

# **TREASURY AND OTHER LEGISLATION AMENDMENT BILL 1994**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objectives of the Bill are to achieve the transfer of responsibility for the administration of friendly societies legislation to the Queensland Office of Financial Supervision (QOFS), to provide for the transfer of incorporation of certain qualifying friendly societies to more appropriate legislation and clarifying the interpretation of legislation referring to the Consolidated Fund, the consolidated revenue fund, the Loan Fund, Public Finance Standards and certain regulations.

The first objective is provided for by appropriate amendments to the *Friendly Societies Act 1991*, the *Family Security Friendly Society (Distribution of Moneys) Act 1991* and the *Queensland Office of Financial Supervision Act 1991*.

The second objective is provided for firstly by appropriate amendments to the *Friendly Societies Act 1991* and the *Associations Incorporation Act 1981*, secondly by appropriate amendments to the *Royal National Agricultural and Industrial Association of Queensland Act 1971*.

The other objective is provided for by appropriate amendments to the *Financial Administration and Audit Act 1977*.

#### **Reasons for the Bill**

The Ministerial Council for Financial Institutions (MINFIN), established under the Financial Institutions Agreement, has unanimously agreed that friendly societies will become subject to the Financial Institutions Scheme.

In due course, QOFS and other State Supervisory Authorities (SSAs) under the Financial Institutions Scheme will assume responsibilities for the regulation and prudential supervision of friendly societies under the proposed national template legislation which is to be passed by the Victorian Parliament.

Both New South Wales and Victoria have already transferred the responsibility for the administration of their jurisdictions' friendly societies legislation to their respective SSAs. In these circumstances, it is appropriate that QOFS assume such responsibility in order to enable it to familiarise itself with this State's friendly society industry in advance of and, in preparation for, the national template legislation.

The opportunity is also being taken to address the situation of those entities which, in the absence of more appropriate legislation being available at the time of their formation, have been regulated by the *Friendly Societies Act 1991*.

The *Financial Administration and Audit Act 1977* was amended in 1991 to implement the creation of the Consolidated Fund, which amalgamated the consolidated revenue fund, the Loan Fund and various other monies. That amendment also provided that all references in legislation to the "Consolidated Revenue Fund" and the "Loan Fund" became references to the "Consolidated Fund".

In order to confirm the operation of State legislation existing prior to the introduction of the 1991 amendment, this Bill clarifies the interpretation of the legislation by deeming the Consolidated Fund to be a continuation of the consolidated revenue fund and the Loan Fund.

### **Estimated Cost for Government Implementation**

The Government has agreed to make a grant of \$350,000.00 to QOFS in relation to initial establishment costs arising from this initiative and other legislation which is being prepared and which will be administered by QOFS from next year.

Subsequent costs incurred by QOFS in administering the legislation are to be funded by an industry levy.

Insofar as the amendment to the *Financial Administration and Audit Act 1977* is concerned, this amending Bill will have no financial costs in its own right, but will protect existing rights and liabilities.

**Consultation**

Consultation has been undertaken with the Department of Emergency Services, the Department of Tourism, Sport and Racing, the Department of Justice and Attorney-General, QOFS and industry in relation to the matters concerning friendly societies.

Consultation has occurred with the Crown Solicitor, the Parliamentary Counsel and relevant Treasury officers concerning the amendment to the *Financial Administration and Audit Act 1977*. The Crown Solicitor has given an opinion supporting the need for the above amendment.

**PART 1—PRELIMINARY**

*Clause 1* specifies the short title.

*Clause 2* provides for the commencement of the various sections and Parts of the Act.

**PART 2—AMENDMENT OF FAMILY SECURITY  
FRIENDLY SOCIETY (DISTRIBUTION OF MONEYS)  
ACT 1991**

*Clause 3* provides for the amendment of the *Family Security Friendly Society (Distribution of Moneys) Act 1991*.

*Clause 4* amends the long title of the Act.

*Clause 5* amends the definition of “administrator” in section 2 to provide for the situation where the Minister appoints a person to be the administrator of the Society, as well as inserting definitions of “QOFS” and “Registrar” consistent with the transfer of responsibility for administration of the Act to QOFS.

*Clause 6* amends section 3 so that any action taken under the section by the Governor in Council is taken by regulation, rather than by order in council.

*Clause 7* inserts section 4A providing for the appointment of a person to be the administrator of the Society. It also provides for the situation should QOFS become the administrator of the Society, by providing that QOFS may perform the functions and exercise the powers of the administrator in addition to its powers under the *Queensland Office of Financial Supervision Act 1992*.

*Clause 8* clarifies section 7(i) with regard to the appointment of agents by the administrator.

*Clause 9* amends section 9(a) to clarify the expenses covered therein are those of the administrator, of and incidental to the conduct of the Society's affairs by the administrator.

*Clause 10* amends section 24(3) so that any action taken under the section by the Governor in Council is taken by regulation, rather than by order in council.

*Clause 11* replaces sections 26-27, providing a regulation-making power and also providing transitional provisions for the case where the Minister appoints a person other than the Registrar as the administrator of the Society (see Clause 7 of the Bill). The Clause also inserts section 28 which provides for the making of a transitional regulation, with a specific, limited retrospective operation in the case of the Registrar ceasing to be the administrator of the Society and further provisions being necessary to accommodate that event.

### **PART 3—AMENDMENT OF FINANCIAL ADMINISTRATION AND AUDIT ACT 1977**

*Clause 12* provides for the amendment of the *Financial Administration and Audit Act 1977*.

*Clause 13* inserts section 7A, which clarifies that the Consolidated Fund, which was created by the *Financial Administration and Audit Amendment Act 1991*, is a continuation of the consolidated revenue fund and the Loan Fund which existed prior to the 1991 Amendment Act.

The Clause further confirms that a payment or funding made from the Consolidated Fund is taken to be a payment or funding from the consolidated revenue fund or the Loan Fund, and conversely, a payment or funding from one of the two latter funds is taken to be a payment or funding from the Consolidated Fund.

*Clause 14* inserts section 119, providing that the standards and regulations that have effect under sections 117 and 118 need not be notified in the Gazette nor laid before the Legislative Assembly to have effect as subordinate legislation. The Clause provides for the expiry of sections 117-119.

## **PART 4—AMENDMENT OF FRIENDLY SOCIETIES ACT 1991**

*Clause 15* provides for the amendment of the *Friendly Societies Act 1991*.

*Clause 16* omits certain existing definitions and inserts other new definitions. It also amends the definition of “corporation” in section 1.3(1) of the Act. These changes are consistent with the theme of transferring responsibility for administration of the Act to the Queensland Office of Financial Supervision (QOFS) and current legislative drafting practice. The amendment to section 1.3(2) is an example of a change because of the current legislative drafting practice.

*Clause 17* amends section 3.5(2) with regard to a reference in that section to section 12.25 of the Act, which dealt with the repeal of the Acts specified in Schedule 1 and which has been removed from the Act through the operation of the *Reprints Act 1992*.

*Clause 18* amends sections 8.1(2) and (3) firstly by requiring the Registrar to report to the Minister, when so required by the Minister, not only with regard to the policy but also procedure that the Registrar is

pursuing, or proposes to pursue, in the administration of the Act and secondly by providing that the Minister may issue directions to the Registrar not only with regard to matters of policy but also matters of procedure.

*Clause 19* replaces section 8.2 which deals with the delegation of the Registrar's powers under the Act to a director, the chief executive officer, or other employee of the Registrar, in recognition of the transfer of responsibility to QOFS.

*Clause 20* amends section 8.11 with regard to the protection of information disclosed to, or obtained by, persons appointed or engaged under the Act and also clarifies an occasion on which such information may be communicated to the Minister or a person acting for the Minister.

*Clause 21* amends section 8.13 by recognising that, in its capacity as Registrar, QOFS will not be appointing officers of the Public Service as inspectors.

*Clause 22* amends the definition of "costs" in section 8.14 so that the section is in accordance with current legislative practice.

*Clause 23* amends section 8.25 so that the section is in accordance with current legislative practice.

*Clause 24* inserts a new Division 5 in Part 8 to provide for the imposition of a supervision levy by QOFS on friendly societies, in recognition of the fact that societies will be responsible for meeting the relevant costs of supervision of their activities by QOFS.

*Clause 25* amends section 9.3 so that the section is in accordance with current legislative practice.

*Clause 26* inserts section 12.21A to provide for the disclosure of information by the Registrar to a person acting for the Minister.

*Clause 27* amends section 12.24 so that the section is in accordance with current legislative practice.

*Clause 28* inserts a new Part 12A to provide the mechanism whereby a friendly society which meets the requirements of that Part may seek to transfer its incorporation to the *Associations Incorporation Act 1981*.

*Clause 29* omits Part 13, Division 1 as the Division is no longer necessary.

*Clause 30* inserts a new Division 3 in Part 13 to provide bridging provisions concerning the change to QOFS as Registrar and a savings provision in relation to a certificate or another document about a friendly society issued before the commencement of the provision. Provision is also made for the making of a transitional regulation with a specific, limited retrospective operation because of a friendly society applying to become an incorporated association and QOFS becoming the Registrar and further provisions being necessary to accommodate those events.

## **PART 5—AMENDMENT OF QUEENSLAND OFFICE OF FINANCIAL SUPERVISION ACT 1992**

*Clause 31* provides for the amendment of the *Queensland Office of Financial Supervision Act 1992*.

*Clause 32* amends section 3 by inserting the definition of “friendly society”, in accordance with transfer of responsibility for administration of the *Friendly Societies Act 1991* to QOFS.

*Clause 33* amends section 7 by providing for QOFS to have such powers as are conferred on it by or under the financial institutions legislation or any Act, as a consequence of its responsibility for the administration of legislation other than that relating to the financial institutions scheme.

*Clause 34* amends section 10 by clarifying that the functions and powers referred to therein are QOFS’ functions and powers under the financial institutions agreement.

*Clause 35* amends section 11 so that the section is in accordance with current legislative practice.

*Clause 36* amends section 26 by providing that a person who holds an office or appointment with a friendly society must not be appointed as a director of QOFS by the Governor in Council.

*Clause 37* amends section 33 by providing that the Governor in Council may terminate the appointment of an appointed director of QOFS if the director accepts an office or appointment with a friendly society.

*Clause 38* amends section 38 by providing that a person who holds an office or appointment with a friendly society must not be appointed as the chief executive officer of QOFS.

*Clause 39* amends section 51 by substituting action by way of a regulation for approval by the Governor in Council by order in council.

*Clause 40* amends section 52 by extending the coverage of the Register of Financial Interests to include friendly societies, consistent with QOFS' responsibility for administration of the *Friendly Societies Act 1991*.

*Clause 41* amends section 53 with regard to the requirement that a prescribed person must at all times act honestly in the exercise of the powers and the performance of the functions that the person has a prescribed person as a consequence of QOFS' responsibility for the administration of the *Friendly Societies Act 1991*.

*Clause 42* amends section 58 by providing that a certificate signed by the chairperson or chief executive officer stating any matter in relation to the supervision levy determined under Part 8 Division 5 of the *Friendly Societies Act 1991* to be evidence of the matter.

*Clause 43* amends section 61 by providing that the draft budget submitted to the Minister by QOFS must include details of the supervision levy intended to be imposed by QOFS on friendly societies.

*Clause 44* replaces section 62 so that, where possible, QOFS must also consult with industry bodies and friendly societies in preparing its draft budget.

*Clause 45* inserts section 62A to provide for the retention by QOFS of fees received by it under the financial institutions legislation or any Act.

*Clause 46* inserts a new Part 5A to provide that QOFS as Registrar is subject to the directions provided for in the *Friendly Societies Act 1991* and also to provide for the protection of the State to extend to QOFS in its administration of the *Friendly Societies Act 1991*. A new Part heading is inserted for regulations.

*Clause 47* inserts section 68 to provide for those persons having a financial interest in friendly societies, with such financial interest only arising because of the amendments to section 52 (see Clause 40 of the Bill).



## **PART 6—AMENDMENT OF ASSOCIATIONS INCORPORATION ACT 1981**

*Clause 48* provides for the amendment of the *Associations Incorporation Act 1981*.

*Clause 49* amends the definition of “association” in section 5(1) by taking into account those friendly societies which obtain a certificate under Part 12A of the *Friendly Societies Act 1991*, seeking to transfer their incorporation to this Act.

*Clause 50* inserts a new Part 7A to provide for the incorporation of certain friendly societies under the Act, where those friendly societies have already complied with the necessary provisions of Part 12A of the *Friendly Societies Act 1991* which complements this new Part.

*Clause 51* inserts section 68A which provides for the making of a transitional regulation, with a specific, limited retrospective operation because of a friendly society becoming an incorporated association and further provisions being necessary to accommodate that event.

## **PART 7—AMENDMENT OF ROYAL NATIONAL AGRICULTURAL AND INDUSTRIAL ASSOCIATION OF QUEENSLAND ACT 1971**

*Clause 52* provides for the amendment of the *Royal National Agricultural and Industrial Association of Queensland Act 1971*.

*Clause 53* omits section 3 dealing with the repeal of the *Brisbane Exhibition Grounds Trust Act 1965* and associated savings provisions as these provisions have served their purpose.

*Clause 54* omits certain definitions as being no longer applicable to the Association under the Act, following on from the friendly societies legislation ceasing to be applicable to the Association and because of the effect of Clause 53 of the Bill also inserts the name of the repealed Act under the definition of “Trust”. A definition of “registered company

auditor” is inserted.

*Clause 55* amends section 5 to provide for consistency with other clauses in the Bill indicating that the Association is no longer to be subject to friendly societies legislation.

*Clause 56* replaces sections 6-9 to provide for the cessation of the Association as a friendly society under the *Friendly Societies Act 1991* and the non-application of that Act. Matters concerning the continuance of membership of the Association, its objects and rules are provided for as well as changes thereto.

*Clause 57* amends and updates certain provisions in section 13 governing dealings with the Association’s land, requiring approval from the Governor in Council instead of the Minister in relation to a purported sale of an estate in fee simple in land vested in the Association.

*Clause 58* inserts sections 17A-17C to provide for the preparation of the Association’s annual accounts, the audit of same and presentation of the audited accounts to an annual general meeting of the Association - with a copy also being given to the chief executive of the Department. Provision is made in relation to persons who are not permitted to be the auditor of the Association and also to the manner in which the Association may be wound-up.

*Clause 59* replaces section 19 concerning the protection of Council members and provides for the liability of Council members in the performance or purported performance of functions or powers under the Act to attach to the Association.

*Clause 60* replaces section 21, providing for the making of regulations under the Act by the Governor in Council. The Clause also inserts a new Part dealing with transitional matters, for example, further provision is made for the making of a transitional regulation, with a specific, limited retrospective operation because the Association is no longer a friendly society under the *Friendly Societies Act 1991* and further provisions being necessary to accommodate that event.