

FINANCIAL INTERMEDIARIES BILL 1996

EXPLANATORY NOTE

Short title

The short title of the Bill is the *Financial Intermediaries Bill 1996*.

Policy objectives of the Bill and the reasons for those objectives

The primary objective of the Bill is the introduction of a system of prudential supervision for cooperative housing societies in particular and certain other societies, including terminating building societies and a general cooperative society, the Cairns Cooperative Weekly Penny Savings Bank Limited, which operates as a financial intermediary.

As part of such a system, the Board of the Queensland Office of Financial Supervision (“the QOFS Board”) is empowered to institute and develop the various prudential and other standards which will be implemented in the supervision of societies by QOFS.

This Bill replaces very prescriptive legislation governing the activities of cooperative housing societies which was enacted in 1958. That legislation can not, and does not, reflect the new prudentially-based supervisory systems which have been, or are in the process of being, introduced in relation to building societies, credit unions and friendly societies.

Furthermore, it is considered that QOFS has the appropriate technical expertise to supervise the general cooperative society, the Cairns Cooperative Weekly Penny Savings Bank Limited, on a rigorous prudential basis.

Such supervision is not possible under that society’s current governing legislation (the *Co-operative and Other Societies Act 1967*), and the application of this proposed legislation to that society and supervision of it by QOFS are essential.

In these circumstances, the opportunity is being taken to introduce such a system for the supervision of the type of societies nominated above, but with particular emphasis on cooperative housing societies.

The Bill also attends to the repeal of the *Cooperative Housing Societies Act 1958* and the *Building Societies Act 1985*.

The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate

The Bill provides for the achievement of the policy objectives mentioned above by introducing a modern system of regulation and prudential supervision of societies, with such supervision being carried out by QOFS.

QOFS is particularly suited to be responsible for these supervisory requirements as it is already involved with the supervision of building societies and credit unions under the Financial Institutions Scheme. That Scheme incorporates a large variety of prudential and other standards specifically designed for the prudential supervision of building societies and credit unions.

The success of the Financial Institutions Scheme (now in its fourth year of operation), particularly its modern legislation and the accompanying system of prudential and other standards has been a major factor in influencing both the format of this Bill and the choice of supervisor.

In turn, the prudential and other standards negotiated with industry in the context of this Bill have been influenced by those standards already in place under the Financial Institutions Scheme where those standards are applicable to and appropriate for the societies affected by this Bill.

Alternative way of achieving the policy objectives

There is no alternative way of achieving the policy objectives other than by means of the legislative initiatives and amendments contained in the Bill.

Administrative costs for Government implementation of the Bill

There are no such costs for Government arising from this Bill, as the Bill deals with supervision by an established supervisory authority, the

Queensland Office of Financial Supervision (QOFS), which is completely funded by levies on the various societies for whose supervision it is responsible for under relevant legislation.

Consistency with fundamental legislative principles

Care has been taken in drafting this Bill to ensure that no aspects of the Bill infringe upon fundamental legislative principles.

Consultation

Consultation has taken place with the Department of Justice, the Australian Financial Institutions Commission, QOFS, industry associations, major providers of funds to the industry as well as within Treasury during the preparation of the Bill.

Consultation with the abovementioned parties, where relevant, has also taken place throughout the development of the prudential and other standards which will be enforced by QOFS in its supervision of all societies caught by the requirements of the Bill.

PART 1—PRELIMINARY

Division 1—Introductory provisions

Clause 1 specifies the short title.

Clause 2 provides for the commencement of the Act.

Division 2—Interpretation

Clause 3 provides for a dictionary of particular words used in the Act.

Clause 4 provides for the particular meaning of “director”, where that term is used in this Act.

Clause 5 provides for the particular meaning of “officer”, where that term is used in this Act.

Division 3—Operation of the Act

Clause 6 provides that the Act binds the State.

Division 4—Effect of Primary Producers’ Cooperative Associations Act 1923

Clause 7 provides that the *Primary Producers’ Cooperative Associations Act 1923* does not apply to a society regulated under this Act. This concerns the use of the word “cooperative” in the name of a society.

PART 2—FUNCTIONS OF QOFS’S BOARD

Clause 8 provides for the functions of the QOFS Board under this Act with regard to the system of standards and also its functions regarding laws affecting societies generally.

Clause 9 provides that the QOFS Board must consult with various bodies in performing its functions and exercising its powers under this Act.

PART 3—STANDARDS

Clause 10 empowers the Board to make standards with respect to the matters listed and any other matters necessary or desirable for the achievement of the objects of this Act.

Clause 11 details the procedure the Board must follow when making, amending or repealing standards. The procedure does not apply to the making of urgent standards.

Clause 12 specifies the power of the Board to make urgent standards.

Clause 13 provides that a standard may provide that it be varied temporarily in relation to a particular society by QOFS.

Clause 14 provides that a standard may make transitional provision for the purpose of allowing additional time to comply with the standard.

Clause 15 details the matters for which a standard may make provision.

Clause 16 provides for the publication of standards made by the Board.

Clause 17 provides that societies must comply with all applicable standards.

PART 4—FUNCTIONS AND POWERS OF QOFS

Division 1—General

Clause 18 sets out the functions of QOFS under this Act.

Clause 19 provides for the general powers of QOFS in performing its functions under this Act.

Clause 20 provides that QOFS may vary a standard if that standard provides that it may be varied temporarily in relation to a particular society by QOFS.

Clause 21 requires QOFS to keep the Treasurer informed on matters concerning this Act.

Clause 22 requires QOFS to maintain a public office and provides for the inspection of rules of societies and documents of a prescribed class. A person may also obtain from QOFS a certified copy of certain documents.

Clause 23 sets out the circumstances in which QOFS may reject documents submitted to it in relation to societies.

Clause 24 provides that QOFS may require the production of another document or the giving of further information in order to assist QOFS in forming the opinion to reject a document.

Clause 25 provides for the extension or abridgment of time within which anything is required to be done under this Act or the society's rules.

Division 2—Specific powers

Subdivision 1—Enforcement powers

Clause 26 allows QOFS to appoint a person as an inspector if QOFS considers the person has the necessary expertise or experience to be an inspector, or the person has satisfactorily completed training approved by QOFS.

Clause 27 provides that an inspector is subject to QOFS' directions in exercising the inspector's powers. It also specifies that the powers of an inspector may be limited under a regulation, under a condition of appointment, or by written notice given by QOFS to the inspector.

Clause 28 specifies that an inspector holds office on the conditions stated in the instrument of appointment. It also outlines how an inspector can resign or cease to hold office.

Clause 29 requires QOFS to issue an appropriate identity card to an inspector and also provides for the surrender of that card after the person ceases to be an inspector, including a penalty for contravention.

Clause 30 requires an inspector to produce the inspector's identity card for inspection before exercising any powers under this Division of the Act. Provision is made for the inspector to produce the identity card for inspection at the first reasonable opportunity if it is not practicable to do so when exercising a power.

Clause 31 allows an inspector to enter a place subject to certain circumstances.

Clause 32 outlines the action an inspector must take if asking for an occupier's consent to an inspector entering the place, including the requirement to inform the person of the purpose of the entry and that the person is not required to consent. This Clause also allows an inspector to ask the occupier to sign an acknowledgment of the consent if the consent is given. If the occupier signs an acknowledgment of consent, the inspector, must immediately give a copy to the occupier.

Provision is made for a court to presume that consent to entry was not given where, in a proceeding before the court, a question arises as to whether the consent was given by the person and an acknowledgment of the giving of consent to entry is not produced as evidence of the consent, or it is not proved that the consent was given.

Clause 33 provides for an inspector to make an application to a Magistrate for a warrant for a place and specifies the application must be sworn and state the grounds on which the warrant is sought. It provides for the Magistrate to refuse consideration of the application until the inspector gives the Magistrate all the information the Magistrate requires.

The Clause also provides that a Magistrate may only issue a warrant if satisfied there are reasonable grounds for suspecting there is a particular

thing or activity that may provide evidence of an offence against this Act, and that the evidence is, or may be within the next seven days, at the place.

Clause 34 provides for an inspector to apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary on certain grounds. The Clause provides for the inspector to prepare an application stating the grounds on which the warrant is sought but apply for the warrant before the application is sworn.

After a warrant is issued, this Clause provides for the Magistrate to immediately fax a copy to the inspector if it is reasonably practicable to do so. The Clause also provides for the issue of a warrant in the circumstances where it is not reasonably practicable for the Magistrate to fax a copy of the warrant to the inspector.

The Clause provides for either a facsimile warrant or a warrant form properly completed by the inspector to authorise the entry and exercise of other powers stated in the warrant issued by the Magistrate. The Clause requires the inspector to send the sworn application and the completed warrant form, if one has been completed, to the Magistrate at the first reasonable opportunity.

Provision is also made for a court to presume, in a proceeding before the court, that a power exercised by an inspector was not authorised by a warrant issued under this Clause unless the warrant is produced in evidence, or the contrary is proved.

Clause 35 allows an inspector to do certain things after entering a place for the purpose of monitoring or enforcing compliance with this Act. This includes searching any part of the place and inspecting or photographing any part of the place or anything in the place.

An inspector may require the occupier of the place, or a person in or on the place, to give the inspector reasonable help in the exercise of the inspector's powers under this Clause. It is a reasonable excuse for the person not to comply if the person is asked to give information or produce a document (other than a document required to be kept by the person under this part of the Act) that might incriminate the person.

Clause 36 provides that an inspector who enters a place with the occupier's consent, may seize a thing in the place subject to certain circumstances. Equally, an inspector entering a place with a warrant may seize the evidence for which the warrant was issued.

The Clause also authorises an inspector to seize anything else at the place if the inspector reasonably believes it is evidence of an offence against this Act, and that the thing must be seized to prevent it from being hidden, lost, destroyed or used to continue or repeat the offence.

Provision is also made for an inspector to seize a thing if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

Clause 37 describes the powers an inspector may exercise with regard to a thing which the inspector has seized, including the power to move the thing from the place where it was seized or leave the thing at the place of seizure but take steps to restrict access to it.

Where an inspector restricts access to a seized thing, a person may not tamper or attempt to tamper with the thing or something restricting access to the thing without the inspector's approval.

Clause 38 requires an inspector who has seized a thing to give a receipt generally describing the seized thing and its condition to the person from whom the thing was seized as soon as practicable. If it is not practicable to give a receipt to the person, the inspector must leave the receipt at the place of seizure in a reasonably secure way. The Clause also provides for circumstances when an inspector does not have to give a receipt for the thing.

Clause 39 provides for the circumstances in which an inspector must return a seized thing to its owner. Provision is also made for an inspector to return a thing seized as evidence as soon as the inspector is satisfied that its retention as evidence is no longer required.

Clause 40 requires an inspector to allow the owner of a thing seized as evidence access to inspect the thing or, if a document, to take copies of the document. The provision does not apply in circumstances in which it is impractical or unreasonable to allow the owner of a thing seized as evidence to inspect the thing or copy the document.

Clause 41 prohibits the impersonation of an inspector.

Clause 42 prohibits a person, without reasonable excuse, obstructing an inspector in the exercise of a power.

Clause 43 provides a power for an inspector to require information from persons where the inspector reasonably believes that an offence against the Act has been committed and a person may be able to require information about the offence.

Clause 44 provides that an inspector may require any person to make available or produce for inspection, at a reasonable time and place nominated by the inspector, a document issued to the person under this Act or required to be kept under this Act.

An inspector is authorised by this Clause to keep the document for the purpose of taking a note on it or making a copy of it. If the inspector makes a copy of document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document. The person responsible for keeping the document must comply with the requirement to certify the copy as a true copy of the document unless the person has a reasonable excuse.

The Clause also stipulates that an inspector must return the document to the person as soon as practicable after making the note or the copy.

Clause 45 provides that while exercising a power, either an inspector or a person acting under the direction of an inspector, damages anything, notice must be given to the owner of any non-trivial damage

Clause 46 allows a person to claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of the power under this Part. A court may only award compensation if it is satisfied that it is just in the circumstances of the particular case. In addition, a regulation may prescribe matters that may, or must, be taken into account by a court when considering whether it is just to make a compensation order.

Subdivision 2—Special meetings and inquiries

Clause 47 sets out the circumstances in which QOFS may call a special meeting of a society or hold an inquiry into the affairs of a society. The Clause also deals with the expenses of holding the meeting or an inquiry and empowers QOFS to direct that directors and such other persons as it requires to attend the meeting or inquiry and allows QOFS or any person nominated by QOFS to attend and address a meeting held under this provision.

Subdivision 3—Special power of intervention

Clause 48 deals with the circumstances in which QOFS may place a society under direction. QOFS has a general power of direction under those circumstances to ensure that the society complies with the requirements of this Act, giving examples of specific directions that QOFS may give. The Clause also imposes a penalty for failure to comply with any direction.

Subdivision 4—Power to suspend operations of society

Clause 49 specifies the circumstances in which QOFS may suspend the operations of the society and empowers QOFS to give a direction to the society not to carry out certain activities. The provision also imposes a penalty for failure to comply with the directions set out in the notice.

Subdivision 5—Administrators

Clause 50 specifies the circumstances in which QOFS may appoint an administrator to conduct the affairs of the society.

Clause 51 provides that the administrator must give QOFS notice of particular changes.

Clause 52 provides that on the appointment of an administrator, the directors of the society cease to hold office and all contracts of employment with, or for the provision of administrative or secretarial services to, the society are terminated. The administrator may terminate any contract for the provision of other services to the society.

Clause 53 provides that the administrator has the powers and functions of the board of a society, including the board's power of delegation.

Clause 54 provides for the steps that need to be taken on the revocation of the administrator's appointment.

Clause 55 provides that on revocation of the administrator's appointment, the administrator must prepare and give a report to QOFS showing how the administration was carried out.

Clause 56 provides for the payment of the expenses of the administration.

Clause 57 provides for the administrator's liability for a loss incurred by a society in instances involving the administrator's fraud, dishonesty, negligence or wilful failure to comply with the Act or the society's rules.

Clause 58 provides that where QOFS appoints directors of the society after the revocation of the appointment of an administrator, QOFS by written notice to the society may specify the extent to which this provision is intended to apply to the society.

Clause 59 provides for a stay of proceedings where an administrator has been appointed.

Clause 60 requires the administrator to prepare a report to QOFS, immediately upon receipt of a request from QOFS.

Subdivision 6—Supervision Fund and levy

Clause 61 provides for the establishment of the Cooperatives Supervision Fund and specifies moneys that are to be paid into and out of the Supervision Fund and the manner in which QOFS may invest the money in the Supervision Fund.

Clause 62 provides for a formula for the calculation of the supervision levy. QOFS may fix the amount of the levy differently for different societies or determine that the levy is not payable by specified societies. QOFS may also determine that the levy may be paid by specified instalments.

Clause 63 requires QOFS to consult with industry bodies and societies in relation to the amount to be paid as a supervision levy.

Clause 64 provides that default in making a payment of a supervision levy is an offence.

PART 5—OBJECTS AND POWERS OF SOCIETIES

Division 1—Objects

Clause 65 sets out the objects of societies, including certain limitations attaching to those objects.

Division 2—Powers

Clause 66 provides for the powers of a society.

Clause 67 deals with the control of certain types of financial transaction.

Clause 68 prohibits a society from carrying out any of its activities in foreign currency.

Clause 69 provides for the raising of funds by a society and the security for amounts so raised.

Division 3—Guarantees

Clause 70 provides that the Treasurer may execute a guarantee for the repayment of an amount raised on loan by a society and may charge the society a fee for doing so.

Clause 71 provides for details regarding the terms, contents and the enforcement of a guarantee, as well as providing for the means of satisfying any liability arising under a guarantee.

PART 6—SOCIETIES***Division 1—Formation and registration***

Clause 72 sets out the requirements for the formation of a new society under this Act.

Clause 73 deals with the procedure for registration of a new society, including details of the necessary documents which must accompany an application for registration of a new society. The provision also deals with the eligibility of a proposed new society for registration.

Clause 74 sets out the requirements on QOFS once it has registered a new society and also deals with the effect of the documents which QOFS must issue to the society.

Clause 75 sets out the effect of incorporation under the Act as a society on a society.

Division 2—Rules

Clause 76 provides that a society must provide in its rules for those matters set out in a relevant standard.

Clause 77 requires a society to provide a copy of its rules to a member or proposed member upon payment of a fee, if any fee has been approved by the society's board.

Clause 78 provides that a society and its members are bound by the rules of the society.

Clause 79 provides that subject to other provisions of this Act the rules of a society may only be altered by special resolution of the members.

Clause 80 provides that the rules of a society may be altered by resolution of the board where the alteration is required by or under this Act or is to give effect to a standard. The provision also specifies when notice is to be given of such alteration of the rules and gives an instance of how such notice may given to members.

Clause 81 provides the circumstances in which QOFS must register an alteration of rules.

Clause 82 provides that QOFS may require modification of rules in certain defined circumstances and specifies when notice must be given, and how such notice may be given, to members.

Clause 83 provides that QOFS may modify rules to facilitate a transfer of engagements and also specifies when notice must be given, and how such notice may be given, to members.

Division 3—Membership

Clause 84 provides for who are the members of the society at various times and under various conditions

Clause 85 sets out the requirements on a minor, if the rules of a society permit a minor to be a member.

Clause 86 sets out the requirements regarding joint membership, if the rules of a society permit that type of membership.

Clause 87 provides for the circumstances in which a person's membership of a society ceases.

Clause 88 provides for the circumstances in which a member may be expelled or have his or her membership rescinded.

Clause 89 provides for the limited liability of a member of a society with regard to his or her membership of the society.

Clause 90 provides that financial accommodation may only be provided by a society to a member and requires the member and the society to comply with certain provisions in that regard. The Clause also prohibits a society from accepting a deposit of money from any person.

Division 4—Name and office

Clause 91 provides the mechanism regarding the registration of the name, or a change of name, of a society by QOFS.

Clause 92 provides that a society must have certain words as part of its name.

Clause 93 provides that a change of name of a society does not affect the identity of the society, nor does such change affect rights, obligations or proceedings involving the society.

Clause 94 provides that QOFS may direct a society to change its name if QOFS is satisfied that its present registered name is likely to be confused with the name of another body corporate or a registered business name.

Clause 95 provides that a society must ensure that its registered name is used on all documentation etc. used by the society and that its registered name and the words "Registered Office" are displayed outside its registered office.

Clause 96 provides for the society's seal and the use of same.

Clause 97 provides that a society is to have a registered office and also provides that prior notice of a change of registered office must be given to, and registered by, QOFS.

PART 7—MANAGEMENT

Division 1—Directors and officers

Clause 98 provides for the meaning of “employee” for the purposes of this Division of the Act.

Clause 99 provides that the business and operations of a society are to be managed and controlled by a board of directors. The provision also provides for the exercise of the powers of the society and the board by the board, subject to certain restrictions on such powers of the board.

Clause 100 provides for meetings of the board, including the time between meetings and the quorum at a meeting of the board.

Clause 101 specifies that the number of directors of a society must not be less than 5.

Clause 102 provides for the election or appointment of directors including term of office, and the requirements for re-election or re-appointment.

Clause 103 provides that a director may appoint a person who is eligible to be a director of the society to be an alternate director in the place of that director.

Clause 104 provides for the election of a chairperson of the board of the society.

Clause 105 provides that certain persons are not eligible to be directors of a society.

Clause 106 provides the circumstances in which the office of a director becomes vacant.

Clause 107 provides the mechanism for causing the office of a director to become vacant by a resolution passed by the society, subject to certain conditions whereby the director is given the opportunity to respond.

Clause 108 requires a director of a society who has a direct or indirect interest in a contract or proposed contract with the society to declare the nature and the extent of that interest to the society’s board. The provision also sets out the manner in which the declaration is to be made.

Clause 109 requires a director of a society who holds an office or has an interest by which duties or interests might be created which could conflict with the director's duties as a director to declare relevant particulars to the society's board.

Clause 110 provides for the recording and the effect of declarations made by a director to the society's board under Clauses 108 and 109 of the Bill.

Clause 111 provides for the reporting of declarations made under Clauses 109 and 110 of the Bill to QOFS and to the society's members.

Clause 112 provides that Clauses 109 and 110 of the Bill are in addition to any rule of law or a provision in a society's rules restricting a director from engaging in activities in conflict with his duties as a director.

Clause 113 provides that a director of a society is to give written notice to the society to enable the society to comply with the provisions relating to the Register of Directors.

Clause 114 provides the conditions upon which financial accommodation may be provided to a director of a society.

Clause 115 requires the remuneration of a director to be approved at a general meeting of the society.

Clause 116 prohibits a society from entering into a management contract without the prior written approval of QOFS.

Clause 117 sets out the duties and responsibilities of directors and officers, including the duty to act honestly etc. The provision also outlines the circumstances in which compensation may be ordered to be paid to a society for any loss or damage it has suffered.

Clause 118 provides for the effect of a contravention of Clause 117, indicating that Clauses 117 and 118 are in addition to and do not derogate from any other rule of law about the duties of directors, officers or employees of a society.

Clause 119 provides that a person who is not a director or alternate director of a society must not purport to act as a director of the society.

Clause 120 provides that the board must appoint a natural person over the age of 18 years who is resident in the State as the secretary of the society. The provision also deals with responses required when the office of secretary is vacant and with certain signing requirements involving a person who is both a director and the secretary of the society.

Clause 121 provides for the circumstances affecting the liability of, and any indemnity for, officers and employees of a society involving the society.

Division 2—Meetings

Clause 122 provides for the holding of the first and each subsequent annual general meeting of the society.

Clause 123 provides for the convening of a special general meeting of a society.

Clause 124 provides for the quorum necessary at a general meeting of a society.

Clause 125 provides the requirements for giving notices of an annual general meeting and a general meeting of a society, including the timing within which relevant notices are to be given. The provision also deals with the failure by a member to receive, and a society to give, the relevant notice.

Clause 126 deals with the voting rights of a member of a society.

Clause 127 deals with the requirements relating to a special resolution of a society, including the method of giving notice to members and the time within which such notice must be given, as well as matters relating to the registration of the special resolution by QOFS.

Clause 128 provides for the registration of a special resolution and the effect of such registration.

Clause 129 provides for the keeping of full and accurate minutes of every meeting of a society's board and every meeting of a society's members.

Division 3—Registers and inspection

Clause 130 provides for keeping of certain registers by a society, as well as providing for the place or places where the registers may be kept in this State.

Clause 131 provides that a society must keep a register, containing specified particulars in relation to its directors, principal executive officer and secretary. Provision is also made for the notification of changes in particulars to QOFS, the searching of the register by members and others and having the register available for scrutiny by members during the society's annual general meetings.

Clause 132 provides for the keeping of a register of members by a society and also makes provision for the searching of the register by members and other persons duly authorised by the society.

Clause 133 provides for the keeping by a society of certain nominated documents at its registered office and having such documents available for inspection without fee by members, potential members and creditors.

Clause 134 provides that a society must, when asked by a member, provide the member with details of the person's financial position with the society as a member.

Clause 135 provides that a member may, subject to the regulations and this Act, request a copy of a register or part of a register kept by a society under this Act.

Division 4—Accounts

Clause 136 specifies the financial year of a society.

Clause 137 requires a society to keep its accounting records in a certain form, for a defined period and within the State.

Clause 138 requires a society to make its accounting records available for inspection at all reasonable times by a director of the society and any other authorised person.

Clause 139 provides that the directors of a society must prepare a profit and loss account and balance sheet at a specified time.

Clause 140 requires the directors of a society to ensure that the society's accounts are audited.

Clause 141 provides that the directors of a society must ascertain certain matters prior to the preparation of a society's profit and loss account and balance sheet.

Clause 142 provides that a society's accounts must comply with all necessary requirements and accounting standards applicable to a society's operations.

Clause 143 requires the directors of a society to attach to the accounts to be laid before an annual general meeting, a signed director's statement containing the various matters specified in the Clause.

Clause 144 deals with the preparation of a directors' report in relation to the various particulars specified in the Clause which must be dealt with in the report.

Clause 145 specifies the various accounts, statements and reports which the directors of a society must cause to be laid before each annual general meeting of the society.

Clause 146 provides for the penalties on a director of a society for contravention of this Division of the Act.

Division 5—Audit

Clause 147 provides for the meaning of "officer" for the purposes of Clauses 148 and 149 of the Bill.

Clause 148 provides for the qualifications necessary for a person to be appointed as auditor of a society.

Clause 149 provides for the qualifications necessary for a firm to be appointed as auditor of a society.

Clause 150 provides that a person or a member of a firm must not knowingly disqualify himself or the firm while an appointment as auditor continues.

Clause 151 sets out the procedures for the appointment of an auditor of a society. The provision also requires a proposed appointee to consent in writing to the appointment as the auditor of a society; specifies a time within which a replacement auditor should be appointed by a society (failing which, provision is then made for QOFS to appoint the replacement) and provides penalties for directors and societies which contravene various aspects of this Clause.

Clause 152 provides that a member of a society must nominate a person or firm for appointment as auditor of the society and indicates the manner in which the society must deal with the nomination.

Clause 153 provides the requirements and procedures for the removal of an auditor, including the notices which must be provided to various parties (including QOFS) and the time within which these notices must be given.

Clause 154 provides the requirements for resignation of an auditor, including the notices which must be given, the consents which must be obtained and the timing of these events.

Clause 155 provides for notice of retirement or withdrawal as auditor to be given to QOFS within certain time.

Clause 156 provides that an auditor of a society ceases to hold office if the society commences to be wound-up.

Clause 157 requires a society to pay the reasonable fees and expenses of its auditor.

Clause 158 requires an auditor to report to the members of a society on specified matters and provides details of particulars which must be included in that report. The provision also sets out how the auditor's report must be dealt with by the society.

Clause 159 sets out the powers and duties of an auditor, including the auditor's right of access to the society's accounting and other records, power to require information from officers and entitlement to attend meetings and receive notices. The provision also requires an auditor to inform QOFS in writing as to certain non-compliances and contraventions.

Clause 160 requires the auditor to prepare a final report if the society is dissolved as part of a merger or transfer of engagements.

Clause 161 prohibits the obstruction of an auditor by an officer of a society and provides for certain penalties in the event of any obstruction.

Clause 162 provides for certain definitions relating to an auditor's qualified privilege and specifies the circumstances in which qualified privilege applies.

Division 6—Returns and relief

Clause 163 provides that a society must lodge returns with QOFS in the form in which QOFS requires it.

Clause 164 provides that the directors of a society may apply to QOFS for relief from complying with requirements concerning accounts and audit of the society. The provision also deals with the matters QOFS must give consideration in dealing with the application, to whom notice of any relief is to be given and how and where it must be published.

PART 8—CHARGES

Clause 165 provides for the registration of charges over a society's assets by applying that Part of the Corporations Law relating to charges (Part 3.5), to a society.

PART 9—MERGERS AND TRANSFERS OF ENGAGEMENTS

Clause 166 provides for certain definitions of terms used throughout this Part.

Clause 167 provides for the application of this Part.

Clause 168 provides the mechanism for a merger or transfer of engagements of 2 or more societies, including the requirements for approval of the relevant procedure by members and the contents of a statement which might be sent to members under the particular procedure.

Clause 169 provides the circumstances in which QOFS may register a merged society under this Division.

Clause 170 deals with the circumstances in which QOFS may issue a certificate confirming a voluntary transfer of engagements under this Division.

Clause 171 provides the circumstances in which QOFS may direct a society to transfer its engagements to another society if the board of the other society has by resolution consented to the proposed transfer.

Clause 172 provides that a society must take all reasonable steps to comply with the direction given by QOFS under this Division to transfer its engagements.

Clause 173 provides for the time whereby QOFS must issue a certificate of confirmation for a transfer of engagements by a direction from QOFS under this Division.

Clause 174 provides that QOFS must give a certificate of confirmation to the transferee society, which is party to a transfer of engagements by direction under this Division.

Clause 175 provides that the transfer of engagements by direction takes effect on the issue of the certificate of confirmation of the transfer BY QOFS.

Clause 176 provides that QOFS must cancel the registration of the society which had been directed to transfer its engagements to another society under this Division.

Clause 177 describes the effect of a merger of societies under this Division on a range of matters including members, assets and liabilities, references in documents to the former societies, legal proceedings and other rights and duties etc. of the former societies.

Clause 178 describes the effect of a transfer of engagements under this Division on a similar range of issues to those discussed in Clause 177 (for mergers) of the Bill.

Clause 179 describes the effect of a merger or a transfer of engagements on guarantees issued by the Treasurer.

PART 10—EXTERNAL ADMINISTRATION

Division 1—Receivers and managers

Clause 180 provides for the application of Part 5.2 of the Corporations Law with all necessary modifications and any prescribed modifications in relation to the appointment of receivers and managers to societies.

Division 2—Administration of society’s affairs

Clause 181 provides for the application of the Corporations Law to the administration of societies, subject to any necessary modifications.

Division 3—Winding-up

Clause 182 provides for the means by which a society may be wound-up under this Act.

Clause 183 sets out the circumstances in which a society may be wound-up on a certificate of QOFS. Provision is also then made for QOFS to appoint the liquidator (who may be employed in the office of QOFS).

Clause 184 provides for the application of the Corporations Law to the winding-up or dissolution of a society, subject to this Division.

Clause 185 provides for the appointment of a person employed in the office of QOFS as liquidator of a society which is to be wound-up voluntarily. Provision is also made for the circumstances in which that person may be appointed.

Clause 186 deals with the appointment of a replacement to the office of liquidator where a society is being wound-up voluntarily and the liquidator was not appointed under the previous Clause.

Clause 187 provides that QOFS may control the amount of remuneration paid to the liquidator of a society which is being wound-up voluntarily.

Clause 188 provides for the registration of the dissolution and the cancellation of the registration of a society by QOFS as soon as possible after the society is dissolved or taken to be dissolved.

PART 11—SPECIAL INVESTIGATIONS

Clause 189 provides for the definition of an “officer” of a society for the purposes of any special investigations conducted under this Part.

Clause 190 sets out the requirements and procedures under which QOFS may appoint an investigator to investigate a society's affairs under this Part.

Clause 191 provides that where 2 or more investigators are appointed under the terms of this Part, each of the investigators may perform the functions or exercise the powers of an investigator independently of the other investigators.

Clause 192 provides the powers of an investigator under this Part, including the power to require an officer of a society to produce all society documents in the officer's possession or under the officer's control. Provision is also made for an officer to appear before the investigator for examination under oath or affirmation and for an investigator to administer an oath or affirmation.

Clause 193 provides for the obligation of an officer to comply with the requirements of an investigator. Provision is also made for the examination of an officer before an investigator and for a legal practitioner to attend the examination of an officer.

Clause 194 provides the circumstances under which an officer of a society who is a legal practitioner may refuse to give information or produce a document to an investigator.

Clause 195 provides for an investigator to certify to the Court a failure of an officer to comply with a requirement of an investigator. The Court is then empowered to make certain orders or impose certain punishments upon the officer.

Clause 196 provides for the recording of an examination of an officer of a society by an investigator. Provision is also made for copies of the record of an examination to be given to certain persons, including a legal practitioner. Penalties are provided for the misuse of the record of examination by a legal practitioner.

Clause 197 provides for the delegation of most of an investigator's powers by an investigator.

Clause 198 provides for the giving of interim reports and a final report by an investigator to QOFS. Provision is also made for the delivery to QOFS of any documents of the society in the possession of the investigator, as well as providing for retention of such documents by QOFS and access to those documents by other persons. Provision is also made for the possible publication of the whole or part of the report.

Clause 199 provides for instituting of prosecution action by QOFS against a person following a report made to it under this Part.

Clause 200 provides for the admissibility of a document certified by QOFS as a copy of an investigator's report under this Part as evidence in legal proceedings.

Clause 201 provides for responsibility for the payment of the expenses of an examination under this Part, whether by QOFS or the society, including requirements for reimbursement of QOFS by the society and action for recovery of an amount by QOFS as a debt due to it in the appropriate court.

Clause 202 specifies offences against a person who interferes with documents of a society the affairs of which are being investigated under this Part. Provision is also for a defence to a prosecution for an offence against the provisions of this Clause.

PART 12—REVIEW OF DECISIONS AND APPEALS

Division 1—Review of decisions

Clause 203 provides that a person whose interests are affected by a decision of QOFS may request QOFS to review that decision. The person's right to receive a statement of the reasons for the original decision is also established.

Clause 204 provides for the time within which an application for review of the original decision must be made in differing circumstances and empowers QOFS to extend the time for making applications. QOFS is obliged to give the applicant an opportunity to appear before QOFS and make a submission about the original decision.

Clause 205 provides for the dealing by QOFS with applications for review and the times within which various actions must be taken by QOFS, including the immediate giving of written notice of the review decision to the applicant and details of what that notice must contain.

Division 2—Appeals against review decisions

Clause 206 provides for an appeal to a Magistrates Court against a review decision by an affected person.

Clause 207 provides the mechanism for starting an appeal.

Clause 208 indicates that an appeal is by way of rehearing by the Magistrates Court.

Clause 209 outlines the powers of the Magistrates Court in deciding an appeal.

PART 13—MISCELLANEOUS***Division 1—Evidence***

Clause 210 provides that certificates issued by QOFS or copies thereof appearing to be certified as such by QOFS are evidence of the matters stated in the certificate or copy.

Clause 211 provides that a printed copy of a society's rules is evidence of the society's rules if appearing to be certified by the society's secretary.

Clause 212 provides that the registers kept under this act are evidence of the particulars directed or authorised by or under the Act to be inserted in the registers.

Clause 213 provides for the evidentiary effect of entries in the minutes of a meeting of a society.

Clause 214 provides for the admissibility in evidence of copies of certain entries in a book of a society.

Division 2—Offences

Clause 215 provides that a society is to give information to QOFS or another person. Penalties are provided for contravention by a society and any officer of a society who is in default.

Clause 216 provides that a society must not contravene restrictions imposed on its powers or on the exercise of its powers under the Act. Penalties are provided for contravention by a society and any officer of a society who is in default.

Clause 217 provides for the interpretation of certain words for the purposes of Clauses 218-220 of the Bill.

Clause 218 deals with offences by officers of societies, as well as providing certain definitions relevant to whom the provisions cover, the timing of certain events and stages within the life of a society when the provision is relevant.

Clause 219 provides for an offence against an officer of a society who has knowingly incurred debts not likely to be repaid by the society, and an offence against a person who was knowingly a party to the carrying on of business of a society for any fraudulent purpose.

Clause 220 provides for QOFS or a prescribed person to apply to the Court for a declaration of liability of a person convicted of an offence under the previous Clause.

Clause 221 prohibits a person from providing any inducements to a member or creditor of a society relating to the appointment of a liquidator of a society.

Clause 222 prohibits an officer of a society from falsifying the records of a society.

Clause 223 provides for certain offences against an officer of a society who commits fraud.

Clause 224 provides for the interpretation of certain words for the purposes of Clauses 225-226 of the Bill.

Clause 225 provides for an offence where a person makes false or misleading statements to QOFS or a relevant person (including an inspector).

Clause 226 provides for an offence where a person gives QOFS or a relevant person (including an inspector) a document containing information which the person knows is false, misleading or incomplete.

Clause 227 provides that the Court has power to make certain orders in relation to damages to a society against certain persons.

Clause 228 prohibits a person from giving or making false copies of the rules of a society.

Clause 229 prohibits a person from obtaining possession of a property of a society by false representation or imposition and withholding or wilfully applying any part of such property for unauthorised purposes.

Clause 230 prohibits an officer of a society from accepting any commission, fee or reward from any person in connection with that person's transaction with the society.

Clause 231 provides for the extension of the reference to an officer in default to any officer of the society who is in any way knowingly concerned in or party to the contravention or offence.

Division 3—Legal proceedings

Clause 232 provides for indictable and summary offences against the Act.

Clause 233 provides the mechanism for taking proceedings for an indictable offence against the Act.

Clause 234 provides limitations on who may hear proceedings for offences against this Act.

Clause 235 provides for a 2 year limitation for starting summary proceedings.

Clause 236 provides for separate and further offences for continuing offences.

Clause 237 provides that the Court may grant an injunction restraining a person from engaging in certain conduct.

Clause 238 provides that the Court may grant relief from liability to certain nominated persons.

Division 4—Other matters

Clause 239 provides for the secrecy of protected information and protected documents.

Clause 240 provides for the abolition of the doctrine of ultra vires in relation to a society.

Clause 241 complements the preceding Clause by providing the assumptions that a person having dealings with a society is entitled to make.

Clause 242 sets out the effect of the operation of the preceding Clause. This Clause and the 2 preceding Clauses are based upon adopting a similar position with regard to the abolition of the application of the doctrine of ultra vires to societies as that adopted by the Corporations Law in relation to companies.

Clause 243 provides for the abolition of the doctrine of constructive notice in relation to a society.

Clause 244 provides that QOFS may approve forms for use under this Act.

Division 5—Regulations

Clause 245 provides a general regulation-making power for the purposes of this Act.

Clause 246 provides for a specific regulation-making power in relation to the matters therein provided for.

Clause 247 provides for a further specific regulation-making power in relation to the matters therein provided for.

PART 14—TRANSITIONAL

Clause 248 provides for the continuation of existing societies registered under the previous legislation.

Clause 249 provides for the issue of a certificate of incorporation under this Act to a continuing society by QOFS on application by the society.

Clause 250 provides for the continuation of guarantees executed under the previous legislation.

Clause 251 provides for the continuation of the existing rules of an existing society, subject to this Act.

Clause 252 provides that where a society has commenced formation procedures under the previous legislation but has not been registered under that previous legislation, then subject to certain requirements imposed by this Act, the previous legislation continues to apply to the formation of the society and it may then be registered under this Act.

Clause 253 provides for changes to existing loans in order that such loans comply with a standard dealing with the transition of such loans to loans complying with the provisions of the Bill.

Clause 254 makes provision for those directors of societies whose terms of office are longer than three years.

Clause 255 provides that copies of existing management contracts must be given to QOFS within 1 month after the commencement of this Act. Provision is also made in relation to the continuation of such contracts.

Clause 256 deals with the extension of time to hold an annual general meeting, due to be held under the previous legislation.

Clause 257 deals with the registration of a special resolution passed by a continuing society under the previous legislation but not registered prior to the commencement of this Act.

Clause 258 provides for the appointment of a registered company auditor as the auditor of a society within 6 months of the commencement of this Act.

Clause 259 provides for continuation of a special meeting or inquiry in relation to a continuing society as if the meeting or inquiry had been called or commenced under this Act.

Clause 260 provides for the continuation under this Act of a winding-up of a continuing society under a certificate issued under the previous legislation.

Clause 261 provides for the continuation under the previous legislation of a winding-up of a continuing society which was started, but not finished, before the commencement of this Act.

Clause 262 provides for payment of an amount from a previously established Cooperatives Supervision Fund into a similar Fund under section 61 of this Act.

PART 15—APPLICATION OF ACT WITH CHANGES TO CERTAIN SOCIETIES

Clause 263 provides for the application of this Act to the Cairns Cooperative Weekly Penny Savings Bank Limited and terminating building societies as outlined in schedule 1 to the Act.

PART 16—REPEALS AND AMENDMENTS

Clause 264 provides for the repeal of the *Building Societies Act 1985* and the *Cooperative Housing Societies Act 1958*.

Clause 265 provides for the amendment of the *Queensland Office of Financial Supervision Act 1992* as outlined in schedule 3 to the Act.

SCHEDULE 1

ACT APPLIES TO CERTAIN ENTITIES AS IF AMENDED

PART 1—APPLICATION OF ACT TO THE CAIRNS COOPERATIVE WEEKLY PENNY SAVINGS BANK LIMITED

This Part provides for the application of the Act to the Cairns Cooperative Weekly Penny Savings Bank Limited, subject to the express non-applicability of various provisions and the modification or replacement of other provisions of the Act as contained in this Part of the Schedule.

PART 2—APPLICATION OF ACT TO TERMINATING BUILDING SOCIETIES

This Part provides for the application of the Act to terminating building societies, subject to the express non-applicability of various provisions and

the modification or replacement of other provisions of the Act as contained in this Part of the Schedule.

SCHEDULE 2

TERMINATING BUILDING SOCIETIES

This Schedule contains the names of the terminating building societies, referred to in Clause 263 of the Bill.

SCHEDULE 3

AMENDMENT OF QUEENSLAND OFFICE OF FINANCIAL SUPERVISION ACT 1992

This Schedule provides for amendments to the *Queensland Office of Financial Supervision Act 1992* as a consequence of the commencement of the *Financial Intermediaries Act 1996* and the repeal of the *Building Societies Act 1985* and the *Cooperative Housing Societies Act 1958*.

SCHEDULE 4

DICTIONARY

This Schedule provides the dictionary, defining particular words used in the Act, referred to in Clause 3 of the Bill.