contravenes this section if the adviser—

(a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and

(b) does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), an adviser does not have a

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reasonable basis for making a securities recommendation to a person unless—

(a) in order to ascertain that the recommendation is appropriate having regard to the information the adviser has about the person's investment objectives, financial situation and particular needs, the adviser has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on that consideration and investigation.

(3) A person who contravenes subsection (1) does not commit an offence by virtue of this section.

Adviser who contravenes this Division liable to compensate client

6.12(1) This section applies if—

(a) an adviser contravenes section 6.9 or 6.11 in relation to a securities recommendation to a person (in this section called the “**client**”); and

(b) the client, in reliance on the recommendation, does, or omits to do, a particular act; and

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case may be, that act in reliance on the recommendation; and

(d) the client suffers loss or damage as a result of that act or omission.

(2) Subject to subsections (3) and (4), the adviser is liable to pay damages to the client in respect of that loss or damage.

(3) In the case of a contravention of section 6.9, the adviser is not so liable if it is proved that a reasonable person in the client's circumstances could be expected to have done, or omitted to do, as the case may be, that act in reliance on the recommendation even if the adviser had complied with that section in relation to the recommendation.

(4) In the case of a contravention of section 6.11, the adviser is not so

liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the adviser had about the client's investment objectives, financial situation and particular needs.

Qualified privilege for adviser when complying with this Division

6.13(1) An adviser who—

- (a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and
- (b) in so making the recommendation, contravenes neither section 6.9(2) or 6.11(1);

is not in the absence of ill will to the person concerned or any other improper motive on the adviser's part liable to any action for defamation at the suit of any person in respect of a statement the adviser makes to the first mentioned person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.

(2) This section does not limit or affect any other right, privilege or immunity that an adviser or other person has as a defendant in an action for defamation.

PART 7—TRANSFER OF ENGAGEMENTS AND AMALGAMATION OF SOCIETIES

Division 1—Transfer of engagements

Friendly society may transfer engagements

7.1(1) A friendly society may, by special resolution, decide to transfer all of its engagements to another friendly society that, in accordance with subsection (2), undertakes to fulfil them.

(2) A friendly society may—

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- (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 friendly society.

(3) Before holding a meeting to consider a motion for a special resolution under subsection (1) or (2), 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 friendly societies involved; and
- (b) the interest in the transfer of each of the directors of the friendly societies involved; and
- (c) the compensation or other consideration to be paid to directors, or other officers, of the friendly societies involved; and
- (d) the payments to be made to the members of the friendly societies involved; and
- (e) such other matters as the Registrar may direct.

(4) The statement mentioned in subsection (3) must be sent so that it will, in the ordinary course of post, reach each member of the friendly society not later than 21 days before 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

7.2(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, 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 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
- (e) 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 Minister in relation to the direction.

(4) After considering the submission, the Minister is to—

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

(5) An order of the Registrar under this section—

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- (a) takes effect 7 days after being served on the friendly 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

7.3(1) If the Registrar is satisfied—

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

the Registrar must issue to the transferor friendly society and the transferee friendly society a certificate confirming the transfer.

Division 2—Amalgamation of friendly societies

Friendly societies may amalgamate

7.4(1) Two or more friendly societies may, by special resolution of each of them, decide to amalgamate to form one friendly 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 friendly society not later than 21 days before the meeting at which the motion for the special resolution is to be considered.

Notice of proposed amalgamation to be published

7.5(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 any statement sent to members under section 7.4.

(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 friendly societies (naming the friendly societies) is proposed; and
- (b) where a statement was sent to members of the society under section 7.4—that a copy of the statement may be inspected during office hours at the registered office of any of the friendly societies named.

Foreign friendly society may amalgamate with other friendly societies

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

Registration of amalgamated friendly society

7.7(1) If each friendly 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 friendly society will be adequate to give effect to the amalgamation;

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

(2) An amalgamated friendly 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 friendly 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 friendly societies.

Division 3—General**Definitions**

7.8 In this Division—

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“acquiring society” means—

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

Consequences of transfers of engagements and amalgamations

7.9(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

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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 a reference to an act, matter or thing done or omitted by the divesting society in relation to the fund.

(3) Upon being satisfied that any estate or interest in land vests in a friendly society by reason of this section and upon production of the appropriate instrument of title (if any)—

(a) the Registrar of Titles, where the *Real Property Act 1861* applies to that estate or interest; or

(b) the person or authority charged with registering instruments of title to or dealings with that estate or interest, where that Act does not apply;

may, without any authority other than this Act and without payment of any fee—

(c) make or cause to be made any necessary recordings in the appropriate register or other record of titles or dealings; and

(d) do and execute all such acts, matters and things as may be necessary and proper;

to record that vesting.

(4) The vesting of assets under this section and any instruments executed as a consequence of this section to give it effect do not attract duty under the *Stamp Act 1894*.

Obligations of officers

7.10(1) An officer of a friendly society or a foreign friendly 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;

commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(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 7.2) 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 8—ADMINISTRATION

Division 1—Administrative staff and office

Registrar

8.1(1) Subject to the Minister, the Registrar administers this Act.

(2) The Registrar must, as and when required by the Minister, report to the Minister on the policy that the Registrar is pursuing, or proposes to

pursue, in the administration of this Act.

(3) The Minister may issue directions to the Registrar on matters of policy and the Registrar must observe and carry out those directions.

Deputy Registrar as Registrar

8.2 It is competent for a Deputy Registrar of Commercial Acts, Brisbane appointed under the *Administration of Commercial Laws Act 1962* to exercise the powers and functions of the Registrar under this Act save that the Registrar may give such directions and exercise such supervision in respect of those powers and functions as the Registrar thinks fit, and such powers or functions when so exercised are as valid and effectual as if exercised by the Registrar.

Office and records of Registrar

8.3(1) All certificates, rules and documents required to be registered by, or to be lodged with or given to, the Registrar, must be kept in the office of the Registrar.

(2) The Registrar may keep registers for the purposes of this Act.

(3) The Registrar may incorporate with registers kept under this Act documents, instruments and registers kept by the Registrar of Friendly Societies under the *Friendly Societies Act 1913*.

Information for Registrar

8.4(1) If the Registrar serves on a friendly society a notice requiring the society to provide the Registrar with specified information relating to or relevant to its affairs the society must comply with the requirement within the time specified in the notice.

(2) If a friendly society contravenes this section any officer of the society who is in default commits an offence.

Fees

8.5(1) There must be paid to the Registrar such fees as may be

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prescribed in respect of acts, matters or things to be done under or for the purposes of this Act.

(2) Where a fee is payable to the Registrar for or in respect of the lodging of a document and the document is submitted for lodgement without payment of the fee, the document is taken not to have been lodged until the fee is paid.

Destruction, etc., of old records

8.6 Subject to the *Libraries and Archives Act 1988*, the Registrar may, if of the opinion that it is no longer necessary or desirable to retain them, destroy or dispose of—

- (a) in the case of a friendly society—
 - (i) any document lodged under Division 4 of Part 4 that has been lodged for not less than 7 years; and
 - (ii) any other document (other than the rules or any document affecting them) which has been lodged, provided or registered for not less than 15 years; and
- (b) in the case of a friendly society that has been dissolved for not less than 15 years, any document relating to the society; and
- (c) any document, a transparency of which has been incorporated with a register kept by the Registrar.

Annual report by Registrar

8.7(1) As soon as practicable after 30 June in each year, the Registrar must furnish to the Minister a report on the administration of this Act by the Registrar in respect of the year ending on that date.

(2) The Minister must lay a copy of the report before the Legislative Assembly.

Inspection of documents in Registrar's Office

8.8(1) Any person may, on payment of the prescribed fee—

- (a) inspect at the office of the Registrar the registration documents

and rules of a friendly society, or a foreign friendly society registered under Part 11;

(b) obtain from the Registrar a certified copy of the certificate of incorporation of a friendly society or a certificate of registration of a foreign friendly society registered under Part 11 and a certified copy of the rules of a friendly society or a foreign friendly society registered under Part 11, or of any part of the rules;

(c) inspect any document lodged under this Act by a friendly society or a foreign friendly society, other than a prescribed document;

(d) inspect any document lodged under the *Friendly Societies Act 1913* by a society under that Act;

(e) obtain a copy of or extract from any document that the person is entitled to inspect under paragraph (c) or (d) certified by the Registrar.

(2) If a transparency or a reproduction of a document is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of the document.

(3) The reference in paragraph (b) or (e) of subsection (1) to a document includes, where a reproduction or transparency of that document has been incorporated with the register kept by the Registrar, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated a person is not entitled to a copy of the original of the document.

When documents taken not to be lodged or given

8.9 When a document is lodged with or given to the Registrar and—

(a) the document does not comply with the provisions of this Act; or

(b) any information required to be contained in or with the document has not been given or is not complete;

the document is taken not to have been lodged or given until such time as the document complies with those provisions or the information has been given or is complete, as the case may be.

Information and evidence

8.10(1) On an application for registration of a friendly society or of any rule or document under this Act, the Registrar may require from the applicant such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from a friendly society such information and evidence as may be reasonable in order to show that the society is bona fide carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a friendly society such evidence as the Registrar thinks proper of the doing of any act, matter or thing required to be done, or of the correctness of any entry in any document required to be lodged with or given to the Registrar, under this Act.

(4) The preceding provisions of this section apply with all necessary modifications to a foreign friendly society registered, or applying for registration, under Part 11.

Secrecy

8.11(1) Subject to this section, the Registrar or any other person appointed or employed for the purposes of this Act or authorised to exercise or perform any power or function of the Registrar under this Act must not, except to the extent necessary to perform his or her official duties or exercise or perform such a power or function, either directly or indirectly and whether before or after ceasing to be Registrar or to be so appointed, employed or authorised—

(a) make a record of or divulge or communicate to any person any information that is gained by or conveyed to him or her by reason of his or her being Registrar or being so appointed, employed or authorised; or

(b) make use of any such information.

(2) A person who contravenes subsection (1) commits an offence.

Penalty—50 penalty units or imprisonment for 6 months, or both.

(3) Nothing in subsection (1) precludes a person from—

(a) producing a document to a court in the course of criminal

proceedings or proceedings under this Act or from divulging or communicating to a court in the course of such proceedings any matter or thing coming under his or her notice in the performance of his or her official duties or the exercise of the powers or functions referred to in that subsection; or

(b) producing a document or communicating any information gained by or conveyed to him or her—

(i) to the Minister or Treasurer or any person acting on behalf of and with the authority of the Minister or Treasurer; or

(ii) to the Registrar, or an investigator appointed under this Act; or

(iii) in accordance with a reciprocal arrangement under section 12.21; or

(iv) to a police officer exercising functions as such;

(v) with the approval of the Minister or the Registrar first had and obtained, to any person appointed or engaged under the provisions of this Act for the purpose of the person exercising functions under the appointment or engagement.

Registrar entitled to be present at meetings

8.12 The Registrar is entitled to attend any meeting of the members of a friendly society.

Division 2—Inspectors

Appointment and functions of inspectors

8.13(1) The Registrar may appoint an officer of the Public Service for the purpose of carrying out inspections relating to the operations of friendly societies.

(2) An officer carrying out an inspection under subsection (1)—

(a) may exercise such of the functions and powers of an investigator holding an inquiry under Division 3 as the Registrar directs; and

(b) may exercise those functions and powers as if the officer were an investigator and the inspection were such an inquiry.

Division 3—Investigations

Definitions

8.14 In this Division—

“**affairs**”, in relation to a friendly society, includes—

- (a) the promotion, formation, membership, control, business, trading, transactions, dealings (whether alone or jointly with any other person and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with any other person and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with any other person and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the society; and
- (b) loans to or by the society; and
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the society or are or have been able to control or materially influence 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; and
- (e) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matter mentioned in paragraph (a), (b), (c) or (d);

“**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;

“friendly society” includes a body exempted under section 3.10 and a foreign friendly society registered under Part 11;

“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) to (e) inclusive.

Appointment of investigators

8.15(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

8.16(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

8.17(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 8.19 for giving a false or misleading answer to the question; or
- (b) proceedings on a charge of perjury in respect of the answer.

Privileged communications

8.18(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 who—

- (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;

commits an offence.

Offences by involved person

8.19(1) An involved person who—

- (a) refuses or fails to comply with a lawful requirement of an

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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;

commits an offence.

Penalty—200 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 Court.

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

8.20 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;

commits an offence unless the person charged did not intend to defeat, delay or obstruct the inquiry.

Penalty—100 penalty units or imprisonment for 12 months, or both.

Record of examination

8.21(1) Except as provided by section 8.17 (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;

commits an offence.

Report of investigator

8.22(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 8.25(3) (under which the

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Registrar may order a friendly society to pay the costs of the inquiry);
or

(b) an application should be made under section 8.25(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 8.16.

(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

8.23 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;

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

Admission of investigator's report as evidence

8.24(1) A document certified by the Registrar as a copy of a report of an inquiry under this Division is admissible as *prima facie* 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 8.17.

Costs of inquiry

8.25(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 8.23 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.

Division 4—Entry and search

Definition

8.26 In this Division—

“**friendly society**” includes a body exempted under section 3.10 and a foreign friendly society registered under Part 11.

Entry and search—monitoring compliance

8.27(1) Subject to subsection (2), the Registrar may, for the purpose of finding out whether the requirements of this Act are being complied with in relation to a friendly society and with such assistance and by such force as is necessary and reasonable—

- (a) enter premises; and
- (b) exercise the powers set out in section 8.29.

(2) The Registrar must not enter premises or exercise a power under subsection (1) unless—

- (a) the occupier of the premises consents to the entry or exercise of the power; or
- (b) a warrant under section 8.30 authorises the entry or exercise of the power.

Entry and search—evidence of offences

8.28(1) Subject to subsection (3), if the Registrar has reasonable grounds for suspecting that there is in premises a particular thing (in this section called “**the evidence**”) that may afford evidence of the commission of an offence against this Act, the Registrar may, with such assistance and by such force as is necessary and reasonable—

- (a) enter the premises; and
- (b) exercise the powers set out in section 8.29.

(2) If the Registrar enters the premises and finds the evidence, the following provisions have effect—

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

(3) The Registrar must not enter the premises or exercise a power under subsection (1) unless—

- (a) the occupier of the premises consents to the entry or exercise of the power; or
- (b) a warrant under section 8.31 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If in the course of searching the premises under subsection (1) pursuant to a warrant under section 8.31 the Registrar—

- (a) finds a thing that the Registrar believes, on reasonable grounds to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the Registrar believes, on reasonable grounds, that it is necessary to seize the thing to prevent—

- (i) its concealment, loss or destruction; or
- (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

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

General powers of Registrar in relation to premises

8.29 The powers the Registrar may exercise under section 8.27(1)(b) or 8.28(1)(b) in relation to premises are as follows—

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

Monitoring warrants

8.30(1) The Registrar may apply to a stipendiary magistrate for a warrant under this section in relation to particular premises.

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

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

the magistrate requires.

(4) The warrant must—

- (a) authorise the Registrar, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 8.29; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrants

8.31(1) The Registrar may apply to a stipendiary magistrate for a warrant under this section in relation to particular premises.

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

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

(4) The warrant must—

- (a) authorise the Registrar, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 8.29; and

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

Offence related warrants may be granted by telephone

8.32(1) If, because of circumstances of urgency, the Registrar considers it necessary to do so, the Registrar may, under this section, apply by telephone for a warrant under section 8.31.

(2) Before applying for the warrant, the Registrar must prepare information of the kind mentioned in section 8.31(2) that sets out the grounds on which the issue of the warrant is sought.

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

(4) If the stipendiary magistrate is satisfied—

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

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 8.31, complete and sign such warrant as the magistrate would issue under the section if the application had been made under that section.

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

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

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warrant; and

(b) the Registrar must—

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

(ii) write on the form of warrant the name of the magistrate and the date on which and the time at which the magistrate signed the warrant.

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

(a) the form of warrant completed by the Registrar; and

(b) the information mentioned in subsection (2), which must have been duly sworn.

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

(a) attach them to the warrant that the magistrate completed and signed; and

(b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 8.31.

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

(9) If—

(a) it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and

(b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

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

Exercise of powers and functions on behalf of Registrar

8.33(1) The Registrar may, in writing, appoint a person to exercise all or any of the Registrar's powers and functions under this Division on behalf of the Registrar.

(2) The person must, in the exercise of the powers and functions, act in accordance with any directions of the Registrar.

(3) The person is not entitled to exercise any of the powers or functions in relation to another person unless the person first produces a copy of the appointment certified by the Registrar for inspection by the other person.

PART 9—APPOINTMENT OF ADMINISTRATOR AND SUSPENSION OF OPERATIONS

Division 1—Appointment and functions of administrator

Registrar may appoint administrator of friendly society

9.1(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 society has fewer than 100 members; 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 it would be in the best interests of the members or creditors of the society to appoint an administrator.

Effect of appointment of administrator

9.2(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; and

(c) the administrator may terminate the appointment of any person or firm as auditor of the society.

(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

9.3(1) The Crown is to indemnify an administrator of a friendly society against all actions, proceedings and claims in relation to—

(a) acts done, or omitted to be done, by the administrator without negligence under this Act; or

(b) acts done, or omitted to be done, by the administrator in good faith and without negligence for the purposes of this Act.

(2) The friendly society is not liable for any loss or damage sustained by any person because a contract or appointment is terminated under section 9.2.

Termination of appointment of administrator

9.4(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 10.1 (relating to management and receivership under Parts 5.2 and 5.3 of the Corporations Law of Queensland); or
- (b) section 10.2 or 10.3 (relating to winding up under Part 5.4 to 5.8 of the Corporations Law of Queensland 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.

Administrator to report

9.5(1) If an administrator of a friendly society—

- (a) is satisfied that there has been a contravention of this Act or the rules of the society; or
- (b) becomes aware of a matter that in the opinion of the administrator—
 - (i) constitutes or may constitute a case of fraudulent activity; or
 - (ii) has adversely affected, is adversely affecting or may adversely affect the viability of the society or the interests of its

members or creditors;

the administrator must, without delay, give a written report to the Registrar.

(2) Upon the receipt of a request from the Registrar the administrator must, without delay, prepare and submit to the Registrar a report showing how the administration is being conducted.

(3) Upon the cessation of his or her appointment, an administrator must, without delay, prepare and submit a report to the Registrar showing how the administration was conducted and for that purpose an administrator has access to the records and books of the friendly society.

(4) Upon completion of the report referred to in subsection (3) and accounting fully in respect of the administration to the satisfaction of the Registrar, the administrator is, in the absence of fraud or dishonesty, released from any further liability to account in respect of the administration.

Stay of proceedings

9.6(1) Where, under this Division, an administrator is appointed to conduct the affairs of a friendly society no action or proceedings in any court may, except with the leave of the Court and, if the Court grants leave, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the society until the appointment of the administrator is terminated.

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

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

Division 2—Suspension of operations of friendly society

Direction to suspend operations

9.7(1) With the consent of the Minister and if the Registrar considers that it would be in the interests of members and potential members of a friendly

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society, the Registrar may, by written order served on the 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), any officer of the society who is in default commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

PART 10—OFFICIAL MANAGEMENT AND WINDING UP

Application of Parts 5.2 and 5.3 of Corporations Law of Queensland

10.1 The provisions of Parts 5.2 and 5.3 of the Corporations Law of Queensland apply (with any necessary modifications) in relation to a friendly society in the same way as they apply in relation to a company and so apply as if—

- (a) references in those provisions to the Commission were references to the Registrar; and
- (b) such other specific modifications as are prescribed were made.

Winding up of friendly society

10.2(1) Subject to section 4.22 (which requires a postal ballot for a decision to wind up a friendly society), a friendly society may be wound up—

- (a) voluntarily; or
- (b) by the Court; or

(c) by order of the Registrar under section 10.3.

(2) The provisions of Parts 5.4 to 5.8 of the Corporations Law of Queensland apply (with any necessary modifications) in relation to a winding up of a friendly society voluntarily or by the Court in the same way as they apply in relation to such a winding up of a company and so apply as if—

(a) a reference in those provisions to the Commission were a reference to the Registrar; and

(b) such other specific modifications as are prescribed were made.

(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 if the society were being wound up voluntarily except that the liquidator is to be appointed by the Registrar.

(4) A person aggrieved by an act, omission or decision of a liquidator of a friendly society may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission as the case may be, and make such orders and give such directions as it thinks fit.

Registrar may order winding up of friendly society

10.3(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, 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 society has fewer than 100 members; 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 winding up would be in the best interests of the society; or
 - (g) that the society has failed to comply with a direction to transfer its engagements that has taken effect under section 7.2.

(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

10.4 Any surplus on the winding up of a friendly society is to be transferred—

- (a) to another friendly society or other 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 other friendly societies, as directed by order of the Registrar published in the Gazette.

Cancellation of registration

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

PART 11—FOREIGN FRIENDLY SOCIETIES

Application and interpretation of this Part

11.1(1) Except where the contrary intention appears, this Part applies to a foreign friendly society only if it has a place of business or is carrying on business within the State.

(2) In this Part, unless the contrary intention appears—

“agent” means the person named in a memorandum of appointment or power of attorney lodged under section 11.2(1)(e) or (8);

“board of directors” includes the committee of management, by whatever name called;

“carrying on business” includes—

- (a) establishing or using an office for the receipt of moneys; or
- (b) advertising for or otherwise seeking the payment of moneys; or
- (c) making loans to persons residing in the State;

whether by servants or agents or otherwise;

“director” includes a member of the committee of management, by whatever name called.

(3) Despite subsection (2), a foreign friendly society is not to be regarded as carrying on business within the State for the reason only that within the State it—

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute; or
- (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or
- (c) maintains any bank account; or
- (d) effects any sale through an independent contractor; or
- (e) creates evidence of any debt or creates a charge on property; or
- (f) secures or collects any of its debts or enforces its rights in regard

to any securities relating to such debts; or

(g) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or

(h) invests any of its funds or holds any property.

Documents, etc., to be lodged by foreign friendly societies having place of business in the State

11.2(1) Every foreign friendly society must, within 1 month after it establishes a place of business or commences to carry on business within the State, lodge with the Registrar for registration—

(a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect; and

(b) a certified copy of its rules or other instrument constituting or defining its constitution; and

(c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors of a friendly society formed and registered under this Act; and

(d) where the list includes directors resident in the State who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign friendly society stating the powers of the local directors; and

(e) a memorandum of appointment or power of attorney under the seal of the foreign friendly society or executed on its behalf in such manner as to be binding on the society and, in either case, verified in the prescribed manner, stating the name and address of one or more persons resident in the State (not including a body corporate incorporated outside the State) authorised to accept on its behalf service of process and any notices required to be served on the society; and

(f) notice of the situation of its registered office in the State; and

(g) notice of the situation of its registered office in its place of

incorporation or origin; and

(h) a statutory declaration in the prescribed form made by the agent of the society;

and the Registrar must register the society under this Part by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar under subsection (1)(e) is executed by a person on behalf of the foreign friendly society, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed form, must be lodged with the Registrar and the copy is for all purposes to be regarded as an original.

(3) Subsection (1) applies to a foreign friendly society which immediately before the date of commencement of this Part, had a place of business or was carrying on business within the State and, on that date, has a place of business or is carrying on business within the State, as if it established that place of business or commenced to carry on that business on that date.

(4) A foreign friendly society must have a registered office within the State to which all communications and notices may be addressed.

(5) An agent, until ceasing to be such in accordance with subsection (7)—

(a) continues to be the agent of the foreign friendly society; and

(b) is answerable for the doing of all such acts, matters and things, as are required to be done by the foreign friendly society under this Act.

(6) A foreign friendly society or its agent may lodge with the Registrar a notice in writing stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(7) The agent in relation to whom the notice has been lodged ceases to be an agent on the expiration of a period of 21 days after the date of lodgement of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (8) whichever is the earlier, but if the notice states a date on which the agent is to so cease and the date is later than the expiration of that

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period, on that date.

(8) Where an agent ceases to be the agent and the foreign friendly society is then without an agent in the State then, if the foreign friendly society continues to carry on business or have a place of business in the State, it must within 21 days after the agent ceases to be an agent appoint an agent and lodge a memorandum of that appointment and a statutory declaration in accordance with subsection (1) and if not already lodged under subsection (2) a copy of the deed or document or power of attorney referred to in that subsection verified in accordance with it.

(9) On the registration of a foreign friendly society under this Part or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in section 11.3(c), (d) or (e), the Registrar must certify to that fact.

(10) The Registrar's certificate under subsection (9) is *prima facie* evidence of the matters mentioned in the certificate.

Return to be filed where documents, etc., altered

11.3(1) Where any change or alteration is made in—

- (a) the rules of the foreign friendly society or other instrument lodged with the Registrar; or
- (b) the directors of the foreign friendly society; or
- (c) the agent or agents of the foreign friendly society or the address of any agent; or
- (d) the situation of the registered office of the foreign friendly society in the State; or
- (e) the address of the registered office of the foreign friendly society in its place of incorporation or origin; or
- (f) the name of the foreign friendly society; or
- (g) the powers of any directors resident in the State who are members of the local board of directors of the foreign friendly society;

the foreign friendly society must, within 1 month after the change or alteration, lodge with the Registrar in the prescribed form particulars of the change or alteration and such documents as the regulations require.

(2) Subject to section 11.8(2), the Registrar may register any change or alteration in the name of a foreign friendly society particulars of which have been lodged with the Registrar under subsection (1).

Balance sheets

11.4(1) Subject to this section, a foreign friendly society must, within the period of 5 months, or such extended period as the Registrar may allow in special circumstances, next after the end of each financial year of the society, lodge with the Registrar a copy of its financial statements made up to the end of its last financial year in such form and containing such particulars and including copies of such documents as the society is required to prepare by the law for the time being applicable to that society in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2) The Registrar may, if of the opinion that the financial statements and other documents referred to in subsection (1) do not sufficiently disclose the foreign friendly society's financial position, require the society to lodge a financial statement within such period, in such form and containing such particulars and including such documents as the Registrar by notice in writing served on the society requires, but this subsection does not authorise the Registrar to require a financial statement to contain any particulars or include any documents that would not be required to be provided if the society were a friendly society formed and incorporated under this Act.

(3) The foreign friendly society must comply with the requirements set out in the notice.

(4) Where a foreign friendly society is not required by the law of the place of its incorporation or origin to prepare a financial statement the society must prepare and lodge with the Registrar a financial statement within such period, in such form and containing such particulars and including such documents as the society would have been required to prepare if the society were a friendly society formed and incorporated under this Act.

Publication of name, etc., of foreign friendly society

11.5(1) There must appear in legible characters on every relevant document of a foreign friendly society that is issued, signed or published in the State the name of the foreign friendly society and the place where it is formed or incorporated.

(2) There must appear in legible characters on every relevant negotiable instrument of a foreign friendly society that is issued or signed in the State the name of the foreign friendly society.

(3) An officer of a foreign friendly society or other person who on behalf of the society—

(a) issues or publishes in the State, or authorises the issue or publication in the State, of any relevant document of the society that does not comply with subsection (1); or

(b) signs or issues in the State, or authorises to be signed or issued in the State, any relevant negotiable instrument that does not comply with subsection (2);

commits an offence.

(4) If an officer of a foreign friendly society, or any other person, signs or issues in the State, or authorises to be signed or issued in the State, on behalf of the society, any relevant negotiable instrument that does not comply with subsection (2), that officer or person is liable to the holder of the relevant negotiable instrument for the amount due on it unless that amount is paid by the foreign friendly society.

(5) Every foreign friendly society must—

(a) display in a conspicuous position in letters easily legible on the outside of every office or place in the State in which its business is carried on—

(i) its name and the place where it is formed or incorporated;
and

(ii) in the case of its registered office in the State— the words “Registered Office”; and

(b) have its name stated in legible character in all notices, advertisements and other official publications of the society and in

every relevant document of the society.

(6) In this section—

“relevant document” in relation to a foreign friendly society, means a business letter, statement of account, invoice, receipt, order for goods or services, official notice or publication of the foreign friendly society;

“relevant negotiable instrument” in relation to a foreign friendly society, means a bill of exchange, promissory note, cheque or other negotiable instrument, endorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or a letter of credit of the foreign friendly society.

Service of notice

11.6 A document is sufficiently served on a foreign friendly society if it is—

- (a) addressed to the foreign friendly society and left at or sent by post to its registered office in the State; or
- (b) addressed to an agent of the foreign friendly society and left at or sent by post to the registered address of the agent.

Cessation of business in the State

11.7(1) If a foreign friendly society ceases to have a place of business or to carry on business in the State it must, within 7 days after so ceasing, lodge with the Registrar in the prescribed form notice of that fact and, as from the day on which the notice is so lodged, its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar ceases and the Registrar must, upon the expiration of 12 months after the lodging of the notice, remove the name of that foreign friendly society from the register.

(2) If a foreign friendly society goes into liquidation or is dissolved in its place of incorporation or origin each person who immediately prior to the commencement of the liquidation proceedings or the dissolution was an agent must, within 1 month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice

of that fact and, when a liquidator is appointed, notice of the appointment.

(3) A person who contravenes subsection (2) commits an offence.

(4) On receipt of a notice from an agent that the foreign friendly society has been dissolved, the Registrar must remove the name of the society from the register.

(5) Where the Registrar has reasonable cause to believe that a foreign friendly society has ceased to carry on business or to have a place of business in the State, the provisions of this Act relating to the cancellation of the registration of defunct friendly societies, with such adaptations as are necessary, extend and apply accordingly.

Restriction on use of certain names

11.8(1) Except with the consent of the Minister a foreign friendly society must not be registered by a name that is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) Except with the consent of the Minister, any change in the name of a foreign friendly society must not be registered if, in the opinion of the Registrar, the new name of the society is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, despite particulars of the change having been lodged in accordance with section 11.3.

(3) A foreign friendly society must not use in the State any name other than that under which it is registered under this Part or under any other Act.

Offences

11.9 If a foreign friendly society contravenes a provision of this Part the society, and any director, other officer or agent of the society who knowingly authorises or permits the contravention commits an offence.

PART 12—GENERAL

Division 1—Evidence

Certificates, etc.

12.1(1) A certificate of incorporation relating to a friendly society signed by or bearing the seal of the Registrar is conclusive evidence that the society is incorporated under this Act.

(2) Any document purporting to be a copy of the certificate of incorporation of a friendly society and certified as such by the Registrar, is to be received in evidence as if it were the original certificate.

(3) Judicial notice must be taken of the signature and seal of any person who holds, or has held, the office of Registrar if the signature or seal purports to be attached to any certificate or other official document.

(4) A copy of or extract from any document registered by, lodged with or given to the Registrar, certified to be a true copy or extract under the hand and seal of the Registrar, is in any proceedings admissible in evidence as of equal validity with the original document.

(5) In any proceedings a certificate by the Registrar stating that a requirement of this Act specified in the certificate—

(a) had or had not been complied with at a date or within a period specified in the certificate; or

(b) had been complied with at a date specified in the certificate but not before that date;

is *prima facie* evidence of the matters specified in the certificate.

Copies or extracts of books to be admitted in evidence

12.2(1) In any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a book relating to the affairs of a friendly society is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under

subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Division 2—Offences

Inducement to secure appointment, etc.

12.3 A person who gives or agrees or offers to give to any officer, member or creditor of a friendly society any valuable consideration with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of some other person as the society's director, auditor, actuary, liquidator, administrator, receiver or receiver and manager, or with a view to securing or preventing the exercise of any power or function, or the doing of an act, authorised by this Act, commits an offence.

Penalty—100 penalty units or imprisonment for 1 year, or both.

False or misleading statements

12.4(1) A person who, in a document required by or for the purposes of this Act or lodged with or given to the Registrar under this Act, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(2) A person who, in a document required by or for the purposes of this Act or lodged with or given to the Registrar under this Act—

- (a) makes or authorises the making of a statement that is false or

misleading in a material particular; or

(b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, commits an offence.

Penalty—100 penalty units or imprisonment for 1 year, or both.

(3) For the purposes of subsections (1) and (2), where—

(a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged with or given to the Registrar; and

(b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect;

the person is taken to have authorised the making of the statement or the omission of the matter or thing.

False or misleading statements in relation to benefit funds

12.5 A person who makes a statement, or disseminates information, that is false in a material particular or is materially misleading and is likely to induce an investment in a benefit fund by other persons commits an offence if, when the person makes the statement or disseminates the information—

(a) the person does not care whether the statement or information is true or false; or

(b) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

Penalty—350 penalty units or imprisonment for 5 years, or both.

Fraudulently inducing persons to invest in a benefit fund

12.6(1) A person who—

- (a) by making or publishing a statement, promise or forecast that the person knows to be misleading, false or deceptive; or
- (b) by a dishonest concealment of material facts; or
- (c) by the reckless making or publishing (dishonestly or otherwise) of a statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false in a material particular or materially misleading;

induces or attempts to induce another person to invest in a benefit fund of a friendly society commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(2) It is a defence to a prosecution for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(d) if it is proved that, when the information was so recorded or stored, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

Falsification of books

12.7(1) An officer, former officer, member or former member of a friendly society who conceals, destroys, mutilates or falsifies any securities of or belonging to the society or any books affecting or relating to affairs of the society commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a friendly society is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who—

- (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or

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(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device; or

(c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter;

commits an offence.

Penalty—350 penalty units or imprisonment for 5 years, or both.

(3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he or she acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Penalty provision

12.8(1) A person who attempts to commit an offence against this Act commits an offence against this Act and is punishable as if the attempted offence had been committed.

(2) A person who commits an offence against this Act for which a specific penalty is not prescribed by another provision of this Act is liable to a penalty of 20 penalty units or imprisonment for 3 months, or both.

Continuing offences

12.9(1) Where—

(a) by or under this Act an act or thing is required or directed to be done within a particular period or before a particular time; and

(b) failure to do that act or thing within the period or before the time referred to in paragraph (a) constitutes an offence; and

(c) that act or thing is not done within the period or before the time referred to in paragraph (a);

then—

(d) the obligation to do that act or thing continues, notwithstanding

that that period has expired or that time has passed, until that act or thing is done; and

(e) where a person is convicted of an offence that, by virtue of paragraph (d), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and

(f) the penalty applicable to each such separate and further offence is 1 penalty unit.

(2) Where—

(a) by or under this Act an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified; and

(b) failure to do that act or thing constitutes an offence; and

(c) a person is convicted of an offence in respect of a failure to do that act or thing;

that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and the penalty applicable to each such separate and further offence is 1 penalty unit.

(3) Charges against the same person for any number of offences under subsection (1)(e) or (2) may be joined in the same complaint if those offences relate to a failure to do the same act or thing.

(4) If a person is convicted of more than one offence under subsection (1)(e) or (2), the court may impose 1 penalty in respect of all the offences of which the person is so convicted, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Officers and other persons in default

12.10(1) Where a provision of this Act provides that an officer of a friendly society or other person who is in default commits an offence, the

reference to the officer or other person who is in default is, in relation to a contravention of the provision, a reference to any officer of the society (including a person who subsequently ceased to be an officer of the society) or any person, as the case may be, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention.

(2) For the purposes of subsection (1), a secretary of a friendly society is, unless the contrary is proved, taken to be knowingly concerned in and party to any failure by the society to comply with a provision of this Act requiring the lodgement of a document with or the giving of a document to the Registrar.

Division 3—Proceedings

Proceedings how and when taken

12.11(1) Notwithstanding anything in any other Act, proceedings for any offence against this Act with a view to the summary conviction of the offender may be instituted within the period of 3 years after the act or omission alleged to constitute the offence or, with the consent of the Minister, at any later time.

(2) In any proceedings for an offence against this Act any complaint under the *Justices Act 1886* may be made only—

- (a) by the Registrar; or
- (b) by a person authorised in writing by the Minister.

(3) A document purporting to be a writing referred to in subsection (2)(b) is, on its production in the proceedings, *prima facie* evidence of its contents.

Indictable offences and summary offences

12.12(1) An offence against this Act that is not punishable by imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

(2) An offence against this Act that is punishable by imprisonment for a period exceeding 6 months is, subject to subsection (3), punishable on

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indictment.

(3) Where—

(a) proceedings for an offence against this Act that is punishable by imprisonment for a period exceeding 6 months are brought in a court of summary jurisdiction; and

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

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

(4) A court of summary jurisdiction may not—

(a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding 2 years; or

(b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in the aggregate, exceed 5 years.

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

Civil remedies

12.13 If a friendly society in making or raising any loan or receiving any monies contravenes any provision of this Act or any rule of the society, the civil rights and liabilities of the society or any other person in respect of the recovery of the loan or moneys are not affected or prejudiced by the contravention, save that the money becomes immediately payable, and the same remedies may be had for the recovery of the loan or moneys and for the enforcement of any security for the loan as if there had not been a contravention of this Act or of the rules of the society.

Civil proceedings not to be stayed

12.14 No civil proceeding under this Act is to be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

Power of Court to prohibit payment or transfer of money or property**12.15(1)** Where—

(a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or

(b) a prosecution has been begun against a person for a contravention of this Act; or

(c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an “**aggrieved person**”) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the “**relevant person**”), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, the Court may, on application by the Registrar or by an aggrieved person, make one or more of the following orders—

(d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting a person holding money or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property, is held;

(f) an order prohibiting the taking or sending out of the State or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting the taking, sending or transfer by a person of property of the relevant person, or of an associate of the relevant person—

(i) from a place in the State to a place outside the State; or

(ii) from a place in Australia to a place outside Australia;

(h) an order appointing—

(i) if the relevant person is an individual—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

(i) if the relevant person is an individual—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;

(j) if the relevant person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.

(2) A reference in subsection (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example—

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(3) Subsection (2) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.

(4) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(5) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(6) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(7) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person

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affected by the order, make a further order discharging or varying the first mentioned order.

(8) An order made under subsection (1) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(9) Nothing in this section affects the powers that the Court has apart from this section.

(10) A person who contravenes an order by the Court under this section commits an offence.

Injunctions

12.16(1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act;

the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of—

- (a) the Registrar; or

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(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;

grant an injunction, on such terms as the Court thinks appropriate, requiring the first mentioned person to do that act or thing.

(3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that act or thing.

(8) Where the Registrar applies to the Court for the grant of an injunction

under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In proceedings under this section against a person the Court may make an order under section 12.15 in respect of the person.

(10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Irregularities

12.17(1) In this section, unless the contrary intention appears—

- (a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and
- (b) a reference to a procedural irregularity includes a reference to—
 - (i) the absence of a quorum at a meeting of a friendly society, at a meeting of directors or creditors of a friendly society or at a joint meeting of creditors and members of a friendly society; and
 - (ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act or the rules of the friendly society, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without

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limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes—

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a friendly society is not invalid by reason of any contravention of a provision of this Act or a provision of the rules of the society;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
- (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention of a kind referred to in paragraph (a);
- (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a friendly society (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding;

and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under paragraph (a) or (c) of subsection (4) despite the fact that the contravention referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court must not make an order under this section unless it is satisfied—

- (a) in the case of an order referred to in paragraph (a) of subsection (4)—
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or
 - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
 - (iii) that it is in the public interest that the order be made; and

(b) in the case of an order referred to in subsection (4)(c), that the person subject to the civil liability concerned acted honestly; and

(c) in every case, that no substantial injustice has been or is likely to be caused to any person.

Power of Registrar to intervene in proceedings

12.18(1) The Registrar may intervene in any proceeding relating to a matter arising under this Act.

(2) Where the Registrar intervenes in a proceeding referred to in subsection (1), the Registrar is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

Review of decision by Registrar

12.19(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 Court against the decision on the review made by the Registrar.

(6) On an appeal the Court may confirm, vary or revoke the decision on the review and make such orders and give such directions as it thinks fit.

Division 4—Miscellaneous**Societies may impose penalties**

12.20(1) A friendly society may by its rules impose penalties not exceeding the prescribed amount on a member for any contravention of the rules by the member and the penalties recovered must be applied in the manner directed by the rules.

(2) The rules may provide—

- (a) that any such penalty be imposed—
 - (i) by a meeting of the friendly society; or
 - (ii) by any person or persons designated in the rules; and
- (b) for suspension of the member against whom the penalty is imposed from all benefits under the rules until the penalty is paid.

Reciprocal arrangements

12.21(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.

Exemption from stamp duty

12.22(1) The following do not attract duty under the *Stamp Act 1894*—

- (a) a draft, order or receipt for money contributed to or received from a fund of a friendly society under this Act or the society's rules;
- (b) a bond given to or on account of a friendly society.

(2) A cheque drawn by or on behalf of a friendly society must bear on its face the words "drawn under the Friendly Societies Act".

Rules of Court

12.23(1) Such Rules of Court may be made as are necessary, desirable or convenient for regulating the procedure and practice of the Court for the purpose of giving full effect to any of the provisions of this Act.

(2) Until such Rules of Court are made or in so far as such Rules of Court do not extend, the Court in respect of any matter before it under this Act may in the particular case give such directions as it considers fit, and the directions, according to their tenor, have the force and effect of Rules of Court.

Regulations

12.24(1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to—

- (a) the registration and incorporation of friendly societies; and
- (b) procedures with respect to the doing of any act or thing under this Act; and
- (c) the functions of the Registrar; and
- (d) the inspection of any register or documents, relating to friendly societies, kept by the Registrar; and
- (e) forms to be used for the purposes of this Act; and
- (f) the form of, and the matters to be provided for in, the rules of

friendly societies; and

(g) fees to be paid in connection with the administration of this Act; and

(h) the furnishing of returns, statements and information to the Registrar and the times and mode of such furnishing; and

(i) all matters required or permitted by this Act to be prescribed where such matters are to be or may be prescribed by the regulations or where the manner of prescription is not otherwise provided; and

(j) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

(2) A regulation may require that a form to be used for the purposes of this Act be a form approved by the Registrar.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units including where a friendly society contravenes a regulation, an offence by an officer of the friendly society or another person who is in default.

(4) Where there is inconsistency between any regulation made under this Act and a rule of a friendly society, the regulation prevails and the rule, to the extent of the inconsistency, does not apply.

Repeal of Acts

12.25 The Acts specified in Schedule 1 are repealed.

PART 13—TRANSITIONAL PROVISIONS

Division 1—Preliminary

Regulations

13.1(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 subsection (1) may, if the regulations so provide, take effect from the commencement of section 12.25 or later.

(3) To the extent that a provision referred to in subsection (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 subsection (1) has effect despite any other section of this Part.

Division 2—Provisions consequent on enactment of this Act

Definitions

13.2 In this Division—

“continuing society” means the corporation that, in accordance with section 13.3, is a continuation of a former society;

“former Act” means the *Friendly Societies Act 1913*;

“former society” means—

(a) a friendly society, social society, benevolent society, cattle insurance society, house society or special purpose 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

13.3(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” (unless the Registrar has exempted, or is proposing to exempt, the society from compliance with section 3.5(1)) and is specified in the certificate of incorporation issued under this section.

Members, assets, rights and liabilities of continuing society

13.4(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

(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 management of the former society become, and are taken to have consented in writing to 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) The secretary of a continuing society must as soon as practicable after its incorporation lodge with the Registrar of Titles, the Registrar of Dealings or any other person required by any Act or law to register, make or enter any note or memorial on or in respect of any instrument of title to land, as the case requires, a notice in writing in the prescribed form setting out in relation to any estate or interest in land held by any person in trust for or on behalf of the society or a branch of the society or its objects, such particulars and other matters as are prescribed.

(3) In the case of any estate or interest in land vested in the society under subsection (1)(c)—

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(a) the Registrar of Titles, where the *Real Property Act 1861* applies to that estate or interest; or

(b) the person or authority charged with registering instruments of title to or dealings with that estate or interest, where that Act does not apply to it;

has, upon lodgement of a notice under subsection (2) and without payment of any fee, power to—

(c) make or cause to be made any necessary recordings in the appropriate register or other record of titles or dealings; and

(d) do and execute all such acts, matters and things as may be necessary and proper;

to record that vesting.

(4) The vesting of property under this section and any instruments executed as a consequence of this section to give it effect do not attract duty under the *Stamp Act 1894*.

Directors may act

13.5 The directors of a continuing society appointed by section 13.4 (1)(h) may manage and control the business and operations of the society despite the fact that their number is not in accordance with section 4.3(1).

Objects of continuing society

13.6 A continuing society may continue to have as an object of the society under this Act any object or purpose which it had as a former society.

Transitional adoption of model rules

13.7(1) 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.

(2) If within 9 months after the commencement of this section the rules of a continuing society are not in conformity with this Act the Registrar

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may by order in writing served on the society direct that its rules are the model rules referred to in subsection (1).

(3) An order under subsection (2) has effect accordingly.

Administration of continuing society

13.8(1) Where at the commencement of this section the affairs of a continuing society are being conducted by an administrator under the *Friendly Societies (Duties and Functions of Registrar) Regulations 1991* those affairs are to continue to be conducted by an administrator and for that purpose—

- (a) the administrator is to be taken to have been validly appointed under Division 1 of Part 9; and
- (b) the provisions of this Act relating to the conduct of the affairs of a friendly society by an administrator apply accordingly.

(2) The person who is the administrator of a continuing society at the commencement of this section may resign that office by notice in writing given to the Minister and the Registrar under this Act may appoint another person as administrator to conduct the affairs of the society.

Validation of regulations

13.9(1) To allay any doubt, it is declared that the *Friendly Societies (Duties and Functions of Registrar) Regulations 1991* (in this section called the “**regulations**”) published in the Gazette on 14 January 1991 at pages 97 to 109 inclusive are and always have been valid and effectual.

(2) The regulations are to be read and construed as if the following definition were, and had since the commencement of the regulations been, inserted in regulation 1.02 after the definition “meeting”—

“**property**”, in relation to a society, includes all funds of the society howsoever obtained or held by it.

Operation of dispensary

13.10 A continuing society that immediately before the commencement

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of this section had as an object of the society the supplying of medical requisites or dispensing medicine to members, their husbands, wives, widows, parents, children or kindred is, for the purpose of section 2.2 (3), to be taken to have as an object of the society the provision of health and welfare facilities and services for members or their dependants.

Prosecution of offences under former Act

13.11 For the purpose of prosecuting any offences under the former Act, a reference in that Act to the Registrar of Friendly Societies is taken to be a reference to the Registrar under this Act.

SCHEDULE 1

[s.12.25]

Year and Number of Act	Short Title
4 Geo. V. No. 13	<i>The Friendly Societies Act of 1913</i>
5 Geo. V. No. 16	<i>The Friendly Societies Act Amendment Act of 1914</i>
15 Geo. V. No. 30	<i>The Friendly Societies Act Amendment Act of 1924</i>
26 Geo. V. No. 12	<i>The Friendly Societies Acts Amendment Act of 1935</i>
2 Geo. VI. No. 25	<i>The Friendly Societies Acts Amendment Act of 1938</i>
3 Geo. VI. No. 24	<i>The Friendly Societies Acts Amendment Act of 1939</i>
4 Geo. VI. No. 26	<i>The Friendly Societies Acts Amendment Act of 1940</i>
6 Geo. VI. No. 35	<i>The Friendly Societies Acts Amendment Act of 1942</i>
7 Geo. VI. No. 26	<i>The Friendly Societies Acts Amendment Act of 1943</i>
11 Geo. VI. No. 31	<i>The Friendly Societies Acts Amendment Act of 1947</i>
12 Geo. VI. No. 13	<i>The Friendly Societies Acts Amendment Act of 1948</i>
13 Geo. VI. No. 33	<i>The Friendly Societies Acts Amendment Act of 1949</i>
15 Geo. VI. No. 50	<i>The Friendly Societies Acts Amendment Act of 1951</i>

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3 Eliz. II. No. 36	<i>The Friendly Societies Acts Amendment Act of 1954</i>
8 Eliz. II No. 10	<i>The Friendly Societies Acts Amendment Act of 1959</i>
No. 26 of 1963	<i>The Friendly Societies Acts Amendment Act of 1963</i>
No. 31 of 1970	<i>Friendly Societies Act Amendment Act 1970</i>
No. 24 of 1974	<i>Friendly Societies Act Amendment Act 1974</i>

SCHEDULE 2

[s. 3.14(1)]

RULES TO BE MADE FOR FRIENDLY SOCIETY

Name and address

1. The name of the friendly society and the address of its registered office.

Objects

2. The objects of the friendly society.

Funds and investments

3. The methods of raising funds and making investments.

Management of funds

4. The management of funds of the friendly society, including the drawing and signing of cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for and on behalf of the friendly society.

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.

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 friendly society, 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 friendly society 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 friendly society in respect of membership including, but without being limited to, any charges on admission to membership or for working expenses.

Settlement of disputes

13. The manner of settling disputes between the friendly society and any of its members or any person who claims by or through a member under

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the rules.

Rules

14. The manner of altering or revoking rules of the friendly society and the manner of adding to the rules.

Seal

15. The custody and use of the seal of the friendly society.