

Queensland



# FINANCIAL INTERMEDIARIES ACT 1996

**Reprinted as in force on 14 August 2001  
(includes amendments up to Act No. 45 of 2001)**

**Reprint No. 2B**

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# Information about this reprint

This Act is reprinted as at 14 August 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# FINANCIAL INTERMEDIARIES ACT 1996

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# FINANCIAL INTERMEDIARIES ACT 1996

[as amended by all amendments that commenced on or before 14 August 2001]

**An Act to provide for the regulation of cooperative housing societies, terminating building societies and The Cairns Cooperative Weekly Penny Savings Bank Limited, and for other purposes**

## PART 1—PRELIMINARY

### *Division 1—Introductory provisions*

#### **1 Short title**

This Act may be cited as the *Financial Intermediaries Act 1996*.

#### **2 Commencement**

This Act (other than parts 2 and 3) commences on a day to be fixed by proclamation.

### *Division 2—Interpretation*

#### **3 Dictionary**

The dictionary in schedule 2 defines particular words used in this Act.

#### **4 Meaning of “director”**

(1) For this Act, “**director**” of a society includes a reference to—

- (a) a person (however described) occupying or acting in the position of director of the society, and whether or not validly appointed to occupy, or duly authorised to act in, the position; and

- (b) a person under whose directions or instructions the society's directors are accustomed to act.

(2) However, a person is not taken to be a person under whose directions or instructions a society's directors are accustomed to act merely because the directors act on advice given by the person in the proper performance of the functions attaching to—

- (a) the person's professional capacity; or
- (b) the person's business relationship with the directors or the society.

## **5 Meaning of “officer”**

(1) For this Act, “**officer**” of a society includes—

- (a) a director, secretary, executive officer or employee of the society; and
- (b) a receiver and manager, appointed under a power contained in an instrument, of property of the society; and
- (c) a liquidator of the society appointed in a voluntary winding-up of the society; and
- (d) a trustee or other person administering a compromise or arrangement made between the society and other persons.

(2) However, none of the following is an officer of the society—

- (a) a receiver who is not also a manager;
- (b) a receiver and manager appointed by a court;
- (c) a liquidator appointed by a court.

### *Division 3—Operation of Act*

## **6 Act binds the State**

(1) This Act binds the State.

(2) However, this section does not permit the State to be prosecuted for an offence.



## **PART 2—PRUDENTIAL AND ADVISORY FUNCTIONS OF REGISTRAR**

### **8 Registrar’s prudential and advisory functions**

The registrar’s prudential and advisory functions under this Act are to—

- (a) institute, develop, and ensure the effective and efficient implementation of, a system of prudential and other standards for, and for the supervision of, societies; and
- (b) advise, and make recommendations to, the Treasurer about—
  - (i) changes to this Act; or
  - (ii) new laws, and changes to other existing laws, about or affecting societies; and
- (c) act under part 3.

### **9 Consultation**

In performing the registrar’s functions and exercising the registrar’s powers under this part, the registrar must consult with the Treasurer, the Reserve Bank of Australia, industry bodies and societies if it is appropriate and practicable to consult with them.

## **PART 3—STANDARDS**

### **10 Making of standards**

(1) The registrar may make standards (whether prudential or otherwise) about—

- (a) the business and affairs of societies; and
- (b) the supervision of societies by the registrar; and
- (c) any other matters about which this Act authorises or requires (whether expressly or by implication) standards to be made.

(2) A standard takes effect from—

- (a) the day a copy of the standard is published in the gazette; or
- (b) a later day stated in the standard.

## **11 Procedures before making of standards**

(1) A standard may be made only if this section or section 12 is complied with.

(2) The registrar must, not later than 60 days before the making of the standard, publish a notice in the gazette, and in a newspaper circulating generally in the State, explaining succinctly the purpose, and intended operation, of the standard.

(3) The notice must invite—

- (a) written suggestions on the proposed standard to be given to the registrar within 30 days after publication of the gazette notice; and
- (b) written comments on the suggestions to be given to the registrar within 21 days after the end of the period of 30 days.

(4) The registrar must—

- (a) make copies of each suggestion and comment given to the registrar available for inspection and purchase at the registrar's public office; and
- (b) take reasonable steps to ensure that copies of each suggestion and comment given to the registrar are available for inspection and purchase at the registrar's public office.

(5) The registrar must comply with subsection (4) for a suggestion or comment as soon as practicable after the suggestion or comment is given.

(6) The registrar must consider all suggestions and comments given before making the standard, and may change the proposed standard to take account of suggestions and comments.

(7) Contravention of this section for a standard does not affect the validity of the standard.

## **12 Urgent standards**

(1) If the registrar decides it is necessary, because of urgent circumstances, for a standard to be made without complying with section 11, the registrar may make the standard.

(2) If the registrar makes a decision under subsection (1), the registrar must immediately publish a copy of the decision in the gazette, together with a succinct statement of the reasons for making the decision.

(3) A standard made because of a decision under subsection (1) has effect for only—

- (a) 120 days; or
- (b) a lesser period stated in the standard.

## **13 Application of changed requirements**

(1) A standard may provide that its operation for a particular society may be varied by the registrar by temporarily changing a requirement of the standard as allowed under the standard.

(2) This section does not limit by implication the power of the registrar to make standards.

## **14 Transitional arrangements**

(1) A standard imposing requirements, or increasing requirements already imposed by a standard, may make transitional provision allowing additional time to comply with the requirements.

(2) This section does not limit by implication the power of the registrar to make standards.

## **15 Matters for which standards may make provision**

(1) A standard may make provision about a matter by applying, adopting or incorporating (with or without changes) provisions of—

- (a) a law of the Commonwealth, a State or a foreign country; or
- (b) a document.

(2) If a standard makes provision about a matter by applying, adopting or incorporating provisions of a law or document, the provisions as in force at

the time are to be attached to the standard, and are taken to be incorporated in the standard.

**(3)** A standard may—

- (a) apply generally to all persons and matters or be limited in its application to—
  - (i) particular persons or matters; or
  - (ii) particular classes of persons or matters; and
- (b) otherwise apply generally or be limited in its application by reference to stated exceptions or factors.

**(4)** A standard may—

- (a) make different provision for—
  - (i) different persons or matters; or
  - (ii) different classes of persons or matters; or
- (b) apply differently by reference to specified exceptions or factors.

**(5)** A standard may authorise a matter to be decided, applied or regulated from time to time by a stated person or body.

**(6)** A standard may make provision about a particular aspect of a matter even though provision is made by this Act about another aspect of the matter or about another matter.

## **16 Publication of standards**

**(1)** When the registrar makes a standard, the registrar must immediately—

- (a) gazette a copy of the standard; and
- (b) prepare a summary of its terms; and
- (c) publish a notice in a newspaper circulating generally in the State—
  - (i) notifying the making of the standard; and
  - (ii) explaining succinctly the purpose, and intended operation, of the standard.

(2) The registrar must, as soon as practicable after the summary is prepared, give a copy of the summary to each society affected by the standard.

(3) The registrar must take reasonable steps to ensure that copies of all standards are available for inspection and purchase at the registrar's public office.

(4) Contravention of this section for a standard does not affect the validity of the standard.

## **17 Societies must comply with standards**

(1) A society must comply with all relevant standards.

Maximum penalty—400 penalty units.

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

Maximum penalty—400 penalty units.

# **PART 4—OTHER FUNCTIONS AND POWERS OF REGISTRAR**

## *Division 1—General*

### **18 Other functions**

The other functions of the registrar under this Act are to—

- (a) register, supervise and regulate societies; and
- (b) supervise and enforce compliance by societies with this Act and with standards; and
- (c) ensure that an effective and efficient system of prudential supervision is applied to societies; and
- (d) protect the interests of members of societies; and
- (e) administer the Cooperatives Supervision Fund; and

- (f) facilitate or direct the transfer of engagements of, or the merger of, societies; and
- (g) otherwise undertake the administration and enforcement of this Act; and
- (h) give information and statistics to the Treasurer about societies; and
- (i) advise, and make recommendations to, the Treasurer; and
- (j) carry out the functions conferred on the registrar by another provision of this Act, other than part 2.

## **19 General powers**

(1) The registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of the registrar's functions under this Act.

(2) Without limiting subsection (1), the registrar has the powers conferred on the registrar under this Act.

## **19A Delegations**

(1) The registrar may delegate the registrar's powers under this Act to an appropriately qualified person.

(2) However, the registrar may delegate a power under part 3 only to APRA under an agreement mentioned in section 64A.<sup>1</sup>

(3) A power, other than a power under part 3, may be subdelegated to an appropriately qualified person if the delegation expressly allows the subdelegation of the power.

(4) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of 'standing'—*

If the person is an employee of the department, the person's classification level in the department.

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<sup>1</sup> Section 64A (State may enter into agreements with APRA)

**19B Registrar's seal**

The registrar must have a seal of office.

**19C Registrar's public office**

The registrar must have a public office for this Act.

**20 Application of variation under standards**

(1) If a standard provides that the operation of the standard for a particular society may be varied by the registrar by temporarily changing a requirement of the standard, the registrar may temporarily change the requirement as allowed under the standard.

(2) Subsection (1) does not limit the registrar's other powers.

**21 The registrar to keep Treasurer informed**

The registrar must—

- (a) keep the Treasurer informed of the operation, administration and enforcement of this Act; and
- (b) give the Treasurer reports and information about the matters as the Treasurer requires.

**22 Inspection of documents at the registrar's public office**

(1) The registrar must keep at the registrar's public office—

- (a) rules of societies; and
- (b) documents required to be kept by the registrar under this Act.

(2) A person may, on payment of the fee prescribed under a regulation—

- (a) inspect at the registrar's public office during ordinary business hours—
  - (i) the rules of a society; and
  - (ii) other documents of a class prescribed under a regulation filed with, created by or otherwise held by the registrar; and
- (b) obtain from the registrar—

- (i) a certified copy of a society's certificate of incorporation and a certified copy of, or of part of, a society's rules; or
- (ii) a certified copy of, or extract from, another document that the person may inspect under paragraph (a)(ii).

### **23 Power of the registrar to reject documents**

(1) This section applies if the registrar considers a document submitted to the registrar—

- (a) contains matter contrary to law; or
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
- (c) because of an omission or misdescription, has not been duly completed; or
- (d) does not comply with the requirements of this Act; or
- (e) contains an error, alteration or erasure.

(2) The registrar may refuse to register, or may reject, the document.

(3) The registrar may ask—

- (a) that the document be appropriately amended or completed and resubmitted; or
- (b) that a fresh document be submitted in its place; or
- (c) if the document has not been duly completed—that a supplementary document be submitted.

### **24 The registrar may require further information**

The registrar may require a person who submits a document to the registrar to also produce another document, or to give any information, that the registrar considers necessary to form an opinion whether the registrar should refuse to register or should reject the document.

### **25 Extension or abridgment of time**

(1) The registrar may, on receipt of written application by a society or of the registrar's own initiative, extend or abridge the time within which anything is required to be done under this Act or the society's rules.



(2) An application under subsection (1) may be made to the registrar even though the time sought to be abridged or extended has ended.

### *Division 2—Specific powers*

#### *Subdivision 1—Enforcement powers*

## **26 Appointment of inspectors**

(1) The registrar may appoint a person, or class of persons, to be an inspector.

(2) The registrar may appoint a person under subsection (1) only if—

- (a) the registrar considers the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished a course of training approved by the registrar.

## **27 Powers of inspectors**

(1) An inspector—

- (a) has the powers given under this Act; and
- (b) is subject to the direction of the registrar in exercising the powers.

(2) The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the registrar to the inspector.

## **28 Inspector's appointment terms**

(1) An inspector holds office on the terms stated in the instrument of appointment.

(2) An inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) if the terms of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment terms (the “**main office**”); and
- (c) may resign by signed notice of resignation given to the registrar.

(3) However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the inspector to hold the secondary office.

## **29 Inspector’s identity card**

(1) The registrar must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for this Act.

(3) A person who ceases being an inspector must return the person’s identity card to the registrar as soon as possible (but within 21 days) after the person ceases being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts.

## **30 Production or display of inspector’s identity card**

(1) An inspector may exercise a power in relation to someone only if—

- (a) the inspector first produces the inspector’s identity card for the other person’s inspection; or
- (b) the inspector has the inspector’s identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the

identity card for inspection by the other person at the first reasonable opportunity.

### **31 Entry to places by inspector**

(1) An inspector may enter a place only if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant; or
- (c) the place is premises occupied by a society and the entry is made when the premises are open for conduct of business or otherwise open for entry.

(2) However, an inspector may, without the occupier's consent or a warrant, enter—

- (a) a public place when the place is open to the public; or
- (b) the land around premises to ask its occupier for consent to enter the premises.

### **32 Consent to entry**

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the occupier was told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the occupier gives the inspector consent to enter the place and exercise powers under this subdivision; and
- (d) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether the occupier of a place consented to an inspector entering the place under this subdivision; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

(7) The court may presume that the occupier did not consent.

### **33 Warrants to enter**

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector’s powers under this subdivision; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and

- (e) the date, within 7 days after the warrant's issue, when the warrant ends.

### **34 Warrants—applications made other than in person**

(1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the inspector—

- (a) the magistrate must—
  - (i) tell the inspector what the terms of the warrant are; and
  - (ii) tell the inspector the date and time the warrant was issued; and
- (b) the inspector must complete a form of warrant (“**warrant form**”) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send the magistrate—

- (a) the sworn application; and

- (b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether a power exercised by an inspector was not authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence.

(10) The court must presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

### **35 General powers after entering places**

(1) This section applies to an inspector who enters a place.

(2) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect or photograph any part of the place or anything at the place; or
- (c) copy a document at the place; or
- (d) take into or onto the place any persons or equipment the inspector reasonably requires for exercising a power under this subdivision; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the powers under paragraphs (a) to (d).

(3) A person must comply with a requirement under subsection (2)(e), unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

(4) A requirement under subsection (2)(e) does not include a requirement to produce a document or give information.<sup>2</sup>

### **36 Power to seize evidence**

(1) An inspector who enters a place with the occupier's consent may seize a thing in the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An inspector who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else at a place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, or destroyed or used to continue or repeat the offence.

(4) Also, an inspector may seize a thing if the inspector reasonably believes it has just been used in committing an offence against this Act.

### **37 Powers supporting seizure**

(1) Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

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2 For the power to require documents to be produced see section 44. For the power to require information see section 43.

(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty for subsection (2)—80 penalty units.

### **38 Receipt for seized things**

(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section given the thing's nature, condition and value.

### **39 Return of seized things**

(1) The inspector must return a seized thing to its owner at the end of—

(a) 60 days; or

(b) if a proceeding for an offence involving it is started within the 60 days—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **40 Access to seized things**

(1) Until a seized thing is returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.



**41 Impersonating inspectors**

A person must not pretend to be an inspector.

Maximum penalty—100 penalty units or 6 months imprisonment.

**42 Obstruction of inspector**

(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—800 penalty units or 7 years imprisonment.

(2) In this section—

“**obstruct**” includes hinder, intimidate, resist or threaten.

**43 Power to require information**

(1) This section applies if the registrar reasonably believes—

- (a) an offence against this Act has just been committed; and
- (b) a society may be able to give information about the offence.

(2) The registrar may, by written notice given to the society, require the society to give information about the offence.

(3) When making the requirement, the registrar must warn the society it is an offence to fail to give the information, unless the society has a reasonable excuse.

(4) The society must give the information, unless the society has a reasonable excuse.

Maximum penalty—400 penalty units.

(5) It is a reasonable excuse for a society to fail to give information if complying with the requirement might tend to incriminate the society.

**44 Power to require production of certain documents**

(1) The registrar may, by written notice given to a person, require the person to produce for inspection by an inspector a document issued, or required to be kept, under this Act.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

(3) An inspector to whom a document is produced may keep the document to make a copy of it.

(4) If the inspector copies it, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(5) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

(6) The inspector must return the document to the person as soon as practicable after making the copy.

(7) It is a reasonable excuse for a person to fail to produce a document or certify a copy of a document, if complying with the requirement may tend to incriminate the person.

#### **45 Inspector to give notice of damage**

(1) This section applies if—

- (a) an inspector damages something when exercising or purporting to exercise a power; or
- (b) a person (the **“other person”**) acting under the direction of an inspector damages something.

(2) The inspector must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector’s or other person’s control, the inspector may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

**“owner”** of a thing includes the person in possession or control of it.

**46 Compensation**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this subdivision, including, for example, in complying with a requirement made of the person.

(2) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence brought against the person claiming compensation.

(3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

***Subdivision 2—Special meetings and inquiries*****47 Special meeting and inquiry**

(1) The registrar may, on the written application of a majority of the directors of a society or of not less than 10% of the members of a society, or on the registrar's own initiative—

- (a) call a special meeting of the society; or
- (b) hold an inquiry into affairs (including the working and financial condition) of the society.

(2) An application under subsection (1) must be supported by the evidence that the registrar directs to show that—

- (a) the applicants have good reason for requiring the meeting or inquiry; and
- (b) the application is made without malicious motive.

(3) If the registrar directs, notice of the application must be given to the society.

(4) Security for the expenses of a meeting or inquiry must be given—

- (a) if the meeting is called or inquiry is held on an application under subsection (1)—by the applicants; or
- (b) if paragraph (a) does not apply—by the persons and in the way the registrar directs.

**(5)** The registrar may—

- (a) direct the time and place the meeting or inquiry is to be held; and
- (b) direct what matters are to be discussed or decided; and
- (c) despite the society's rules, give notice to members of the holding of the meeting or inquiry as the registrar considers appropriate.

**(6)** The registrar may, by written notice, direct the directors and the other persons the registrar requires to attend the meeting or inquiry.

**(7)** A person to whom a direction is given under subsection (6) must not fail to comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—800 penalty units or 4 years imprisonment.

**(8)** A meeting held under this section has all the powers of a meeting called under the society's rules and has power to appoint a person to preside at the meeting, despite any rule of the society to the contrary.

**(9)** The registrar, or a person nominated by the registrar, may attend and address a meeting held under this section.

**(10)** The expenses of and incidental to the meeting or inquiry may be defrayed by the applicants, or out of the society's funds, or by an officer or member, or former officer or member, in the proportions agreed to between the registrar and those persons.

**(11)** The expenses may be recovered as a debt in a court having jurisdiction for the recovery of debts up to the amount involved.

**(12)** In default of agreement under subsection (10), the expenses must be defrayed by the persons, and in the proportions, that the Supreme Court, on the application of the registrar, directs.

***Subdivision 3—Special power of intervention*****48 Intervention by the registrar**

(1) The registrar may, by written notice given to a society, place it under direction if the registrar considers that—

- (a) the society has contravened this Act and, after being given written notice of the contravention by the registrar, has allowed the contravention to continue or has again contravened this Act; or
- (b) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
- (c) the society's affairs are being conducted in an improper or financially unsound way.

(2) The registrar may, by written notice given to the society, revoke the notice.

(3) While the society is under direction, the registrar may do all things the registrar considers necessary to do under this Act.

(4) Without limiting subsection (3), the registrar may—

- (a) order an audit of the society's affairs at the society's expense by an auditor chosen by the registrar; or
- (b) direct the society to change a practice the registrar considers is undesirable or unsound; or
- (c) direct the society to cease or limit the raising or lending of funds or the exercise of other powers; or
- (d) remove a director, or all the directors, of the society from office and appoint another director or other directors; or
- (e) remove an auditor of the society from office and appoint another auditor; or
- (f) give other directions about how the society's affairs are, or are not, to be conducted.

(5) A director or auditor appointed under this section holds office for the term directed by the registrar.

(6) A society and any officer of the society who is in default each commit an offence if the society—

- (a) fails to comply with a direction given, or requirement made, under this section to the extent the society is capable of doing so, unless the society has a reasonable excuse; or
- (b) obstructs, hinders or resists the exercise of the registrar's powers under this section, unless the society has a reasonable excuse.

Maximum penalty for subsection (6)—1 600 penalty units or 7 years imprisonment.

#### *Subdivision 4—Power to suspend operations of society*

### **49 Power to suspend operations**

(1) The registrar may act under subsection (2) if the registrar considers that it is necessary to do so—

- (a) in the interests of members, or persons who may become members, of a society; or
- (b) because a society has failed to comply with a standard.

(2) The registrar may, by written notice given to the society, direct the society not to do all or any of the following—

- (a) give financial accommodation to members;
- (b) raise funds;
- (c) grant security over the society's assets.

(3) A notice under subsection (2) continues in force until it expires or is withdrawn by the registrar.

(4) The registrar may, by a further written notice given to the society—

- (a) extend the period for which a notice under subsection (2) is to have force; or
- (b) amend the terms of the notice; or
- (c) withdraw the notice.

(5) If a society fails to comply with a notice under this section, the society and any officer of the society who is in default each commit an offence.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

(6) Subsection (5) does not apply if the failure to comply happens with the registrar's written permission.

### *Subdivision 5—Administrators*

## **50 Appointment of administrator**

(1) This section applies if—

- (a) the registrar considers that—
  - (i) a society has contravened this Act or the society's rules and, after being given written notice of the contravention by the registrar, has allowed the contravention to continue or has again contravened this Act or the rules; or
  - (ii) a society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
  - (iii) a society's affairs are being conducted in an improper or financially unsound way; or
- (b) after making the inquiries about a society the registrar considers appropriate, the registrar is satisfied that it is in the interest of members or creditors that the society's affairs be conducted by an administrator; or
- (c) the registrar has certified that any of the events mentioned in section 183(1)(a), (b) or (f)<sup>3</sup> has happened in relation to a society.

(2) The registrar may appoint an administrator to conduct a society's affairs.

(3) The appointment must be made by written notice.

(4) The notice of appointment must state—

- (a) the date of appointment; and
- (b) the appointee's name; and
- (c) the appointee's business address.

(5) An administrator holds office until the administrator's appointment is revoked.

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3 Section 183 (Winding-up on certificate of the registrar)

**51 Notice of change of administrator's particulars to be given to the registrar**

If the administrator's name or business address changes, the administrator must immediately give the registrar written notice of the change.

**52 Effect of administrator's appointment**

(1) On the appointment of an administrator of a society—

- (a) the society's directors cease to hold office; and
- (b) all contracts of employment with, or for providing administrative or secretarial services to, the society are terminated; and
- (c) the administrator may terminate a contract for providing other services to the society.

(2) A director of a society may not be appointed or elected while the administrator is in office except in the circumstances mentioned in section 54(3).

**53 Administrator's powers and functions**

An administrator of a society has the powers and functions of the society's board, including the board's powers of delegation.

**54 Revocation of administrator's appointment**

(1) The registrar may revoke an administrator's appointment.

(2) The revocation must happen by written notice.

(3) Before revoking an administrator's appointment, the registrar must—

- (a) appoint another administrator; or
- (b) appoint a liquidator; or
- (c) ensure directors have been elected under the society's rules at a meeting called by the administrator under the rules; or
- (d) appoint directors of the society.

(4) Directors elected or appointed under subsection (3)—



- (a) take office on the revocation of the administrator's appointment; and
- (b) for directors appointed under subsection (3)(d)—hold office, subject to section 58, until the end of the society's next annual general meeting.

### **55 Administrator's duty on revocation of appointment**

(1) Immediately on the revocation of an administrator's appointment, the administrator must prepare and give the registrar a report showing how the administration was carried out and, for that purpose, an administrator has access to the society's records and documents.

(2) On giving the report and accounting fully for the society's administration to the registrar's satisfaction, the administrator is released from further duty to account for the society's administration other than because of fraud, dishonesty, negligence or wilful failure to comply with this Act.

### **56 Expenses of administration**

(1) The expenses of conducting a society's affairs by an administrator are payable from the society's funds.

(2) The expenses include the administrator's remuneration at a rate approved by the registrar.

(3) An administrator has, for the expenses of conducting a society's affairs, the same priority on the winding-up of a society as the liquidator of the society has.

### **57 Administrator's liability**

(1) If a society incurs a loss because of fraud, dishonesty, negligence or wilful failure to comply with this Act or the society's rules by an administrator, the administrator is liable for the loss.

(2) An administrator is not liable for other loss but must account for the loss in a report given under section 55.<sup>4</sup>

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4 Section 55 (Administrator's duty on revocation of appointment)

**58 Additional powers of the registrar**

(1) If the registrar appoints directors of a society under section 54(3)(d),<sup>5</sup> the registrar may, by written notice given to the society, state—

- (a) a time during which this section is to apply to the society; and
- (b) the terms on which all or any of the directors hold office; and
- (c) the rules that are to be the society's rules.

(2) While this section applies to a society, the registrar may—

- (a) from time to time remove and appoint directors; and
- (b) vary, revoke or specify new terms in place of all or any of the terms stated under subsection (1); and
- (c) amend all or any of the rules stated under subsection (1).

(3) The registrar may, by written notice given to the society, extend the time during which this section is to apply to a society.

(4) A rule stated by the registrar under this section as a rule of a society—

- (a) is not to be amended or revoked except in the way set out in this section; and
- (b) if it is inconsistent with any other rule of the society—prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and
- (c) has the same evidentiary value as is by this Act given to the society's rules and to copies of them.

**59 Stay of proceedings**

(1) This section applies if the registrar appoints an administrator to conduct a society's affairs.

(2) A person must not begin or continue a proceeding in a court against the society until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the court grants leave, under any terms the court imposes.

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<sup>5</sup> Section 54 (Revocation of administrator's appointment)

(3) A person intending to apply for leave must give the registrar at least 10 days notice of intention to apply.

(4) On the hearing of an application for leave, the registrar may be represented and may oppose the granting of the application.

## **60 Administrator to report to the registrar**

On the receipt of a request from the registrar, a society's administrator must, without delay, prepare and give the registrar a report showing how the administration is being carried out.

### *Subdivision 6—Supervision fund and levy*

## **61 Cooperatives Supervision Fund**

(1) The Cooperatives Supervision Fund is established.

(2) The registrar must pay into the fund—

- (a) all amounts received as supervision levy under this subdivision; and
- (b) income from the investment of amounts credited to the fund and the proceeds of the sale of investments.

(3) The registrar must pay out of the fund—

- (a) payments for or towards the expenses of performing the registrar's functions and exercising the registrar's powers under this Act; and
- (b) expenses incurred in administering the fund.

(4) The registrar may invest amounts in the fund in the way the registrar considers appropriate.

## **62 Supervision levy**

(1) The registrar may decide that an amount must be paid to the registrar by societies as a supervision levy.

(2) The amount of the levy may be fixed by the registrar as—

- (a) a stated amount; or

(b) a stated percentage of an amount to be decided, on a stated day, by reference to stated factors about societies (including, for example, the number of members in a society, reserves, obligations and debts and total assets); or

(c) both a stated amount and a stated percentage.

(3) If the levy is fixed, wholly or partly, as mentioned in subsection (2)(b), the registrar may include in the decision directions about how the levy is to be decided.

(4) The registrar may—

(a) fix the amount of the levy differently for different societies; and

(b) decide that the levy is not payable by stated societies.

(5) The registrar may, in the decision, require the levy to be paid in 1 amount by a stated time or permit the levy to be paid by stated instalments.

(6) If the registrar permits the levy to be paid by instalments, the registrar may, in the decision, allow a discount for payment in 1 amount by a stated time or require payment of an additional amount or percentage, by way of interest, in the instalments.

(7) The registrar may, in the decision, require the payment of amounts, by way of late payment charge, interest or both, for amounts of levy not paid as required by the decision.

(8) The registrar may include in the decision directions about how amounts of late payment charge and interest are to be decided.

(9) Amounts of levy, when they are payable, are payable by the society concerned to the registrar, and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount of levy.

(10) On the application of a society, the registrar may change—

(a) an amount of levy payable by the society; or

(b) the time within which an amount of levy is payable by the society.

(11) An amount paid by a society as levy is treated as an expense in the society's accounts.

(12) In subsections (9) to (11)—

“levy” includes late payment charge and interest for levy.

### **63 Consultation**

In deciding the amount to be paid as supervision levy under section 62, the registrar may consult with industry bodies and societies if it is appropriate and practicable to consult with them.

### **64 Failure to make payment an offence**

If a society does not make a payment required to be made for a supervision levy, the society and any officer of the society who is in default each commit an offence.

Maximum penalty—200 penalty units.

### *Division 3—Prudential regulation or advice service agreements with APRA*

#### **64A State may enter into agreements with APRA**

(1) The registrar may with the approval of the Minister, enter into an agreement with APRA on behalf of the State under which APRA is, for a fee, to provide prudential regulation or advice services.

(2) The agreement may—

- (a) provide for APRA to act on behalf of the registrar; and
- (b) make provision about the circumstances in which, and the extent to which, one party to the agreement is liable to the other party to the agreement for matters arising under the agreement.

(3) In this section—

**“prudential regulation or advice services”** means services of either or both of the following kinds—

- (a) services consisting of APRA performing a role in the prudential regulation or supervision of societies;
- (b) services consisting of APRA providing advice relating to the prudential regulation or supervision of societies.

## **PART 5—OBJECTS AND POWERS OF SOCIETIES**

### *Division 1—Objects*

#### **65 Objects**

(1) The objects of a society are to apply its funds in providing financial accommodation to its members—

- (a) for the purchase of residential premises, or for residential development, by a member; or
- (b) for the refinancing or consolidation of residential loans provided by another society to a member; or
- (c) for the refinancing or consolidation of residential loans provided to a member by another entity; or
- (d) for another purpose authorised by this Act, a regulation or a standard.

(2) A society must not provide financial accommodation to a member for another purpose.

Maximum penalty—400 penalty units.

(3) The application of the society's funds is subject to this Act, the relevant standards and the society's rules.

### *Division 2—Powers*

#### **66 Powers**

(1) Without limiting section 75,<sup>6</sup> but subject to this Act and the society's rules, a society has the powers mentioned in this division.

(2) The fact that the doing of an act by a society would not be, or is not, in its best interests does not affect its power or legal capacity to do the act.

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6 Section 75 (Effect of incorporation)

**67 Control of certain financial transactions**

(1) In this section—

**“approved financial contracts”** means—

(a) futures contracts relating to—

- (i) securities issued or guaranteed by the Treasurer or the Government of the State or by the Commonwealth or another State; or
- (ii) bills of exchange payable within 200 days that have been accepted or endorsed by a bank prescribed under a regulation;

but only if made, or dealt in, or on a futures market of a futures exchange within the meaning of the Corporations Act; or

- (b) interest rate swap contracts, or forward interest rate contracts, to which a bank, or other body approved by the registrar for the purpose, is a party; or
- (c) options relating to contracts mentioned in paragraph (a) or (b); or
- (d) other contracts of a kind approved by the registrar under subsection (6).

(2) Except as provided by this section, a society must not engage in transactions of the following kinds—

- (a) transactions relating to financial or other futures;
- (b) options in futures transactions;
- (c) forward interest rate transactions;
- (d) interest rate swap transactions;
- (e) other financial transactions of a kind specified in a standard.

Maximum penalty—800 penalty units.

(3) A society may enter into and deal in approved financial contracts only if it does so to reduce the risk of adverse variations—

- (a) in the costs of raising funds by the society; or
- (b) in the revenue obtainable by the society from investments made or financial accommodation provided by the society.

(4) A society must not contravene subsection (3).

Maximum penalty—800 penalty units.

(5) A contract entered into by a society in contravention of this section may be enforced as if it were an approved financial contract entered into for a purpose mentioned in subsection (3) if another party to the contract entered into it in good faith and, when the other party entered into the contract, the other party did not suspect, and had no reason to suspect, the contravention.

(6) The registrar may approve kinds of contracts under this section on terms the registrar considers appropriate.

## **68 Control of foreign currency transactions**

A society must not—

- (a) invest any of its funds in foreign currency; or
- (b) carry out any of its activities in foreign currency.

Maximum penalty—800 penalty units.

## **69 Raising funds**

(1) A society may raise funds to carry out its objects.

(2) Funds may be raised from a financial institution or another entity (including a trustee).

(3) A society may raise funds whether the repayment of the funds is guaranteed by the Treasurer or not.

(4) However—

- (a) if a society has raised funds the repayment of which is guaranteed and the funds have not been repaid—the society must not raise further funds the repayment of which is not guaranteed; and
- (b) if a society has raised funds the repayment of which is not guaranteed and the funds have not been repaid—the society must not raise further funds the repayment of which is guaranteed.

Maximum penalty for subsection (4)—800 penalty units.



### ***Division 3—Guarantees***

#### **70 Treasurer’s guarantee**

(1) The Treasurer may execute a guarantee in favour of a financial institution or another entity (including a trustee) (an “**approved entity**”) for the repayment of funds raised by a society.

(2) The Treasurer may charge the society a fee prescribed under a regulation for executing the guarantee.

#### **71 Provisions about guarantees**

(1) The following provisions apply to a guarantee executed by the Treasurer—

- (a) the guarantee is subject to the terms prescribed under a regulation and to any other terms the Treasurer decides;
- (b) the guarantee may include either or both of the following—
  - (i) the interest, charges and expenses chargeable by the approved entity against the principal debtor in the normal course of its business;
  - (ii) the expenses of enforcing, obtaining, or trying to enforce or obtain, payment of the debt guaranteed and the interest, charges and expenses;
- (c) the approved entity must obtain and take the security for the payment of the principal debt (including any interest, charges and expenses chargeable) that the Treasurer may require;
- (d) the guarantee is enforceable against the Treasurer or against the Consolidated Fund only if—
  - (i) the approved entity has exhausted all other rights and remedies for the recovery of the amount secured by the guarantee; or
  - (ii) the approved entity becomes entitled to appoint a receiver for the society;
- (e) an assignment of, or charge on, the rights conferred by the guarantee is effective against the Treasurer only if made with the Treasurer’s written consent;

(f) other provisions prescribed under a regulation.

(2) A liability arising under a guarantee is to be satisfied out of amounts appropriated by the Parliament.

## **PART 6—SOCIETIES**

### *Division 1—Formation and registration*

#### **72 Formation of societies**

(1) A body proposed to be a society may be formed by 5 or more adults.

(2) A proposed society may be formed only if there has been a meeting to form the society at which 5 or more adults were present.

(3) At the formation meeting, there must be presented—

(a) a written statement showing—

(i) the objects of the society; and

(ii) the reasons for believing that—

(A) an application for registration of the society would be granted; and

(B) if registered, the society will be able to carry out its objects successfully; and

(b) a copy of the society's proposed rules.

(4) If, at the formation meeting or a subsequent or adjourned meeting, 5 or more adults, after considering the statement and the rules, approve the rules (with or without amendment) and sign an application for membership, they may proceed to elect the first directors of the society under the rules as so approved.

(5) The expenses of, and incidental to, the formation of the society may be paid out of the society's capital or income.

**73 Registration**

(1) A proposed society formed under this part may apply to the registrar, under a regulation, to be registered under this Act as a society.

(2) An application for registration must—

- (a) be made within 2 months after the formation meeting at which the first directors of the society were elected; and
- (b) be accompanied by—
  - (i) a statutory declaration by the person presiding at the formation meeting and the secretary of the meeting, stating that the requirements of section 72 have been complied with; and
  - (ii) a copy of the statement presented to the meeting, signed by the person presiding and the secretary; and
  - (iii) 2 copies of the proposed rules of the society, certified by the person presiding and the secretary to be the rules approved at the meeting; and
  - (iv) a list containing the full name, date and place of birth, residential address and business occupation of each director; and
  - (v) a list containing the full name, address and occupation of each of 5 or more adults who attended the meeting and applied for membership; and
  - (vi) such evidence as the registrar requires—
    - (A) that the society is eligible for registration; and
    - (B) that the society, if registered, will be able to comply with this Act and all relevant standards; and
    - (C) that the society, if registered, will be able to carry out its objects successfully.

(3) The registrar may, for this section, accept a statutory declaration as adequate evidence of matters mentioned in the declaration.

(4) If the registrar is satisfied that the society is eligible for registration, the registrar must—

- (a) register the society as a cooperative housing society; and
- (b) register its proposed rules.

- (5) A society is eligible for registration only if—
- (a) the society's application for registration complies with this Act; and
  - (b) the proposed rules of the society are not contrary to this Act; and
  - (c) there are reasonable grounds for believing the society will, if registered—
    - (i) be able to comply with all relevant standards; and
    - (ii) be able to carry out its objects successfully; and
  - (d) there is no good reason why the society and its rules should not be registered.

#### **74 Certificate of incorporation**

(1) On registering a society, the registrar must issue a certificate of incorporation to the society.

(2) The certificate of incorporation is evidence that all requirements of this Act about registration and matters precedent or incidental to registration have been complied with.

#### **75 Effect of incorporation**

On the issue of a certificate of incorporation to a society, the society is a corporation with perpetual succession and—

- (a) has, subject to this Act and the society's rules, the legal capacity of a natural person; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

### *Division 2—Rules*

#### **76 Rules**

(1) A society's rules must provide for the matters stated in a standard made for this subsection.

(2) A society's rules may also provide for any matter that is necessary, expedient or desirable for the society's purposes.

(3) If there is an inconsistency between a society's rule and this Act or a standard, this Act or the standard prevails and the rule is invalid to the extent of the inconsistency.

## **77 Copies of rules**

(1) A society must give a copy of its rules to a member or proposed member who asks for a copy and has paid the fee (if any) payable under subsection (2) to the society.

Maximum penalty—10 penalty units.

(2) A society may charge a fee for supplying the copy but only if the fee has been approved by its board.

## **78 Society and members to be bound by rules**

A society's rules bind the society, all its members, and all persons claiming through the society or a member, to the same extent as if—

- (a) each member had subscribed his or her name and attached his or her seal to the rules; and
- (b) there were contained in the rules a covenant on the part of each member and the member's legal representative to observe all the rules subject to this Act and the standards.

## **79 Alteration of rules by special resolution**

(1) A society's rules may be altered only if the alteration has been approved by special resolution of the members.

(2) Subsection (1) applies subject to sections 80, 82 and 83.<sup>7</sup>

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<sup>7</sup> Sections 80 (Alteration of rules by board of directors), 82 (Power of the registrar to require changes of rules) and 83 (Power of the registrar to change rules to facilitate transfer of engagements)

**80 Alteration of rules by board of directors**

(1) A society's rules may be altered by a resolution of its board if the alteration—

- (a) is required under this Act; or
- (b) is to give effect to a standard.

(2) The society must give written notice of the alteration to its members not later than the day on which notice is given of the society's next general meeting.

Maximum penalty—10 penalty units.

(3) The notice may, with the written approval of the registrar, be given by advertisement published in a newspaper circulating generally in the area of the State in which the society operates.

**81 Registration of alteration of rules**

(1) The registrar must register an alteration of a society's rules if the registrar is satisfied—

- (a) the alteration is not contrary to this Act or the standards; and
- (b) there is no good reason why the alteration should not be registered.

(2) The alteration takes effect when it is registered.

(3) The society's rules must be read subject to any registered alteration.

**82 Power of the registrar to require changes of rules**

(1) This section applies if the registrar considers that a society's rules should be altered—

- (a) to comply with this Act; or
- (b) to give effect to a standard; or
- (c) in the interests of the society's members; or
- (d) in the public interest.

(2) The registrar may, by written notice given to the society, require it, within a reasonable period stated in the notice, to alter its rules in a way stated in the notice or otherwise in a way approved by the registrar.

(3) If the society fails to alter its rules as required by the notice, the registrar may alter its rules by notation on the registered copy of the rules.

(4) The registrar must immediately give written notice to a society of—

- (a) an alteration of its rules made under this section; and
- (b) the day on which the alteration starts.

(5) The society must give written notice of the alteration to its members not later than the day on which notice is given of the society's next general meeting.

Maximum penalty—80 penalty units.

(6) The notice may, with the written approval of the registrar, be given by advertisement published in a newspaper circulating generally in the area of the State in which the society operates.

### **83 Power of the registrar to change rules to facilitate transfer of engagements**

(1) If the registrar has directed a transfer of engagements under part 9,<sup>8</sup> the registrar may alter the rules of the transferee society to the extent necessary to ensure the rules are appropriate.

(2) The registrar must alter the rules by notation on the registered copy.

(3) The registrar must immediately give written notice to a society of—

- (a) an alteration of its rules made under this section; and
- (b) the day on which the alteration starts.

(4) The society must give written notice of the alteration to its members not later than the day on which notice is given of the society's next general meeting.

(5) The notice may, with the written approval of the registrar, be given by advertisement published in a newspaper circulating generally in the area of the State in which the society operates.

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8 Part 9 (Mergers and transfers of engagements)

***Division 3—Membership*****84 Members**

(1) The members of a society are—

- (a) the persons who sign the application for membership on the formation of the society; and
- (b) the other persons who are admitted to membership under the society's rules.

(2) The members of a merged society are the persons who, on the day of the merger, are members of a society that is a party to the merger, and the other persons who are admitted to membership under the merged society's rules.

(3) The members of a society to which another society has transferred its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society.

(4) A person may exercise the rights of membership of a society only if the person has complied with the requirements for membership under the society's rules, including, for example, the payment of an amount.

**85 Members who are minors**

(1) Subject to a society's rules, a minor may be a member.

(2) A member of a society who is a minor cannot hold office in a society and cannot vote at a meeting of the society.

(3) A member of a society is not entitled, because of the member's minority or former minority, to avoid the member's obligations or liabilities—

- (a) as a member; or
- (b) under a deed, mortgage, bill, lien, charge, contract, instrument or other document entered into by the member as a member.

**86 Joint members**

(1) Membership in a society may be joint if the society's rules provide for it.

(2) If membership is joint, the following provisions apply—



- (a) the register of members must indicate that a person is a joint member;
- (b) the joint members may choose the order in which they are named in the register of members but, if they do not choose, the society may enter the names in the order it considers appropriate;
- (c) the joint member who is named first in the society's register of members is the primary joint member;
- (d) subject to the society's rules, but without affecting the right of a member to obtain a copy of the balance sheet from the society on demand, a notice or other document may be given or sent to the primary joint member;
- (e) membership is taken to be solely that of the primary joint member to determine—
  - (i) who is qualified to vote on a resolution at a meeting of the society; and
  - (ii) the number or proportion of members required to give effect to a provision of this Act or the society's rules.

### **87 Cessation of membership**

(1) A person ceases to be a member of a society as provided by the society's rules.

(2) If a member of a society dies, the member's estate remains liable to pay an amount due by the member to the society under the society's rules.

### **88 Expulsion of member**

A member of a society may be expelled, or have the member's membership rescinded, under the society's rules.

### **89 Liability of members**

A member of a society is not liable, because of the membership, to contribute towards the payment of the debts and liabilities of the society or the costs, charges and expenses of a winding-up of the society.

**90 Financial accommodation to, and deposits from, members and others**

(1) A society may provide financial accommodation only to its members.

(2) A society must not provide financial accommodation to a person who is not a member of the society.

Maximum penalty—10 penalty units.

(3) A member of a society who wishes to obtain financial accommodation must apply to the society in the way approved by the society.

(4) In providing financial accommodation to a member, a society may make a loan to a member only—

- (a) on condition that the member makes repayments of principal and interest calculated on the outstanding loan balance; or
- (b) in a way mentioned in the relevant standard; or
- (c) in another way prescribed under a regulation.

Maximum penalty—40 penalty units.

(5) A society must not accept a deposit of money from any person.

Maximum penalty for subsection (5)—80 penalty units.

***Division 4—Name and office*****91 Name**

(1) The registered name of a society is its name as stated in the society's rules for the time being registered under this Act.

(2) The registrar must not register proposed rules, or an alteration of the rules of a society affecting the society's name, if the registrar is satisfied that the proposed name—

- (a) is undesirable; or
- (b) is likely to be confused with the name of a corporation or a registered business name.

(3) If the registrar registers an alteration of a society's rules changing the society's name, the registrar may, on application by the society, amend its certificate of incorporation or issue a new certificate.

(4) A society must publish a change of its name as directed by the registrar.

Maximum penalty—10 penalty units.

(5) A society must not use a name other than its registered name.

Maximum penalty—80 penalty units.

## **92 Society must have certain words as part of name**

(1) A society's registered name must include the word 'Limited' at the end of its name.

(2) A society's registered name must also include the words 'Cooperative Housing Society' as part of its name.

(3) A description of a society is not inadequate or incorrect merely because the society's registered name is given using—

- (a) the abbreviation 'Co-op' for the word 'Cooperative'; or
- (b) the abbreviation 'Ltd' for the word 'Limited'; or
- (c) the abbreviation 'No.' for the word 'Number'; or
- (d) the symbol '&' for the word 'and'.

## **93 Change of name does not affect identity**

(1) A change of name of a society does not—

- (a) affect the society's identity; or
- (b) affect a right or obligation of the society or of a member or other person; or
- (c) make defective legal proceedings by or against the society.

(2) A legal proceeding that might have been continued or started by or against the society under its former name may be continued or started by or against it under its new name.

**94 The registrar may direct change of name**

The registrar may direct a society to change its name if, through inadvertence or otherwise, the society is registered by a name that the registrar is satisfied is likely to be confused with the name of another corporation or a registered business name.

**95 Publication of name**

(1) A society must ensure its registered name appears in legible letters on—

- (a) all business letters, notices, advertisements and other publications of the society; and
- (b) all bills of exchange, cheques, promissory notes, endorsements, orders for money or goods, invoices, receipts and other documents required in the society's business.

Maximum penalty—80 penalty units.

(2) A society must ensure its registered name and the words 'registered office' are displayed in a conspicuous place and in legible letters, on the outside of its registered office.

Maximum penalty—80 penalty units.

(3) A society must ensure its registered name is displayed in a conspicuous place and in legible letters on the outside of every other office or place in which its business is carried on.

Maximum penalty for subsection (3)—80 penalty units.

**96 Seal**

(1) A society must ensure its registered name appears in legible letters on its seal.

Maximum penalty—80 penalty units.

(2) An officer of a society, or a person acting on its behalf, must not use a seal, purporting to be the society's seal, on which its registered name does not appear in legible letters.

Maximum penalty for subsection (2)—80 penalty units.

**97 Registered office**

(1) A society must have a registered office.

(2) The first registered office of a society is the address appearing in the society's rules at the time of registration.

(3) A society must give the registrar written notice of a proposed change of address.

Maximum penalty—10 penalty units.

(4) The new address becomes the society's registered office—

- (a) at the end of the day the change of address is registered by the registrar; or
- (b) if a later day is specified in the notice—the later day.

***Division 5—Application of Corporations legislation*****97A Definitions for div 5**

In this division—

“**Part 5.1 body**” see the Corporations Act, section 9.

“**Part 5.7 body**” see the Corporations Act, section 9.

“**registered Australian body**” see the Corporations Act, section 9.

**97B Excluded matter for corporations legislation**

(1) A society is declared to be an excluded matter for the Corporations Act, section 5F,<sup>9</sup> in relation to the Corporations legislation other than the Corporations Act, parts 5B.1 and 5B.2.<sup>10</sup>

(2) Subsection (1) does not apply to a society that is a registered Australian body, Part 5.1 body or Part 5.7 body.

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9 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

10 Corporations Act, parts 5B.1 (Registering a body corporate as a company) and 5B.2 (Registrable bodies)

### **97C Application of Corporations legislation in relation to certain matters**

(1) This section applies in relation to the following provisions of the Corporations Act (the “**applied provisions**”)—

- chapter 2K
- part 5.2
- part 5.3A
- part 5.4
- part 5.4A
- part 5.4B
- part 5.5
- part 5.6
- section 1279(1)(b) and (c) and (2)
- section 1282(3), (5), (6), (9), (10) and (11)
- section 1284
- part 9.7.<sup>11</sup>

(2) A society, other than a society that is a registered Australian body, is declared to be an applied Corporations legislation matter for the *Corporations (Ancillary Provisions) Act 2001*, part 3,<sup>12</sup> in relation to the applied provisions.

(3) A society that is a registered Australian body is declared to be an applied Corporations legislation matter for the *Corporations (Ancillary Provisions) Act 2001*, part 3, in relation to the applied provisions other than chapter 2K and part 5.2.

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11 Corporations Act, chapter 2K (Charges), part 5.2 (Receivers, and other controllers, of property of corporations), part 5.3A (Administration of a company’s affairs with a view to executing a deed of company arrangement), part 5.4 (Winding up in insolvency), part 5.4A (Winding up by the Court on other grounds), part 5.4B (Winding up in insolvency or by the Court), part 5.5 (Voluntary winding up), part 5.6 (Winding up generally), section 1279 (Application for registration as auditor or liquidator), section 1282 (Registration of liquidators), section 1284 (Security to be given by liquidators) and part 9.7 (Unclaimed property)

12 *Corporations (Ancillary Provisions) Act 2001*, part 3 (Application of Commonwealth corporations legislation to State matters)

(4) Subsections (2) and (3) apply subject to the following changes to the applied provisions—

- (a) a reference to a company or corporation is to be read as a reference to a society;
- (b) a reference to ASIC is to be read as a reference to the registrar;
- (c) a reference to a special resolution is to be read as a reference to a special resolution under this Act;
- (d) a reference to a chapter is to be read as a reference to the applied provisions in the chapter;
- (e) a reference in part 5.4, 5.4A, 5.4B, 5.5 or 5.6 to a voluntary winding up is taken to include a winding up on a certificate of the registrar;
- (f) the applied provisions are taken to be changed—
  - (i) in the ways specified in schedule 1; and
  - (ii) in the other ways applying under the *Corporations (Ancillary Provisions) Act 2001*, part 3.

## PART 7—MANAGEMENT

### *Division 1—Directors and officers*

#### **98 Definition of “employee” for division**

In this division—

“employee” of a society, includes a person, or an employee of a person, who provides the society with services under a management contract.

#### **99 Board of directors**

(1) The business and operations of a society are to be managed and controlled by a board of directors, the majority of whom must be resident in the State.

(2) The board may exercise all the powers of the society.

(3) However, the board's powers are subject to the restrictions imposed by this Act, relevant standards and the society's rules.

(4) Every director acting in the society's business or operations under a resolution duly passed by the board is taken to be acting as the society's duly authorised agent.

(5) Anything done by or in relation to a director is not invalid merely because of a defect or irregularity in the director's election or appointment.

### **100 Meetings**

(1) Meetings of a society's board must be held as often as is necessary for properly conducting the society's business.

(2) Meetings of the board must be held at intervals of not longer than 3 months.

(3) A quorum at a meeting of the board is the number of directors prescribed by the society's rules, but must not be less than half the total number of directors.

(4) A meeting of the board may be conducted in the way prescribed by the society's rules.

### **101 Number of directors**

The number of directors of a society must not be less than 5.

### **102 Election or appointment of directors**

(1) Subject to this Act, the directors of a society are elected or appointed, hold and vacate office, and retire or are removed from office, as prescribed by the society's rules.

(2) A director holds office for a term (not longer than 3 years) prescribed by the society's rules.

(3) Despite subsection (2), for a director elected at an annual general meeting of a society, the society's rules may specify a term of office ending at the end of the third annual general meeting of the society happening after the election.

(4) A director is eligible for re-election or reappointment at the end of the director's term.



(5) The directors must be elected—

- (a) at the society's annual general meeting; or
- (b) in another way prescribed by the society's rules.

### **103 Alternate directors**

(1) If authorised by a society's rules, a director may appoint a person, who is eligible to be a director of the society, to be the alternate director in place of that director.

(2) The alternate director may act as a director in the absence of the director who appointed him or her.

(3) The alternate director must not be an alternate for another director.

### **104 Chairperson**

(1) A chairperson of a society's board must be elected—

- (a) at the society's annual general meeting; or
- (b) in another way prescribed by the society's rules.

(2) The chairperson—

- (a) must hold office; and
- (b) must retire; and
- (c) may be removed from office;

as prescribed by the society's rules.

### **105 Qualifications of directors**

A person is not eligible to be a director of a society if the person—

- (a) is a minor; or
- (b) is bankrupt, has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit; or
- (c) is prohibited from being a director of a corporation by the Corporations Act for a reason other than the person's age; or

- (d) has been convicted in the last 10 years—
  - (i) of an indictable offence in relation to the promotion, formation or management of a corporation; or
  - (ii) of an offence involving fraud or dishonesty; or
  - (iii) of an offence prescribed under a regulation.

### **106 Vacation of office**

(1) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) becomes a person who, under section 105, is not eligible to be a director; or
- (c) is absent from 3 consecutive ordinary meetings of the board without its leave; or
- (d) resigns by written notice of resignation given to the board; or
- (e) is 3 months in arrears for an amount payable to the society and has failed to make arrangements for payment satisfactory to the society; or
- (f) is removed from office by a resolution under section 107; or
- (g) completes a term of office.

(2) If a casual vacancy happens in the office of a director as mentioned in subsection (1)(a) to (f), the board may appoint a person who is eligible to be a director to fill the vacancy.

(3) The term of office of a director appointed to fill a casual vacancy ends at the end of the next annual general meeting of the society after the appointment.

(4) A director may not be removed from office, and the office of a director does not become vacant, except as provided by this Act.

### **107 Removal of directors**

(1) A society may, by resolution, remove a director before the end of the director's term of office, despite anything in the society's rules or in an agreement between it and the director.

(2) The resolution may be passed only if the society has given notice to members stating the proposed resolution and the day and time of the meeting when it is proposed the resolution will be made (the “**removal meeting**”).

(3) The society must also give a copy of the notice to the director.

(4) A society’s rules may provide for—

- (a) the period of notice; and
- (b) the way notice may be given to members; and
- (c) any other relevant matter.

(5) The director may make written representations to the society (of a reasonable length) before the removal meeting.

(6) The society must promptly send to each member a copy of any written representations made by the director if—

- (a) the director asks the society to do so; and
- (b) there is enough time for the copies to be received by the members at least 2 days before the removal meeting.

(7) At the removal meeting, the director—

- (a) is entitled to be heard on the resolution to remove the director; and
- (b) if the director has made written representations under subsection (5) and a copy has not been sent to members under subsection (6)—may require that the representations be read out.

### **108 Declaration of interest**

(1) A director of a society who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract, with the society must declare the nature and extent of the interest to the society’s board under this section.

Maximum penalty—400 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to a contract to provide financial accommodation if the provision of the financial accommodation does not contravene section 114.<sup>13</sup>

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13 Section 114 (Financial accommodation to directors)

(3) For a proposed contract, the declaration must be made—

- (a) at the meeting of the board at which the question of entering into the contract is first considered; or
- (b) if the director was not at that time interested in the proposed contract—at the next meeting of the board held after the director becomes interested in the proposed contract.

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

(5) For this section, a director makes a sufficient declaration if the director gives a general written notice to the board to the effect that the director—

- (a) is a member of a specified entity; and
- (b) is taken to be interested in a contract that may, after the giving of the notice, be made with the entity.

### **109 Declaration of possible conflict of duty or interest**

(1) A director of a society who holds an office or has an interest in property by which, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (2), declare at a meeting of the society's board the fact and the nature, character and extent of the conflict.

Maximum penalty—400 penalty units or 2 years imprisonment.

(2) The declaration must be made by the director—

- (a) if the director holds the office or has the interest when the director becomes a director—at the first meeting of the board held after—
  - (i) the director becomes a director; or
  - (ii) the relevant facts about holding the office or having the interest come to the director's knowledge;

whichever is the later; or

- (b) if the director starts to hold the office or acquires the interest after the director becomes a director—at the first meeting of the board held after the relevant facts about holding the office or having the interest come to the director's knowledge.

**110 Recording and effect of declaration**

(1) This section applies to a declaration under section 108 or 109.

(2) The declaration must be recorded in the minutes of the meeting at which it was made and, unless the board otherwise determines, the director must not—

- (a) be present during a deliberation of the board about the matter; or
- (b) take part in a decision of the board about the matter.

(3) For making a determination of the board under subsection (2) about a director who has made a declaration, the director must not—

- (a) be present during a deliberation of the board making the determination; or
- (b) take part in the making by the board of the determination.

**111 Reporting declarations**

(1) This section applies to a declaration under section 108 or 109.

(2) The board must report the declaration—

- (a) to the registrar immediately after the making of the declaration; and
- (b) to the society's members at the next annual general meeting after the making of the declaration.

Maximum penalty—80 penalty units.

(3) A society must, within 3 months after the end of its financial year, file with the registrar a return stating—

- (a) all declarations made to the board during that financial year; and
- (b) all declarations in force at the end of the financial year.

Maximum penalty for subsection (3)—80 penalty units.

**112 Sections 108–109 not of limiting effect**

Sections 108 and 109 are in addition to any rule of law or a provision in a society's rules restricting a director from having an interest in contracts with the society or from holding offices or having interests involving duties or interests in conflict with the director's duties or interests as a director.

**113 General duty to make disclosure**

(1) A director of a society must give written notice to the society—

- (a) of particulars about contracts necessary to enable the society to comply with section 131;<sup>14</sup> and
- (b) of particulars of any change in the particulars mentioned in paragraph (a), including the consideration (if any) received because of the event giving rise to the change.

(2) The notice must be given—

- (a) if the notice is under subsection (1)(a)—within 14 days after the person—
  - (i) became a director; or
  - (ii) entered into the contracts;whichever happens last; and
- (b) if the notice is under subsection (1)(b)—within 14 days after the person becomes aware of the happening of the event giving rise to the change.

(3) A society must, within 7 days after receiving a notice, send a copy to each of the other directors of the society.

(4) A director or society must not contravene this section.

Maximum penalty for subsection (4)—400 penalty units.

**114 Financial accommodation to directors**

(1) A society must not provide financial accommodation to a director unless it is—

- (a) provided in the ordinary course of business; and
- (b) subject to the terms normally imposed by the society in similar dealings; and
- (c) approved by a majority of at least two-thirds of the directors present and voting on the matter at a meeting of the board at which a quorum is present.

Maximum penalty—800 penalty units.

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14 Section 131 (Register of directors etc.)

(2) A director must not obtain financial accommodation given in contravention of subsection (1).

Maximum penalty—800 penalty units or 4 years imprisonment.

(3) In this section, a reference to—

- (a) the provision of financial accommodation to a director; or
- (b) the obtaining of financial accommodation by a director;

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director jointly with another person.

### **115 Directors' remuneration**

A director of a society must not knowingly receive remuneration that is not a fee, concession or other benefit approved at a general meeting of the society.

Maximum penalty—80 penalty units.

### **116 Management contracts**

(1) A society must not enter into a management contract without the registrar's written approval.

Maximum penalty—800 penalty units.

(2) The registrar may give the registrar's approval on terms.

(3) A management contract entered into in contravention of subsection (1) is void.

### **117 Duties of officers**

(1) An officer of a society must at all times act honestly in performing the functions and exercising the powers of the office.

Maximum penalty—

- (a) 1 600 penalty units or 7 years imprisonment—
  - (i) if because of the contravention—

(A) the society is, or its members are, deceived or defrauded; or

- (B) a creditor of the society, or a creditor of any other person, is deceived or defrauded; or
- (ii) if paragraph (a) does not apply but the contravention was committed—
  - (A) with the intention of deceiving or defrauding the society or its members, a creditor of the society or a creditor of any other person; or
  - (B) for any other fraudulent purpose; or

(b) 800 penalty units or 4 years imprisonment, in any other case.

(2) An officer of a society must at all times exercise a reasonable degree of care and diligence in performing the functions and exercising the powers of the office and in protecting the interests of the society's members.

Maximum penalty—400 penalty units.

(3) An officer or employee of a society, or a former officer or employee of a society, must not make improper use of information acquired because of his or her position as an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

Maximum penalty—800 penalty units or 4 years imprisonment.

(4) An officer or employee of a society must not make improper use of his or her position as an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

Maximum penalty—800 penalty units or 4 years imprisonment.

(5) Section 5<sup>15</sup> applies to subsection (2) as if, in subsection (1)(a) of the section, the words “, executive officer or employee” were omitted and the words “or executive officer” were substituted.

## **118 Effect of contravention of s 117**

(1) If—

- (a) a person is convicted of an offence against section 117; and

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15 Section 5 (Meaning of “officer”)



- (b) the court by which the person is convicted is satisfied that the society has suffered loss or damage because of the act or omission that constituted the offence;

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the society of an amount stated by the court.

(2) The order may be enforced as if it were a judgment of the court.

(3) If a person contravenes section 117, the society may, whether or not the person has been convicted of an offence against the section for the contravention, recover from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount involved—

- (a) if that person or any other person has made a profit because of the contravention—an amount equal to that profit; and
- (b) if the society has suffered loss or damage because of the contravention—an amount equal to that loss or damage.

(4) This section and section 117 are in addition to and do not derogate from any other rule of law about the duties of officers and employees of a society.

### **119 Unlawfully acting as director**

(1) A person must not purport to act as a director of a society unless the person is a director of the society, or the alternate director of a director of the society.

Maximum penalty—400 penalty units or 2 years imprisonment.

(2) A director of a society must not permit a person who is not a director of the society, or the alternate director of a director of the society, to purport to act as a director of the society.

Maximum penalty for subsection (2)—400 penalty units or 2 years imprisonment.

### **120 Secretary**

(1) The board of a society must appoint an individual who is 18 or more and who is resident in the State to be the secretary of the society.

(2) If the office of secretary is vacant or for some other reason the secretary is not capable of acting, an act or thing required or authorised to

be done by or in relation to the secretary may be done by or in relation to an assistant or deputy secretary or, if there is no assistant or deputy secretary or no assistant or deputy secretary is capable of acting, by or in relation to an officer of the society authorised by the directors to act as secretary either generally or in relation to the doing of the act or thing.

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

### **121 Liability of, and indemnity for, officers and employees**

(1) A rule of, or contract with, a society is void if it purports to—

- (a) exempt an officer or employee of the society from a liability to the society for negligence, default, breach of duty or breach of trust; or
- (b) indemnify an officer or employee of the society against a liability mentioned in paragraph (a).

(2) However, a society may indemnify an officer or employee of the society against a liability incurred by the officer or employee—

- (a) in defending civil proceedings about the society's affairs and resulting in judgment in favour of the officer or employee; or
- (b) in defending criminal proceedings about the society's affairs and resulting in the officer or employee being acquitted; or
- (c) for an application in proceedings mentioned in paragraph (a) or (b) in which relief is, under this Act, granted to the officer or employee by the Supreme Court.

(3) Subsection (1) does not apply to—

- (a) a contract of insurance unless the premiums are paid by the society; and
- (b) compulsory professional indemnity insurance even if the premiums are paid by the society.

***Division 2—Meetings*****122 Annual general meeting**

(1) A society must hold its first annual general meeting within 18 months after it is registered under this Act.

Maximum penalty—80 penalty units.

(2) A society must hold every subsequent annual general meeting within 5 months after the close of its financial year, or within a further time allowed by the registrar or prescribed under a regulation.

Maximum penalty for subsection (2)—80 penalty units.

**123 Special general meeting**

(1) The board of a society may call a special general meeting of the society.

(2) The board of a society must immediately proceed to call a special general meeting of the society if required to do so by not less than the number of members prescribed for the purpose by the society's rules.

**124 Quorum**

(1) A general meeting of a society may deal with an item of business only if a quorum is present.

(2) Subsection (1) does not apply to an item of business that may be dealt with by postal voting under the society's rules.

(3) A quorum is as prescribed by the society's rules.

**125 Notice of meeting**

(1) Written notice of a general meeting of a society must be given personally or by post to each member of the society—

- (a) for an annual general meeting—at least 14 days before the date of the meeting; and
- (b) for a special general meeting—at least 7 days before the date of the meeting.

(2) However, if the society's rules so provide, notice of an annual general meeting or special general meeting may be given to the society's members by advertisement published in a newspaper circulating generally in the area of the State in which the society operates.

(3) Notice of a general meeting of a society must be displayed in a conspicuous place at the registered office and each other office of the society—

- (a) for an annual general meeting—for at least 14 days immediately before the date of the meeting; and
- (b) for a special general meeting—for at least 7 days immediately before the date of the meeting.

(4) The failure by a member of a society to receive notice of a general meeting required to be given to the member by this Act does not invalidate the meeting.

(5) A society must give notice of an annual general meeting, or a special general meeting, or display notice of an annual general meeting in accordance with this section.

Maximum penalty for subsection (5)—80 penalty units.

## **126 Voting**

A member of a society may not exercise more than 1 vote on a question arising for determination by the society's members.

## **127 Special resolutions**

(1) For this Act, a special resolution is a resolution passed by a majority of not less than two-thirds of the members who, being entitled to vote—

- (a) in any case—are present personally at a meeting at which a motion for the passing of the resolution is moved and vote on the resolution; or
- (b) for a merger or transfer of engagements under part 9<sup>16</sup>—vote on the resolution by a postal ballot conducted—
  - (i) under the society's rules; or

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16 Part 9 (Mergers and transfers of engagements)

- (ii) under a regulation; or
- (iii) in a way approved by the registrar.

(2) For a special resolution passed at a meeting, unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a stated majority is evidence of the fact.

(3) Written notice of a proposed special resolution, stating its terms, must be given personally or by post to each member of the society who is entitled to vote on the resolution at least 21 days before the date of the meeting or close of the postal ballot.

(4) However, if a society's rules so provide, notice of a proposed special resolution, stating its terms, may be given to the members of the society entitled to vote on the resolution by advertisement published in a newspaper circulating generally in the area of the State in which the society operates.

(5) A purported special resolution for which notice has not been given under subsection (3) or (4) is of no effect.

(6) However, the failure by a member to receive notice of a proposed special resolution does not invalidate the passing of the resolution.

(7) This section applies only to the matters required by this Act or a society's rules to be passed or approved by a special resolution.

## **128 Registration of special resolution**

(1) A society must, within 1 month after a special resolution has been passed, submit the resolution to the registrar for registration.

(2) A special resolution is of no effect until registered.

(3) The registrar must register a special resolution of a society if satisfied that—

- (a) the special resolution is not contrary to—
  - (i) this Act; or
  - (ii) a standard; and
- (b) there is no good reason why the special resolution should not be registered.

**129 Minutes**

A society must cause full and accurate minutes to be kept of every meeting of its board, and of every meeting of its members.

Maximum penalty—80 penalty units.

***Division 3—Registers and inspection*****130 Registers**

(1) A society must keep the registers prescribed under a regulation.

Maximum penalty—160 penalty units.

(2) All registers required to be kept by a society under this Act must be kept at the society's registered office and be kept in the way, and contain the particulars, prescribed under a regulation.

Maximum penalty—80 penalty units.

(3) With the written consent of the registrar, all or any of the registers may be kept at an office of the society other than its registered office.

(4) All registers must be kept within the State at all times.

**131 Register of directors etc.**

(1) A society must keep a register of its directors, principal executive officer and secretary and enter in the register for each director, principal executive officer and secretary—

- (a) the person's present given name and surname; and
- (b) the person's former given name or surname (if any); and
- (c) the person's date and place of birth; and
- (d) the person's usual residential address; and
- (e) the person's business occupation (if any).

Maximum penalty—160 penalty units.

(2) A society must, within 1 month after a director, principal executive officer or secretary of the society changes his or her usual residential address, advise the registrar of the new usual residential address of the director, principal executive officer or secretary.

Maximum penalty—10 penalty units.

(3) A society must, within 7 days after receiving notice from a director under section 113(1)(a),<sup>17</sup> enter in its register, for the director, the particulars of contracts to which the notice relates and, for contracts entered into after the person became a director—

- (a) the consideration for the transaction (if any) because of which an entry is required to be made in the register; and
- (b) the date of—
  - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
  - (ii) if there was no transaction—the happening of the event because of which an entry is required to be made in the register.

Maximum penalty—160 penalty units.

(4) A society must, within 3 days after receiving a notice from a director under section 113(1)(b), enter in its register the particulars of the change specified in the notice.

Maximum penalty—160 penalty units.

(5) Within 1 month beginning on the day on which a person becomes or ceases to be a director, the principal executive officer or secretary of a society, the society must file with the registrar a return in the approved form advising that fact and containing for a new director, principal executive officer or secretary the matters required by subsection (1) to be shown in the register.

Maximum penalty—10 penalty units.

(6) A register kept by a society under this section must be open for inspection—

- (a) by a member of the society, without fee; and
- (b) by another person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

(7) A society must produce its register at the start of each annual general meeting of the society and keep it open and accessible during the meeting to all persons attending the meeting.

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<sup>17</sup> Section 113 (General duty to make disclosure)

Maximum penalty—160 penalty units.

(8) It is a defence to a prosecution for failing to comply with subsection (3) or (4) in relation to particulars about a director if the defendant proves that the failure was due to the failure of a director to comply with section 113 in relation to those particulars.

### **132 Register of members**

(1) A society must keep a register of members of the society and enter in the register—

- (a) the names and addresses of the members; and
- (b) the date of admission to membership; and
- (c) any other information prescribed under a regulation.

Maximum penalty—160 penalty units.

(2) The register of members is evidence of membership of the society.

(3) A member is entitled to have access only to the part of the register of members in which particulars of his or her membership are entered.

(4) Subject to subsection (3), a society may refuse to allow a person to have access to the register of members unless the person satisfies the society that the person requires access to—

- (a) call a meeting of members; or
- (b) undertake some other activity approved by the registrar.

(5) Before a society allows a person, who has satisfied the society under subsection (4), to have access to the register of members, the society may require the person to enter into a contract with the society under which the person undertakes—

- (a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and
- (b) to restrict use of the information obtained by the person from the register to a stated purpose.



**133 Inspection of documents at society's registered office**

A society must keep a copy of the following documents at its registered office available for inspection without fee by members of the society, persons eligible for membership of the society and its creditors—

- (a) this Act and the regulation;
- (b) the society's rules;
- (c) each management contract for the society;
- (d) the society's last accounts, together with a copy of the report of the auditor on the accounts;
- (e) the last directors' report under section 144.<sup>18</sup>

**134 Members entitled to particulars of their financial position**

A society must, on being asked by a member of the society, give the member particulars of the person's financial position with the society as a member or borrower.

**135 Members entitled to copies of registers**

(1) This section applies if a member of a society asks the society to give the member a copy of a register or a part of a register kept by the society under this Act.

(2) This section is subject to section 132(4).<sup>19</sup>

(3) The society must send the copy to the member—

- (a) if the society requires payment of an amount prescribed by the society's rules—within 21 days after payment of the amount is received by the society, or within a longer period approved by the registrar; or
- (b) if the society does not require payment of an amount—within 21 days after the request is made, or within a longer period approved by the registrar.

Maximum penalty for subsection (3)—80 penalty units.

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18 Section 144 (Directors' reports)

19 Section 132 (Register of members)

***Division 4—Accounts*****136 Financial year**

(1) The financial year of a society is from 1 January to 31 December.

(2) If a society is registered (other than because of a merger) on a day falling between 1 July and 31 December in any year, its first financial year may, if the society elects, extend to 31 December in the following year.

**137 Accounting records to be kept**

A society must—

- (a) keep accounting records that correctly record and explain the society's transactions and financial position; and
- (b) keep the accounting records in a way that will enable—
  - (i) true and fair accounts of the society to be prepared periodically; and
  - (ii) the society's accounts to be conveniently and properly audited under this part; and
- (c) keep the accounting records for 7 years after the completion of the transactions to which they relate; and
- (d) keep the accounting records in writing in the English language or so as to enable the records to be readily accessible and readily convertible into writing in the English language; and
- (e) keep the accounting records at the society's registered office.

Maximum penalty—400 penalty units.

**138 Inspection of accounting records**

(1) A society must make its accounting records available at all reasonable times for inspection without fee by a director of the society and by anyone else authorised or permitted under this Act to inspect the accounting records.

Maximum penalty—160 penalty units.

(2) The Supreme Court may, on application by a director of a society, make an order authorising a registered company auditor acting for the director to inspect the society's accounting records.

(3) A registered company auditor who inspects accounting records under a court order must not disclose to a person other than the director on whose application the order was made information acquired during the inspection.

Maximum penalty—160 penalty units.

(4) The cost of an inspection conducted under a court order must be met by the society.

### **139 Profit and loss account and balance sheet**

The directors of a society must, before the day on which notice of an annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 122<sup>20</sup> to be held, not less than 3 weeks before the end of the period, cause to be prepared—

- (a) a profit and loss account for the last financial year giving a true and fair view of the society's profit or loss for that financial year; and
- (b) a balance sheet as at the end of the last financial year giving a true and fair view of the society's state of affairs as at the end of that financial year.

### **140 Audit**

(1) The directors of a society must take reasonable steps to ensure the society's accounts are audited as required by this part before the day before which the accounts are required by this division to have been prepared.

(2) The directors of a society must cause to be attached to, or endorsed on, the accounts the auditor's report given to the directors under division 5.<sup>21</sup>

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20 Section 122 (Annual general meeting)

21 Division 5 (Audit)

**141 Directors to ascertain certain matters**

Before the profit and loss account and balance sheet are prepared, the directors of a society must take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realise in the ordinary course of business their value as shown in the society's accounting records and, if so, to cause—
  - (i) those assets to be written down to an amount they might be expected so to realise; or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the society's documents at an amount that, having regard to its value to the society as a going concern, is more than the amount it would have been reasonable for the society to spend to acquire the asset as at the end of the financial year and, unless adequate provision for writing down the asset is made, to cause to be included in the accounts information and explanations to prevent the accounts from being misleading because of the overstatement of the amount of the asset.

**142 Requirements applying to accounts**

(1) The directors of a society must ensure the accounts—

- (a) comply with the requirements prescribed under a regulation or in a standard; and
- (b) comply with applicable accounting standards.

(2) The registrar may, by gazette notice, declare an accounting standard to be an applicable accounting standard for a society's accounts, with the changes stated in the notice.

(3) The registrar may, by gazette notice, vary or revoke the notice.

(4) If accounts prepared under subsection (1) would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts, the society's directors must add the information and explanations necessary to give a true and fair view of the matters.

### **143 Directors' statement**

(1) The directors of a society must cause to be attached to the accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made under a resolution of the directors and signed by not less than 2 directors stating whether in the opinion of the directors—

- (a) the profit and loss account is drawn up so as to give a true and fair view of the society's profit or loss for the financial year; and
- (b) the balance sheet is drawn up so as to give a true and fair view of the society's state of affairs as at the end of the financial year; and
- (c) as at the date of the statement, there are reasonable grounds to believe that the society will be able to pay its debts as and when they are payable.

(2) The directors of a society must—

- (a) in forming an opinion on the matters mentioned in subsection (1)(a) and (b) for a statement under the subsection—have regard to circumstances that have arisen and information that has become available, since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared when the statement is made, have affected the determination of an amount or a particular in the accounts; and
- (b) if adjustments have not been made in the accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of the accounts, or of an amount or particular in the accounts—include in the statement information and explanations to prevent the accounts, or the amount or particular, from being misleading as a result of the adjustments not having been made.

**144 Directors' reports**

(1) The directors of a society must, before (but not more than 3 weeks before) the day before which the accounts for its last financial year are required under this division to be prepared, cause to be prepared a report, prepared under a resolution of the directors and signed by at least 2 directors—

- (a) stating the names of the directors in office at the date of the report and stating for each director—
  - (i) the qualifications, experience and special responsibilities (if any) of the director; and
  - (ii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under division 1<sup>22</sup> since the commencement or the date on which particulars were last given under this paragraph; and
- (b) stating that—
  - (i) the society keeps a register under section 131<sup>23</sup> containing information about the directors; and
  - (ii) the register is open for inspection—
    - (A) by a member of the society, without fee; and
    - (B) by anyone else, on payment of the amount (if any) prescribed by the society's rules; and
- (c) stating—
  - (i) the society's principal activities during its last financial year and any significant change in the nature of the activities that happened during that financial year; and
  - (ii) the net amount of the society's profit or loss for that financial year after provision for income tax; and
- (d) containing a review of the society's operations during that financial year and of the results of the operations; and
- (e) giving particulars of any significant change in the society's state of affairs that happened during that financial year; and

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22 Division 1 (Directors and officers)

23 Section 131 (Register of directors etc.)

- (f) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
- (i) the society's operations; or
  - (ii) the results of those operations; or
  - (iii) the society's state of affairs;
- in financial years after that financial year; and
- (g) referring to—
- (i) likely developments in the society's operations; and
  - (ii) the expected results of those operations;
- in financial years after that financial year.

**(2)** If, in the opinion of the directors of a society, it would prejudice the society's interests if particular information required under subsection (1)(g) were to be included in a report—

- (a) the information need not be so included; and
- (b) the report must contain a statement that some or all of the information required under subsection (1)(g) has not been included in the report.

**(3)** The report must state whether or not, during the financial year or since the end of the financial year, a director has received, or has become entitled to receive, a benefit because of a contract made (during that or any other financial year) with the society by—

- (a) the director; or
- (b) a firm of which the director is a member; or
- (c) an entity in which the director has a substantial financial interest.

**(4)** If so, the report must state the general nature of each benefit that a director has received or to which a director has become entitled.

**(5)** Subsections (3) and (4) do not apply to—

- (a) a benefit included in the total amount of emoluments received, or due and receivable, by directors shown under a regulation in force under section 142(1)(a);<sup>24</sup> or

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24 Section 142 (Requirements applying to accounts)

- (b) the fixed salary of a full-time employee of the society; or
- (c) the provision of financial accommodation to a director that—
  - (i) does not contravene section 114;<sup>25</sup> and
  - (ii) is shown in the society's accounts as required by an applicable accounting standard.

(6) Subsection (7) applies if there is attached to or included with a report of the directors (the “**first report**”) laid before a society at its annual general meeting a statement, report or other document about the society's affairs, not being a statement, report or document required by this Act to be laid before the society in general meeting.

(7) For section 226,<sup>26</sup> the statement, report or other document, is taken to be part of the first report.

### **145 Accounts and reports to be laid before annual general meeting**

(1) The directors of a society must cause to be laid before each annual general meeting of the society—

- (a) a copy of the accounts made out under section 139<sup>27</sup> for the society's last financial year; and
- (b) a copy of the auditor's report required by section 140<sup>28</sup> to be attached to or endorsed upon the accounts; and
- (c) a copy of the statement by the directors required by section 143<sup>29</sup> to be attached to the accounts; and
- (d) a copy of the directors' report made out under section 144<sup>30</sup> for that financial year.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to the society's members at the registered office from the day before which

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25 Section 114 (Financial accommodation to directors)

26 Section 226 (False, misleading or incomplete documents)

27 Section 139 (Profit and loss account and balance sheet)

28 Section 140 (Audit)

29 Section 143 (Directors' statement)

30 Section 144 (Directors' reports)



the documents are required under this division to have been prepared until the holding of the annual general meeting.

### **146 Contravention of division**

(1) A director of a society must take reasonable steps to comply with or secure compliance with a provision of this division.

Maximum penalty—

- (a) 1 600 penalty units or 2 years imprisonment, if the offence is committed with intent to deceive or defraud creditors of the society or creditors of any other person or for a fraudulent purpose; or
- (b) 400 penalty units in any other case.

(2) In a proceeding against a person for an offence against subsection (1) arising out of the accounts of a society not complying with an applicable accounting standard, the onus of proving that the accounts would not, if prepared under the standard, have given a true and fair view of the matters required by this division to be dealt with in the accounts lies on that person.

(3) In a proceeding for an offence against subsection (1) arising out of an omission from the accounts of a society, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by this division to be dealt with in the accounts.

(4) Subsection (5) applies if, after the end of the period within which the accounts of a society or a report of the directors of a society is or are required under this division to be prepared, the registrar, by written notice to each of the directors, requires the directors to produce the accounts or report to a person stated in the notice on a stated date and at a stated place, and the directors fail to produce the accounts or report as required by the notice.

(5) In a proceeding for a failure to comply with the requirements of this division, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not prepared within the period.

***Division 5—Audit*****147 Meaning of “officer” for ss 148–149**

(1) In sections 148 and 149<sup>31</sup>—

“**officer**” of a society includes a receiver who is not also a manager.

(2) For sections 148 and 149(1), a person is taken to be an officer of a society if the person has, at any time during the last 12 months, been an officer or promoter of the society.

(3) However, the registrar may direct that subsection (2) does not apply to the person.

(4) For sections 148 and 149, a person is not taken to be an officer of a society only because of—

- (a) being, or having been, the liquidator of the society; or
- (b) having been appointed as auditor of the society; or
- (c) being, or having been, authorised to accept, on behalf of the society, service of process or notices required to be served on the society.

**148 Person as society’s auditor**

A person must not—

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a society;

if—

- (d) the person is not a registered company auditor; or
- (e) the person is indebted in an amount of more than \$5 000 to the society; or
- (f) the person—
  - (i) is an officer of the society; or

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31 Sections 148 (Person as society’s auditor) and 149 (Firm as society’s auditor)

- (ii) is a partner, employer or employee of an officer of the society; or
- (iii) is a partner or employee of an employee of an officer of the society.

Maximum penalty—160 penalty units.

### **149 Firm as society's auditor**

(1) A firm must not—

- (a) consent to be appointed as auditor of a society; or
- (b) act as auditor of a society; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a society;

unless—

- (d) at least 1 member of the firm is a registered company auditor; and
- (e) if the business name under which the firm is carrying on business is not registered under the law of the State relating to business names—there has been filed with the registrar a return in the approved form showing, for each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and
- (f) neither the firm nor the member of the firm responsible for conducting the audit, or signing the report, is indebted in an amount of more than \$5 000 to the society; and
- (g) no member of the firm is—
  - (i) an officer of the society; or
  - (ii) a partner, employer or employee of an officer of the society; or
  - (iii) a partner or employee of an employee of an officer of the society; and
- (h) no officer of the society receives remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(2) The appointment of a firm as auditor of a society is taken to be an appointment of all persons who are members of the firm and are registered

company auditors, whether resident in Australia or not, as at the date of the appointment.

(3) If a firm that has been appointed as auditor of a society is reconstituted because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or new members, or both—

- (a) a person who was auditor because of subsection (2) and who has retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor as from the day of the retirement or withdrawal but, unless the person was the only member of the firm who was a registered company auditor and, after the person's retirement or withdrawal, there is no member of the firm who is a registered company auditor, sections 154 and 155<sup>32</sup> do not apply to the resignation; and
- (b) a person who is a registered company auditor and who is admitted to the firm is taken to have been appointed as an auditor of the society as from the date of admission to the firm; and
- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the society.

(4) Subsection (3) does not affect the operation of subsection (1).

(5) Except as provided by subsection (3), the appointment of the members of a firm as auditors of a society because of the appointment of the firm as auditor of the society is not affected by the dissolution of the firm.

(6) A report or notice purporting to be made or given by a firm appointed as auditor of a society is not taken to be duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(7) Each member of a firm must ensure the firm does not, in contravention of this section, consent to be appointed, or act as, auditor of a society, or prepare a report required by this Act to be prepared by an auditor of a society.

Maximum penalty for subsection (7)—80 penalty units.

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32 Sections 154 (Resignation of auditors) and 155 (Notice of retirement etc. to be given)

**150 Person must not disqualify self etc. from acting as society's auditor**

A person must not—

- (a) if appointed auditor of a society—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the society; or
- (b) if a member of a firm that has been appointed auditor of a society—knowingly disqualify the firm while the appointment continues from acting as auditor of the society.

**151 Appointment of auditors**

(1) In this section, a reference to the appointment of a person or firm as auditor of a society includes a reference to the appointment of persons, firms, or a person or persons and a firm or firms, as auditors of the society.

(2) Within 1 month of incorporation, the directors of a society must appoint, unless the society at a general meeting has appointed, a person or firm as auditor of the society.

(3) Within 14 days of the appointment of the auditor, the society must give the registrar written notice of the appointment.

Maximum penalty—80 penalty units.

(4) A person or firm appointed as auditor under subsection (2) holds office, subject to this division, until the society's first annual general meeting.

(5) A society must—

- (a) at its first annual general meeting appoint a person or firm as auditor of the society; and
- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor, appoint a person or firm to fill the vacancy.

Maximum penalty—160 penalty units.

(6) A person or firm appointed as auditor under subsection (5) holds office—

- (a) until ceasing to be capable of acting as auditor because of section 148 or 149(1);<sup>33</sup> or
- (b) until death or removal or resignation from office under section 153 or 154.<sup>34</sup>

**(7)** Within 1 month after a vacancy happens in the office of auditor of a society (other than a vacancy caused by the removal of an auditor from office), the directors must, if there is no surviving or continuing auditor of the society, appoint a person or firm to fill the vacancy unless the society at a general meeting has appointed a person or firm to fill the vacancy.

**(8)** While a vacancy in the office of auditor continues, the surviving or continuing auditor (if any) may act.

**(9)** A society must not, and the directors of a society must not, appoint a person or firm as auditor of the society unless the person or firm has, before the appointment, consented by written notice given to the society or to the directors to act as auditor and has not withdrawn consent by written notice given to the society or to the directors.

**(10)** A notice given by a firm must be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

**(11)** A purported appointment of a person or firm as auditor of a society in contravention of subsection (9) has no effect.

**(12)** If an auditor of a society is removed from office at a general meeting under section 153—

- (a) the society may at that meeting (without adjournment), by a resolution passed by a majority of its members as, being entitled so to do, vote in person, immediately appoint as auditor a person or firm to whom has been sent a copy of the notice of nomination under section 152; or
- (b) if a resolution mentioned in paragraph (a) is not passed at that meeting, or could not be passed at that meeting only because a copy of the notice of nomination mentioned in the paragraph had not been sent to a person—

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33 Section 148 (Person as society's auditor) or 149 (Firm as society's auditor)

34 Section 153 (Removal of auditors) or 154 (Resignation of auditors)

- (i) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting; and
- (ii) the society may, at the adjourned meeting, by ordinary resolution, appoint as auditor a person or firm notice of whose nomination for appointment as auditor has been received by the society from a member of the society at least 14 clear days before the date of the adjourned meeting.

(13) If after the removal from office of an auditor, the society fails to appoint another auditor under subsection (12), the society must, within 7 days after the failure, notify the registrar of the failure.

Maximum penalty—160 penalty units.

(14) As soon as practicable after receiving a notice under subsection (13), the registrar must, unless there is another auditor of the society whom the registrar believes is able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor a person or firm that has consented to be appointed.

(15) Subject to subsection (14), if a society does not appoint an auditor when required by this division to do so, the registrar may, on the written application of a member of the society, appoint as auditor of the society a person or firm that has consented to be appointed.

(16) A person or firm appointed as auditor of a society under subsection (7), (12), (14) or (15) holds office, subject to this division, until the society's next annual general meeting.

(17) A director of a society must take all reasonable steps to comply with, or to secure compliance with, subsection (2) or (7).

Maximum penalty—160 penalty units.

(18) A society that contravenes subsection (9) commits an offence.

Maximum penalty for subsection (18)—80 penalty units.

## **152 Nomination of auditors**

(1) A society must not appoint a person or firm as auditor of the society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless written notice of nomination of the person or firm as auditor was given to the society by a member—

- (a) before the meeting was called; or

(b) not less than 3 weeks before the meeting.

(2) A purported appointment of a person or firm as auditor of the society in contravention of subsection (1) has no effect.

(3) If a society contravenes subsection (1), the society and any officer of the society who is in default each commit an offence.

Maximum penalty—10 penalty units.

(4) If notice of nomination of a person or firm for appointment as auditor is received by the society, whether for appointment at a meeting or an adjourned meeting mentioned in section 151(12) or at an annual general meeting, the society must not less than 7 days before the meeting or when notice of the meeting is given—

(a) send a copy of the notice of nomination to each person or firm nominated and to each auditor of the society; and

(b) cause a copy of the notice of nomination to be displayed in a conspicuous place at the society's registered office until the day of the meeting.

Maximum penalty—10 penalty units.

### **153 Removal of auditors**

(1) An auditor of a society may only be removed from office by—

(a) special resolution at a general meeting of the society; or

(b) the registrar under section 48(4)(e).<sup>35</sup>

(2) If notice of a special resolution to remove an auditor is given, the society must immediately send a copy of the notice to the auditor and to the registrar.

Maximum penalty—80 penalty units.

(3) Within 7 days after receiving a copy of the notice, the auditor may make written representations of not more than a reasonable length to the society and ask that a copy of the representations be displayed by the society in a conspicuous place at the society's registered office until the day of the meeting at which the resolution is to be considered.

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35 Section 48 (Intervention by the registrar)



(4) Unless the registrar, on the application of the society orders otherwise, the society must display a copy of the representations as required by the auditor, and the auditor may, without prejudice to the right to be heard orally or, if a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

Maximum penalty for subsection (4)—80 penalty units.

### **154 Resignation of auditors**

(1) An auditor of a society may, by written notice given to the society, resign if the auditor—

- (a) by written notice given to the registrar, has applied for consent to the resignation and stated the reasons for the application; and
- (b) at or about the same time as the auditor gave the registrar the notice, has given the society written notice of the application; and
- (c) has received the registrar's consent to the resignation.

(2) The registrar must, as soon as practicable after receiving a notice from an auditor, notify the auditor and the society whether the registrar consents to the resignation.

(3) A statement made by an auditor in an application to the registrar for consent to the resignation or in answer to an inquiry by the registrar relating to the reasons for the application—

- (a) is not admissible in evidence in a civil or criminal proceeding against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor.

(4) A certificate by the registrar that a statement was made in the application or in the answer to an inquiry by the registrar is evidence that the statement was made.

(5) The resignation of an auditor takes effect on whichever of the following dates happens last—

- (a) the date (if any) stated for the purpose in the notice of resignation;

- (b) the date on which the registrar gives the registrar's consent to the resignation;
- (c) the date (if any) fixed by the registrar for the purpose.

### **155 Notice of retirement etc. to be given**

(1) If, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of section 149(1)(d)<sup>36</sup> of acting as auditor of a society, the member retiring or withdrawing must give the society reasonable notice of retirement or withdrawal.

Maximum penalty—80 penalty units.

(2) On receipt of the notice by the society, the office of auditor becomes vacant.

(3) Within 14 days after the removal of an auditor or the receipt of a notice of resignation, retirement or withdrawal from an auditor, the society must give the registrar a notice of the removal, resignation, retirement or withdrawal in the approved form.

Maximum penalty for subsection (3)—10 penalty units.

### **156 Effect of winding-up on office of auditor**

An auditor of a society ceases to hold office if—

- (a) a special resolution is passed for the voluntary winding-up of the society; or
- (b) an order is made by the court for the winding-up of the society; or
- (c) the registrar issues a certificate under section 183<sup>37</sup> for the society.

### **157 Fees and expenses of auditors**

A society must pay the reasonable fees and expenses of an auditor, including the auditor's expenses in giving a report required to be given by this Act.

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36 Section 149 (Firm as society's auditor)

37 Section 183 (Winding-up on certificate of the registrar)

**158 Auditor's report**

(1) An auditor of a society must report to the members on the accounts required to be laid before the society at the annual general meeting and on the society's accounting records and other records relating to the accounts.

(2) The auditor must state in the report—

- (a) whether the accounts are in the auditor's opinion properly prepared—
  - (i) so as to give a true and fair view of the matters required by section 139<sup>38</sup> to be dealt with in the accounts; and
  - (ii) under this Act; and
  - (iii) under applicable accounting standards; and
- (b) if, in the auditor's opinion, the accounts have not been prepared under a particular applicable accounting standard—
  - (i) whether, in the auditor's opinion, the accounts would, if prepared under that standard, have given a true and fair view of the matters required by section 139 to be dealt with in the accounts; and
  - (ii) if, in the auditor's opinion, the accounts would not, if so prepared, have given a true and fair view of those matters—the reasons for the opinion; and
  - (iii) if the directors have caused a statement to be attached to the accounts giving particulars of the quantified financial effect on the accounts of the failure to so prepare the accounts—the auditor's opinion of the particulars; and
  - (iv) if neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts of the failure to so prepare the accounts; and
- (c) any defect or irregularity in the accounts and any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained; and
- (d) if the auditor is not satisfied as to a matter mentioned in paragraph (a) or (b)—the reasons for not being satisfied.

(3) The auditor of a society has a duty to form an opinion on each of the following matters—

- (a) whether the auditor has obtained all the information and explanations the auditor required;
- (b) whether proper accounting records and other records, including registers, have been kept by the society as required by this Act.

(4) The auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming for any matter mentioned in subsection (3).

(5) The auditor must give the auditor's report to the society's directors in sufficient time to enable the society to comply with the requirements of section 140<sup>39</sup> for the report.

(6) The auditor's report—

- (a) must be attached to or endorsed on the accounts; and
- (b) if a member so requires—must be read before the society at the annual general meeting; and
- (c) must be open to inspection by a member at any reasonable time.

(7) The auditor must, when giving the auditor's report, also give the society's directors a report as to—

- (a) the adequacy, in the auditor's opinion, of the systems adopted by the society to monitor and manage risks associated with its financial activities; and
- (b) any other matter of a kind prescribed in a standard made for this subsection.

(8) When an auditor gives the society's directors a report under subsection (7), the auditor must also give the registrar a copy of the report.

(9) An auditor of a society must not contravene this section.

Maximum penalty for subsection (9)—80 penalty units.

## **159 Powers and duties of auditor**

(1) An auditor of a society has a right of access at all reasonable times to the accounting records and other records and registers of the society.

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39 Section 140 (Audit)

(2) The auditor is entitled to require from an officer of the society any information and explanation that the auditor requires for the audit.

(3) An auditor of a society, or an agent authorised by the auditor in writing for the purpose, is entitled to—

- (a) attend a general meeting of the society; and
- (b) receive all notices of, and other communications about, a general meeting that a member is entitled to receive; and
- (c) be heard at a general meeting that he or she attends on any part of the business of the meeting concerning the auditor in the capacity of auditor; and
- (d) be heard at a meeting mentioned in paragraph (c) even though—
  - (i) the auditor retires at the meeting; or
  - (ii) a resolution to remove the auditor from office is passed at the meeting.

(4) If an auditor becomes aware that the society or the directors has or have not complied with section 122,<sup>40</sup> or the provisions of section 145<sup>41</sup> about the laying of accounts before the society's annual general meeting, the auditor must immediately inform the registrar by written notice and, if accounts have been prepared and audited, send the registrar a copy of the accounts and of the auditor's report on the accounts.

(5) Except if subsection (4) applies, if an auditor, while performing duties as auditor of a society, is satisfied that—

- (a) there has been a contravention of this Act; and
- (b) the circumstances are such that, in the auditor's opinion, the matter has not been, or will not be, adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the society's directors;

the auditor must immediately report the matter to the registrar by written notice.

(6) If an auditor of a society—

- (a) is not satisfied that the accounts comply with a particular applicable accounting standard; or

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40 Section 122 (Annual general meeting)

41 Section 145 (Accounts and reports to be laid before annual general meeting)

- (b) considers that the accounts do not comply with a particular applicable accounting standard;

the auditor must report the matter to the registrar in writing within 7 days after giving to the society's directors the auditor's report under section 158.<sup>42</sup>

(7) If an auditor sends the registrar a report on the accounts under subsection (6), the registrar may, by written notice to the society, require it to give the registrar a copy of the accounts within 7 days after service of the notice.

(8) In addition to any other report that an auditor, or former auditor, of a society is required to give to the registrar, an auditor, or former auditor, of a society must give the registrar any report about the society's affairs that the registrar requires and the auditor, or former auditor, is able to give.

(9) An auditor, or former auditor, of a society must not contravene this section.

Maximum penalty for subsection (9)—80 penalty units.

## **160 Final audit on merger or transfer of engagements**

(1) This section applies to a society that is dissolved as part of a merger, or transfer of engagements, under part 9.<sup>43</sup>

(2) The society's auditor must prepare a report containing the statements and information prescribed under a regulation about the society's accounts and accounting records for the financial year up to the date of the society's dissolution and for the previous financial year if an auditor's report has not been prepared for the society's accounts for that year.

(3) The provisions of section 159 about the rights of access of an auditor to a society's records apply for the preparation of the report as if it were a report required under section 158.

(4) The society's auditor must give the report to the directors of the merged society or transferee society within 2 months after the date of the merger or transfer and the directors of the merged society or transferee society must in turn, within 3 months after the date of the merger or

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42 Section 158 (Auditor's report)

43 Part 9 (Mergers and transfers of engagements)

transfer, give the registrar the auditor's report together with the accounts of the society dissolved as part of the merger or transfer.

(5) An auditor of a society must not contravene this section.

Maximum penalty—80 penalty units.

(6) A director of a society must take all reasonable steps to ensure that a report required by this section to be given to the directors of a society or to the registrar is so given.

Maximum penalty for subsection (6)—80 penalty units.

### **161 Obstruction of auditor**

An officer of a society must not—

- (a) fail without lawful excuse—
  - (i) to allow an auditor of the society access, under this part, to the accounting records and other records and registers of the society that are in the possession or control of the officer; or
  - (ii) to give any information or explanation as and when required under this part; or
- (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

Maximum penalty—400 penalty units.

### **162 Qualified privilege**

(1) An auditor of a society has qualified privilege in relation to—

- (a) an oral or written statement made by the auditor while exercising functions as auditor of the society; and
- (b) the giving to the registrar of a notice or report, or a copy of any accounts.

(2) A person has qualified privilege in relation to the publishing of—

- (a) a document that is prepared by an auditor of a society while exercising functions as auditor of the society and is required under this Act to be given to the registrar, whether or not the requirement has been complied with; and

- (b) an oral or written statement made by the auditor while exercising functions as auditor of the society.

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

(4) In this section—

“**malice**” includes ill-will to the person concerned or any other improper motive.

“**qualified privilege**” means that a person—

- (a) has qualified privilege in proceedings for defamation; or  
(b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person.

### *Division 6—Returns and relief*

#### **163 Returns**

(1) A society must file returns with the registrar—

- (a) under a relevant standard; or  
(b) under a regulation.

Maximum penalty—80 penalty units.

(2) The registrar may, by written notice, require a society to file the further returns that the registrar requires.

(3) A further return must contain the information required by the notice and must be filed as often as is required by the notice.

(4) The registrar may, by written notice, require a society to file with a return or further return a report by a registered company auditor, or other person of a stated class, on stated matters to which the return relates.

(5) A society must not fail to comply with a requirement of a notice given to it under this section, unless the society has a reasonable excuse.

Maximum penalty for subsection (5)—400 penalty units.



**164 Relief from requirements as to accounts and audit**

(1) The directors of a society may apply to the registrar in writing for an order relieving the directors, the society or the auditor of the society from compliance with any stated requirements of division 4 or 5 (other than section 137).<sup>44</sup>

(2) An application under subsection (1) must be accompanied by a written statement made under a resolution of the society's directors, signed by not less than 2 directors and stating the reasons for seeking the order.

(3) The registrar may require the directors making the application to give information about the society's operations that the registrar thinks necessary to determine the application.

(4) The registrar may make an order unconditionally or on terms the registrar considers appropriate.

(5) Notice of an order under subsection (4) must be given to the society.

(6) The registrar may, if the registrar considers it appropriate, make an order for a stated class of societies relieving the directors of a society included in the class, a society included in the class or the auditor of a society included in the class, from compliance with any stated requirements of division 4 or 5 (other than section 137).

(7) The registrar may make an order under subsection (6) unconditionally or on terms the registrar considers appropriate.

(8) Notice of an order under subsection (6) must be published in the gazette.

(9) The registrar may make an order about a society or a class of societies only if the registrar considers, for each requirement of this Act stated in the order, that compliance with the requirement—

- (a) would make accounts, or a report required about the accounts, misleading; or
- (b) would be inappropriate to the circumstances of the society, or of the societies included in the class; or
- (c) would impose unreasonable burdens on—

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44 Division 4 (Accounts) or 5 (Audit)  
Section 137 (Accounting records to be kept)

- (i) the society, an officer of the society or the auditor of the society; or
- (ii) the societies, or officers or auditors of the societies, included in the class.

(10) The order may be limited in its effect to a period stated in the order.

(11) The registrar may, on application by the directors of a society or on the registrar's own initiative, revoke or suspend the order.

(12) A revocation or suspension does not take effect—

- (a) for an order under subsection (4)—until written notice of the revocation or suspension is given to the society; or
- (b) for an order under subsection (6)—until notice of the revocation or suspension is published in the gazette.

## **PART 9—MERGERS AND TRANSFERS OF ENGAGEMENTS**

### **166 Definitions for part**

In this part—

**“certificate of confirmation”** means a certificate given by the registrar to confirm a transfer of engagements.

**“transferee society”** means a society to whom another society is to transfer, or has transferred, its engagements.

**“transferor society”** means a society that is to transfer, or has transferred, its engagements.

### **167 Application of part**

This part applies only if—

- (a) all funds raised by the societies proposing to consolidate their assets, liabilities and undertakings by way of merger, or transfer of engagements, and not repaid were provided by the same entity; and

- (b) either—
  - (i) a guarantee is in force for each of the societies; or
  - (ii) a guarantee is not in force for any of the societies.

### **168 Application for registration of merger or transfer of engagements**

(1) If 2 or more societies propose to consolidate all of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements.

(2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the registrar has decided that it may be approved by the society's board.

(3) Each society must send to each of its members a statement approved by the registrar stating—

- (a) the financial position of each of the societies as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and
- (b) the interest that an officer of any of the societies has in the proposed merger, or transfer of engagements; and
- (c) the compensation or other consideration proposed to be paid, or other incentive proposed to be given, to an officer or member of a society in relation to the proposed merger, or transfer or engagements; and
- (d) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements; and
- (e) how the societies' reserves will be dealt with on the merger or transfer of engagements; and
- (f) if there is a management contract for any of the societies—what is to happen to the contract; and
- (g) any other matter specified by the registrar.

(4) The statement must be sent to the members so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than—

- (a) if the resolution is to be decided at a meeting—21 days before the date of the meeting; or

- (b) if the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(5) The registrar may exempt a society from having to comply with all or part of subsection (3).

(6) The registrar may grant an exemption, or approve a statement, on terms the registrar considers appropriate.

(7) An application for the registration of a merger or transfer of engagements must be made in the way and form required by the registrar.

(8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the registrar.

(9) An application for a proposed transfer of engagements must be accompanied by 2 copies of the proposed rules of the transferee society and any other particulars required by the registrar.

### **169 The registrar may register merged society**

(1) This section applies if societies have applied to register a merger and the registrar is satisfied that—

- (a) the societies involved have complied with section 168; and
- (b) the proposed rules of the merged society are adequate; and
- (c) there are reasonable grounds for believing that the merged society will be able to comply with all relevant standards; and
- (d) the certificates of incorporation of the societies involved in the merger have been—
  - (i) surrendered to the registrar; or
  - (ii) lost or destroyed; and
- (e) there is no good reason why the merged society and its rules should not be registered.

(2) The registrar must—

- (a) register the merged society; and
- (b) register its rules; and
- (c) cancel the registration of the societies involved in the merger.

(3) On registering the merged society, the registrar must issue to the society a certificate of incorporation.

(4) A merger takes effect on the issue of the certificate of incorporation.

### **170 Certificate of confirmation (voluntary transfer)**

(1) This section applies to a transfer of engagements following an application under section 168.<sup>45</sup>

(2) The registrar must issue a certificate of confirmation if the registrar is satisfied that—

- (a) the societies have complied with section 168; and
- (b) the rules, or proposed rules, of the transferee society are adequate; and
- (c) the certificate of incorporation of the transferor society has been—
  - (i) surrendered to the registrar; or
  - (ii) lost or destroyed; and
- (d) there is no good reason why the transfer should not take effect.

### **171 The registrar may direct a transfer of engagements**

(1) The registrar may, by written notice given to a society, direct it to transfer its engagements to another society if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The registrar must give a copy of the direction to the transferee society.

(3) The direction must state that the transferor society must surrender its certificate of incorporation to the registrar or satisfy the registrar that its certificate has been lost or destroyed.

(4) The registrar may direct a society to transfer its engagements only if—

- (a) the registrar considers that—

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<sup>45</sup> Section 168 (Application for registration of merger or transfer of engagements)

- (i) the society has contravened this Act or the society's rules and, after being given written notice of the contravention by the registrar, has allowed the contravention to continue or has again contravened this Act or the rules; or
  - (ii) the society is trading unprofitably or has an accumulated deficit in its profit and loss appropriation account; or
  - (iii) the society's affairs are being conducted in an improper or financially unsound way; or
- (b) after making inquiries about 1 or both of the societies that the registrar considers appropriate, the registrar is satisfied that it is in the interest of members or creditors of the society that is to be directed to transfer its engagements; or
- (c) the registrar has certified, for the society, that any of the events mentioned in section 183(1)(a), (b) or (f)<sup>46</sup> has happened.

### **172 Society to comply with direction**

(1) A society must take all reasonable steps to comply with a direction to transfer its engagements.

Maximum penalty—1 600 penalty units.

(2) An officer of a society must not—

- (a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements; or
- (b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

### **173 Certificate of confirmation (transfer by direction)**

(1) This section applies to a transfer of engagements by a direction under section 171.<sup>47</sup>

(2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation.

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<sup>46</sup> Section 183 (Winding-up on certificate of the registrar)

<sup>47</sup> Section 171 (The registrar may direct a transfer of engagements)

(3) If the transfer does not take effect immediately—

- (a) the direction must state the day when the registrar proposes to issue the certificate of confirmation; and
- (b) when the registrar is satisfied that the societies have complied with the direction, the registrar must issue a certificate of confirmation.

### **174 Who receives the certificate of confirmation**

The registrar must give a certificate of confirmation to the transferee society.

### **175 When transfer of engagements takes effect**

A transfer of engagements takes effect on the day of issue of the certificate of confirmation of the transfer, or a later day specified in the certificate.

### **176 Cancellation of registration**

The registrar must cancel the transferor society's registration.

### **177 Effect of merger on societies**

- (1) This section applies on a merger of societies taking effect.
- (2) The merged society is the successor of the merging societies.
- (3) Without limiting subsection (2)—
  - (a) the members of each merging society become members of the merged society; and
  - (b) all assets and liabilities of each merging society become assets and liabilities of the merged society without any conveyance, transfer or assignment; and
  - (c) in all documents (including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society; and

- (d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society; and
- (e) the duties, obligations, immunities, rights and privileges applying to a merging society apply to the merged society.

### **178 Effect of transfer of engagements on societies**

- (1) This section applies on a transfer of engagements taking effect.
- (2) The transferee society is the successor of the transferor society.
- (3) Without limiting subsection (2)—
  - (a) the members of the transferor society become members of the transferee society; and
  - (b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and
  - (c) in all documents (including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and
  - (d) a legal proceeding by or against the transferor society that is not finished when the transfer of engagements takes effect may be continued and finished by or against the transferee society; and
  - (e) the duties, obligations, immunities, rights and privileges applying to the transferor society apply to the transferee society.

### **179 Effect of merger or transfer of engagements on guarantees**

- (1) This section applies on a merger or transfer of engagements taking effect, if a guarantee is in force for each of the societies involved in the merger or transfer of engagements.
- (2) On a merger—
  - (a) each existing guarantee must be surrendered to the Treasurer; and
  - (b) a new guarantee must be executed for the merged society for the amount outstanding under all the guarantees.
- (3) On a transfer of engagements—



- (a) each existing guarantee, other than the most recent guarantee if it is for the transferee society, must be surrendered to the Treasurer who must vary the most recent guarantee to cover the total amount outstanding under all the guarantees; or
- (b) each existing guarantee must be surrendered to the Treasurer who must execute a new guarantee for the transferee society for the total amount outstanding under all the guarantees.

## **PART 10—EXTERNAL ADMINISTRATION**

### *Division 3—Winding-up*

#### **182 Winding up**

Part 6, division 5 includes provision for applying certain provisions of the Corporations Act about winding up to societies.

#### **183 Winding-up on certificate of the registrar**

**(1A)** A society may be wound up, under this section, on a certificate of the registrar.

**(1)** For a winding-up on a certificate of the registrar, the society may be wound-up if the registrar certifies that—

- (a) the society has not started business within a year of registration or has suspended or ceased to carry on business for more than 6 months; or
- (b) an event (to be stated in the certificate) has happened on the happening of which a regulation or the society's rules provide that the society is to be wound-up; or
- (c) the registration of the society has been obtained by mistake or fraud; or
- (d) the society exists for an illegal purpose; or
- (e) the society has, after notice by the registrar of a contravention of this Act or the society's rules, failed, within the time stated in the

notice, to remedy the contravention or has committed a further contravention of a kind stated in the notice; or

- (f) there are, and have been for a period of 1 month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum under the society's rules; or
- (g) because of an investigation under this Act into the society's affairs, it is in the interests of the public, or members or creditors of the society, that the society be wound-up.

(2) The registrar may certify under subsection (1) only if the event has been proved to the registrar's satisfaction.

(3) If the registrar certifies under subsection (1), the registrar may appoint a person to be the society's liquidator.

(4) The liquidator is entitled to receive an amount of remuneration the registrar considers appropriate, having regard to the rate of payment that normally would apply for such an appointment.

(5) A vacancy in the office of a liquidator appointed under subsection (3) must be filled by a person appointed by the registrar for the purpose.

(6) A winding-up on a certificate of the registrar is taken to start at the date of the certificate of the registrar.

(7) The liquidator must, within 14 days after the appointment, give notice of the appointment by gazette notice.

### **186 Vacancy in office of liquidator on voluntary winding-up**

(1) This section applies if—

- (a) a society is being wound-up voluntarily; and
- (b) a vacancy happens in the office of liquidator that, in the registrar's opinion, is unlikely to be filled in the way provided by the applied voluntary winding up provisions.

(2) The registrar may appoint as liquidator a person qualified for the appointment under the applied voluntary winding up provisions.

(3) In this section—

**“applied voluntary winding up provisions”** means the provisions of the Corporations Act, part 5.5, as applied under part 6, division 5.

**187 Remuneration of liquidator on voluntary winding-up**

Despite anything in the Corporations Act or a law applied under part 6, division 5, the remuneration paid to the liquidator of a society wound-up voluntarily must not be more than the amount fixed by the registrar.

**188 Cancellation of registration**

As soon as is practicable after a society is dissolved or taken to be dissolved, the registrar must register the dissolution and cancel the registration of the society.

**PART 11—SPECIAL INVESTIGATIONS****189 Definition of “officer” for part**

In this part—

“**officer**” of a society includes—

- (a) a person who acts, or who at any time acted, as banker, solicitor, auditor or in another capacity for the society; and
- (b) a person who—
  - (i) has, or has at any time had, in his or her possession property of the society; or
  - (ii) is indebted to the society outside the normal trading terms of the person’s membership; or
  - (iii) is capable of giving information about the society’s affairs; and
- (c) if an investigator has reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (b)—that person.

**190 Appointment of investigators**

(1) The registrar may appoint an investigator to investigate a society’s affairs if the registrar considers that it is desirable to do so—

- (a) for the protection of the public, or of the society's members or creditors; or
- (b) in the public interest.

(2) The registrar may appoint a person as investigator only if the person has, in the registrar's opinion, the appropriate expertise for the position (whether because of training or otherwise).

(3) The registrar must, in the instrument appointing an investigator, state full particulars of the appointment including—

- (a) the matters into which the investigations are to be made, being all the affairs or particular affairs of the society; and
- (b) the terms (if any) of the investigator's appointment.

(4) The registrar may—

- (a) in the instrument appointing an investigator, state the period during which the investigation is to be made; and
- (b) at any time, by written notice given to an investigator, vary—
  - (i) particulars stated in the instrument of appointment, being particulars mentioned in subsection (3)(a) or (b); or
  - (ii) the period during which the investigation is to be made.

(5) The registrar may, by written notice given to an investigator, terminate the appointment at any time.

### **191 Two or more investigators appointed**

(1) This section applies if 2 or more investigators are appointed to investigate a society's affairs (whether by the same instrument or by different instruments).

(2) Each of the investigators may exercise the powers or perform the functions independently of the other investigator or investigators.

### **192 Powers of investigators**

(1) An investigator may, by written notice given to an officer of a society the affairs of which are being investigated, require the officer—

- (a) to produce to the investigator all documents of the society and other documents about the society's affairs in the possession or under the control of the officer; and
- (b) to give the investigator all reasonable help with the investigation; and
- (c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation.

(3) If documents are produced to an investigator, the investigator may take possession of the documents for the period the investigator considers necessary for the investigation.

(4) During the period, the investigator must permit a person who would be entitled to inspect any 1 or more of those documents, if they were not in the investigator's possession, to inspect at all reasonable times the documents that person would be entitled to inspect.

### **193 Examination of officers**

(1) If a society's affairs are being investigated, an officer of the society must not—

- (a) fail to comply with a requirement of an investigator under section 192 to the extent to which the officer is able to comply with it, unless the officer has a reasonable excuse; or
- (b) in purported compliance with a requirement, knowingly give information that is false or misleading in a material particular; or
- (c) when appearing before an investigator for examination under a requirement—
  - (i) state anything the officer knows is false or misleading in a material particular; or
  - (ii) fail to be sworn or make an affirmation.

Maximum penalty—800 penalty units or 4 years imprisonment.

(2) A legal practitioner acting for the officer—

- (a) may attend the examination; and
- (b) may examine the officer about matters in relation to which the investigator has questioned the officer; and

- (c) to the extent the investigator permits—may address the investigator about matters in relation to which the investigator has questioned the officer.

(3) A person who complies with the requirement of an investigator under this section does not incur liability to another person merely because of the compliance.

(4) A person required to attend for examination under this part is entitled to the allowances and expenses prescribed under a regulation.

(5) It is a reasonable excuse for an officer to fail to comply with a requirement of an investigator under section 192 if complying with the requirement might tend to incriminate the officer.

### **194 Privileged communications**

(1) An officer who is a legal practitioner may refuse to give information or produce a document to an investigator if—

- (a) the information or document is a privileged communication between the legal practitioner as such and another person; and
- (b) the other person does not agree to its being given or its production; and
- (c) subsection (2) does not apply.

(2) If the society to which the information or document relates is being wound-up, the legal practitioner must give the information or produce the document if the liquidator agrees to its being given or to its production.

Maximum penalty—400 penalty units or 2 years imprisonment.

(3) A legal practitioner commits an offence if the practitioner—

- (a) refuses to give information or produce a document to an investigator on the ground that it is a privileged communication between the legal practitioner and another person who has not agreed to its being given or to its production; and
- (b) knows the name of the other person and the residential or other address at which the person might be found; and
- (c) fails to comply with a request by the investigator to give the investigator the name and address in writing.

Maximum penalty for subsection (3)—400 penalty units or 2 years imprisonment.

**195 Failure of officer to comply with requirement of investigator**

(1) This section applies if an officer of a society fails to comply with a requirement of an investigator appointed to investigate the society's affairs.

(2) The investigator may, if the investigator considers that the officer did not have a lawful excuse for the failure, certify the failure by signed writing to the Supreme Court.

(3) If an investigator gives a certificate under subsection (2), the Supreme Court may inquire into the case and—

- (a) order the officer to comply with the requirements of the investigator within a period fixed by the court; or
- (b) if the court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator—punish the officer in the same way as if the officer had been guilty of contempt of the court and may also make an order under paragraph (a).

**196 Recording of examination**

(1) An investigator may cause to be made a record of the questions asked and the answers given at an examination under this part.

(2) A record of the examination of a person under this part may be used in evidence in a legal proceeding against the person.

(3) A copy of the record of the examination of a person must be given without fee to the person on the written request of the person.

(4) This section does not affect or limit the admissibility of other written or oral evidence.

(5) The registrar may give a copy of the record of the examination to a legal practitioner who satisfies the registrar that the practitioner is acting for a person who is conducting, or is in good faith contemplating, legal proceedings in relation to affairs being investigated by an investigator.

(6) A legal practitioner to whom a copy of the record is given must—

- (a) use the record only for the institution or preparation of, and in the course of, legal proceedings; and
- (b) not publish or communicate the record or a part of it for any other purpose.

Maximum penalty—400 penalty units or 2 years imprisonment.

(7) If a report is made under section 198,<sup>48</sup> a record made under this section about the report must be given with the report.

### **197 Delegation of powers by investigator**

(1) An investigator may delegate the investigator's powers under this part except—

- (a) the power to administer oaths or affirmations; and
- (b) the power to examine on oath or affirmation.

(2) An investigator may delegate the powers only to a person who has, in the investigator's opinion, the appropriate expertise for exercising the powers (whether because of training or otherwise).

(3) A delegate must produce the instrument of delegation for inspection on request by an officer of a society the affairs of which are being investigated.

### **198 Report of investigator**

(1) An investigator may, and if so directed by the registrar must, make interim reports to the registrar.

(2) On the completion or termination of the investigation, the investigator must report to the registrar the investigator's opinion about the affairs of a society the investigator has investigated, together with the facts on which the opinion is based.

(3) An investigator may, when making a report, give to the registrar any documents of which the investigator has taken possession under section 192(3).<sup>49</sup>

(4) The registrar—

- (a) may keep the documents for the period the registrar considers necessary to enable a decision to be made as to whether or not a legal proceeding ought to be instituted because of the investigation; and

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48 Section 198 (Report of investigator)

49 Section 192 (Powers of investigators)



- (b) may keep the documents for a further period the registrar considers necessary to enable the proceeding to be instituted and prosecuted; and
- (c) may permit other persons to inspect the documents while they are in the registrar's possession; and
- (d) may permit the use of the documents for the purposes of a legal proceeding instituted because of the investigation; and
- (e) must permit a person who would be entitled to inspect any of the documents if they were not in the registrar's possession to inspect at all reasonable times the documents that the person would be entitled to inspect.

(5) A copy of a final report must, and a copy of the whole or any part of an interim report may, if the registrar considers it appropriate, be sent by the registrar to the registered office of the society to which it relates.

(6) However, the registrar is not bound to give a society or any other person a copy of a report, or any part of a report, by an investigator if the registrar considers that there is good reason for not divulging the contents of the report or part.

(7) The registrar may, if the registrar considers that it is in the public interest to do so, cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this part to be sent to the registrar with the report to which the record relates, a copy of the record may be given to the persons and on terms the registrar considers appropriate.

(9) Subsection (8) applies subject to section 196.<sup>50</sup>

### **199 Proceedings following investigation**

(1) If, from a report under section 198 or from the record of an examination under this part, the registrar considers that an offence may have been committed by a person and that a prosecution ought to be instituted, the registrar may cause a prosecution to be instituted and prosecuted.

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<sup>50</sup> Section 196 (Recording of examination)

(2) The registrar may, by written notice given before or after the institution of a prosecution under subsection (1), require an officer of the society the affairs of which were investigated (not being an officer who is or, in the registrar's opinion, is likely to be, a defendant in the proceeding) to give all help for the prosecution or proposed prosecution that the officer is reasonably able to give.

(3) If the officer fails to comply with the requirement stated in the notice, the Supreme Court may, on the registrar's application, direct the officer to comply with the requirement.

(4) If, from a report under section 198 or from the record of an examination under this part, the registrar considers that proceedings ought in the public interest to be brought by a society the affairs of which were investigated by the investigator, for the recovery of damages for fraud, misfeasance or other misconduct in connection with the society's affairs, or for the recovery of the society's property, the registrar may cause proceedings to be instituted accordingly in the society's name.

## **200 Admission of investigator's report in evidence**

(1) A document certified by the registrar as a copy of an investigator's report is admissible in legal proceedings as evidence of—

- (a) the investigator's report of the investigator's opinion for part 10, division 3;<sup>51</sup> and
- (b) the facts or matters found by the investigator to exist.

(2) The court before which legal proceedings are brought against a society or other person for matters dealt with in an investigator's report under section 198 may order that a copy of the report be given to the society or person.

(3) This section does not diminish the protection given to witnesses by law.

## **201 Expenses of investigation**

(1) The expenses of and incidental to an investigation into a society's affairs (including the costs incurred and payable by the registrar in a

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51 Part 10 (External administration), division 3 (Winding-up)

proceeding brought by the registrar in a society's name) must be paid by the registrar.

(2) However, if the registrar considers that the whole or a part of the expenses of and incidental to an investigation (including the costs incurred and payable by the registrar in a proceeding brought by the registrar in a society's name) should be paid by the society, the registrar may by order—

- (a) direct that the whole, or part of, the expenses be paid by the society; or
- (b) if the registrar has already paid the expenses under subsection (1)—direct the society to reimburse the registrar; or
- (c) in either case—direct the society to reimburse the registrar for the remuneration of an employee of the registrar connected with the investigation.

(3) The order may state—

- (a) the amount of the expenses to be paid or reimbursed; and
- (b) how and when the payment or reimbursement of the expenses is to be made.

(4) The society named in the order, to the extent stated in the order, is liable to pay the expenses or reimburse the registrar for the expenses.

(5) An amount for which the society is liable under the order may be recovered as a debt due to the registrar in a court having jurisdiction for the recovery of debts up to the amount involved.

(6) An investigator may include in the report a recommendation whether—

- (a) an order under subsection (2) should be made; or
- (b) an application under subsection (7) for a similar order should be made; or
- (c) both an order and an application should be made.

(7) An application may be made to a court by or on behalf of the registrar for the court to make the same order as the registrar may make under subsection (2).

(8) The court may make an order with respect to the application or its subject matter as it considers appropriate.

(9) Subsections (3), (4) and (5) apply to an order by the court as if it were an order made by the registrar.

(10) An application under subsection (7) may be made—

- (a) during proceedings in the court instituted in the society's name under section 199(4);<sup>52</sup> or
- (b) on, or within 14 days after, a conviction by the court in proceedings certified by the registrar for the purposes of the application to have been instituted as a result of an investigation under this part of affairs of a stated society.

## **202 Concealing etc. document**

(1) A person must not—

- (a) conceal, destroy, mutilate or alter a document of or about a society the affairs of which are being investigated under this part; or
- (b) send, cause to be sent or conspire with another person to send, out of the State such a document or property belonging to or under the control of the society.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

(2) In a proceeding for an offence against subsection (1), it is a defence if the person charged proves that he or she did not act with intent to defeat the purposes of this part or to delay or obstruct the carrying out of an investigation under this part.

## **PART 12—REVIEW OF DECISIONS AND APPEALS**

### *Division 1—Review of decisions*

## **203 Affected person may apply for review**

(1) A person whose interests are affected by a decision of the registrar under this Act (the “**original decision**”) may apply to the registrar for a review of the decision.

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52 Section 199 (Proceedings following investigation)

(2) The person has a right to receive a statement of the reasons for the original decision.

## **204 Applying for review**

(1) The application for review of the original decision must be made to the registrar in the approved form within 28 days after the day on which the person receives notice of the original decision.

(2) However, if—

- (a) the notice did not state reasons for the decision; and
- (b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (1);

the person may make the application within 28 days after the day on which the person receives the statement of reasons.

(3) The registrar may at any time extend the period for making the application.

(4) The registrar must also give the applicant an opportunity to appear before the registrar and make a submission about the original decision.

## **205 Decision on review**

(1) Within 14 days after receiving the application for review of an original decision, the registrar must—

- (a) review the original decision; and
- (b) consider the applicant's submission; and
- (c) make a decision (the “**review decision**”) to—
  - (i) confirm the original decision; or
  - (ii) amend the original decision; or
  - (iii) set aside the original decision and substitute another decision.

(2) The registrar must immediately give the applicant written notice of the review decision.

(3) The notice must state—

- (a) the reasons for the review decision; and

- (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the day on which the applicant receives notice of the review decision.

### ***Division 2—Appeals against review decisions***

#### **206 Who may appeal?**

A person whose interests are affected by the review decision may appeal against the decision to a Magistrates Court.

#### **207 How to start appeal**

(1) The appeal is started by filing a written notice of appeal with the clerk of the court of the Magistrates Court nearest—

- (a) if the applicant is an individual—the place where the person resides or carries on business; or
- (b) if the applicant is a society—the society’s registered office.

(2) The notice of appeal must be filed within 28 days after the day on which the person receives notice of the review decision.

(3) The court may at any time extend the period for filing the notice of appeal.

(4) A copy of the notice must be served on the registrar within 7 days of filing the notice.

(5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

#### **208 Appeal is by way of rehearing**

An appeal is by way of rehearing, unaffected by the review decision.

#### **209 Powers of court on appeal**

(1) In deciding the appeal, the Magistrates Court—

- (a) has the same powers as the registrar; and
- (b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

(2) The court may—

(a) confirm the review decision; or

(b) amend the review decision; or

(c) set aside the review decision and substitute another decision; or

(d) set aside the review decision and return the issue to the registrar with the directions the court considers appropriate.

(3) If the court acts under subsection (2)(b) or (c), the decision is taken, for this Act (other than this part), to be the registrar's decision.

## **PART 13—MISCELLANEOUS**

### *Division 1—Evidence*

#### **210 Certificates**

(1) In a proceeding, a document appearing to be a certificate of registration, certificate of incorporation or other certificate issued by the registrar under this Act, or a copy of that type of document appearing to be certified as such by the registrar, is evidence of the matters stated in the certificate or copy.

(2) Judicial notice must be taken of the imprint of the registrar's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

(3) A copy of, or extract from, a document filed with, created or otherwise held by the registrar, and certified to be a true copy or extract under the registrar's seal—

(a) is admissible in a proceeding as the original document; and

(b) has the same validity in evidence as the original document or the extracted part of the original document.

(4) In a proceeding, a certificate of the registrar stating that a requirement of this Act specified in the certificate—

- (a) had, or had not, been complied with at a date or within a period stated in the certificate; or
- (b) had been complied with at a date stated in the certificate but not before that date;

is evidence of the matters stated in the certificate.

## **211 Rules**

A printed copy of a society's rules appearing to be certified by the society's secretary to be a true copy of its registered rules is evidence of the rules.

## **212 Registers**

(1) The registers kept under this Act are evidence of the particulars directed or authorised by or under this Act to be inserted.

(2) A copy of an entry in a register appearing to be certified by the secretary of the society concerned to be a true copy of the entry concerned is evidence of the particulars to which the entry relates.

## **213 Minutes**

(1) An entry in the minutes purporting to be—

- (a) a minute of the business transacted at a meeting of a society or its board; and
- (b) signed by the chairperson of the meeting at which the business was transacted or a subsequent meeting;

is evidence that the business as recorded was transacted at the meeting and that the meeting was duly called and held.

(2) An entry in the minutes of a meeting of a society to the effect that a resolution was carried or was lost is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

## **214 Entries**

A copy of an entry in a book of a society regularly kept in the course of business is, if certified by statutory declaration of the secretary to be a true



copy of the entry, admissible in evidence in any case if, and to the same extent as, the original entry itself is admissible.

### *Division 2—Offences*

#### **215 Defaults by societies**

(1) A society must comply with a lawful requirement under this Act to give information to the registrar or another person.

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

Maximum penalty for subsection (2)—400 penalty units or 2 years imprisonment.

#### **216 Restrictions on powers**

(1) A society must not contravene a restriction imposed on its powers, or about its exercise of its powers, under this Act.

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

Maximum penalty for subsection (2)—800 penalty units or 4 years imprisonment.

#### **217 Interpretation provision for ss 218–220**

(1) In sections 218, 219 and 220—

“**appropriate officer**” means—

- (a) for a society being wound-up—the liquidator; and
- (b) for a society under the management of an administrator—the administrator; and
- (c) for a society the affairs of which are being investigated under part 11<sup>53</sup>—the person nominated as the appropriate officer in the particular case by the registrar; and

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- (d) for a society for which a receiver or manager of all or any of the society's property has been appointed, whether by the Supreme Court or under the powers contained in an instrument—the receiver or manager; and
- (e) for a society that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts—the registrar.

**“relevant day”** means—

- (a) for a society being wound-up—the day on which under this Act the winding-up has started or is taken to have started; and
- (b) for a society under the management of an administrator—the day on which the administrator is appointed; and
- (c) for a society the affairs of which are being investigated under part 11—the day on which the investigator was appointed; and
- (d) for a society for which a receiver or manager has been appointed—the day on which the receiver or manager was appointed; and
- (e) for a society that has, within the meaning of subsection (2), ceased to carry on business—the day on which a letter was first sent to the society or a notice was first published in the gazette for the society; and
- (f) for a society that, within the meaning of subsection (2), is unable to pay its debts—the day on which the execution or other process was returned unsatisfied in whole or in part.

**“society to which this section applies”** means a society—

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under part 11; or
- (d) for which a receiver or manager has been appointed, whether by the court or under the powers contained in an instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or cannot pay its debts.

**(2)** For subsection (1)—

- (a) a society is taken to have ceased to carry on business if the registrar—

- (i) has sent to the society by post a letter stating that the registrar has no reason to believe that the society is carrying on business and has not, within 1 month of sending the letter, received an answer to the effect that the society is carrying on business; or
  - (ii) has published in the gazette a notice of the proposed deregistration of the society; and
- (b) a society is taken to be unable to pay its debts only if execution of other process issued on a judgment, decree or order of a court in favour of a creditor of the society is returned unsatisfied in whole or part.

### **218 Offences by officers**

**(1)** An officer, or former officer, of a society to which this section applies who—

- (a) does not to the best of the person's knowledge and belief fully and truly disclose to the appropriate officer—
  - (i) all the property of the society; and
  - (ii) how and to whom and for what consideration and when the society disposed of any part of its property, other than any part that has been disposed of in the ordinary course of the society's business; or
- (b) does not deliver up to the appropriate officer, or as the appropriate officer directs—
  - (i) all the property of the society in the person's custody or under the person's control and that the person is required by law to deliver up; or
  - (ii) all documents in the person's custody or under the person's control belonging to the society and that the person is required by law to deliver up; or
- (c) within 5 years before the relevant day or at any time on or after that day—
  - (i) has concealed any part of the society's property to the value of \$100 or more, or has concealed a debt due to or from the society; or

- (ii) has fraudulently removed part of the society's property to the value of \$100 or more; or
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of a document affecting, or about, the society's property or affairs; or
  - (iv) has made, or has been privy to the making of, a false entry in a document affecting or about the society's property or affairs; or
  - (v) has fraudulently parted with, altered or made an omission in, or has been privy to fraudulent parting with, altering or making an omission in a document affecting or about the society's property or affairs; or
  - (vi) by a false representation or other fraud, has obtained on credit for or on behalf of the society, property that the society has not subsequently paid for; or
  - (vii) has obtained on credit for or on behalf of the society, under the false pretence that the society is carrying on business, property that the society has not subsequently paid for; or
  - (viii) has pawned, pledged or disposed of any of the society's property that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the society's business; or
- (d) knowingly makes a material omission in a statement about the society's affairs; or
  - (e) knowing or believing that a false debt has been proved by a person, fails for a period of 1 month to inform the appropriate officer of the knowledge or belief; or
  - (f) prevents the production of a document affecting or about the society's property or affairs; or
  - (g) within 5 years before the relevant day, or at any time on or after that day, has attempted to account for any part of the society's property by making entries in the society's documents showing fictitious transactions, losses or expenses; or
  - (h) within 5 years before the relevant day, or at any time on or after that day, has been guilty of a false representation or other fraud

for obtaining the consent of the society's creditors or any of them to an agreement about the society's affairs or to the winding-up; commits an offence.

Maximum penalty—800 penalty units or 4 years imprisonment.

(2) It is a defence to a charge—

- (a) under subsection (1)(a), (b) or (d) or subsection (1)(c)(i), (vii) or (viii), if the accused person proves that the person had no intent to defraud; and
- (b) under subsection (1)(c)(iii) or (iv) or subsection (1)(f), if the accused person proves that the person had no intent to conceal the society's state of affairs or to defeat the law.

(3) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under subsection (1)(c)(viii), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

Maximum penalty—800 penalty units or 4 years imprisonment.

## **219 Incurring debts not likely to be paid**

(1) If an officer of a society to which this section applies was knowingly a party to the contracting of a debt by the society and had at the time the debt was contracted, no probable or reasonable grounds of expectation, after taking into consideration the society's other liabilities (if any) at the time, of the society being able to pay the debt, the officer commits an offence.

Maximum penalty—400 penalty units.

(2) If any business of a society to which this section applies has been carried on with intent to defraud the society's creditors or creditors of another person or for a fraudulent purpose, a person who was knowingly a party to the carrying on of the business in that way commits an offence.

Maximum penalty—800 penalty units or 14 years imprisonment.

## **220 Powers of Supreme Court**

(1) If a person has been convicted of an offence under section 219, the Supreme Court, on the application of the registrar or a prescribed person,

may declare that the person is personally responsible without any limitation of liability—

- (a) for a conviction under section 219(1)—for the payment to the society of an amount equal to the whole of the debt to which the conviction relates or the part of the debt the Supreme Court considers appropriate; and
- (b) for a conviction under section 219(2)—for the payment to the society of the amount required to satisfy all or any of the society's debts as the court considers appropriate.

(2) For a society to which a conviction mentioned in subsection (1) relates, the prescribed persons under the subsection are—

- (a) the appropriate officer; and
- (b) a creditor of the society authorised by the registrar to make an application under subsection (1).

(3) If the Supreme Court makes a declaration under subsection (1) about a person, it may—

- (a) give further directions it considers appropriate to give effect to the declaration and, in particular, may order that the liability of the person under the declaration is a charge on—
  - (i) a debt or obligation due from the society to the person; or
  - (ii) any charge or any interest in any charge on any of the society's assets held by or vested in the person or a corporation or person on the person's behalf or a person claiming as assignee from or through the person liable or a corporation or person acting on the person's behalf; or
- (b) from time to time make any further order necessary to enforce a charge imposed under this subsection.

(4) This section has effect despite the fact that the person concerned is criminally liable for the matters on the ground on which the declaration is made.

(5) On the hearing of an application under subsection (1), the appropriate officer or other applicant may give evidence or call witnesses.

(6) In subsection (3)—

“**assignee**” includes a person to whom or in whose favour, by the direction of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee

for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the matters on which the conviction or declaration was made.

### **221 Inducement to be appointed as liquidator**

A person must not give, or agree or offer to give, to a member or creditor of a society valuable consideration for securing the person's appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the liquidator of the society.

Maximum penalty—400 penalty units or 2 years imprisonment.

### **222 Falsification of records**

(1) An officer of a society must not destroy, mutilate, alter or falsify a document or security, or make or be privy to the making of a false or fraudulent entry in a document, belonging to the society with intent to defraud or deceive a person.

(2) A person who has a duty to record information in the documents of a society must not fail to record the information in the documents—

- (a) with intent to defraud another person; or
- (b) knowing that the failure will render other matter contained in the documents false or misleading in a material particular.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

### **223 Frauds by officers**

An officer of a society must not—

- (a) by false pretence, or by means of another fraud, induce a person to give credit to the society; or
- (b) with intent to defraud creditors of the society, make or cause to be made a gift or transfer of, or charge on, or cause or connive at the levying of an execution against, the society's property; or
- (c) with intent to defraud the society's creditors, conceal or remove part of the society's property within 2 months before, or on or

after, the date of an unsatisfied judgment or order for payment of money obtained against the society.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

## **224 Definition of “relevant person” for ss 225–226**

In sections 225 and 226—

“**relevant person**” means a person exercising powers under this Act, and includes an inspector.

## **225 False or misleading statements**

(1) A person must not state anything to the registrar or a relevant person that the person knows is false or misleading in a material particular.

Maximum penalty—800 penalty units or imprisonment for 4 years.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person’s knowledge.

## **226 False, misleading or incomplete documents**

(1) A person must not give to the registrar or a relevant person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—800 penalty units or imprisonment for 4 years.

(2) However, a person does not commit an offence against subsection (1) if the person, when giving the document—

- (a) tells the registrar or the relevant person, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the registrar or the relevant person the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person’s knowledge.



**227 Power of court to assess damages against certain persons**

(1) In this section—

**“prescribed person”** means—

- (a) a liquidator or provisional liquidator of the society concerned; or
- (b) if the society concerned is under the management of an administrator—the administrator or a member of the society; or
- (c) a person authorised by the registrar to apply under subsection (3).

**“society to which this section applies”** means a society—

- (a) that is being wound-up; or
- (b) that is under the management of an administrator; or
- (c) the affairs of which are being investigated under part 11;<sup>54</sup> or
- (d) for which a receiver or manager has been appointed, whether by the Supreme Court or under the powers contained in an instrument; or
- (e) that, within the meaning of subsection (2), has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

(2) For subsection (1), a society has ceased to carry on business, or is unable to pay its debts, in the circumstances mentioned in section 217(2).<sup>55</sup>

(3) Subsection (4) applies if, on application by the registrar or a prescribed person, the Supreme Court is satisfied that a person who has taken part in the formation, promotion, administration, management or winding-up of a society to which this section applies—

- (a) has misapplied or kept or become liable or accountable for property of the society; or
- (b) has been guilty of negligence, default, breach of trust or breach of duty in relation to the society and that the society has suffered, or is likely to suffer, loss or damage as a result.

(4) The Supreme Court may make 1 or both of the following orders—

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54 Part 11 (Special investigations)

55 Section 217 (Interpretation provision for ss 218–220)

- (a) an order directing the person to pay money or transfer property to the society;
- (b) an order directing the person to pay to the society the amount of the loss or damage.

(5) This section applies to the receipt of an amount or property by an officer or former officer of the society, whether by way of salary or otherwise, that appears to the Supreme Court to have been unfair or unjust to the society or its members.

(6) This section applies despite the fact that the person concerned may be criminally liable for the matters for which the order is sought.

(7) If the Supreme Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or a part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

## **228 False copies of rules**

A person must not—

- (a) give a member of a society or a person intending or applying to become a member, a copy of the rules or an alteration of the rules other than those that have been properly registered, representing that they are binding on the society's members; or
- (b) make an alteration in any of the rules of the society after they have been properly registered and circulate them representing that they have been properly registered.

Maximum penalty—160 penalty units.

## **229 Fraud or misappropriation**

A person must not—

- (a) by false representation or imposition obtain possession of property of a society; or
- (b) having property of a society in the person's possession, withhold or misapply the property, or wilfully apply part of the property, to purposes other than those stated or authorised in the society's rules or under this Act.

Maximum penalty—1 600 penalty units or 7 years imprisonment.

**230 Commissions**

(1) An officer of a society must not accept a commission, fee or reward, whether monetary or otherwise, from a person for or about that person's transaction with the society.

Maximum penalty—80 penalty units.

(2) An officer of a society who commits an offence against subsection (1) is indebted to the society for double the value or amount of the commission, fee or reward.

**231 Officers and other persons in default**

If this Act provides that an officer of a society who is in default commits an offence, the reference to the officer who is in default is, for a contravention of, or an offence against, this Act, a reference to an officer of the society (including a person who later ceased to be an officer of the society) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.

***Division 3—Legal proceedings*****232 Indictable and summary offences**

(1) An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

(2) Any other offence against this Act is a summary offence.

**233 Proceedings for indictable offences**

(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or

(b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

(b) a plea of the person charged at the start of the proceeding must be disregarded; and

(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.

### **234 Limitation on who may summarily hear indictable offence proceedings**

(1) A proceeding must be before a magistrate if it is a proceeding—

(a) for the summary conviction of a person on a charge for an indictable offence; or

(b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **235 Limitation on time for starting summary proceedings**

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start within 2 years after the alleged offence is committed.

**236 Continuing offences**

(1) If—

- (a) under this Act anything is required or directed to be done within a particular period or before a particular time; and
- (b) failure to do the thing within the period or before the time constitutes an offence; and
- (c) the thing is not done within the period or before the time;

then—

- (d) the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done; and
- (e) if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time—the person commits a separate and further offence for each day after the day of the conviction during which the failure to do the thing continues; and
- (f) the penalty that applies to each separate and further offence is 8 penalty units.

(2) If—

- (a) under this Act anything is required or directed to be done but no period within which or time by which the thing is to be done is specified; and
- (b) failure to do the thing constitutes an offence; and
- (c) a person is convicted of an offence for a failure to do the thing;

the person commits a separate and further offence for each day after the day of the conviction during which the failure to do the thing continues and the penalty that applies to each separate and further offence is 8 penalty units.

**237 Injunctions**

(1) This section applies if a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act; or

- (b) attempting to contravene this Act; or
- (c) aiding, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act.

(2) The Supreme Court may, on the application of the registrar or a person whose interests have been, are or would be affected by the conduct mentioned in subsection (1), grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring that person to do anything.

(3) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Act, the Supreme Court may, on the application of the registrar or a person whose interests have been, are or would be affected by the failure to do the thing, grant an injunction requiring the person to do the thing.

(4) If an application is made for an injunction under subsection (2) or (3), the Supreme Court may grant an injunction by consent of all the parties to the proceeding, whether or not the court is satisfied that the subsection applies.

(5) The Supreme Court may grant an interim injunction pending determination of an application under subsection (1).

(6) The Supreme Court may discharge or vary an injunction granted under this section, and may grant an injunction on terms.

(7) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(8) The power of the Supreme Court to grant an injunction requiring a person to do a thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do the thing; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(9) If the registrar applies to the Supreme Court for the grant of an injunction under this section, the court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(10) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

(11) The Supreme Court's powers under this section are in addition to its other powers.

### **238 Power to grant relief**

(1) This section applies to a person who is—

- (a) an officer of a society; or
- (b) an auditor of a society, whether or not the auditor is an officer of the society; or
- (c) an expert for a matter in relation to which the civil proceeding has been taken or the claim will or might arise; or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Supreme Court to carry out a duty in relation to a society.

(2) If, in a civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity because of which the person is such a person, it appears to the Supreme Court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly

and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate.

(3) If a person to whom this section applies has reason to believe that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty in a capacity because of which the person is such a person, the person may apply to the Supreme Court for relief.

(4) The Supreme Court has the same power to grant relief under subsection (3) as it would have had under subsection (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

#### *Division 4—Other matters*

### **239 Secrecy**

(1) In this section—

**“court”** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

**“person to whom this section applies”** means a person who is, or was at any time, involved in the administration of this Act.

**“produce”** includes permit access to.

**“protected document”** means a document that—

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duty under this Act.

**“protected information”** means information that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under this Act.

(2) A person to whom this section applies must not—

- (a) make a record of protected information; or



- (b) whether directly or indirectly, divulge or communicate to a person protected information about another person.

Maximum penalty—160 penalty units.

(3) However, subsection (2) does not apply if the record is made, or the information divulged or communicated—

- (a) under this Act; or  
(b) in the performance of duties, as a person to whom this section applies, under this Act.

(4) Unless it is necessary to do so for carrying this Act into effect, a person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or  
(b) to produce a protected document in court.

(5) This section applies subject to section 133.<sup>56</sup>

## **240 Abolition of doctrine of ultra vires**

(1) The object of this section is—

- (a) to abolish any application of the doctrine of ultra vires to societies; and  
(b) to ensure that societies give effect to any restrictions on their powers, but without affecting the validity of their dealings with outsiders.

(2) In this section, a reference to the doing of an act by a society includes a reference to—

- (a) the making of an agreement by the society; and  
(b) a transfer of property to or by the society.

(3) Sections 66 and 75<sup>57</sup> apply to a society subject to any restrictions on its powers expressly imposed under this Act or the society's rules.

(4) A society contravenes this subsection if—

- (a) a society exercises a power contrary to a restriction mentioned in subsection (3); or

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<sup>56</sup> Section 133 (Inspection of documents at society's registered office)

<sup>57</sup> Sections 66 (Powers) and 75 (Effect of incorporation)

- (b) the society does an act otherwise than in pursuance of its objects under this Act.

(5) The exercise of the power, or the act, is not invalid merely because of the contravention.

(6) An officer of a society who is involved in the contravention contravenes this subsection.

(7) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (6).

(8) The society or officer does not commit an offence merely because of a contravention of this section.

(9) The fact that—

(a) by exercising a power mentioned in subsection (4)(a), or doing an act mentioned in subsection (4)(b), a society contravened, or would contravene, subsection (4); or

(b) by doing a particular act, an officer of a society contravened, or would contravene, subsection (6);

may be asserted or relied on only in the following circumstances—

(c) a prosecution of a person for an offence against this Act;

(d) an application for an injunction under section 237<sup>58</sup> to restrain the society from entering into an agreement;

(e) a proceeding (other than an application for an injunction) by the society, or by a member of the society, against an officer or former officer of the society;

(f) an application by the registrar or by a member of the society for the winding-up of the society.

(10) Subsection (11) applies if, had subsection (9) not been enacted, the Supreme Court would have power under section 237 to grant, on the application of a person, an injunction restraining a society, or an officer of a society, from engaging in particular conduct constituting a contravention of subsection (4) or (6).

(11) The Supreme Court may, on the application of the person, order the society or the officer to pay damages to the person or to someone else.

(12) This section applies subject to section 67.<sup>59</sup>

(13) In this section—

“**restriction**” includes prohibition.

## **241 Persons having dealings with a society**

(1) A person having dealings with a society is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding about the dealings, any assertion by the society that the matters that the person is entitled to assume were not correct must be disregarded.

(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from a society (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding about the dealings, any assertion by the society or the second person that the matters the first person is entitled to assume were not correct must be disregarded.

(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act and the society’s rules have been complied with; and
- (b) that a person who appears, from returns filed with or given to the registrar under this Act, to be a director, the principal executive officer or the secretary of the society has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by a person of that type for a society; and
- (c) that a person who is held out by the society to be an officer or agent of the society has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (d) that an officer or agent of the society who has authority to issue a document for the society has authority to warrant that the document is genuine and that an officer or agent of the society who has authority to issue a certified copy of a document for the society has authority to warrant that the copy is a true copy; and

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<sup>59</sup> Section 67 (Control of certain financial transactions)

- (e) that a document has been properly sealed by the society if—
  - (i) it bears what appears to be an imprint of the society's seal; and
  - (ii) the sealing of the document appears to be authenticated under the society's rules by a person or persons mentioned in the rules as authorised to attest the sealing of the document who, because of paragraph (b) or (c), may be assumed to be that person or those persons; and
- (f) that the directors, secretary, officers, employees and agents have properly performed their duties to the society.

(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person's connection or relationship with the society, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is about dealings with the society—subsection (1) does not apply to an assertion by the society about the assumption; and
- (b) if the assumption is about dealings about an acquisition or purported acquisition from the society of title to property—subsection (2) does not apply to an assertion by the society or someone else about the assumption.

## **242 Effect of fraud**

(1) Section 241 operates—

- (a) to entitle a person to make the assumptions mentioned in section 241(3) in relation to dealings with a society; or
- (b) to entitle a person to make the assumptions mentioned in section 241(3) in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a society;

even if a person mentioned in section 241(3)(b), (c), or (e) or an officer, agent or employee of the society mentioned in section 241(3)(d) or (f)—

- (c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the society; or
- (d) has forged a document that appears to have been sealed or behalf of the society.

(2) However, subsection (1) does not operate to entitle a person to make the assumptions if the person mentioned in subsection (1)(a) or (b) of this section has actual knowledge that the person mentioned in section 241(3)(b), (c) or (e), or the officer, agent or employee of the society mentioned in section 241(3)(d) or (f), has acted or is acting fraudulently, or has forged a document, as mentioned in subsection (1)(c) or (d) of this section.

### **243 Abolition of doctrine of constructive notice**

A person dealing with a society, or an agent of a society, is not to be presumed to have notice of the society's rules and any document registered by or filed with the registrar in relation to the society.

### **244 Approval of forms**

The registrar may approve forms for use under this Act.

## *Division 5—Regulations*

### **245 Regulation-making power**

The Governor in Council may make regulations under this Act.

### **246 Specific regulation-making powers**

- (1) A regulation may make provision about—
- (a) the keeping of registers and records by the registrar; and
  - (b) the filing or registration of documents, the time and way of submitting documents for filing or registration and the

requirements with which documents filed with the registrar must comply; and

- (c) prescribing fees for the registration or exemption of societies and fees to be paid for a document filed, registered with or issued by the registrar or for an act or service required or authorised to be performed by the registrar; and
- (d) prescribing the way in which, the persons by whom, and the directions or requirements under which, forms are required or authorised to be signed, prepared or completed and generally regulating the signing, preparation and completion of forms; and
- (e) the calling of, conduct of, and procedure and voting at meetings required or authorised to be held, the number of persons forming a quorum at a meeting, the sending of notices of meetings to persons entitled to attend meetings, the filing with the registrar of notices of meetings and of resolutions passed at meetings; and
- (f) the proof of debts of a society, the time within which debts can or may be proved and generally regulating the proving of debts.

(2) A regulation may provide that, if a document required to be filed with, or given to, the registrar is signed or filed or given on behalf of a person by the person's agent duly authorised in writing, the original or a verified copy of the authority must be filed or given with, endorsed on or attached to the document.

(3) A regulation may impose a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

(4) A power conferred by this section to make a regulation providing for the imposition of fees may be exercised by providing for all or any of the following matters—

- (a) specific fees;
- (b) maximum or minimum fees;
- (c) scales of fees;
- (d) the reduction, waiver or refund of fees.

## **247 Further specific regulation-making powers**

(1) A regulation may make provision about—

- (a) the information to be contained in returns to the registrar; and

- (b) the circumstances in which, and the period within which, returns must be filed with the registrar; and
- (c) documents that must be incorporated in, or be given with, the returns; and
- (d) permitting a society subject to any stated terms, exceptions or qualifications, to insert in an account or report under this Act, in substitution for an amount that the society would be required or permitted to be set out in the accounts or report, an amount ascertained under a regulation (not being an amount that is more than \$500 more or less than the first amount).

(2) For subsection (1)(d), the insertion of zero is taken to be the insertion of an amount.

(3) Also, for information purposes only, a regulation may identify the functions of the registrar under this Act conferred on APRA under an agreement between the State and APRA under part 4, division 3.

## **PART 14—TRANSITIONAL PROVISIONS**

### *Division 1—Transitional provisions for Act No. 23 of 1996*

#### **248 Continuing societies**

(1) Each continuing society continues in existence and is taken to be a society registered and incorporated under this Act.

(2) Subsection (1) applies even though the previous law is repealed.

#### **250 Guarantees**

(1) A guarantee executed under part 7 of the previous law and in force immediately before the commencement continues in existence and is taken to have been executed under this Act.

(2) Subsection (1) applies subject to section 179.<sup>60</sup>

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60 Section 179 (Effect of merger or transfer of engagements on guarantees)

**251 Rules**

(1) The rules of a continuing society, in force immediately before the commencement, become its rules under this Act.

(2) The rules have effect subject to this Act.

**253 Existing loans and mortgages**

(1) This section applies to a loan made by a continuing society under the previous law if the loan is in existence at the commencement.

(2) A standard may provide for the transition of the loan to a loan complying with section 90(4).<sup>61</sup>

(3) The standard must require the transition to happen within 12 months after the commencement.

(4) The standard must not operate to the disadvantage of a person other than a society by—

(a) decreasing the person's rights; or

(b) imposing additional liabilities on the person.

(5) The conditions of the loan are taken to be changed to the extent necessary to comply with the standard.

(6) A mortgage securing the loan at the commencement and continuing in force immediately before the change of conditions of the loan continues to secure the loan.

(7) The mortgage is taken to be changed to the extent necessary to secure the loan with the changed conditions.

**254 Directors**

(1) An existing term of office of a director of a continuing society that is not due to end until 3 years or more after the commencement ends at the end of the third annual general meeting of the society after the commencement.

(2) Subsection (1) does not, by implication, prevent the office of the director becoming vacant at an earlier time.

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<sup>61</sup> Section 90 (Financial accommodation to, and deposits from, members and others)



**Division 2—Transitional provisions for Financial Sector Reform  
(Queensland) Act 1999**

**255 Definition for div 2**

In this division—

“**transfer date**” means the date that, under the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* (Cwlth), section 3(16) is specified as the transfer date for the purposes of that Act.

**256 State is successor of QOFS**

(1) The State is the successor in law of QOFS to the extent that the registrar succeeds QOFS in the performance of functions under this Act.

(2) The following provisions of this division do not limit subsection (1).

**257 Particular assets of QOFS vest in State**

The following assets become the assets of the State—

- (a) assets that immediately before the transfer date vested in QOFS under a winding-up of a society under part 10, division 3;
- (b) all documents relating to the performance by QOFS of functions under this Act.

**258 Continuation and preservation of civil proceedings involving QOFS**

(1) For a proceeding under this Act, other than a proceeding for an offence, started before the transfer date to which QOFS was a party immediately before the date, the registrar is substituted for QOFS as a party to the proceeding.

(2) For this section evidence that would have been admissible for or against QOFS is admissible for or against the registrar.

**259 Continuation of offence proceedings**

(1) This section applies to a proceeding for an offence brought under this Act by QOFS that started before the transfer date but which is not completed immediately before the date.

(2) On and after the transfer date, the proceeding may continue to be prosecuted by the registrar in place of QOFS and the registrar may be substituted for QOFS.

**260 Continuation of things done, and started, by QOFS**

(1) Anything done by QOFS under this Act before the transfer date—

- (a) continues to have effect; and
- (b) is taken to have been done by the registrar.

(2) Anything started by QOFS under this Act before the transfer date and not finished before the date—

- (a) is taken to have been started by the registrar; and
- (b) may be finalised by the registrar.

**261 Instruments**

(1) An instrument, other than a statutory instrument, in existence immediately before the transfer date and given by QOFS under this Act—

- (a) continues in force; and
- (b) is taken to have been given by the registrar.

(2) A reference in the instrument to QOFS may, if the context permits, be taken to be a reference to the registrar.

(3) This section does not apply to an instrument of appointment of an inspector.

**262 Inspectors cease to hold office**

All inspectors holding office immediately before the transfer date stop holding the office and all instruments of appointment of the inspectors stop having effect.

**263 Standards**

(1) A standard in force immediately before the transfer date—

- (a) continues in force; and
- (b) is taken to have been made by the registrar.

(2) A reference in the standard to QOFS may, if the context permits, be taken to be a reference to the registrar.

**264 Application for certificate of incorporation**

(1) On application by a continuing society, the registrar must issue to the society a certificate of incorporation stating that the society is incorporated under this Act.

(2) The registrar must not issue a certificate of incorporation to a continuing society under subsection (1) unless the society—

- (a) surrenders to the registrar its certificate of incorporation under the previous law; or
- (b) satisfies the registrar that the certificate has been lost or destroyed.

*Division 3—Transitional provision for Corporations (Ancillary Provisions) Act 2001*

**265 Charges**

(1) The amendment of this Act by the *Corporations (Ancillary Provisions) Act 2001* does not affect the validity of the registration of an existing charge on the property of a society.

(2) In this section—

“**existing charge**” means a charge that, immediately before the commencement of the amendments of this Act by the *Corporations (Ancillary Provisions) Act 2001*, was registered under this Act.

**SCHEDULE 1****CHANGES TO THE APPLIED PROVISIONS OF THE  
CORPORATIONS ACT**

section 97C(4)(f)(i)

- 1 Section 261(1), definition “property”—**  
*omit.*
- 2 Section 261(2) and (3), ‘subsection 263(3) or’—**  
*omit.*
- 3 Section 263(1)(a)(vii), (1)(b), (2) to (4) and (6) to (8)—**  
*omit.*
- 4 Section 263(1)(a)(viii)—**  
*omit, insert—*  
‘(viii)the name of the chargee;’.
- 5 Section 263(1)(c), ‘, in a case to which paragraph (b) does not apply,’—**  
*omit.*
- 6 Section 263(5), ‘(1)(b) or (c) or (4)(b) or (c)’—**  
*omit, insert—*  
‘(1)(c)’.
- 7 Section 263(5), ‘or (3)’—**  
*omit.*

## SCHEDULE 1 (continued)

**8 Section 264(1)(a)(iii), ‘(otherwise than as mentioned in paragraph 263(1)(b))’—***omit.***9 Section 265(10) and (11)—***omit.***10 Section 265A(2), ‘265(10), (12)’—***omit, insert—**‘265(12)’.***11 Section 266(1)(e) and (2)(b)—***omit.***12 Section 268(4)—***omit.***13 Section 269(3)—***omit.***14 Section 416, definition “officer”—***omit.***15 Section 417, ‘or Part 11.2’—***omit.*

## SCHEDULE 1 (continued)

**16 Section 420A(2), ‘section 180, 181, 182, 183 or 184’—**

*omit, insert—*

‘the *Financial Intermediaries Act 1996*, section 117’.

**17 Section 429(1)—**

*omit, insert—*

‘(1) In this section—

“**reporting officer**”, for a society, in respect of property of which a person is controller, means a person who was a director or secretary of the society on the control day.’.

**18 Section 429(2)(c)(iii)—**

*omit.*

**19 Section 433(3)(b), (6) and (7), ‘subsection 329(6)’—**

*omit, insert—*

‘the *Financial Intermediaries Act 1996*, section 154(1),’.

**20 Section 434(1)(a), ‘or trustee for debenture holders’—**

*omit.*

**21 Section 434(2)(a), ‘or by a trustee for debenture holders’—**

*omit.*

**22 Section 440J—**

*omit.*

## SCHEDULE 1 (continued)

- 23 Section 442F(1), ‘Sections 128 and 129’—**  
*omit, insert—*  
‘The *Financial Intermediaries Act 1996*, sections 240, 241 and 242’.
- 24 Section 442F(1)(b), ‘section 129’—**  
*omit, insert—*  
‘the *Financial Intermediaries Act 1996*, section 241’.
- 25 Section 442F(2), ‘sections 128 and 129’—**  
*omit, insert—*  
‘the *Financial Intermediaries Act 1996*, sections 240, 241 and 242’.
- 26 Section 459C(1)(a), ‘234,’—**  
*omit.*
- 27 Section 461(1)(h), from ‘in a report’ to ‘ASIC Act’—**  
*omit.*
- 28 Section 461(1)(j)—**  
*omit.*
- 29 Section 462(2)(h) and (3)—**  
*omit.*
- 30 Section 464—**  
*omit.*

## SCHEDULE 1 (continued)

**31 Section 467B, ‘233,’—**

*omit.*

**32 Section 482(1A)(b)—**

*omit.*

**33 Section 486A(3)—**

*omit.*

**34 Section 511(1A)—**

*omit.*

**35 Section 513A, ‘233,’—**

*omit.*

**36 Section 513D(a), ‘233,’—**

*omit.*

**37 Section 527, ‘according to the law of the Capital Territory’—**

*omit.*

**38 Section 533(1)(d)—**

*omit.*

**39 Section 539(4)(b)—**

*omit.*



## SCHEDULE 1 (continued)

**40 Section 553(2)—**

*omit, insert—*

‘(2) If, under the *Financial Intermediaries Act 1996*, section 201, the whole or a part of the expenses of and incidental to an investigation are payable by a society, the amount payable is admissible to proof against the society.’.

**41 Section 553E, ‘and to section 279’—**

*omit.*

**42 Section 556(1)(dc), ‘appointed in accordance with Part 2M.4’—**

*omit, insert—*

‘for the society’.

**43 Section 566, ‘before 23 June 1993 and’—**

*omit.*

**44 Section 567(1), (2) and (5)(a), ‘before 23 June 1993 and’—**

*omit.*

**45 Part 5.6, division 9—**

*omit.*

**SCHEDULE 2****DICTIONARY**

section 3

**“accounting records”** include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) documents and records that record such entries; and
- (c) working papers and other documents necessary to explain the methods and calculations by which accounts are made up.

**“accounting standard”** has the meaning given by the Corporations Act, section 9.

**“accounts”** means profit and loss accounts and balance sheets, and includes statements, reports and notes (other than auditors’ reports or directors’ reports) attached to, or intended to be read with, any of those accounts or balance sheets.

**“affairs of a society”**, for a society, has the same meaning as “affairs of a body corporate” has for a body corporate in the Corporations Act, section 53.

**“applicable accounting standard”** means an accounting standard as applying under section 142.

**“appropriate officer”**, for sections 218, 219 and 220, see section 217.

**“approved entity”** see section 70(1).

**“approved financial contracts”** see section 67.

**“approved form”** see section 244.

**“APRA”** means the Australian Prudential Regulation Authority.

**“board”** means the board of directors of the society.

**“certificate of confirmation”** see section 166.

## SCHEDULE 2 (continued)

**“continuing society”** means a cooperative housing society registered under the previous law immediately before the commencement.

**“director”** see section 4.

**“employee”**, for part 7, division 1, see section 98.

**“executive officer”** of a society, means a person (however described) who is concerned, or takes part, in the management of the society.

**“guarantee”** means a guarantee executed by the Treasurer under section 70.

**“inspector”** see section 26.

**“lot”** means—

- (a) a lot on a building units plan or group titles plan under the *Building Units and Group Titles Act 1980*; or
- (b) a lot under the *Land Title Act 1994* that is also a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*.

**“management contract”** means a contract or other arrangement under which—

- (a) a person who is not an officer of a society agrees to perform the whole, or a substantial part, of the society’s functions; or
- (b) a society agrees to perform the whole or a substantial part of its functions—
  - (i) in a particular way; or
  - (ii) under the directions of a person; or
  - (iii) subject to specified restrictions or terms.

**“officer”**—

- (a) for sections 148 and 149, see section 147; or
- (b) for part 11, see section 189; or
- (c) in any case, see section 5.

**“previous law”** means the *Cooperative Housing Societies Act 1958*.

## SCHEDULE 2 (continued)

**“registered company auditor”** means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Act, part 9.2.

**“registered office”** of a society, see section 97.

**“registrar”** means the chief executive.

**“registrar’s public office”** means the public office established under section 19C.

**“relevant day”**, for sections 218, 219 and 220, see section 217.

**“relevant person”**, for sections 225 and 226, see section 224.

**“residential development”** means—

- (a) construction or improvement of residential premises; or
- (b) conversion of a building to residential premises; or
- (c) improvement of land if—
  - (i) residential premises are situated or being constructed on the land; and
  - (ii) the improvement is of a type normally associated with land containing residential premises; or
- (d) acquisition of land for a purpose mentioned in paragraph (a), (b) or (c).

**“residential loan”** means financial accommodation provided to a person for the purchase of residential premises or for residential development.

**“residential premises”** means a building or lot occupied, or to be occupied, by a person as the person’s principal place of residence, whether as owner, under a lease or tenancy agreement or otherwise, and—

- (a) includes a building or lot declared under a regulation to be residential premises under this Act; but

does not include—

- (b) a building not situated within Australia; or
- (c) a building or lot declared under a regulation not to be residential premises under this Act.

## SCHEDULE 2 (continued)

**“society”** means a society registered under this Act as a cooperative housing society.

**“society to which this section applies”**, for sections 218, 219 and 220, see section 217.

**“special resolution”** see section 127.

**“standard”** means a standard in force under part 3.

**“Supreme Court”** includes a Supreme Court judge.

**“transferee society”** see section 166.

**“transferor society”** see section 166.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 August 2001. Future amendments of the Financial Intermediaries Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 Key****Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

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[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 November 1996
1A	to Act No. 39 of 1997	26 September 1997
1B	to Act No. 74 of 1997	6 February 1998
2	to Act No. 74 of 1997	24 February 1998
2A	to Act No. 27 of 1999	19 November 1999

## 5 Tables in earlier reprints

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Name of table	Reprint No.
Corrected minor errors	1

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### **Financial Intermediaries Act 1996 No. 23**

date of assent 15 August 1996

ss 1–2, pts 2–3 commenced on date of assent

remaining provisions commenced 1 October 1996 (1996 SL No. 248)

as amended by—

### **Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

### **Cooperatives Act 1997 No. 39 ss 1–2, 472 sch 7**

date of assent 25 August 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1997 (1997 SL No. 286)

### **Revenue and Other Legislation Amendment Act 1997 No. 74 s 1 pt 2**

date of assent 1 December 1997

commenced on date of assent

### **Financial Sector Reform (Queensland) Act 1999 No. 27 ss 1–2(1), (4), 76 sch 1 pt 2**

date of assent 16 June 1999

ss 1–2, 76 commenced on date of assent

remaining provisions commenced 1 July 1999 (see s 2(1) and proc publ Cwlth of Australia gaz 29 June 1999, No. S283)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc publ Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc publ Cwlth of Australia gaz 13 July 2001, No. S285)

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