

Queensland



**STATE FINANCIAL
INSTITUTIONS AND
METWAY MERGER
FACILITATION BILL 1996**

Queensland



**STATE FINANCIAL INSTITUTIONS AND
METWAY MERGER FACILITATION
BILL 1996**

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1996

A BILL

FOR

**An Act to facilitate the establishment of a major Queensland-based
financial institution, and for other purposes**

*State Financial Institutions and Metway Merger
Facilitation*

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *State Financial Institutions and Metway Merger Facilitation Act 1996*.

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Commencement

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2.(1) The amendment of the Suncorp Act in schedule 2, items 1 to 4 is taken to have commenced on 23 May 1996.

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(2) The amendment of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991* in schedule 2, commences on the Metway amalgamation day.

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Definitions and dictionary

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3. The dictionary¹ in schedule 3 defines particular words used in this Act.²

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¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—Acts Interpretation Act 1954, section 14.

² The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the section definitions can be found. For example, the definition ‘ “SBS preconversion reserve” see section 30’ tells the reader that the term “SBS preconversion reserve” is defined in section 30.

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PART 2—OBJECT AND BASIC CONCEPTS

1

Division 1—Object

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Object of this Act

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4. The object of this Act is to facilitate the restructuring of some or all of the State financial institutions mentioned in section 5 to enable them and Metway to merge and become a major Queensland-based financial institution.

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Division 2—Basic Concepts

8

What is a State financial institution

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5. For this Act each of the following is a State financial institution (“SFI”)—

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- (a) QIDC as a company registered under the Corporations Law, part 2.2, division 3;³
- (b) SIF as a company registered under the Corporations Law, part 2.2, division 3;
- (c) Suncorp Finance Limited (A.C.N. 009 705 417);
- (d) SBS;
- (e) a wholly-owned subsidiary of an entity mentioned in paragraph (a), (b), (c) or (d);
- (f) a company formed for holding some or all of the issued share capital, assets or liabilities of 1 or more of the entities mentioned in paragraphs (a) to (e).

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³ Corporations Law, part 2.2 (Registration of companies), division 3 (Registering non-companies as companies)

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What is the Metway scheme of arrangement

6.(1) The “**Metway scheme of arrangement**” is the scheme or schemes of arrangement under the Corporations Law, part 5.1⁴—

- (a) between 1 or more SFIs and their members; and
- (b) if a regulation declares another entity (a “**scheme entity**”) to be an entity for the Metway scheme of arrangement—between the scheme entity and its members;

under which 1 or both of the following happen—

- (c) all, or substantially all, of the assets and liabilities of 1 or more SFIs, and the scheme entity (if any), are transferred to Metway;
- (d) 1 or more SFIs, and the scheme entity (if any), become wholly-owned subsidiaries of Metway.

(2) Subsection (1) does not, by implication, limit the matters that may be included in the Metway scheme of arrangement.

**PART 3—TRANSFER OF THE INCORPORATION OF
QIDC AND SIF TO CORPORATIONS LAW**

Division 1—Definition

Definition for pt 3

7. In this part—

“**candidate company**” means QIDC or SIF.

⁴ Corporations Law, part 5.1 (Arrangements and reconstructions)

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Division 2—QIDC not statutory GOC

When div 2 takes effect

8. Despite the commencement of this division, it has effect only on and from the day fixed by a Treasurer’s gazette notice.

QIDC stops being statutory GOC

9. QIDC is no longer a statutory GOC.

QIDC’s share capital and issued shares

10.(1) QIDC continues to have the share capital it was taken to have under the GOC Act as a statutory GOC.

(2) Also the shares in QIDC as a statutory GOC issued under the GOC Act remain issued.

(3) This section is subject to section 16.⁵

QIDC’s powers

11.(1) Despite no longer being a statutory GOC, until QIDC becomes a company GOC under section 18(3),⁶ QIDC continues to have the powers it had as a statutory GOC.

(2) Subsection (1) does not by implication limit the powers QIDC has under another Act.

⁵ Section 16 (Variation of share capital)

⁶ Section 18 (Application of GOC Act)

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Division 3—Facilitative mechanisms

Registration under Corporations Law

12.(1) A candidate company is authorised by this section to transfer its incorporation to the Corporations Law and become registered under part 2.2, division 3⁷ of the law.

(2) However, before a candidate company may act under subsection (1), its members must consent to the transfer of incorporation.

(3) The Treasurer is authorised to take, and authorise other persons to take, any action necessary or desirable to enable a candidate company to become registered under the Corporations Law, part 2.2, division 3.

Memorandum and articles of candidate company

13.(1) To facilitate the transfer of a candidate company's incorporation to the Corporations Law, the Treasurer may—

- (a) adopt a memorandum and articles for a candidate company; and
- (b) amend the memorandum and articles previously adopted.

(2) The memorandum and articles must not be inconsistent with this Act or the Corporations Law.

Candidate company may change its name

14.(1) The memorandum and articles may change a candidate company's name.

(2) The change of name has effect on the candidate company becoming registered under the Corporations Law, part 2.2, division 3.

⁷ Corporations Law, part 2.2 (Registration of companies), division 3 (Registering non-companies as companies)

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Share capital and issue of shares

15.(1) If a candidate company does not have a share capital, a Treasurer's gazette notice may provide that, on a specified day, the candidate company is taken to have a share capital of a specified amount.

(2) Before becoming registered under the Corporations Law, part 2.2, division 3, the candidate company must apply the part of its capital that the Treasurer directs in paying up, in full, shares in itself.

(3) As soon as practicable after complying with subsection (2), the candidate company must issue the shares paid up under the subsection as directed by the Treasurer.

Variation of share capital

16.(1) A Treasurer's gazette notice may vary the share capital of a candidate company.

(2) Without limiting subsection (1), a Treasurer's gazette notice may provide for—

- (a) the issue of further shares in a candidate company; or
- (b) the cancellation of issued shares in a candidate company; or
- (c) the consolidation or division of issued shares in a candidate company.

(3) This section applies only until a candidate company becomes registered under the Corporations Law, part 2.2, division 3.

Shares must be issued to a Minister

17.(1) This section applies if shares in a candidate company are issued under section 15 or 16.

(2) The shares must be issued to a Minister.

(3) The State owns the shares.

(4) The Minister holds the shares on the State's behalf.

(5) This section does not, by implication, limit the persons to whom

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shares may be transferred under a scheme of amalgamation or the Metway
scheme of arrangement. 1
2

Division 4—Miscellaneous 3

Application of GOC Act 4

18.(1) The GOC Act does not apply in relation to a candidate company
transferring its incorporation to the Corporations Law. 5
6

(2) Also, a thing may be done under this part despite the GOC Act. 7

(3) However, on a candidate company becoming registered under the
Corporations Law, part 2.2, division 3, it becomes a company GOC under
the GOC Act and that Act applies to the company GOC with any necessary
changes. 8
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(4) Without limiting subsection (3), the GOC Act applies with the
following changes— 12
13

(a) for applying section 106(1)(a) (Draft corporate plan) the reference
to 1 month is taken to be a reference to 6 months; 14
15

(b) for applying section 107(3) (Special procedures in relation to draft
corporate plan) the reference to 2 months is taken to be a
reference to 7 months; 16
17
18

(c) for applying section 109(1) (Corporate plan pending agreement)
the reference to 1 month is taken to be a reference to 6 months; 19
20

(d) for applying section 116(1)(a) (Draft statement of corporate
intent) the reference to 1 month is taken to be a reference to
6 months; 21
22
23

(e) for applying section 117(3) (Special procedures in relation to draft
statement of corporate intent) the reference to 2 months is taken to
be a reference to 7 months; 24
25
26

(f) for applying section 119(1) (Statement of corporate intent
pending agreement) the reference to 2 months is taken to be a
reference to 7 months. 27
28
29

(5) Despite subsection (3), on the Metway amalgamation day the 30

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company GOC stops being a company GOC under the GOC Act and that Act no longer applies to it. 1
2

(6) Subsection (5) does not affect the company GOC’s registration under the Corporations Law, part 2.2, division 3. 3
4

Part 3 overrides certain Acts 5

19. This part applies despite anything in the QIDC Act or the Suncorp Act. 6
7

Notice by Treasurer 8

20. The Treasurer must, by gazette notice, notify the day on which a candidate company becomes registered under the Corporations Law, part 2.2, division 3. 9
10
11

**PART 4—TRANSFER OF THE UNDERTAKING AND
INCORPORATION OF SBS** 12
13

Division 1—Transfer of SBS’s undertaking to QIDC 14

Definitions for div 1 15

21. In this division— 16

“**excluded asset**” means an asset classified as an excluded asset under section 24. 17
18

“**excluded liability**” means a liability classified as an excluded liability under section 24. 19
20

“**transfer day**” means the day appointed by a Treasurer’s gazette notice for section 22. 21
22

“**transferred asset**” means an asset transferred to QIDC under this division. 23
24

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“transferred liability” means a liability transferred to QIDC under this division. 1
2

“undertaking” of SBS means— 3

(a) all assets of SBS except excluded assets; and 4

(b) all liabilities of SBS except excluded liabilities. 5

Vesting of undertaking 6

22.(1) On the transfer day, SBS’s undertaking is transferred to, and vested in, QIDC. 7
8

(2) The transfer of assets and liabilities under this section has effect despite the provisions of any other law or instrument. 9
10

(3) The transfer of a liability under this section discharges SBS from the liability. 11
12

SBS’s members do not become members of, or shareholders in, QIDC 13

23. To remove any doubt, it is declared that a member of SBS does not become a member of, or shareholder in, QIDC because of the transfer of SBS’s undertaking to QIDC. 14
15
16

Treasurer may exclude assets and liabilities from transfer 17

24.(1) A Treasurer’s gazette notice may classify assets or liabilities of SBS as excluded assets or excluded liabilities. 18
19

(2) However, the notice may not relate to an amount in the rule preconversion reserve. 20
21

(3) The notice must be given before the transfer day. 22

Terms of transfer 23

25. A Treasurer’s gazette notice may fix terms on which SBS’s undertaking is transferred. 24
25

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Transitional provisions

26.(1) The following transitional provisions apply—

- (a) for construing an instrument or an oral agreement, understanding or undertaking so far as it applies to a transferred asset or transferred liability—
 - (i) a reference to SBS is to be construed as a reference to QIDC; and
 - (ii) a reference to a branch, office, or agency of SBS is to be construed as a reference to the corresponding branch, office or agency of QIDC or a branch, office or agency designated by the Treasurer as the corresponding branch, office or agency; and
 - (iii) a reference to an officer of SBS is to be construed as a reference to the corresponding officer of QIDC or an officer designated by the Treasurer as the corresponding officer;
- (b) the relationship existing between SBS and a person (including a member or depositor) in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between QIDC and the person after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer;
- (c) an instruction, order, mandate, authority or notice given to or by SBS before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to or by QIDC at the time it was given to or by SBS;
- (d) if a security held by SBS is referable to a transferred asset or transferred liability, then, so far as it is referable to the transferred asset or transferred liability—
 - (i) QIDC becomes entitled or subject to rights, priorities and liabilities in relation to the security that SBS would have had if there had been no transfer; and
 - (ii) the security is available to QIDC as security for the discharge of liabilities including, where the security extends

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to future or prospective liabilities, liabilities incurred after the transfer;	1 2
(e) QIDC is entitled to possession of all documents to which SBS was entitled immediately before the transfer took effect that are referable to a transferred asset or transferred liability;	3 4 5
(f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by, SBS is (if SBS's liability under the instrument or order is a transferred liability) payable by QIDC in the same way as if it had been drawn by or on, or accepted or endorsed by, QIDC;	6 7 8 9 10
(g) if a transferred asset consists of rights to the possession or use of property under an instrument—QIDC may exercise those rights without exposing SBS to liability for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of any instrument;	11 12 13 14 15
(h) QIDC has the same right to ratify an instrument relating to an asset or liability transferred to it from SBS as SBS would have had if there had been no transfer;	16 17 18
(i) QIDC may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name, in SBS's name, or if the asset or liability is held in the name of a predecessor in title to SBS, in the name of the predecessor in title.	19 20 21 22 23
(2) Subsection (1) does not limit the other provisions of this division.	24
 Direct payment orders to accounts transferred to QIDC	 25
27. An instruction, order or mandate for payments to be made to an account at SBS is, if the account at SBS is transferred to QIDC under this division, taken to be an instruction, order of mandate for the payments to be made to the account at QIDC.	26 27 28 29
 Transfer of staff	 30
28.(1) The transfer of officers and employees of SBS to QIDC as part of	31

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- SBS's undertaking does not— 1
- (a) affect the officers' or employees' remuneration; or 2
 - (b) prejudice the officers' or employees' existing or accruing rights to recreation leave, sick leave, long service leave or superannuation; 3
or 4
5
 - (c) interrupt continuity of service; or 6
 - (d) constitute a retrenchment or redundancy; or 7
 - (e) entitle the officers or employees to a payment or other benefit merely because they are no longer employed by SBS. 8
9
- (2) Subsection (1) does not apply to directors of SBS in the capacity of directors. 10
11

Legal proceedings relating to undertaking 12

29.(1) This section applies if legal proceedings might have been continued or started by or against SBS in relation to a transferred asset or transferred liability immediately before the transfer day. 13
14
15

(2) The proceedings may be continued or started by or against QIDC. 16

(3) QIDC has the same rights and privileges as SBS would have had if there had been no transfer. 17
18

(4) A document that could have been given in evidence by or against SBS if there had been no transfer may be given in evidence by or against QIDC. 19
20
21

Reserve established in QIDC 22

30.(1) On the transfer day, a reserve is established in QIDC (the “SBS preconversion reserve”) of an amount equal to the amount in the rule preconversion reserve immediately before that day. 23
24
25

(2) The SBS preconversion reserve reduces at the same rate and at the same intervals as the rule preconversion reserve would have continued to 26
27

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reduce under rule 178 of SBS's rules⁸ if SBS's undertaking had not transferred under section 22.⁹ 1
2

(3) When the SBS preconversion reserve is reduced by an amount under subsection (2), QIDC's general reserves increase by an equivalent amount. 3
4

Effect of winding-up on SBS preconversion reserve 5

31.(1) This section applies if QIDC is wound up under any law. 6

(2) The amount in the SBS preconversion reserve must be distributed to the remaining preconversion members of SBS in proportion to the paid-up value of the withdrawable shares in SBS held by them on 30 September 1993. 7
8
9
10

(3) However the distribution must not happen until after payment of the capital paid up or credited as paid up on the issued shares in QIDC. 11
12

(4) In this section— 13

“remaining preconversion members of SBS” means the persons who— 14

(a) became client members of SBS under rule 177 of SBS's rules;¹⁰ and 15
16

(b) have not ceased to be members of SBS under the rules at any time before the transfer day; and 17
18

(c) have not given notice to QIDC surrendering their claims to a distribution of the SBS preconversion reserve before the winding-up started. 19
20
21

Exclusion of obligation to inquire 22

32.(1) A person dealing with QIDC is not obliged to inquire whether anything to which the transaction relates is or is not part of SBS's 23
24

⁸ Rule 178 reduces the rule preconversion reserve by 20% a year, starting 30 June 1994, so that it is reduced to nil on 30 June 1998.

⁹ Section 22 (Vesting of undertaking)

¹⁰ Under rule 177, every person who, at the beginning of 30 September 1993, held withdrawable shares in SBS became a client member.

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undertaking. 1

(2) A person dealing with SBS is not obliged to inquire whether anything 2
to which the transaction relates is or is not an excluded asset or excluded 3
liability. 4

Cancellation of SBS's registration as a building society 5

33.(1) This section applies only if— 6

(a) SBS's undertaking is transferred to QIDC; and 7

(b) there are no excluded assets or excluded liabilities; and 8

(c) SBS has not become registered under the Corporations Law, 9
part 2.2, division 3.¹¹ 10

(2) SBS must surrender its certificate of incorporation, and its authority 11
to operate as a building society, under the Financial Institutions 12
(Queensland) Code to the State supervisory authority for Queensland under 13
the code. 14

(3) On receipt of the certificate, the State supervisory authority must 15
cancel SBS's registration as a society under the Financial Institutions 16
(Queensland) Code. 17

Dissolution of SBS 18

34.(1) This section applies if SBS's registration as a society under the 19
Financial Institutions (Queensland) Code is cancelled under section 33. 20

(2) SBS is dissolved without a winding-up. 21

(3) A person is not entitled to damages or compensation because of the 22
dissolution. 23

¹¹ Corporations Law, part 2.2 (Registration of companies), division 3 (Registering non-companies as companies)

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Division 2—Transfer of incorporation of SBS to Corporations Law

Registration of SBS under Corporations Law

35.(1) SBS is authorised by this section to transfer its incorporation to the Corporations Law and become registered under part 2.2, division 3 of the law.

(2) Subject to subsection (3), SBS must act under subsection (1) if directed to do so by the Treasurer.

(3) However, before SBS may act under subsection (1), a majority of its members who are entitled to vote must consent to the transfer.

(4) The voting entitlement of members about the consent to the transfer of incorporation must be decided under SBS's rules.

Memorandum and articles of SBS

36.(1) To facilitate the transfer of SBS's incorporation to the Corporations Law, the Treasurer may—

- (a) adopt a memorandum and articles for when the transfer takes effect; and
- (b) amend the memorandum and articles previously adopted.

(2) The memorandum and articles must not be inconsistent with this Act or the Corporations Law.

SBS must change its name

37.(1) The memorandum and articles must change SBS's name so that SBS will not contravene the Financial Institutions (Queensland) Code, section 144(2)(a)¹² on becoming registered under the Corporations Law,

¹² Financial Institutions (Queensland) Code, section 144(2)(a) (Use of words 'building society', 'credit society', 'credit union' or 'credit co-operative'). The provision limits the bodies that may lawfully trade or carry on business under a name of which the words 'building society' form part to certain bodies under the code.

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part 2.2, division 3. 1

(2) The change of name has effect on SBS becoming registered under the 2
Corporations Law. 3

***Division 3—Provisions applying if SBS becomes registered under
Corporations Law*** 4
5

Subdivision 1—Application and expiry of division 6

When div 3 applies 7

38. This division applies if SBS becomes registered under the 8
Corporations Law, part 2.2, division 3. 9

When div 3 expires 10

39. This division and schedule 1 expire 2 years after the Metway 11
amalgamation day. 12

Subdivision 2—SBS no longer building society 13

SBS ceases to be a building society 14

40. SBS ceases to be a building society under the Financial Institutions 15
(Queensland) Code. 16

Cancellation of SBS's registration as a building society 17

41.(1) SBS must surrender its certificate of incorporation, and its 18
authority to operate as a building society, under the Financial Institutions 19
(Queensland) Code to the State supervisory authority for Queensland under 20
the code. 21

(2) On receipt of the certificate, the State supervisory authority must 22

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cancel SBS’s registration as a society under the Financial Institutions (Queensland) Code.	1 2
<i>Subdivision 3—Application of Financial Institutions (Queensland) Code</i>	3
When subdiv 3 has effect	4
42. Despite the commencement of this subdivision, it has effect only while a regulation declares that it has effect.	5 6
Application of Financial Institutions (Queensland) Code to SBS	7
43.(1) The Financial Institutions (Queensland) Code, as in force on 1 July 1996, applies to SBS with all necessary changes.	8 9
(2) Without limiting subsection (1), the code applies with the following changes—	10 11
(a) a reference to the SSA is taken to be a reference to QOFS;	12
(b) a reference to a building society, financial body, financial institution or a society is taken to be a reference to SBS;	13 14
(c) a reference to the financial institutions legislation or Financial Institutions Code is taken to be a reference to the code as applying under this section.	15 16 17
(3) The code also applies with the changes specified in schedule 1, part 1. ¹³	18 19
(4) For applying the code, Book 3, Prudential Standards for Building Societies applies with the following changes—	20 21
(a) a reference to the SSA is taken to be a reference to QOFS;	22
(b) a reference to AFIC is taken to be a reference to QOFS;	23
(c) a reference to the FI Code is taken to be a reference to the Financial Institutions (Queensland) Code as applying under this	24 25

¹³ Schedule 1, part 1 (Changes to the Applied Financial Institutions (Queensland) Code)

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section.	1
(5) The book also applies—	2
(a) with the changes specified in schedule 1, part 2; ¹⁴ and	3
(b) subject to any amendments made under section 45(3).	4
 Applied code not part of financial institutions legislation	 5
44.(1) To remove any doubt, it is declared that the applied provisions do not form part of the financial institutions legislation under the AFIC (Queensland) Code.	6 7 8
(2) Also, QOFS, when acting under the applied provisions is not acting as the State supervisory authority for Queensland.	9 10
 Making etc. of standards by QOFS's board	 11
45.(1) The board of QOFS may, by resolution, make standards (whether prudential or otherwise) with respect to—	12 13
(a) the business and affairs of SBS; and	14
(b) the supervision of SBS by QOFS, including the practices and procedures to be adopted in carrying out that supervision; and	15 16
(c) the administration and enforcement by QOFS of the applied provisions; and	17 18
(d) any other matters in relation to which the applied provisions authorise or require (whether expressly or by implication) standards to be made; and	19 20 21
(e) any other matters in relation to the applied provisions that the board considers necessary or desirable to achieve the objects of the provisions.	22 23 24
(2) The board may, by resolution, amend or repeal a standard made under this section.	25 26

¹⁴ Schedule 1, part 2 (Changes to Book 3, Prudential Standards for Building Societies)

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(3) The board may, by resolution, also amend Book 3, Prudential Standards for Building Societies in so far as it applies to SBS under this division. 1
2
3

(4) A resolution under this section takes effect on and from— 4

(a) the day a copy of the resolution is published in the gazette; or 5

(b) if a later day is fixed in the resolution—that day. 6

Transitional arrangements 7

46.(1) A standard that imposes requirements, or increases the requirements already imposed by a standard, may make transitional provision for the purpose of allowing additional time to comply with the requirements. 8
9
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11

(2) This section does not limit by implication the power of QOFS's board to make standards under another section. 12
13

Publication of standards 14

47. When the board of QOFS makes a resolution for the purposes of section 45, it must immediately publish a copy of the resolution in the gazette. 15
16
17

Auditor must give QOFS certain information 18

48.(1) If an auditor of SBS under the Corporations Law is required by section 332(9) or (10)¹⁵ of that law to report anything relating to SBS to the Australian Securities Commission by written notice, or send any documents relating to SBS to that commission, the auditor must also give a copy of the notice or documents to QOFS. 19
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Maximum penalty—100 penalty units. 24

¹⁵ Corporations Law, section 332(9) and (10) require a company's auditor to inform the Australian Securities Commission about defaults relating to the company's annual general meeting and laying financial statements before the meeting and, in certain circumstances, about other contraventions of the Corporations Law.

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- (2) If the auditor, in the course of performing the auditor’s duties, is satisfied— 1
2
- (a) there has been a contravention of the applied provisions; and 3
 - (b) that the matter has not been, or will not be, adequately dealt with 4
in the auditor’s report on SBS’s financial statements or by 5
bringing it to the notice of SBS’s directors or, if SBS is controlled 6
by another corporation, that corporation’s directors; 7
- the auditor must give QOFS written notice about the matter. 8
- Maximum penalty—100 penalty units. 9
- (3) Subsection (2) does not apply if subsection (1) applies to the matter. 10
- (4) If, under the Corporations Law, section 332A,¹⁶ the auditor is 11
required to send a copy of a report given to SBS’s directors to the 12
Australian Accounting Standards Board, the auditor must immediately also 13
give a copy of the report to QOFS. 14
- Maximum penalty—100 penalty units. 15
- (5) An auditor, or former auditor, of SBS under the Corporations Law or 16
a former auditor of SBS under the Financial Institutions (Queensland) Code 17
must give to QOFS any report about the affairs of SBS that QOFS requires 18
and the auditor, or former auditor, is able to give. 19
- Maximum penalty for subsection (5)—100 penalty units. 20
- QOFS may obtain copy of accounts etc.** 21
- 49.(1)** If QOFS receives a report under section 48(4), it may, by written 22
notice given to SBS, require SBS to give a copy of its financial statements, 23
accounts or group accounts to QOFS within 7 days of receiving the notice. 24
- (2) SBS must comply with the notice. 25
- Maximum penalty for subsection (2)—100 penalty units. 26

¹⁶ Corporations Law, section 332A requires a company’s auditor to inform the Australian Accounting Standards Board about non-compliance with accounting standards in certain cases.

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<i>Subdivision 4—SBS as State instrumentality</i>	1
SBS is State instrumentality	2
50.(1) SBS is an instrumentality of the Crown in right of the State.	3
(2) SBS stops being an instrumentality of the Crown in right of the State on the Metway amalgamation day.	4 5
<i>Division 4—Relationship of pt 4 to financial institutions legislation</i>	6
Part 4 overrides financial institutions legislation	7
51. This part applies despite the financial institutions legislation under the AFIC Code.	8 9
PART 5—AMALGAMATION OF CERTAIN STATE FINANCIAL INSTITUTIONS	10 11
Object of pt 5	12
52.(1) The object of this part is to provide for arrangements (a “ scheme of amalgamation ”) under which 2 or more SFIs may be amalgamated.	13 14
(2) There may be more than 1 scheme of amalgamation.	15
(3) An SFI may participate in more than 1 scheme of amalgamation.	16
(4) An SFI with which another SFI has amalgamated may participate in another scheme of amalgamation.	17 18
Definitions for pt 5	19
53. In this part—	20
“ participating entity ”, for a scheme of amalgamation, means an SFI that is participating in the scheme.	21 22

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“ transferee entity ” means a participating entity to which assets or liabilities are transferred under a scheme of amalgamation.	1 2
“ transferor entity ” means a participating entity from which assets or liabilities are transferred under a scheme of amalgamation.	3 4
“ transferred asset ” means an asset transferred to a participating entity under a scheme of amalgamation.	5 6
“ transferred liability ” means a liability transferred to a participating entity under a scheme of amalgamation.	7 8
“ undertaking ”, of a participating entity, means the assets and liabilities of the entity.	9 10
Treasurer may cause preparation of schemes	11
54. The Treasurer may cause a scheme of amalgamation to be prepared for 2 or more SFIs.	12 13
Treasurer may approve schemes	14
55.(1) A Treasurer’s gazette notice may approve a scheme of amalgamation.	15 16
(2) When the scheme is approved it, and all its terms, take effect by force of this section.	17 18
Matters that may be included in schemes	19
56.(1) A scheme of amalgamation may provide for all or any of the following—	20 21
(a) the transfer of all or part of the undertaking of a participating entity to another participating entity;	22 23
(b) the allotment, appropriation or transfer of shares, debentures, policies or other interests of a participating entity to another entity;	24 25
(c) the cancellation of shares, debentures, policies or other interests of a participating entity;	26 27
(d) the reduction of capital of a participating entity;	28

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(e) the continuation by or against a participating entity of legal proceedings by or against another participating entity;	1 2
(f) the dissolution, with or without winding-up, of a participating entity;	3 4
(g) the application to a participating entity of instruments applying to another participating entity;	5 6
(h) provision about the existing officers and employees of a participating entity and their rights;	7 8
(i) whether, and, if so, the extent to which a participating entity is the successor in law of another participating entity;	9 10
(j) the change of name of a participating entity;	11
(k) the consideration for the transfer of all or part of a participating entity's undertaking to another participating entity and the value or values at which it is transferred;	12 13 14
(l) any incidental, consequential or supplemental matters that are necessary to ensure the amalgamation is fully and effectively carried out.	15 16 17
(2) This section does not limit the matters that may be included in a scheme of amalgamation.	18 19
Effect of scheme relating to transfer of assets	20
57.(1) This section applies if an asset is transferred under a scheme of amalgamation.	21 22
(2) If it is provided by the scheme, the asset is transferred free from any charge that is, under the scheme, to cease to have effect.	23 24
Transitional provisions	25
58.(1) The following transitional provisions apply—	26
(a) for construing an instrument or an oral agreement, understanding or undertaking so far as it applies to a transferred asset or transferred liability—	27 28 29

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|-------|--|--|
| (i) | a reference to the transferor entity is to be construed as a reference to the transferee entity; and | 1
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| (ii) | a reference to a branch, office, or agency of the transferor entity is to be construed as a reference to the corresponding branch, office or agency of the transferee entity or a branch, office or agency designated by the Treasurer as the corresponding branch, office or agency; and | 3
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| (iii) | a reference to an officer of the transferor entity is to be construed as a reference to the corresponding officer of the transferee entity or an officer designated by the Treasurer as the corresponding officer; | 8
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| (b) | the relationship existing between the transferor entity and a person (including a member or depositor) in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between the transferee entity and the person after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer; | 12
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| (c) | an instruction, order, mandate, authority or notice given to or by the transferor entity before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to or by the transferee entity at the time it was given to or by the transferor entity; | 19
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| (d) | if a security held by the transferor entity is referable to a transferred asset or transferred liability, then, so far as it is referable to the transferred asset or transferred liability— | 24
25
26 |
| (i) | the transferee entity becomes entitled or subject to rights, priorities and liabilities in relation to the security that the transferor entity would have had if there had been no transfer; and | 27
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29
30 |
| (ii) | the security is available to the transferee entity as security for the discharge of liabilities including, where the security extends to future or prospective liabilities, liabilities incurred after the transfer; | 31
32
33
34 |
| (e) | the transferee entity is entitled to possession of all documents to | 35 |

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- which the transferor entity was entitled immediately before the transfer took effect that are referable to a transferred asset or transferred liability; 1
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3
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by, the transferor entity is (if the entity’s liability under the instrument or order is a transferred liability) payable by the transferee entity in the same way as if it had been drawn by or on, or accepted or endorsed by, the transferee entity; 4
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- (g) if a transferred asset consists of rights to the possession or use of property under an instrument—the transferee entity may exercise those rights without exposing the transferor entity to liability for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of any instrument; 9
10
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- (h) the transferee entity has the same right to ratify an instrument relating to an asset or liability transferred to it from the transferor entity as that entity would have had if there had been no transfer; 15
16
17
- (i) the transferee entity may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name, in the transferor entity’s name, or if the asset or liability is held in the name of a predecessor in title to the transferor entity, in the name of the predecessor in title. 18
19
20
21
22
- (2) Subsection (1) does not limit the other provisions of this part. 23

Exclusion of obligation to inquire 24

59. A person dealing with a participating entity to which all or part of another participating entity’s undertaking has been transferred under a scheme of amalgamation is not obliged to inquire whether anything to which the transaction relates is, or is not, transferred under the scheme. 25
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Transfer of staff 29

60.(1) This section applies if a scheme of amalgamation provides for the transfer of officers or employees from the employment of one participating entity (the “**first entity**”) to another participating entity. 30
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- (2) The transfer does not— 1
- (a) affect the officers’ or employees’ remuneration; or 2
 - (b) prejudice the officers’ or employees’ existing or accruing rights to recreation leave, sick leave, long service leave or superannuation; 3
or 4
5
 - (c) interrupt continuity of service; or 6
 - (d) constitute a retrenchment or redundancy; or 7
 - (e) entitle the officers or employees to a payment or other benefit merely because they are no longer employed by the first entity. 8
9
- (3) Subsection (2) does not apply to directors of the first entity in the capacity of directors. 10
11

Legal proceedings relating to undertaking 12

61.(1) This section applies if legal proceedings might have been continued or started by or against a transferor entity in relation to a transferred asset or transferred liability immediately before the transfer happened. 13
14
15
16

(2) The proceedings may be continued or started by or against the transferee entity to whom the asset or liability was transferred. 17
18

(3) The transferee entity has the same rights and privileges as the transferor entity would have had if there had been no transfer. 19
20

(4) A document that could have been given in evidence by or against the transferor entity if there had been no transfer may be given in evidence by or against the transferee entity. 21
22
23

Part 5 overrides certain laws 24

62.(1) This part has effect despite the Corporations Law, financial institutions legislation under the AFIC (Queensland) Code, QIDC Act and the Suncorp Act. 25
26
27

(2) Without limiting subsection (1), a scheme of amalgamation may change the name of QIDC or SIF. 28
29

**PART 6—MANDATORY REQUIREMENTS
REGARDING METWAY GROUP COMPANIES’
ARTICLES**

Application of pt 6

63. This part applies on and from the Metway amalgamation day.

Metway group companies’ articles to include certain provisions

64.(1) The articles of each Metway group company must, at all times, require—

- (a) the head office of the company to be located in Queensland; and
- (b) at least a majority of the directors of the company, including the managing director, to be ordinarily resident in Queensland.

(2) For subsection (1) and the articles, the head office of the company is located in Queensland only if—

- (a) the principal operational offices of the following company personnel, however described, are located in Queensland—
 - (i) chairperson;
 - (ii) chief executive officer;
 - (iii) chief financial officer;
 - (iv) chief operating officer; and
- (b) the principal operational offices for the following company services, however described, are located in Queensland—
 - (i) treasury operations;
 - (ii) information technology management;
 - (iii) marketing management;
 - (iv) credit control operations;
 - (v) human resource management;
 - (vi) account processing;

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(vii) corporate services department;	1
(viii) purchasing department; and	2
(c) the usual location for the holding of company board meetings is in Queensland.	3 4
Inconsistent alterations to Metway group companies' articles have no effect	5 6
65.(1) A special resolution of a Metway group company that would, apart from this subsection, have the effect of altering the company's articles so that the articles would not comply with section 64 has no effect.	7 8 9
(2) A special resolution or resolution of the company has no effect if the resolution would—	10 11
(a) if acted on and apart from this subsection—result in a contravention of the mandatory articles; or	12 13
(b) apart from this subsection—ratify an act or omission contravening the mandatory articles.	14 15
Injunctions	16
66.(1) Subsection (2) applies if a Metway group company or another person has engaged, is engaging or is proposing to engage in conduct constituting—	17 18 19
(a) a contravention of the mandatory articles; or	20
(b) attempting to contravene the mandatory articles; or	21
(c) aiding, abetting, counselling or procuring a person to contravene the mandatory articles; or	22 23
(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the mandatory articles; or	24 25
(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the mandatory articles; or	26 27 28
(f) conspiring with others to contravene the mandatory articles.	29

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- (2) The Supreme Court may, on the application of the Treasurer, grant an injunction, on the terms the court considers appropriate, restraining the company or other person from engaging in the conduct and, if the court considers it appropriate, requiring the company or other person to do something. 1
2
3
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- (3) If a Metway group company or another person has failed, is failing or is proposing to fail to do something that the company or other person is required by the mandatory articles to do, the Supreme Court may, on the application of the Treasurer, grant an injunction, on the terms the court considers appropriate, requiring the company or other person to do the thing. 6
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- (4) On an application for an injunction under subsection (2) or (3), the Supreme Court may, if the court considers it appropriate, grant an injunction by consent of all the parties to the proceeding, whether or not the court is satisfied subsection (2) or (3) applies. 12
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- (5) If the Supreme Court considers it appropriate, the court may grant an interim injunction pending a decision on an application under subsection (2) or (3). 16
17
18
- (6) The Supreme Court may discharge or vary an injunction granted under this section. 19
20
- (7) The power of the Supreme Court to grant an injunction restraining a Metway group company or another person from engaging in conduct may be exercised— 21
22
23
- (a) whether or not it appears to the court that the company or other person intends to engage again, or to continue to engage, in conduct of that kind; and 24
25
26
 - (b) whether or not the company or other person has previously engaged in conduct of that kind; and 27
28
 - (c) whether or not there is an imminent danger of substantial damage to a person if the company or other person engages in conduct of that kind. 29
30
31
- (8) The power of the Supreme Court to grant an injunction requiring a Metway group company or another person to do something may be exercised— 32
33
34

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(a) whether or not it appears to the court that the company or other person intends to fail again, or to continue to fail, to do the thing; and	1 2 3
(b) whether or not the company or other person has previously failed to do the thing; and	4 5
(c) whether or not there is an imminent danger of substantial damage to a person if the company or other person fails to do the thing.	6 7
(9) If the Treasurer applies to the Supreme Court for the grant of an injunction under this section, the court must not require the Treasurer, as a condition of granting an interim injunction, to give an undertaking as to damages.	8 9 10 11
(10) If the Supreme Court has power under this section to grant an injunction restraining a Metway group company or another person from engaging in particular conduct, or requiring the company or another person to do a particular thing, the court may, either in addition to, or in substitution for, the grant of the injunction, make any other order it considers appropriate against the company or the other person who engaged in the conduct or a person who was involved in the contravention.	12 13 14 15 16 17 18
Delegation by Treasurer	19
67. The Treasurer may delegate the Treasurer's powers under this part to the chief executive of the department.	20 21
Jurisdiction of Supreme Court	22
68. The Supreme Court of Queensland has jurisdiction for matters arising under this part and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under the Commonwealth Constitution, section 75. ¹⁷	23 24 25 26

¹⁷ Commonwealth Constitution, section 75 (Original jurisdiction of High Court)

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Part 6 overrides Corporations Law	1
69.(1) This part has effect despite the Corporations Law.	2
(2) Without limiting subsection (1), if there is any conflict or inconsistency between this part and a Metway group company's memorandum or articles, this part prevails.	3 4 5
PART 7—GUARANTEE OF EXISTING OBLIGATIONS	6 7
Obligation for existing QIDC liabilities	8
70.(1) This section applies only to matters done or not done by QIDC under the QIDC Act before the Metway amalgamation day.	9 10
(2) If QIDC becomes liable to pay an amount because of something done or not done for a matter mentioned in subsection (1), the State has the same obligation for payment of the amount as it would have had under the QIDC Act if this Act had not been enacted.	11 12 13 14
(3) This section does not apply to a liability of an SFI transferred to QIDC under part 4 or 5 except to the extent QIDC becomes liable to pay an amount because of something done, or not done, by it under the QIDC Act after the transfer but before the Metway amalgamation day.	15 16 17 18
Obligation for existing insurance liabilities	19
71.(1) This section applies only to policies or contracts of insurance or indemnity issued or entered into by SIF, or a wholly-owned subsidiary of SIF, under the Suncorp Act before the Metway amalgamation day.	20 21 22
(2) If SIF, or a wholly-owned subsidiary of SIF, becomes liable to pay an amount for a policy or contract of insurance or indemnity mentioned in subsection (1), the State has the same obligation to pay the amount as it would have had under the Suncorp Act if this Act had not been enacted.	23 24 25 26

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Obligation for liabilities transferred from QIDC, SIF or a wholly-owned subsidiary of SIF

72.(1) This section applies if the State has an obligation mentioned in section 70 or 71 to pay an amount and the liability in relation to the amount is transferred under part 4 or 5 or the Metway scheme of arrangement from QIDC, SIF, or a wholly-owned subsidiary of SIF to another entity on or before the Metway amalgamation day.

(2) The State has the same obligation to pay the amount as it would have had if the amount were payable under—

(a) section 70; or

(b) section 71.

No guarantee for future liabilities

73. To remove any doubt, on and from the Metway amalgamation day the State does not guarantee the payment of an amount, in relation to a liability of QIDC, SIF or a wholly-owned subsidiary of SIF, not mentioned in section 70, 71 or 72.

Appropriation of guaranteed amounts

74.(1) This section applies if an amount becomes payable by the State because of section 70, 71 or 72.

(2) The Treasurer may pay the amount from the consolidated fund without further appropriation.

Guarantee fee

75.(1) If the State has an obligation to pay an amount under section 70 or 72(2)(a), the Treasurer may require QIDC, or the entity to whom the liability in relation to the amount was transferred under part 4 or 5 or the Metway scheme of arrangement, to pay fees to the State in relation to the State's obligation to pay the amount.

(2) The Treasurer may also require Metway, or a wholly-owned subsidiary of Metway, to pay fees to the State in relation to an amount owed

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- by Metway, or a wholly-owned subsidiary of Metway, to Queensland Treasury Corporation. 1
2
- (3) The fees mentioned in subsections (1) and (2) must be calculated at the rates of— 3
4
- (a) for an amount that becomes due and payable within 1 year of the liability to repay the amount being incurred—0.05 % per annum of the amount; and 5
6
7
- (b) for an amount that becomes due and payable more than 1 year after the liability to repay the amount was incurred—0.20 % per annum of the amount. 8
9
10
- (4) How and when the fees are to be paid is to be decided by the Treasurer. 11
12
- (5) A fee required to be paid under this section is a debt due to the State. 13

PART 8—MISCELLANEOUS 14

Exemption from State tax 15

76.(1) State tax is not payable in relation to anything done because of, or for a purpose connected with or arising out of, this Act, including, without limitation— 16
17
18

- (a) an asset or liability transferred under part 4 or 5;¹⁸ or 19
- (b) an asset or liability transferred under the Metway scheme of arrangement. 20
21

(2) Also, State tax is not payable in relation to the transfer of an asset or liability held, at the Metway amalgamation day, by an SFI or Metway, or a related body corporate of an SFI or Metway, if— 22
23
24

- (a) the transfer happens within 2 years after the Metway 25

¹⁸ Part 4 (Transfer of the undertaking and incorporation of SBS)
Part 5 (Amalgamation of certain State financial institutions)

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amalgamation day; and	1
(b) a regulation declares State tax is not payable in relation to the transfer.	2 3
(3) No person has an obligation under a law imposing a State tax—	4
(a) to lodge a statement or return relating to a matter mentioned in subsection (1) or (2); or	5 6
(b) to include in a statement or return a record or information relating to a matter mentioned in subsection (1) or (2).	7 8
(4) So far as the legislative power of Parliament permits, a reference in this section to State tax includes a reference to tax imposed under an Act of another State.	9 10 11
 Transfer of assets and liabilities of SFIs to government entities	 12
77.(1) A regulation may transfer an SFI's asset or liability to a government entity.	13 14
(2) The regulation—	15
(a) must be made, and must take effect, before the Metway amalgamation day; and	16 17
(b) has effect despite any other law or instrument; and	18
(c) may make transitional arrangements about the transfer.	19
(3) The transfer of a liability discharges the SFI from the liability.	20
 Transfer of certain assets and liabilities of Metway to government entities	 21 22
78.(1) This section applies to an asset or liability of Metway that was held on or before the Metway amalgamation day by an SFI if, within 6 months after the Metway amalgamation day, the Treasurer and Metway agree in writing that the asset or liability should stop being an asset or liability of Metway.	23 24 25 26 27
(2) A regulation may declare that, on and from the Metway amalgamation day, the asset or liability is taken to have been transferred to a	28 29

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- government entity specified in the regulation. 1
- (3) The regulation— 2
- (a) has effect despite any other law or instrument; and 3
- (b) may make transitional arrangements about the transfer. 4
- (4) The transfer of a liability discharges Metway from the liability. 5
- (5) In this section— 6
- “Metway” includes a related body corporate of Metway. 7

Transfer of staff 8

79.(1) This section applies if the Metway scheme of arrangement 9
provides for the transfer of officers or employees from the employment of 10
an SFI to Metway, any holding company of Metway or a wholly-owned 11
subsidiary of Metway. 12

- (2) The transfer does not— 13
- (a) affect the officers’ or employees’ remuneration; or 14
- (b) prejudice the officers’ or employees’ existing or accruing rights to 15
recreation leave, sick leave, long service leave or superannuation; 16
or 17
- (c) interrupt continuity of service; or 18
- (d) constitute a retrenchment or redundancy; or 19
- (e) entitle the officers or employees to a payment or other benefit 20
merely because they are no longer employed by the SFI. 21

(3) Subsection (2) does not apply to directors of the SFI in the capacity 22
of directors. 23

Transfer of entity’s incorporation does not affect legal personality 24

80. The fact that, under this Act, an entity transfers its incorporation to 25

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the Corporations Law and becomes registered under part 2.2, division 3¹⁹ of the law does not, of itself, affect the entity's legal personality. 1
2

Registering authority to note transfer 3

81.(1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities— 4
5

(a) may (without formal application) register or record in the appropriate way the transfer of an asset or liability under a transferring provision; and 6
7
8

(b) must, on application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transferring provision to the transferee entity. 9
10
11

(2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in its transferor entity's name or the name of a predecessor in title to the transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability. 12
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(3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transferring provision. 18
19
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(4) An entity is a transferee entity's transferor entity if it is the entity from which the asset or liability concerned was transferred to the transferee entity. 23
24
25

(5) In this section— 26

“transferee entity” means the entity to which an asset or liability is transferred under a transferring provision. 27
28

“transferor entity” means the entity from which an asset or liability is 29

¹⁹ Corporations Law, part 2.2 (Registration of companies), division 3 (Registering non-companies as companies)

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transferred under a transferring provision. 1

“transferring provision” means— 2

(a) part 4, division 1;²⁰ or 3

(b) part 5;²¹ or 4

(c) sections 77 and 78;²² or 5

(d) the Metway scheme of arrangement. 6

Treasurer may direct participating entities 7

82.(1) To allow or facilitate the doing of anything for part 3, 4 or 5²³ or 8
the Metway scheme of arrangement, the Treasurer may give a written 9
direction to QIDC, SIF or an SFI. 10

(2) The entity concerned must comply with the direction to the extent it is 11
able to. 12

Diligence and care expected of certain directors 13

83.(1) This section applies if it becomes relevant to decide whether a 14
director of a relevant entity has, in exercising the director’s powers or 15
discharging the director’s functions in relation to the relevant entity, 16
exercised the degree of diligence and care that a reasonable person in a like 17
position in a corporation similar to the relevant entity would exercise in the 18
relevant entity’s circumstances. 19

(2) Regard must be had to— 20

(a) the application of this Act to the relevant entity; and 21

²⁰ Part 4, division 1 (Transfer of SBS’s undertaking to QIDC)

²¹ Part 5 (Amalgamation of certain State financial institutions)

²² Section 77 (Transfer of assets and liabilities of SFIs to government entities)
Section 78 (Transfer of certain assets and liabilities of Metway to government
entities)

²³ Part 3 (Transfer of the incorporation of QIDC and SIF to Corporations Law)
Part 4 (Transfer of the undertaking and incorporation of SBS)
Part 5 (Amalgamation of certain State financial institutions)

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(b) relevant matters required or permitted to be done under this Act in relation to the relevant entity; and	1 2
(c) relevant directions given to the relevant entity by the Treasurer.	3
(3) Subsection (2) does not limit the matters to which regard may be had for subsection (1).	4 5
(4) In this section—	6
“relevant entity” means QIDC, SIF or an SFI.	7
Act does not affect existing legal relationships	8
84.(1) This Act has effect despite anything in any instrument.	9
(2) Nothing done under this Act, or the Metway scheme of arrangement, in relation to an entity—	10 11
(a) places the entity or the State in breach of a contract, trust or confidence or otherwise makes the entity or the State guilty of a civil wrong; or	12 13 14
(b) makes the entity or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, transfer or assumption of any right or liability or the disclosure of any information; or	15 16 17 18
(c) is taken to fulfil a condition—	19
(i) allowing a person to terminate an instrument or be released (wholly or partly) from an obligation or modify the operation or effect of an instrument or obligation; or	20 21 22
(ii) requiring money to be paid, or anything else to be done, before its stated maturity; or	23 24
(d) releases a surety or other obligee (wholly or partly) from an obligation.	25 26
(3) If, apart from this subsection, obtaining the advice or consent of, or giving notice to, a person would be necessary under an instrument to give effect to a transaction contemplated by this Act, the advice or consent is taken to have been obtained or the notice is taken to have been given.	27 28 29 30

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Act does not limit other powers

85.(1) This Act provides facilitative mechanisms.

(2) Without limiting subsection (1), this Act does not prevent anything being done otherwise than under this Act.

Effect of inconsistency with GOC Act

86.(1) This section applies if a scheme of amalgamation or the Metway scheme of arrangement, in so far as it applies to QIDC or SIF, allots, cancels or transfers a share in QIDC or SIF in a way that is inconsistent with the GOC Act as the Act applies to QIDC or SIF.

(2) The scheme of amalgamation or Metway scheme of arrangement prevails to the extent of the inconsistency.

Person may disclose protected information

87.(1) The *Financial Administration and Audit Act 1977*, section 92, does not prevent the disclosure of protected information to an approved person.

(2) This section is taken to have had effect on and from the day the Bill for this Act was introduced into the Legislative Assembly.

(3) Also, but only for the purpose of this section and to the extent necessary for this section to operate, any other provision of this Act is taken to have had effect on and from the day the Bill for this Act was introduced into the Legislative Assembly.

(4) In this section—

“approved person” means—

(a) a person (the **“first person”**) appointed by a relevant entity to conduct a due diligence investigation or audit of, or to report on, the entity or another relevant entity for, or in relation to, a matter contemplated by this Act; or

(b) another person employed or contracted by the first person in connection with the investigation, audit or report.

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“protected information” means information obtained under the <i>Financial Administration and Audit Act 1977</i> .	1 2
“relevant entity” means the State, QIDC, SIF, an SFI or Metway.	3
Application of Corporations Law to unit trust	4
88.(1) To remove any doubt, this section applies if the State, or someone on its behalf, promotes a unit trust to hold ordinary shares in Metway and any of the units under the trust are to be listed on the official list of Australian Stock Exchange Limited.	5 6 7 8
(2) The Corporations Law, chapter 7, ²⁴ applies to the issue of units in the unit trust and to all matters incidental regarding the establishment of the trust and to its ongoing operation.	9 10 11
Application of Corporations Law to Metway scheme of arrangement	12
89. To avoid any doubt, it is declared that any transfer of an asset or liability under the Metway scheme of arrangement takes effect under the Corporations Law, section 413(2) ²⁵ in accordance with the scheme of arrangement’s terms.	13 14 15 16
Evidence	17
90. A certificate purporting to be issued by the Treasurer certifying that an asset or liability has been, or has not been, transferred, under this Act, to an entity is evidence of the matter certified.	18 19 20
Extraterritorial operation of Act	21
91. It is the intention of Parliament that this Act should apply, as far as possible, in relation to—	22 23
(a) land or things outside the State (whether in or outside Australia);	24

²⁴ Corporations Law, chapter 7 (Securities)

²⁵ Corporations Law, section 413(2) (Provisions for facilitating reconstruction and amalgamation of part 5.1 bodies)

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and	1
(b) acts, transactions and matters done, entered into or happening outside the State (whether in or outside Australia); and	2 3
(c) land, things, acts, transactions and matters (wherever situated, done, entered into or happening) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.	4 5 6
References to entities that change name	7
92.(1) This section applies if an entity mentioned in this Act changes its name—	8 9
(a) on becoming registered under the Corporations Law, part 2.2, division 3; or	10 11
(b) under a scheme of amalgamation.	12
(2) If appropriate, a reference in an Act or other document to the entity by a former name is taken to include a reference to the entity by its new name.	13 14
Regulation-making power	15
93. The Governor in Council may make regulations under this Act.	16
PART 9—TRANSITIONAL, REPEALS AND AMENDMENTS	17 18
Transitional regulations	19
94. A regulation may make provision about any matter for which—	20
(a) it is necessary or convenient to make provision to allow or facilitate the doing of anything to achieve the purposes of this Act; and	21 22 23
(b) this Act does not make provision or sufficient provision.	24

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Repeal of QIDC Act

95.(1) Sections 8 to 12, 14, 18 to 31, 33, 34 and 36 of the QIDC Act are repealed on whichever of the following days happens first—

- (a) the day QIDC becomes a company GOC under section 18(3);²⁶
- (b) the day SBS's undertaking is transferred to QIDC under part 4, division 1.

(2) The QIDC Act is repealed on the Metway amalgamation day.

Repeal of SIF Act

96.(1) Sections 8 to 20, 23 to 37, 41, 42 and 43 of the Suncorp Act are repealed the day SIF becomes a company GOC under section 18(3).

(2) The Suncorp Act is repealed on the Metway amalgamation day.

Acts amended

97. Schedule 2 amends the Acts mentioned in it.

²⁶ Section 18 (Application of GOC Act)

SCHEDULE 1

1

section 43(3) and (5)

2

PART 1

3

CHANGES TO THE APPLIED FINANCIAL INSTITUTIONS (QUEENSLAND) CODE

4

5

1. Section 2—

6

omit.

7

2. Section 3, definitions “AFIC”, “Appeals Tribunal”, “applicable accounting standard”, “building society”, “certificate of confirmation”, “consolidated accounts”, “credit union”, “financial institutions agreement”, “financial institutions legislation”, “financial institutions scheme”, “foreign society”, “Ministerial Council”, “participating State”, “services corporation”, “special services provider”, “SSA”, “standard”, “transferee society”, “transferor society”, and “Tribunal”—

8

9

10

11

12

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14

15

omit.

16

3. Section 3—

17

insert—

18

SCHEDULE 1 (continued)

- ‘ **“applicable accounting standard”** see the Corporations Law, section 9.²⁷ 1
2
- “consolidated accounts”** see the Corporations Law, section 9.²⁸ 3
- “special services provider”** means an entity registered under the AFIC Code as a special services provider. 4
5
- “standard”** means— 6
- (a) subject to the *State Financial Institutions and Metway Merger Facilitation Act 1996*, section 43(4) and (5), Book 3, Prudential Standards for Building Societies, published in the gazette on 21 October 1992 at pages 791 to 845 as amended, until 1 July 1996, by other standards made by the Australian Financial Institutions Commission under the AFIC Code; or 7
8
9
10
11
12

²⁷ Corporations Law, section 9—

“applicable accounting standard”:

- (a) in relation to, or in relation to accounts or consolidated accounts forming part of, a body’s financial statements for an accounting period, means an accounting standard that, when the financial statements are made out:
- (i) applies to that accounting period; and
(ii) is relevant to the accounts; or
- (b) in relation to accounts, for an accounting period, of an undertaking to which prescribed interests relate, means an accounting standard that, when the accounts are made out:
- (i) applies to that accounting period; and
(ii) is relevant to the accounts.

²⁸ Corporations Law, section 9—

“consolidated accounts”, in relation to a body, means all the following:

- (a) a consolidated profit and loss account that section 295A requires to be made out in relation to an accounting period of the body;
- (b) a consolidated balance-sheet that section 295B requires to be made out in relation to that accounting period;
- (c) statements, reports and notes, other than a director’s report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance-sheet;
but does not include accounts that, because of paragraph 409A(1)(b), are attached to that consolidated profit and loss account or consolidated balance-sheet.

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SCHEDULE 1 (continued)

(b) a standard made under the <i>State Financial Institutions and Metway Merger Facilitation Act 1996</i> , section 45.’.	1 2
4. Section 14, definition “relevant code”, ‘or the AFIC Code’—	3
<i>omit.</i>	4
5. Sections 15 to 26—	5
<i>omit.</i>	6
6. Section 27, definition “Minister”—	7
<i>omit, insert—</i>	8
‘ “ Minister ” means the Treasurer.’.	9
7. Sections 28 to 65B—	10
<i>omit.</i>	11
8. Section 66(f) to (i)—	12
<i>omit.</i>	13
9. Section 74—	14
<i>omit.</i>	15
10. Section 88(3), ‘principal objects of the financial institutions scheme’—	16 17
<i>omit, insert—</i>	18
‘objects of this Code’.	19

SCHEDULE 1 (continued)

11. Section 88(4), ‘Without limiting subsection (3)’—	1
<i>omit, insert—</i>	2
‘While the financial body is under direction’.	3
12. Part 2, division 2, subdivisions 6 and 6A—	4
<i>omit.</i>	5
13. Section 106—	6
<i>omit.</i>	7
14. Parts 3 to 5—	8
<i>omit.</i>	9
15. Part 6, sections 231 to 241, 244 to 246, 248 and divisions 2 to 5—	10
<i>omit.</i>	11
16. Parts 7 to 9 and 11 to 13—	12
<i>omit.</i>	13
17. Section 383(1), ‘certificate of registration, certificate of incorporation or other’—	14
<i>omit.</i>	15
<i>omit.</i>	16
18. Sections 384 to 387—	17
<i>omit.</i>	18

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SCHEDULE 1 (continued)

19. Section 389(2)—	1
<i>omit.</i>	2
20. Sections 390 to 393—	3
<i>omit.</i>	4
21. Section 397(1)(c)—	5
<i>omit.</i>	6
22. Section 398(1)(c)—	7
<i>omit.</i>	8
23. Section 399—	9
<i>omit.</i>	10
24. Section 400(b), ‘body’s rules or by or under the financial institutions legislation’—	11
<i>omit, insert—</i>	12
‘body’s constitution or by or under any law’.	13
	14
25. Section 402(2)—	15
<i>omit.</i>	16
26. Section 405—	17
<i>omit.</i>	18

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SCHEDULE 1 (continued)

27. Section 410(3)—	1
<i>omit.</i>	2
28. Sections 412 and 413—	3
<i>omit.</i>	4
29. Parts 15 and 16—	5
<i>omit.</i>	6
30. Schedules 1 and 2—	7
<i>omit.</i>	8
PART 2	
CHANGES TO BOOK 3, PRUDENTIAL STANDARDS FOR BUILDING SOCIETIES	
1. Introduction, Character, and Transitional Arrangements—	12
<i>omit.</i>	13
2. Prudential Note 3.1, Objective—	14
<i>omit.</i>	15
3. Prudential Note 3.1, Specific Risks, (iii) Market Risk, second paragraph, last sentence—	16
<i>omit.</i>	17
<i>omit.</i>	18

SCHEDULE 1 (continued)

4. Prudential Note 3.1, Specific Risks, (iv) Credit Risk, fourth paragraph, third sentence, ‘While “associate” has been defined under Part 4 of the FI Code, the’—	1
	2
	3
<i>omit, insert—</i>	4
‘The’.	5
5. Prudential Note 3.1, Prudential Standards, 3.1.1.d(vi), ‘(see Book 1)’—	6
	7
<i>omit.</i>	8
6. Prudential Note 3.1, Prudential Standards, 3.1.1.f—	9
<i>omit.</i>	10
7. Prudential Note 3.1, Prudential Standards, 3.1.3.c—	11
<i>omit.</i>	12
8. Prudential Note 3.2, Objective—	13
<i>omit.</i>	14
9. Prudential Note 3.2, Prudential Standards, 3.2.4.c, first dot point, ‘(see Book 5)’—	15
	16
<i>omit.</i>	17
10. Prudential Note 3.2, Prudential Standards, 3.2.4.d, first dot point, ‘(as defined in Section 3 of the FI Code)’—	18
	19
<i>omit.</i>	20

SCHEDULE 1 (continued)

11. Prudential Note 3.2, Prudential Standards, 3.2.6.a, first sentence—	1
<i>omit.</i>	2
12. Prudential Note 3.3, A. Public Financial Reports, Objective—	3
<i>omit.</i>	4
13. Prudential Note 3.3, B. Financial Reports To State Supervisory Authorities, Objective—	5
<i>omit.</i>	6
<i>omit.</i>	7
14. Prudential Note 3.3, C. Audit, Objective and General Background—	8
<i>omit.</i>	9
<i>omit.</i>	10
15. Prudential Note 3.3, Prudential Standards, 3.3.3.d(i)(b), ‘, under Section 258 (Register of Directors, etc)’—	11
<i>omit.</i>	12
<i>omit.</i>	13
16. Prudential Note 3.3, Prudential Standards, 3.3.3.d(i)(c), ‘under Division 1 (Directors and Officers)’ —	14
<i>omit.</i>	15
<i>omit.</i>	16
17. Prudential Note 3.3, Prudential Standards, 3.3.3.d(i)(c), ‘prepared for the purposes of Section 274 (Director's Reports)’—	17
<i>omit.</i>	18
<i>omit.</i>	19

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SCHEDULE 1 (continued)

- 18. Prudential Note 3.3, Prudential Standards, 3.3.3.d(ii)(a),
'under Section 258'—** 1
2
omit. 3
- 19. Prudential Note 3.3, Prudential Standards, 3.3.3.d(ii)(b)—** 4
omit, insert— 5
'(b) the register is open for inspection by any member of the society,
without fee; and'. 6
7
- 20. Prudential Notes 3.4 and 3.5—** 8
omit. 9
- 10

SCHEDULE 2	1
AMENDMENTS	2
section 97	3
FREEDOM OF INFORMATION ACT 1992	4
1. Section 11(1)(o)—	5
<i>omit.</i>	6
2. Schedule 2, item 3—	7
<i>omit.</i>	8
JUDICIAL REVIEW ACT 1991	9
1. Schedule 2, item 14(f)—	10
<i>omit.</i>	11
2. Schedule 6, item 3—	12
<i>omit.</i>	13

SCHEDULE 2 (continued)

**QUEENSLAND INDUSTRY DEVELOPMENT
CORPORATION ACT 1994**

1. Section 15—

insert—

‘(3) However, this section does not apply to a liability of an SFI transferred to QIDC under the *State Financial Institutions and Metway Merger Facilitation Act 1996*, part 4 or 5, except to the extent QIDC becomes liable to pay an amount because of something done, or not done, by it under this Act after the transfer but before the Metway amalgamation day.

‘(4) In subsection (3), the following words have the same meaning as they have in the *State Financial Institutions and Metway Merger Facilitation Act 1996*—

- SFI
- Metway amalgamation day.²⁹’

²⁹ *State Financial Institutions and Metway Merger Facilitation Act 1996—*

What is a State financial institution

5. For this Act each of the following is a State financial institution (“SFI”)—

- (a) QIDC as a company registered under the Corporations Law, part 2.2, division 3;
- (b) SIF as a company registered under the Corporations Law, part 2.2, division 3;
- (c) Suncorp Finance Limited (A.C.N. 009 705 417);
- (d) SBS;
- (e) a wholly-owned subsidiary of an entity mentioned in paragraph (a), (b), (c) or (d);
- (f) a company formed for holding some or all of the issued share capital, assets or liabilities of 1 or more of the entities mentioned in paragraphs (a) to (e).

Schedule 3—

“**Metway amalgamation day**” means the day notified by a Treasurer’s gazette notice as the day the Metway scheme of arrangement takes effect.

SCHEDULE 2 (continued)

**QUEENSLAND OFFICE OF FINANCIAL
SUPERVISION ACT 1992**

1. Section 64B—

insert—

‘(2) Also, despite section 11, QOFS represents the State in performing its functions and exercising its powers under the Financial Institutions (Queensland) Code as applied to Suncorp Building Society Limited by the *State Financial Institutions and Metway Merger Facilitation Act 1996*.

‘(3) Subsection (2) and this subsection expire 2 years after the Metway amalgamation day under the *State Financial Institutions and Metway Merger Facilitation Act 1996*.³⁰’.

2. Section 64C(1), ‘section’—

omit, insert—

‘subsection’.

3. Section 64C—

insert—

‘(1A) Also, a liability that would, apart from this subsection, attach to QOFS because of an act or omission happening in QOFS performing a function, or exercising a power, under the Financial Institutions (Queensland) Code as applied to Suncorp Building Society Limited by the *State Financial Institutions and Metway Merger Facilitation Act 1996*, attaches to the State.

³⁰ *State Financial Institutions and Metway Merger Facilitation Act 1996*, schedule 3—

“**Metway amalgamation day**” means the day notified by a Treasurer’s gazette notice as the day the Metway scheme of arrangement takes effect.

SCHEDULE 2 (continued)

‘(1B) Subsection (1A) and this subsection expire 2 years after the Metway amalgamation day under the *State Financial Institutions and Metway Merger Facilitation Act 1996*.³¹’

SUNCORP INSURANCE AND FINANCE ACT 1985

1. **Section 48A, ‘, superannuation, and general insurance’—**
omit, insert—
‘and superannuation’.
2. **Section 48A, ‘, superannuation and general insurance’—**
omit, insert—
‘and superannuation’.
3. **Section 48D(3)—**
omit.
4. **Section 48D(4), ‘, superannuation and general insurance’—**
omit, insert—
‘and superannuation’.

³¹ *State Financial Institutions and Metway Merger Facilitation Act 1996*, schedule 3—

“**Metway amalgamation day**” means the day notified by a Treasurer’s gazette notice as the day the Metway scheme of arrangement takes effect.

SCHEDULE 2 (continued)

5. In pt 5A, after section 48N—

insert—

‘Declaration about scheme of transfer

‘**48NA.(1)** To remove any doubt, the scheme of transfer agreed to by the Treasurer under section 48G(1) on 28 June 1996 must not be taken to be a scheme of transfer that does not, or did not, comply with part 5 merely because of the extent to which it provides or does not provide for how the corporation’s general insurance fund under section 38 is to be dealt with or the transfer of all or part of the fund to a wholly-owned subsidiary of the corporation.

‘**(2)** In subsection (1), a reference to section 38 is a reference to the section as in force immediately before the *Suncorp Insurance and Finance Amendment Act 1996* was assented to.³²’.

³² The *Suncorp Insurance and Finance Amendment Act 1996* was assented to on 23 May 1996.

SCHEDULE 3	1
DICTIONARY	2
section 3	3
“applied provisions” , for part 4, division 3, means the provisions applying to SBS under section 43.	4 5
“articles” means articles of association.	6
“assets” includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.	7 8 9
“Book 3, Prudential Standards for Building Societies” means Book 3, Prudential Standards for Building Societies published in the gazette on 21 October 1992 at pages 791 to 845 as amended, until 1 July 1996, by other standards made by the Australian Financial Institutions Commission under the AFIC Code.	10 11 12 13 14
“candidate company” , for part 3, see section 7.	15
“charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether on demand or otherwise.	16 17 18
“company” means a company incorporated under the Corporations Law.	19
“excluded asset” , for part 4, division 1, see section 21.	20
“excluded liability” , for part 4, division 1, see section 21.	21
“GOC Act” means the <i>Government Owned Corporations Act 1993</i> .	22

SCHEDULE 3 (continued)

“government entity” see the GOC Act, section 5. ³³	1
“holding company” see Corporations Law, section 9. ³⁴	2
“instrument” means an instrument of any kind, and includes, for example—	3 4
(a) a contract, deed, agreement, arrangement, understanding or undertaking; and	5 6
(b) a mandate, instruction, notice, authority or order; and	7
(c) a lease, licence, transfer, conveyance or other assurance; and	8
(d) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and	9 10
(e) a mortgage, charge, lien or security;	11
whether express or implied and whether made or given orally or in writing.	12 13
“legal proceedings” includes arbitration and administrative proceedings.	14
“liabilities” includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously.	15 16 17

³³ *Government Owned Corporations Act 1993*, section 5—

Meaning of “government entity”

5. A “Government entity” is—

- (a) a government company or part of a government company; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a department or a division, branch or other part of a department; or
- (d) a GOC Act entity; or
- (e) an entity prescribed by regulation.

³⁴ Corporations Law, section 9—

“holding company” means:

- (a) in relation to a body corporate—a body corporate of which the first-mentioned body is a subsidiary by virtue of Division 6; or
- (b) in Part 3.6 or 3.7—a company of which some body corporate is a subsidiary by virtue of Division 6 of this Part.

SCHEDULE 3 (continued)

“mandatory articles” means a Metway group company’s articles required by section 64(1).	1 2
“members” of SBS means the persons who are members under SBS’s rules.	3 4
“memorandum” means memorandum of association.	5
“Metway” means Metway Bank Limited (A.C.N. 010 831 772).	6
“Metway amalgamation day” means the day notified by a Treasurer’s gazette notice as the day the Metway scheme of arrangement takes effect.	7 8 9
“Metway group company” means—	10
(a) Metway; or	11
(b) any holding company of Metway; or	12
(c) a wholly-owned subsidiary of Metway that is the principal operating, banking or insurance company in the group of companies consisting of Metway and any related body corporate of Metway.	13 14 15 16
“Metway scheme of arrangement” see section 6.	17
“participating entity” , for part 5, see section 53.	18
“QIDC” means Queensland Industry Development Corporation.	19
“QIDC Act” means the <i>Queensland Industry Development Corporation Act 1994</i> .	20 21
“QOFS” means the Queensland Office of Financial Supervision.	22

SCHEDULE 3 (continued)

“ related body corporate ” see Corporations Law, section 9. ³⁵	1
“ resolution ”, of a Metway group company, see the Corporations Law, section 9. ³⁶	2 3
“ rule preconversion reserve ” means the Preconversion Reserve of SBS established under rule 177(e) of SBS’s rules.	4 5
“ SBS ” means Suncorp Building Society Limited.	6
“ SBS preconversion reserve ” see section 30.	7
“ SBS’s rules ” means SBS’s rules under the Financial Institutions (Queensland) Code or, if SBS is dissolved, its rules under the code before the dissolution.	8 9 10
“ scheme of amalgamation ” see section 52.	11
“ security ” means—	12
(a) a mortgage or charge; or	13
(b) a guarantee; or	14
(c) another instrument acknowledging, evidencing, recording, imposing or securing a liability for the payment of an amount or the discharge of a liability.	15 16 17
“ SFI ” see section 5.	18

³⁵ Corporations Law, section 9—
“**related body corporate**”, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.
Corporations Law, section 50—

Related bodies corporate

Where a body corporate is:

- (a) a holding company of another body corporate;
 - (b) a subsidiary of another body corporate; or
 - (c) a subsidiary of a holding company of another body corporate;
- the first-mentioned body and the other body are related to each other.

³⁶ Corporations Law, section 9—
“**resolution**” means:

- (a) in relation to a body corporate—a resolution other than a special resolution;
- or
- (b)

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SCHEDULE 3 (continued)

“SIF” means Suncorp Insurance and Finance.	1
“special resolution”, of a Metway group company, see the Corporations Law, section 9. ³⁷	2 3
“State tax” means tax imposed under an Act.	4
“subsidiary” see the Corporations Law, section 9. ³⁸	5
“Suncorp Act” means the <i>Suncorp Insurance and Finance Act 1985</i> .	6
“tax” includes fee, duty and charge.	7
“transfer day”, for part 4, division 1, see section 21.	8
“transferee entity”, for part 5, see section 53.	9
“transferor entity”, for part 5, see section 53.	10
“transferred asset”—	11
(a) for part 4, division 1, see section 21; and	12
(b) for part 5, see section 53.	13
“transferred liability”—	14
(a) for part 4, division 1, see section 21; and	15
(b) for part 5, see section 53.	16

³⁷ Corporations Law, section 9—

“special resolution” has the meaning given by section 253.

Corporations Law, section 253(1)—

[Special resolution of company]

1. A resolution is a special resolution of a company if:

- (a) it is passed at a meeting of the company, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and
- (b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

³⁸ Corporations Law, section 9—

“subsidiary”, in relation to a body corporate, means a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 6.

SCHEDULE 3 (continued)

“Treasurer’s gazette notice” means a notice by the Treasurer published in the gazette.	1 2
“undertaking” —	3
(a) of SBS, for part 4, division 1, see section 21; and	4
(b) of a participating entity, for part 5, see section 53.	5
“wholly-owned subsidiary” —	6
(a) of an SFI—includes a subsidiary of the SFI none of whose members is a person other than the SFI or a trustee for the SFI; and	7 8 9
(b) in any other case—see Corporations Law, section 9. ³⁹	10 11

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³⁹ Corporations Law, section 9—

“wholly-owned subsidiary”, in relation to a body corporate, means a body corporate none of whose members is a person other than:

- (a) the first-mentioned body;
- (b) a nominee of the first-mentioned body;
- (c) a subsidiary of the first-mentioned body, being a subsidiary none of whose members is a person other than:
 - (i) the first-mentioned body; or
 - (ii) a nominee of the first-mentioned body; or
- (d) a nominee of such a subsidiary.