



FAMILY SECURITY FRIENDLY SOCIETY (DISTRIBUTION OF MONEYS) ACT 1991

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Queensland



Family Security Friendly Society (Distribution of Moneys) Act 1991

Act No. 89 of 1991

An Act to provide for the continuance of the powers of the Registrar as administrator and trustee of the Family Security Friendly Society and to provide for the distribution of funds held by or that may come into the hands of the Registrar as administrator and trustee of the Society

[Assented to 11 December 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.

Short title

1. This Act may be cited as the *Family Security Friendly Society (Distribution of Moneys) Act 1991*.

Definitions

2. In this Act—

“available evidence” means the matters mentioned in section 16(2);

“administrator” means the Registrar as the administrator of the Society appointed under the regulations;

“creditor” means a creditor of the Society but does not include an investor whose only claim against the Society is in relation to contributions made by the investor to a fund of the Society;

“investor” means a person who contributed money to the Society for investment in a fund of the Society and whether or not the person became, at law, a member of the Society, and whether or not the fund was lawfully created;

“investors’ moneys” means the amounts that are available to the administrator, from time to time, for distribution to the investors under section 9(d), after the administrator has applied the Society's moneys in the order required by section 9(a), (b) and (c), or has made adequate provision for the payment of those moneys;

“property” has the meaning assigned by the regulations as provided for in section 13.9(2) of the *Friendly Societies Act 1991*;

“proven claim” means a claim that the administrator considers proven under section 17;

“regulations” means the *Friendly Societies (Duties and Functions of Registrar) Regulations 1991*;

“Society” means the Family Security Friendly Society.

Certain sections of *Friendly Societies Act 1991* not to apply etc.

3.(1) It is declared that—

- (a) sections 13.4(1)(c) and (f) and 13.8 of the *Friendly Societies Act 1991* do not apply, and have never applied, to the Society; and
- (b) the regulations have applied to the Society from 1 August 1991, and continue to apply to the Society, subject to this Act.

(2) Despite subsection (1)(a), the Governor in Council may, by order in council, fix a day from which a provision mentioned in that subsection is to apply to the Society.

(3) If the Governor in Council fixes a day under subsection (2) from which both of the provisions mentioned in subsection (1)(a) apply to the Society, the regulations cease to apply to the Society from that day.

Inconsistency between this Act and other Acts

4. This Act governs the duties and responsibilities of the administrator and, except where a contrary intention appears, if there is an inconsistency between this Act and any other Act or law, this Act prevails.

Administrator to collect property of Society

5. It is the duty of the administrator to collect the property of the Society vested in the Registrar as trustee under the regulations and to convert the property into money, in the time and way that the administrator alone, considers is in the best interests of investors and creditors of the Society.

All contributions by investors taken to have been desposited into a common fund

6. All amounts contributed by investors to the Society, irrespective of—

- (a) the fund on account of which they were received by or on behalf of the Society; or
- (b) whether or not the fund mentioned in paragraph (a) was lawfully created; or
- (c) when the moneys were contributed;

are taken to have been deposited into a common fund of the Society and (except to the extent that those amounts have been redeemed by the Society before 15 January 1991) available for distribution to creditors and investors under this Act.

Powers of administrator

7. Subject to section 5, the administrator may—

- (a) make any compromise or arrangement with creditors, and persons claiming to be creditors or having or alleging that they have claims (present or future, certain or contingent, ascertained or sounding only in damages), against the Registrar as trustee of the Society; and
- (b) compromise any debts, liabilities capable of resulting in debts and claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Registrar as trustee of the Society and a debtor or person apprehending liability to the Society, and all questions in any way relating to or affecting the property or the duties of the administrator under this Act, on such terms as are agreed, and take any security for the discharge of, and give a complete discharge in respect of, the debt, liability or claim; and
- (c) bring, defend, continue or discontinue any legal proceeding in the name of the Registrar as trustee of the Society; and
- (d) appoint solicitors; and
- (e) sell or otherwise dispose of, in any way, all or any part of the property of the Society; and
- (f) do acts and execute deeds, receipts and other documents in the name of the Society; and
- (g) subject to the *Bankruptcy Act 1966* of the Commonwealth, prove in the bankruptcy of a debtor of the Society or under any deed executed under that Act; and
- (h) draw, accept, make and endorse any bill of exchange or promissory note in the name of the Society; and
- (i) appoint an agent to do any business that the administrator is unable to, or that is unreasonable to expect the administrator to do, in

person; and

(j) do anything else that is necessary or incidental to the performance of the administrator's duties under this Act.

Additional power of administrator in relation to amounts lent by Society

8.(1) Despite any provision of a loan agreement, mortgage or other security between the Society and a borrower to whom the Society has lent money that has not been fully repaid, if the administrator alone considers it to be in the best interests of the investors and creditors of the Society, the administrator may by a written notice served on the borrower, require the borrower to repay the principal of the loan in full by repaying the amount specified in the notice (together with interest under the loan agreement, mortgage or other security to the day of repayment of the principal) within 90 days of service of the notice.

(2) If a borrower fails to comply with a notice under subsection (1)—

(a) the borrower is taken to be in default under the loan agreement, mortgage or other security; and

(b) a mortgage or other security given to the Society to secure the repayment of the loan may be immediately enforced by the administrator in accordance with its terms; and

(c) the amount specified in the notice, or such lesser amount of principal and interest as is outstanding after any securities held by the Society to secure the loan have been enforced—

(i) is a debt due to the Society by the borrower; and

(ii) may be sued for and recovered by the administrator in a court having jurisdiction for the recovery of debts up to the amount concerned.

Application of moneys

9. The moneys of the Society that become available to the administrator in performing the duty imposed by section 5 must be applied by the administrator in the following order—

- (a) first, in payment of the expenses mentioned in clause 4.05 of the regulations;
- (b) next, in payment of the expenses of and incidental to the performance of the administrator's duty under this Act;
- (c) next, in payment of the creditors;
- (d) finally, to be distributed to the investors under this Act.

Protection of administrator etc.

10. The administrator, an officer of the public service or an agent of the administrator or an employee of that agent acting under this Act are indemnified by the State against all actions, proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by any of them without negligence under this Act; and
- (b) acts done or omitted to be done by any of them in good faith and without negligence for the purpose of this Act.

Administrator to advertise before applying moneys

11. The administrator must, before applying any moneys under section 9(c) or (d), advertise at least once in—

- (a) a newspaper circulating generally in Australia; or
- (b) a newspaper published, and circulating generally, in each State or Territory where the administrator considers potential claimants may be located.

Things that must be in the advertisement

12. The advertisement must—

- (a) state the existence of the moneys; and
- (b) invite claims from investors and other persons who consider that the Society owes them money; and
- (c) require a claimant to send to the administrator with the person's

claim—

- (i) any document or information in that person's possession that is proof of the claim; and
- (ii) if the claimant is an investor—a bond certificate or receipt from the Society or other proof of moneys contributed to the funds of the Society; and
- (d) specify the day (not earlier than 2 months after the publication of the advertisement) before which a claim and proof of the claim must be received by the administrator; and
- (e) specify the place or address to where the claim and its proof is to be sent or delivered; and
- (f) contain any other information, that the administrator considers may be helpful to a potential claimant.

Administrator may write to known claimants

13. In addition to advertising under section 11, the administrator may as near in time as is practicable to the time when the advertisements are published, send letters to persons that the administrator knows to be potential claimants, addressed to them at the addresses last known to the administrator, telling them of their rights to make claims and of information and requirements associated with the making of a claim that is contained or is to be contained in an advertisement under section 12.

Claims not received by specified day

14. Claims that are not received by the administrator by the day specified under section 12 are not valid claims under this Act and are to be disregarded by the administrator.

Amounts confirmed with administrator during administration taken to be claims

15. If during the course of administering the Society under the regulations, the administrator has received—

- (a) written confirmation from an investor of the amount that is

shown in the Society's records as the amount that the investor has deposited with the Society; or

(b) a claim from a creditor of the Society that is accompanied by proof of the claim that is mentioned in section 12(c);

then despite section 12—

(c) the investor and the creditor need not make a claim under section 12; and

(d) the amount that is—

(i) confirmed by the investor; or

(ii) claimed by the creditor;

is taken by the administrator to be an amount claimed under this Act; and

(e) the administrator must send a letter to—

(i) the investor; and

(ii) the creditor;

at the address last known to the administrator advising the investor and creditor of the amount taken as a claim under this section.

Administrator to consider claims

16.(1) All claims received by the administrator (other than claims that under section 14 are not valid claims), must be considered by the administrator who must make a decision in relation to each claim.

(2) In making a decision under subsection (1), the administrator must have regard to—

(a) the proof mentioned in section 12(c) sent with the claim; and

(b) documents and information held by the administrator; and

(c) any other material and information available to the administrator that the administrator considers to be relevant.

Administrator to decide claims

17.(1) Subject to section 16, the administrator must decide which of those claims under this Act that the administrator considers, on the available evidence, proven to the satisfaction of the administrator and the amounts of those claims.

(2) The administrator must deduct the following amounts from the amount of a claim made by an investor—

- (a) the amount of any partial redemption of a benefit; and
- (b) the amount of any annuity payment;

paid out to the investor by the Society before 15 January 1991 unless the investor has already deducted those amounts in making the claim.

(3) In deciding the amount of each claim the administrator must disregard the amount of—

- (a) a bonus; or
- (b) agent's commission; or
- (c) any similar adjustment;

that has been added to or deducted from an investor's contribution by the Society, where the amount mentioned in paragraph (a), (b) or (c) has not been paid out to the investor, and the amount of each claim is to be decided as if none of the amounts mentioned in those paragraphs had ever been added to or deducted from the amount of the contribution.

(4) The administrator must determine the percentage that the amount of each investor's proven claim represents of the total amount of all investors' proven claims.

Administrator to notify claimants

18. The administrator must give written notice to each claimant, stating—

- (a) that the administrator has—
 - (i) rejected the claimant's claim and the reasons for its rejection; or
 - (ii) accepted the claimant's claims as proven, either in whole or to the extent specified in the notice, and, if accepted in part only,

- the reasons for its partial non-acceptance; and
- (b) if the claimant is an investor whose claim has been accepted either in whole or part—
- (i) the total amount of all investors' proven claims; and
 - (ii) the percentage determined under section 17(4) in relation to the investor.

Administrator to pay expenses and creditors

19.(1) The administrator must begin to apply the moneys available to the administrator in performing the duty imposed under section 5, as soon as they are available, to pay the administration expenses under section 9(a) and (b) and next to pay creditors under section 9(c).

(2) It is sufficient compliance with subsection (1) if the administrator makes adequate provision for the payment of the moneys mentioned in that subsection and then pays those moneys from time to time as the administrator determines.

Administrator to distribute investors' moneys to investors who have made proven claims

20.(1) When the administrator has made—

- (a) the payments provided for under section 19(1); or
- (b) adequate provision for those payments under section 19(2);

the administrator must then begin to distribute the investors' moneys to the investors who have made proven claims.

(2) The administrator may make—

- (a) an initial distribution; and
- (b) as many interim distributions;

before making a final distribution, as the administrator determines.

(3) At each distribution made by the administrator, an investor who has made a proven claim is to receive the investor's percentage determined or last determined under section 17(4) of the investors' moneys then being

distributed.

Payment of claimant in foreign country

21. The money value of a proven claim is to be determined in Australian currency, and in the case of payment to a claimant in a foreign country, is to be based on the exchange rate applicable to the currency of the country where the payment is to be made as at the day the payment is to be made.

Acceptance of claim initially rejected or not accepted in full

22.(1) If a claim that, in the first instance, is rejected or not accepted in full by the administrator is later accepted by the administrator as being proven, the administrator must pay that claim, so far as available moneys will allow, to the same extent as like proven claims have been paid by the administrator, before any further payments (other than payments mentioned in section 9(a) and (b)) are made under this Act.

(2) After payment of a claim under subsection (1), the administrator must treat the claim in a similar way to like proven claims under this Act.

(3) If the claim that is accepted under subsection (1) is a claim by an investor in relation to a contribution to the Society for investment in one of its funds, the administrator must again work out the percentage under section 17(4) to take account of the additional proven claim and must give another notice to each claimant under section 18(b) either before or with the next distribution to investors under section 20.

Moneys received by investor from third party

23. If an investor, who makes or has made a claim under this Act, receives or has received any moneys from a person (other than the administrator), before or after the commencement of this Act because of a demand or proceeding made or brought by the investor against the person arising out of or in relation to a contribution of money to the Society by the investor to which the investor's claim under this Act relates, the investor must notify the administrator in writing—

- (a) if the moneys were received before the commencement of this Act—within 1 month of the commencement; or

(b) if the moneys were received after the commencement of this Act—within 1 month of the receipt of the moneys;

of the following details—

- (c) the amount of the moneys received;
- (d) when they were received;
- (e) the claim under this Act to which they relate.

Further moneys available for distribution

24.(1) Subject to subsection (2), moneys coming into the hands of the administrator under this Act after the final distribution of the investors' moneys are to be distributed under this Act.

(2) If, having regard to the amount of moneys mentioned in subsection (1) and the expenses of administering those moneys under this Act, the administrator believes that the moneys would be used up in administration expenses to such an extent that a distribution under the relevant provisions of this Act would not be warranted, the administrator may request the Governor in Council for directions in relation to the distribution of the moneys.

(3) Despite any other provision of this Act, the Governor in Council may, on receipt of a request under subsection (2), by order in council, give such directions to the administrator relating to the distribution of the moneys as the Governor in Council considers are just and equitable.

(4) The administrator is to distribute the moneys under the direction.

Administrator's decision final

25. The administrator's decision under section 17 is final and is not subject to judicial, administrative or any other form of review whatever.

Orders in council to be tabled and disallowable

26. Section 28A of the *Acts Interpretation Act 1954* applies to orders in council as if the orders in council were regulations.

Regulations

27. The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.