

Friendly Societies (Victoria) Bill

EXPLANATORY MEMORANDUM

Background

The principle purpose of this Bill is to implement a Friendly Societies Code which will be part of the law of Victoria. The Code is to provide for the formation, registration, management and regulation of friendly societies.

The Code is the product of discussions and negotiations between the States and Territories for uniform national legislation covering the operations of non-bank financial institutions. In May 1994 the Ministerial Council for Financial Institutions resolved that friendly societies be subject to national uniform supervision as recommended by the Special Premiers Working Group which was established in October 1990 to reform this area of law. The Ministerial Council agreed that friendly societies be integrated into the Financial Institutions Scheme, which was set up in July 1992, with the Australian Financial Institutions Commission (AFIC) being the sole national coordinating body and standard setting body and with supervision to be undertaken by the State supervisory authorities (SSAs). An Implementation Task Force, comprising representatives of all States and Territories and AFIC, was established, following the Ministerial Council resolution to develop the legislation.

Schedule 1 of the Bill which sets out the Code is the template legislation which, once passed by the Victorian Parliament, will be adopted in all participating States and Territories, excluding Western Australia which has agreed to introduce consistent legislation into its Parliament.

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 defines expressions used in the Act.
- Clause 4 provides that the Act binds the Crown.

PART 2—FRIENDLY SOCIETIES (VICTORIA) CODE AND FRIENDLY SOCIETIES (VICTORIA) REGULATIONS

- Clause 5 applies the Friendly Societies Code as a law of Victoria and provides that the Code applies as if sections 27, 28, 50, 51 and 52 were omitted.

Clause 6 provides that the regulations in force for the time being under Part 4 of this Act may be referred to as the Friendly Societies (Victoria) Regulations.

Clause 7 provides for the interpretation of some expressions in the Friendly Societies (Victoria) Code and the Friendly Societies (Victoria) Regulations.

PART 3—CONFERRAL OF FUNCTIONS AND POWERS

Clause 8 provides that AFIC has the functions and powers conferred on it by or under the friendly societies legislation of Victoria.

Clause 9 provides that the Australian Financial Institutions Appeals Tribunal has the functions and powers conferred on it by or under the friendly societies legislation of Victoria.

Clause 10 provides that the Victorian Financial Institutions Commission is the State Supervisory Authority for Victoria.

PART 4—POWER TO MAKE REGULATIONS FOR FRIENDLY SOCIETIES CODE

Clause 11 defines "the Code" for the purposes of this Part.

Clause 12 provides for a general regulation making power for the purposes of the Code.

PART 5—LEVIES, FEES AND OTHER AMOUNTS

Clause 13 provides that the SSA must pay into the Supervision Fund established under section 41 of the **Financial Institutions (Victoria) Act 1992** all amounts received as supervision levies under this Part.

Clause 14 provides that the SSA may determine that an amount is to be paid to it by societies as a supervision levy. The SSA may fix the amount of the levy differently for different societies or determine that the levy is not payable by specified societies. The SSA may also determine that the levy may be paid by specified instalments

Clause 15 provides that the SSA may consult with industry bodies and societies in determining the amount to be paid as a supervision levy.

Clause 16 imposes the fees prescribed by the Friendly Societies (Victoria) Regulations or by the AFIC (Victoria) Regulations in respect of matters referred to in the friendly societies legislation of Victoria.

- Clause 17 imposes the levy payable under sections 119 and 120 of the AFIC (Victoria) Code by a society.
- Clause 18 provides that all fees, fines and penalties and other money which, under the friendly societies legislation of Victoria are not payable to a specified person, must be paid to Victoria.

PART 6—FRIENDLY SOCIETIES ADVISORY COMMITTEE

- Clause 19 provides for the continuation under this Act of the Friendly Societies Advisory Committee established by section 100 of the **Friendly Societies Act 1986**.
- Clause 20 prescribes the constitution of the Advisory Committee and procedures for appointment of members and conduct of meetings.
- Clause 21 sets out the functions of the Advisory Committee.

PART 7—MISCELLANEOUS

- Clause 22 provides that Divisions 2 and 3 of Part III of the **Instruments Act 1958** do not apply to contracts in relation to the provision of benefits made in accordance with the Code.
- Clause 23 is a regulation making power for the purposes of this Act.

PART 8—TRANSITIONAL

- Clause 24 is a general savings provision for all persons, things and circumstances appointed or created by or under the **Friendly Societies Act 1986**.
- Clause 25 contains a number of transitional provisions in relation to matters under the **Friendly Societies Act 1986**.
- Clause 26 provides that a special resolution approving a proposed merger under the **Friendly Societies Act 1986** that has not been registered before the commencement of this section is deemed to be an approval of a proposed merger for the purposes of the Code.
- Clause 27 provides that a direction by the SSA under the **Friendly Societies Act 1986** to merge with another society is deemed to be a direction to the society to transfer its engagements under the Code.
- Clause 28 provides that the appointment of an administrator under the **Friendly Societies Act 1986** continues as if it were an appointment under the Code.

PART 9—FINANCIAL INSTITUTIONS (VICTORIA) ACT 1992

- Clause 29 provides that in this Part the **Financial Institutions (Victoria) Act 1992** is called the Principal Act.
- Clause 30 makes amendments to a number of the definitions in section 3 of the Principal Act.
- Clause 31 amends sections 19 and 20(2) of the Principal Act by substituting "the scheme or friendly societies legislation of Victoria" for "the scheme legislation".
- Clause 32 amends section 24 of the Principal Act by including a reference to the "Friendly Societies (Victoria) Code".
- Clause 33 substitutes a new section 39 in the Principal Act which deals with the immunity of members of the Victorian Financial Institutions Commission.
- Clause 34 amends section 41 of the Principal Act which deals with the supervision fund.
- Clause 35 amends section 47 of the Principal Act.
- Clause 36 inserts a new section 48A into the Principal Act which deals with ministerial agreements for friendly societies legislation.

PART 10—CONSEQUENTIAL AMENDMENTS

- Clause 37 repeals the **Friendly Societies Act 1986**.
- Clause 38 amends section 32 of the **Interpretation of Legislation Act 1984**.
- Clause 39 inserts a new section 38D into the **Interpretation of Legislation Act 1984**.
- Clause 40 amends section 135 of the **Property Law Act 1958**.

SCHEDULE 1

FRIENDLY SOCIETIES CODE

PART 1—PRELIMINARY

Division 1—Introductory

- Clause 1 provides that the Code may be referred to as the Friendly Societies Code.

Clause 2 provides for the commencement of the Code.

Division 2—Interpretation

Clause 3 contains a number of definitions for the purposes of the Code.

Clause 4 defines the term "associate" for the purposes of the Code other than Division 5 of Part 5, (Shareholding restrictions) and clause 295 (Financial accommodation to directors and associates).

Clause 5 defines the term "director".

Clause 6 defines the expression "holding body corporate".

Clause 7 defines the expression "holding society".

Clause 8 describes the acts (or failures to act) which constitute the making of a decision.

Clause 9 defines the term "officer".

Clause 10 defines the expression "related body corporate".

Clause 11 defines the term "subsidiary".

Clause 12 specifies the circumstances where a person has qualified privilege.

Clause 13 provides that a reference to "carrying on business", "carrying on a business", or "carrying on a business of a particular kind" includes a reference to carrying on a business otherwise than for profit.

Clause 14 sets out what is meant by a reference to a business of a particular kind.

Clause 15 provides that a reference to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business whether alone or together with others.

Clause 16 provides that Schedule A contains miscellaneous interpretation provisions.

Division 3—Operation of Friendly Societies Legislation

Clause 17 provides that the friendly societies legislation applies throughout Australia and both within and outside Australia.

Division 4—Application and Adoption of Corporations Law

Clause 18 provides that, in this Division, "Corporations Law" includes the Corporations Regulations.

- Clause 19 provides that the Corporations Law does not apply to or in relation to a friendly society other than by regulation under this Code or as specified in this provision.
- Clause 20 provides that a regulation may adopt, with or without modification, a provision of the Corporations Law for application to societies or their securities, unless that provision as adopted would be inconsistent with the friendly societies legislation.
- Clause 21 provides that definitions and other interpretation provisions of the Corporations Law (other than the words "Gazette" and "Minister") relevant to a provision adopted under clause 20 are also adopted, unless otherwise stated.

PART 2—FUNCTIONS AND POWERS OF SSA

Division 1—General

- Clause 22 sets out the functions of the SSA.
- Clause 23 provides for the general powers of the SSA.
- Clause 24 requires the SSA to comply with all applicable standards.
- Clause 25 allows the SSA to temporarily vary a requirement of a standard, as allowed under the standard.
- Clause 26 requires the SSA to keep the Minister informed of the operations of the SSA and the operation, administration and enforcement of the Code.
- Clause 27 requires the SSA to maintain registers of documents at its public office and provides for the inspection of rules of a society and documents of a prescribed class. A person may also obtain from the SSA a certified copy of certain documents.
- Clause 28 sets out the circumstances in which the SSA may reject documents.
- Clause 29 provides for the extension or abridgment of time within which anything is required to be done under the Code or a society's rules.

Division 2—Specific Powers

Subdivision 1—Services Corporations

- Clause 30 provides that the SSA may declare a body corporate to be a services corporation and allows a society to subscribe for or acquire shares in a services corporation.

Subdivision 2—Enforcement Powers

- Clause 31 requires a society, a body corporate related to a society or a services corporation to provide information and reports to the SSA.
- Clause 32 provides that the SSA may require a person to attend before an employee of the SSA to answer questions or to produce documents.
- Clause 33 provides that the SSA may authorise a person or class of persons to exercise all or any of the powers conferred on an inspector by the Code. The provision also requires the SSA to issue an identity card to an inspector.
- Clause 34 requires an inspector to produce the inspector's identity card in certain circumstances.
- Clause 35 specifies the circumstances in which an inspector may enter a place and exercise the general powers of inspectors in relation to places.
- Clause 36 specifies the circumstances in which an inspector may enter a place and the powers of the inspector when the inspector finds certain evidence, and prescribes requirements in relation to that evidence.
- Clause 37 sets out the general powers of inspectors in relation to places.
- Clause 38 provides for the application for and issue of a monitoring warrant by a Magistrate.
- Clause 39 provides that an inspector may apply to a Magistrate for a warrant in relation to a particular place where the inspector has reasonable grounds for suspecting that there is or may be within the next 72 hours in the place a particular thing that may afford evidence of the commission of an offence against the Code.
- Clause 40 allows an offence related warrant to be granted by a Magistrate by telephone in urgent circumstances.

Clause 41 provides that a person must not assault, obstruct, hinder or resist an inspector in the exercise of powers under the Code.

Clause 42 makes it an offence for a person to make false or misleading statements to the SSA.

Subdivision 3—Special meeting and inquiry

Clause 43 specifies the circumstances in which the SSA may call a special meeting of a society or members of a benefit fund, or hold an inquiry into the affairs of a society or a benefit fund. The provision also deals with the expenses of holding the meeting or inquiry and empowers the SSA to direct the directors and such other persons as it requires to attend the meeting or inquiry. The SSA or any person nominated by the SSA may attend and address a meeting held under this provision.

Subdivision 4—Special power of intervention

Clause 44 specifies the circumstances in which the SSA may place a society under direction. Under those circumstances the SSA has a general power of direction to ensure that the principal objects of the financial institutions scheme are achieved in relation to the society. The provision gives examples of specific directions that the SSA may give.

Subdivision 5—Power to suspend operations of society

Clause 45 specifies the circumstances in which the SSA may suspend the operations of a society and empowers the SSA to give a direction to the society not to carry out certain activities.

Subdivision 6—Administrators

Clause 46 specifies the circumstances in which the SSA may appoint an administrator to conduct the affairs of a society. The clause also provides that, on the appointment of an administrator, the directors of the society cease to hold office, all contracts of employment are terminated and the administrator may terminate contracts for the provision of administrative or secretarial services to the society.

The administrator has the powers and functions of the board of a society, including the board's power of delegation. The provision also covers steps that need to be taken on the revocation of the administrator's appointment.

- Clause 47 provides that where the SSA appoints directors of a society after the revocation of the appointment of an administrator, the SSA may, by written notice to the society, specify: (a) a time during which this clause is to apply in relation to the society; (b) the terms and conditions on which all or any of the directors hold office; and (c) the rules that are to be the society's rules.
- Clause 48 provides for a stay of proceedings where an administrator has been appointed.
- Clause 49 requires the administrator to report to the SSA.

Subdivision 7—Levies

- Clause 50 provides that the SSA must pay into the Supervision Fund established under clause 94 of the Financial Institutions Code all amounts received as supervision levies under this Part.
- Clause 51 provides that the SSA may determine that an amount is to be paid to it by societies as a supervision levy. The SSA may fix the amount of the levy differently for different societies or determine that the levy is not payable by specified societies. The SSA may also determine that the levy may be paid by specified instalments.
- Clause 52 provides that the SSA may consult with industry bodies and societies in determining the amount to be paid as a supervision levy.
- Clause 53 provides that default in making a payment of a supervision levy is an offence.

Subdivision 8—Control of Advertising

- Clause 54 provides that a person who does not have the written permission of the SSA to do so, must not issue an advertisement relating to a proposed society or proposed benefit fund of a society or a body corporate that proposes to become a foreign society.
- Clause 55 provides that the SSA may, by written notice given to a society or foreign society, give a direction to the society or foreign society in relation to the issuing of advertisements.

PART 3—SOCIETIES

Division 1—Objects and Activities

- Clause 56 sets out the primary objects of societies.

Clause 57 provides that a society's objects must include primary objects.

Clause 58 provides that the dominant activities of a society must be within the scope of the primary objects of the society.

Division 2—Formation and Registration

Clause 59 sets out the procedures for formation of societies.

Clause 60 sets out the procedures for application for registration as a society under the Code.

Clause 61 provides that, on registering a society, the SSA must issue to the society a certificate of incorporation, which is conclusive evidence that all requirements in relation to registration have been complied with.

Clause 62 sets out the effect of incorporation.

Clause 63 confers a number of specific powers on societies (in addition to the powers of a natural person) but limits a society's powers to hold a subsidiary except where approved by the SSA. The provision restricts a society from carrying on business outside Australia unless permitted by the standards.

Clause 64 prohibits a society from issuing debentures.

Clause 65 restricts a society from entering into reinsurance arrangements unless the society's actuary has given the society certain advice.

Clause 66 prohibits a society from acting as a trustee in relation to the issue of prescribed interests under the Corporations Law.

Clause 67 provides that, except as permitted by the standards, a society must not enter into a financial arrangement which is dependent upon the future value of property, rights or liabilities, or a particular rate, index or other factor at a particular future time.

Clause 68 provides that, except as permitted by the standards, a society must not invest any funds or carry out any activities in a foreign currency.

Division 3—Rules

Subdivision 1—General

Clause 69 requires a society to provide in its rules for the primary objects and any other objects of the society and the matters set out in the standards.

Clause 70 requires a society to provide a copy of its rules to a member or proposed member upon payment of a fee, if any.

Clause 71 provides that a society and its members are bound by the rules of the society.

Subdivision 2—Amendment of rules

Clause 72 provides that subject to other provisions of the Act the rules of a society may only be amended by special resolution of the members.

Clause 73 sets out the circumstances where the rules of a society may be amended by resolution of the board. The provision also specifies the notice to be given to members of such an amendment of the rules.

Clause 74 sets out the circumstances in which the SSA must register an amendment of rules.

Clause 75 empowers the SSA to require modification of rules in certain circumstances and specifies the manner of giving notice to members of the amendment of the rules.

Subdivision 3—Societies conducting health benefit funds

Clause 76 defines "Commonwealth Act" and "registered society" for the purposes of this subdivision.

Clause 77 provides that the rules of a registered society include the terms, conditions, directions and Council's rules that apply to the society under the National Health Act 1953 (Cth).

Clause 78 provides that a registered society is to give the SSA notice of the date on which rule changes take effect under the National Health Act 1953.

Division 4—Standards

Clause 79 provides that a society must comply with all applicable standards.

Division 5—Membership

Clause 80 sets out the criteria for membership of a society.

Clause 81 provides for certain restrictions on the membership of minors and provides that a person who is at least 10 but has not reached the age of 16 may, with the consent of a parent, become a member of a benefit fund of a society or take an assignment of benefits.

- Clause 82 provides for joint membership of a society or a benefit fund.
- Clause 83 provides for corporate membership of a society or a benefit fund.
- Clause 84 provides that a person ceases to be a member of a society as provided by the society's rules.
- Clause 85 provides that a member may be expelled or have his or her membership rescinded as provided by the society's rules.
- Clause 86 provides for the limitation of liability attaching to a person's membership.

Division 6—Name and office

- Clause 87 provides for the registration and use of the name of a society.
- Clause 88 allows a society to use certain abbreviations as part of its name.
- Clause 89 provides that a change of name does not affect the identity of a society.
- Clause 90 restricts the use of the words "friendly society" by persons other than societies, foreign societies or services corporations.
- Clause 91 provides that an unregistered society must not use the words "friendly society" in its name or hold out that its business is that of a society.
- Clause 92 requires a society to ensure that its registered name appears on all of the society's business documents and advertisements, and that its registered name and the words "registered office" are displayed outside its registered office.
- Clause 93 requires a society to ensure that its registered name appears on its common seal.
- Clause 94 provides that a society may, if authorised by its rules, have a duplicate common seal.
- Clause 95 requires a society to have a registered office and provides that a society's first registered office is the address that appears in the society's rules at the time of registration. A society must provide the SSA with written notice of any proposed change of address of the registered office.

PART 4A—BENEFIT FUNDS

Division 1—Provision of Benefits and Establishment of Benefit Funds

- Clause 96 provides that a society must not pay benefits otherwise than out of a benefit fund maintained for the receipt of contributions and payments.
- Clause 97 sets out how and when a benefit fund is established.
- Clause 98 requires the society to apply to the SSA to approve the establishment of a benefit fund. This clause also sets out the requirements in relation to the form of application and the factors that the SSA must be satisfied of before approving the application.

Division 2—Management of Benefit Funds

- Clause 99 provides that a society must keep the assets of each benefit fund distinct and separate from the assets of any other benefit fund and the other assets of the society. The clause also provides that a society must maintain a separate account at a bank, building society or credit union for each benefit fund, unless the society is permitted by the Code or the standards to maintain a single account for 2 or more benefit funds.
- Clause 100 specifies what payments a society must credit to each benefit fund.
- Clause 101 restricts how a society may deal with the assets of a benefit fund and sets out how the assets of a benefit fund may be applied.
- Clause 102 provides for a restriction on the society's right to mortgage or otherwise charge or encumber an asset of a benefit fund.
- Clause 103 provides that a society must not invest assets of a benefit fund otherwise than in accordance with the Code, the society's rules and the standards. This clause also provides that the society must exercise the care, diligence and skill that a prudent investor would exercise.
- Clause 104 provides that a society must pay any money it receives for a benefit fund into an account maintained for the benefit fund under clause 99 or into a funds inward clearing account established under clause 105.
- Clause 105 provides for the establishment of a funds inward clearing account by the society. The clause provides that the money of a benefit fund paid into a funds inward clearing account is money of that benefit fund while it is held in the

account and interest earned on the money belongs to the benefit fund in like proportion to the entitlement of the benefit fund to the money in the account.

Clause 106 provides for the establishment by a society of a funds outward clearing account. The society must pay into the account any amount that the society withdraws from an account maintained under clause 99 for a benefit fund and does not pay forthwith to the person entitled to that amount. The clause provides that if the amount in the funds outward clearing account has not been paid to the person entitled to it within 3 months after the amount was paid into the account the amount must be paid back to the account from which it was withdrawn.

Clause 107 specifies how a society can transfer an asset from one benefit fund to another benefit fund.

Clause 108 provides for the distribution of a surplus in a benefit fund. A surplus may be allocated as bonuses to members of the benefit fund if the society's rules so provide or may be transferred to another benefit fund or to the management fund of the society.

Clause 109 specifies what the fair value of an asset is for the purposes of clauses 107 and 108.

Division 3—Restructure of Benefit Funds

Clause 110 defines the terms "existing fund" and "new fund" for the purposes of this Division.

Clause 111 provides that a society may restructure one or more of its benefit funds by transferring the whole or part of an existing fund to another existing fund or transferring the whole or part of one or more existing funds to a new fund. The clause also sets out the procedure which a society must follow to obtain the approval of the restructure by a special resolution of its members or a resolution of the society's board (if the SSA so determines). The society must prepare a restructure statement which must be approved by the SSA before submitting the proposal to its members for approval.

Clause 112 provides that a society must, by board resolution, amend the society's rules to recognise the restructure of an existing fund.

Clause 113 provides that after the restructure is approved the society must lodge with the SSA a copy of the resolutions approving the restructure and rule amendments and an application to register the amendment to the society's rules. Audited

accounts for the restructured benefit funds must be lodged with the SSA within three months after the restructure takes effect.

Clause 114 provides that a restructure takes effect on the day on which the SSA registers the amendment of rules.

Clause 115 describes the effect of a restructure on members, assets, undertakings and liabilities of the benefit funds involved in the restructure.

Clause 116 provides that a society must, within one month after a restructure, give written notice of the restructure to each member of the benefit funds affected by the restructure.

Division 4—Termination of Benefit Funds

Clause 117 provides for the application of this Division.

Clause 118 provides that a society that proposes to terminate a benefit fund must lodge a termination statement containing specified information with the SSA for approval, before submitting the statement to its members. The proposed termination must be approved by a special resolution of members of the benefit fund or a resolution of the society's board (if the SSA determines).

Clause 119 provides that the assets of the benefit fund being terminated must be distributed by the society in accordance with this clause within 12 months after the termination is approved.

Clause 120 provides that the society must, not later than the date of distribution of the assets of the benefit fund, give written notice of the termination of the benefit fund to each member of the fund.

Clause 121 provides that after a society has distributed the assets of a benefit fund the society's board must, by resolution, amend the society's rules to recognise the termination of the benefit fund.

Clause 122 provides that, within one month after the assets of the benefit fund have been distributed, the society must lodge with the SSA, a copy of the resolutions approving the termination and rule amendments and an application to register the rule amendment. Audited accounts for the terminated benefit fund must be lodged with the SSA within three months after the termination takes effect.

Clause 123 provides that the termination of the benefit fund takes effect on the day on which the SSA registers the amendment of rules.

Division 5—Assignment of Benefits

Clause 124 provides that an assignment of an entitlement to benefits may only be made in accordance with this provision.

Clause 125 provides that a member of a society who is at least 16 years old may nominate a person to whom any benefits that are payable at the death of the member are to be paid.

PART 4B—OFFERING AND MARKETING OF BENEFITS

Division 1—Application and Interpretation

Clause 126 defines the terms "application period", "exempt person", "licensed adviser", "licensed dealer" and "proper authority" for the purposes of this Part.

Clause 127 sets out what is meant by a benefits advisory business.

Clause 128 excludes certain benefit funds from the application of this Part.

Clause 129 provides that a society must not issue benefits unless the society's actuary has given the society written advice about certain matters.

Clause 130 describes when a person is a representative of another person.

Clause 131 describes when a person is involved in a contravention.

Clause 132 specifies what is meant by engaging in conduct.

Clause 133 describes what is meant by a reference to doing any act or thing.

Clause 134 specifies what constitutes a misleading representation.

Division 2—Disclosure Documents and Application Forms

Clause 135 provides that a person must not issue an invitation to contribute to or issue an application form for making contributions to a benefit fund of a society unless a disclosure document has been lodged with the SSA within the preceding 12 months.

Clause 136 provides that a person must not issue an application form for benefits or making contributions to a benefit fund of a society unless the form is attached to a disclosure document and both the disclosure document and the form have been lodged with the SSA.

Clause 137 specifies the form of the disclosure document and the date taken to be the date of issue of the disclosure document.

Clause 138 requires a disclosure document to specify the nature and extent of any interest that a director or proposed director of the society or an expert has in the assets of the benefit fund or benefits of the kind to which the document relates.

Clause 139 sets out the liability of a director or other person responsible for the preparation of the disclosure document in respect of a contravention of clause 137 or 138.

Clause 140 sets out the content required to be contained in a disclosure document.

Clause 141 provides that a condition requiring waiver of compliance with the requirements in this Division or which purports to effect a person applying for the benefits with notice of certain matters is void.

Clause 142 imposes an obligation on directors, experts and other persons named in the disclosure document or a person who authorised or caused the issue of the disclosure document to notify the society of any false or misleading statements in or material omission from the disclosure document of which they are aware.

Clause 143 provides for a supplementary or replacement disclosure document to be lodged to correct a deficiency if the society becomes aware of a false or misleading statement in or material omission from the disclosure document.

Clause 144 provides for a supplementary or replacement disclosure document to be lodged with the SSA if there are significant changes or new matters which affect matters included in the disclosure document.

Clause 145 contains general provisions about supplementary disclosure documents.

Clause 146 contains general provisions about replacement disclosure documents.

Clause 147 sets out the consequences of lodging a supplementary disclosure document.

Clause 148 sets out the consequences of lodging a replacement disclosure document.

Clause 149 provides for 2 options a society must follow if a person applies for benefits pursuant to a disclosure document on an application form which is not current following the lodgment of a supplementary or replacement disclosure document.

Clause 150 provides for the inclusion of documents in a disclosure document by reference.

- Clause 151 sets out certain requirements in relation to disclosure documents that state that specified information is to be set out in an application form.
- Clause 152 provides that the publication of certain notices inviting a person to apply for benefits or which refer or call attention to a disclosure document relating to benefits are prohibited.
- Clause 153 provides that the publication of certain reports that are reasonably likely to induce persons to apply for benefits of the kind to which a disclosure document relates are prohibited.
- Clause 154 sets out certain evidentiary provisions for the purposes of clauses 152 and 153.
- Clause 155 requires certain documents referred to in a disclosure document to be kept at a society's registered office for inspection.
- Clause 156 requires that a disclosure document that includes a statement made by an expert must not be issued unless the expert has given written consent to the issue of the document with the statement included.
- Clause 157 empowers the SSA to issue an order, in specified circumstances, directing a society not to issue an invitation to contribute to the benefit fund to which the disclosure document relates or accept a contribution to that benefit fund.
- Clause 158 provides that the SSA may exempt a particular person or class of persons from compliance with any of the provisions of this Division or any standards made for the purposes of this Division.

Division 3—Prohibited Conduct and Civil Liability

- Clause 159 describes when a statement is taken to be in a disclosure document.
- Clause 160 prohibits a person from engaging in conduct that is misleading or deceptive being conduct in connection with any dealing in benefits or any disclosure document or notice published in relation to benefits.
- Clause 161 prohibits the authorisation or issue of a disclosure document where a material statement in the document is false or misleading or there is a material omission from the disclosure document.
- Clause 162 provides for recovery of the amount of any loss or damage caused by the conduct of a person involved in a contravention of this Division or Division 2.

- Clause 163 describes the persons who may be taken to be involved in a contravention for the purpose of an action under clause 162 in respect of false or misleading statements in, or omissions from, a disclosure document.
- Clause 164 provides that a person is not liable in an action under clause 162, if the person who applied for benefits to which the disclosure document relates, knew that the statement was false or misleading or was aware of the omitted matter.
- Clause 165 provides that a director of the society is not liable in an action under clause 162 if the disclosure document was issued without the director's knowledge or consent.
- Clause 166 provides that a director or proposed director of a society is not liable where he or she has reasonable grounds for believing that the disclosure document was correct.
- Clause 167 sets out the circumstances in which an expert, auditor, actuary, banker or solicitor or certain professional persons named in the disclosure document are not liable in an action under clause 162.
- Clause 168 sets out the circumstances in which an auditor, actuary, banker, solicitor or certain professional persons named in part only of a disclosure document are not liable in an action under clause 162.
- Clause 169 provides that a society or a person who authorised or caused the issue of the disclosure document is not liable in an action under clause 162 if the false or misleading statement or omission is due to reasonable mistake or another specified cause.
- Clause 170 provides that the directors of a society and any person who authorised or caused the issue of a disclosure document are liable to indemnify a director who did not know or consent to the issue of the disclosure document and any person specified in clause 163 who is named in the disclosure document without consent.

Division 4—Regulation of Industry Participants

Subdivision 1—Conduct in relation to benefits

- Clause 171 prohibits the carrying on of a business dealing in benefits by persons other than those specified.
- Clause 172 prohibits the carrying on of a benefits advisory business by persons other than those specified.

Subdivision 2—Agreements with unlicensed persons

- Clause 173 provides that certain persons are not "clients" for the purposes of this Subdivision.
- Clause 174 provides for the application of clauses 175 to 183 to agreements between unlicensed persons and clients.
- Clause 175 allows a client in certain circumstances to give written notice to a non-licensee rescinding an agreement.
- Clause 176 describes the effect of a notice of rescission under clause 175.
- Clause 177 allows a client to apply to the Court for the partial rescission of an agreement.
- Clause 178 allows the Court to make consequential orders on rescission of an agreement under clause 176, unless the order would prejudice certain specified rights.
- Clause 179 specifies the circumstances in which an agreement is unenforceable against a client.
- Clause 180 specifies the circumstances in which a non-licensee is not entitled to recover commission.
- Clause 181 provides that, for the purposes of determining, in a proceeding in a court, whether or not a non-licensee is entitled to enforce an agreement or recover commission, it is presumed, unless the contrary is proved, that clause 179 or 180, as the case requires, applies or applied.
- Clause 182 provides for the recovery by a client of commission paid to a non-licensee.
- Clause 183 provides that the clients rights under this Subdivision do not prejudice any other right or remedy of the client.

Subdivision 3—Representatives

- Clause 184 sets out the form required for a proper authority given by a society in respect of a representative of the society.
- Clause 185 prohibits a person without a proper authority from acting as a dealer's representative.
- Clause 186 prohibits a person without a proper authority from acting as an investment adviser's representative.

- Clause 187 prohibits a person without a proper authority from acting as a society's representative.
- Clause 188 prohibits a body corporate from acting as a representative of a dealer, an investment adviser or a society.
- Clause 189 specifies the circumstances in which a person does not contravene sections 171, 172, 185, 186 or 187.
- Clause 190 prohibits a person banned under section 829 of the Corporations Law from acting as a representative of a society, licensed dealer or a licensed adviser.
- Clause 191 requires a society to keep a register, in the specified form, of holders of proper authorities.
- Clause 192 requires a society to notify the SSA of the location and contents of its register of holders of proper authorities.
- Clause 193 provides for the inspection and copying of a society's register of holders of proper authorities.
- Clause 194 empowers the SSA to require a person to produce a proper authority and provides that failure to comply with such a requirement is an offence.
- Clause 195 specifies the circumstances in which the SSA may give information to a society regarding a current or prospective representative of the society.
- Clause 196 provides that a holder of a proper authority may be required to return it to the society in certain circumstances.

Subdivision 4—Liability of principals for representatives' conduct

- Clause 197 sets out when a principal is liable for the acts of a representative.
- Clause 198 provides for liability of principals where the identity of a principal is unknown.
- Clause 199 provides for liability of principals where an act is done by a client in reliance on a representative's conduct.
- Clause 200 provides that, where it is proved for the purposes of a proceeding in a court, that a person engaged in certain conduct while the person was a representative of an indemnifying principal or principals, it is presumed that the person engaged in the conduct as a representative of the indemnifying principal or principals.

Clause 201 provides that an agreement is void if it purports to affect a person's liability or to provide for the indemnification of a person.

Clause 202 sets out the effect of this Subdivision on certain rights and liabilities.

Subdivision 5—Excluding persons from dealing with benefits

Clause 203 empowers the SSA to make a banning order against a person under certain specified circumstances.

Clause 204 describes the nature of a banning order made under clause 203.

Clause 205 provides that a banning order may permit a person to do certain acts subject to conditions specified in the banning order, and allows the SSA to vary a banning order.

Clause 206 provides for the variation or revocation of a banning order by the SSA on the application of the person to whom the banning order relates.

Clause 207 provides for the revocation of a banning order where a required variation would result in the order ceasing to have any application.

Clause 208 describes the effect and provides for the publication of orders under this Subdivision.

Clause 209 makes it an offence for a person to contravene a banning order.

Clause 210 requires the SSA to give a person against whom it is proposed to make a banning order an opportunity to appear at a hearing and make submissions.

Clause 211 allows the SSA to apply to the Court for an order disqualifying a person from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business.

Subdivision 6—Recommendations about benefits

Clause 212 defines "adviser".

Clause 213 provides that, for the purposes of this Subdivision, a recommendation made by a partner or officer is deemed to have also been made by the partnership or body corporate, as the case requires.

Clause 214 provides that an adviser must inform a client of any interest of the adviser that may influence the adviser's recommendation.

Clause 215 provides defences to an alleged breach of clause 214(2).

Clause 216 requires an adviser to have a reasonable basis for a recommendation, whether express or implied, with respect to benefits.

Clause 217 provides that an adviser who breaches this Subdivision is liable to compensate the client for any loss or damage suffered by the client in reliance on a recommendation.

Clause 218 provides that an adviser has qualified privilege when the adviser is complying with this Subdivision.

PART 5—SHARES AND CHARGES

Division 1—Shares generally

Clause 219 provides that a society may issue permanent shares and redeemable preference shares.

Clause 220 provides for the division of shares into classes and that the rights attaching to shares.

Clause 221 provides that the share capital of a society is the aggregate of the nominal values of issued shares.

Clause 222 limits the liability of shareholders to the amount (if any) unpaid on their shares.

Clause 223 provides that the consent of the society is required to any transfer of its shares, unless otherwise provided in the society's rules.

Clause 224 prohibits a society from applying its capital to make payments to persons in consideration of subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any permanent shares in the society. An officer of a defaulting society commits an offence and a court may impose penalties and make certain compensatory orders.

Clause 225 regulates a society's power to make payments by way of brokerage or commission to persons in relation to subscriptions for shares in the society. Disclosure of the amount of the proposed payment is required in a prospectus. The total amount permitted for such payments is either 10% of the total amount payable on allotment of the shares or an amount specified in the society's rules, whichever is the lesser.

Clause 226 sets out procedures for the Court to validate improperly issued shares.

Division 2—Permanent Shares

Clause 227 allows the issue of permanent shares in a friendly society and regulates priorities where there are different classes of permanent shares.

Clause 228 provides for the issue of preference shares as a class of permanent shares.

Clause 229 requires certain rights of preference shareholders to be set out in the society's rules.

Clause 230 regulates the cancellation of permanent shares in a society. Cancellation of permanent shares requires the approval of the SSA and must not result in the society being in breach of a standard.

Clause 231 regulates the distribution of profits by way of dividends or bonus shares to holders of permanent shares. A society commits an offence if dividends are paid otherwise than out of profits of the management fund of the society or out of a share premium account. If a society contravenes this requirement, certain remedies are available to creditors.

Clause 232 provides that a society must not issue permanent shares unless expressly authorised by the society's rules. In issuing the shares, the society must comply with the Code and the standards.

Clause 233 restricts the allotment of permanent shares otherwise than for cash unless an expert's report stating certain matters is obtained. For the purposes of this clause, permanent shares issued under a dividend re-investment plan or the issue of bonus shares paid for out of a share premium account are not issues of shares otherwise than in consideration of cash.

Clause 234 empowers the SSA to exempt a society from a requirement of clause 233.

Clause 235 allows a society to: (a) make arrangements relating to payment of calls on permanent shares; (b) accept from shareholders amounts unpaid on permanent shares although no part of that amount has been called-up; and (c) resolve that any proportion of its uncalled permanent share capital is not capable of being called-up except in a winding-up.

Clause 236 regulates calls on permanent shares in a society and provides for the effect on shareholders of non-compliance with calls.

Clause 237 requires permanent shares forfeited for non-payment of a call to be offered for sale by auction and requires the society's rules to regulate the procedure involved.

- Clause 238 prohibits an allotment of permanent shares unless a minimum subscription has been received. If this does not occur, the society must repay all money received from applicants in accordance with the procedures set out in the clause. Certain offences are prescribed for directors contravening this provision.
- Clause 239 requires a society allotting permanent shares to lodge a return as to allotments with the SSA. The return is to contain certain prescribed particulars.
- Clause 240 requires any premium received from the issue of permanent shares at a premium to be transferred to the 'share premium account'. The share premium account may only be applied for certain specified uses.
- Clause 241 allows a society to reduce its permanent share capital by special resolution, subject to confirmation by the Court. Creditors are entitled to object to the reduction in certain circumstances and the Court must prepare a list of objecting creditors and the nature and amount of their debts and claims, consider the creditors' objections and make certain orders relating to the reduction of capital. A society must not act on a resolution for reduction of permanent share capital before an application is made to the SSA for registration of the resolution and an office copy of the Court order is lodged with the SSA. The liability of shareholders is limited to certain prescribed amounts but they may also be liable to contribute to certain creditors. Officers are liable for certain offences in relation to the reduction.
- Clause 242 prohibits a society from giving financial assistance in relation to the acquisition of its permanent shares. The meaning of giving financial assistance is defined. Officers of a defaulting society are liable for certain offences.
- Clause 243 prescribes a number of exceptions to the prohibition in clause 242, including: (a) payments of dividends in good faith and in the ordinary course of commercial dealing; (b) payments made pursuant to a reduction of capital; (c) the discharge of liabilities of the society incurred in good faith and in the ordinary course of commercial dealing; (d) acquisitions of certain interests in permanent shares where no consideration is provided by the society or related body corporate; and (e) purchases of permanent shares pursuant to a court order.
- Clause 244 sets out the consequences of a society financing dealings in its permanent shares which include the following: (a) a contract made or performed, or transaction entered into in contravention of clause 243, or any related contract or transaction, is voidable at the option of the society provided that notice is

given; (b) the Court may make such orders as it thinks just and equitable against any party to the contract or transaction or related contract or transaction, the society or any person who aided, abetted, counselled or procured, or was knowingly concerned in or party to the contravention; and (c) a person may not be liable, and any contract or transaction may not be invalid, if a certificate signed by specified officers stating that the requirements of clause 243(4) have been complied with in relation to the proposed giving of financial assistance.

Clause 245 prohibits a subsidiary of a society from acquiring permanent shares in its holding society and prescribes certain exceptions.

Clause 246 regulates the granting of options over permanent shares.

Division 3—Redeemable Preference Shares

Clause 247 applies certain provisions of the Code to redeemable preference shares.

Clause 248 permits the issue of redeemable preference shares and prescribes requirements for redemption by a society.

Division 4—Shareholding Restrictions

Subdivision 1—Interpretative provisions

Clause 249 applies this Division to shares issued by a society under the Code.

Clause 250 provides for the extraterritorial operation of this Division.

Clause 251 defines a person's "entitlement" to shares in a society.

Clause 252 describes the factors which determine whether a person has a "relevant interest" in a share in a society by reference to that person's power or control over the share.

Clause 253 defines the expression "associate" for the purposes of this Division.

Clause 254 sets out the meaning of voting power or a right to vote for the purposes of this Division.

Clause 255 provides that, in determining whether a person's contravention of a provision of this Division was due to inadvertence or mistake, the person's ignorance of or mistake concerning a matter of law is to be disregarded.

Subdivision 2—Maximum shareholdings

Clause 256 provides that a person's maximum permissible shareholding of permanent shares or redeemable preference shares is to be determined by reference to a specified percentage of the nominal value of the relevant shares. The maximum permissible shareholding is 10% of the nominal value of all shares issued by the society.

Clause 257 prescribes the consequences of a person exceeding the maximum permissible shareholding, which include requiring forfeiture, sale or cancellation of the excess shares.

Clause 258 provides for a number of exceptions to clause 257.

Subdivision 3—Substantial shareholdings

Clause 259 applies Part 6.7 of the Corporations Law (relating to substantial shareholdings and substantial shareholders) to a society, with all necessary modifications.

Subdivision 4—Power to obtain information

Clause 260 applies Part 6.8 of the Corporations Law (relating to power to obtain information as to beneficial ownership of shares) to a society, with all necessary modifications.

Subdivision 5—Enforcement

Clause 261 applies sections 741 to 744 of the Corporations Law (relating to the powers of a Court to make orders with respect to substantial shareholdings) to a society, with all necessary modifications.

Clause 262 empowers the SSA to exempt a person from compliance with all or any provisions of this Division, and to declare that a provision of this Division has effect in its application to a particular person or persons.

Division 5—Issue of Shares

Clause 263 prohibits a friendly society from issuing shares at a discount.

Clause 264 prohibits a society from issuing redeemable preference shares as partly paid up or otherwise than in consideration of the payment of cash.

Clause 265 empowers the SSA to exempt a person from compliance with all or any of the provisions of this Division or to make certain declarations.

Division 6—Title to and Transfer of Shares

- Clause 266 provides that this Division does not apply to the extent that its application would be inconsistent with Part 7.13 (Title to, and transfer of, securities) Division 3 (Transfer of marketable securities and marketable rights) of the Corporations Law.
- Clause 267 provides that a document of title issued by a society in relation to shares held by a member is evidence of the member's title to the shares.
- Clause 268 prescribes procedures where a document of title to shares is lost or destroyed. A duplicate document of title must be issued by the society on application by the owner of the shares.
- Clause 269 prohibits a society from registering a transfer of permanent shares unless an instrument of transfer has been delivered to the society in the prescribed form.
- Clause 270 prescribes procedures relating to the registration of a transfer of permanent shares where the transfer is requested by the transferor.
- Clause 271 requires a society that refuses to register a transfer of permanent shares to send a notice of refusal to the transferee.
- Clause 272 allows a transferee or transmittee of permanent shares, where a society refuses or fails to register the transfer or transmission, to apply to the Court for an order that the transfer or transmission be registered.
- Clause 273 regulates certifications by a society of instruments of transfer of permanent shares.
- Clause 274 specifies the duties of a society which has issued permanent shares in relation to the issue of certificates and other documents.
- Clause 275 provides the SSA with power to grant exemptions or make declarations in relation to shares or a class of shares.

Division 7—Registration of Charges

- Clause 276 applies Part 3.5 of the Corporations Law (relating to charges) to a society, with all necessary modifications.
- Clause 277 empowers AFIC and the SSA to issue directions to societies in relation to the creation and registration of charges.

Clause 278 provides that the prior approval of the SSA to the creation of a charge is required except in prescribed circumstances.

PART 6—MANAGEMENT

Division 1—Interpretation

Clause 279 defines the term "employee" for the purposes of this Division.

Clause 280 describes what constitutes control of another entity.

Division 2—Directors and Officers

Clause 281 provides that the business and operations of a society are to be managed and controlled by a board of directors, the powers of which are subject to any restrictions imposed by the friendly societies legislation, applicable standards and the society's rules.

Clause 282 regulates the meetings of a society's board.

Clause 283 provides that a society must cause full and accurate minutes to be kept of every meeting of its board.

Clause 284 provides that the number of directors of a society must not be less than 5.

Clause 285 regulates the election of directors and makes provision for terms of office and re-election.

Clause 286 provides that the members of a society may, pursuant to the society's rules, elect not more than two employees of the society nominated by the directors to be directors of the society.

Clause 287 provides that a director may appoint a person who is eligible to be a director of the society to be an alternate director in the place of that director.

Clause 288 provides for the election of a chairperson of the board of the society.

Clause 289 provides that certain persons are not eligible to be directors of a society.

Clause 290 specifies the circumstances in which the office of a director becomes vacant.

Clause 291 provides for the removal of directors.

Clause 292 requires a director of a society who has a direct or indirect interest in a contract or proposed contract with the society to declare the nature and extent

of the interest to the society's board. The provision also sets out the manner in which the declaration is to be made.

Clause 293 requires a director of a society to give written notice to the society of certain information relating to securities, rights, options, contracts or interests in a benefit fund to enable the society to comply with the provisions relating to the Register of Directors.

Clause 294 prohibits an officer of a society who is not a director of the society from obtaining financial accommodation from the society other than as provided by this clause.

Clause 295 prescribes the conditions upon which financial accommodation may be provided to directors and associates of directors (as defined in this clause).

Clause 296 requires the remuneration of a director to be approved at a general meeting of the society.

Clause 297 prohibits a society from entering into a management contract without the prior written approval of the SSA.

Clause 298 specifies the duties of directors and officers of a society.

Clause 299 permits the Court to prohibit the transfer of money under certain circumstances.

Clause 300 provides that a person who is not a director or alternate director of a society must not purport to act as a director of a society.

Division 3—Meetings of Members of a Society

Clause 301 provides for the holding of the first and each subsequent annual general meeting of the society.

Clause 302 provides for the convening by the board of a society of a special general meeting of the society.

Clause 303 provides that a general meeting of a society must not deal with an item of business unless a quorum (as prescribed by the society's rules) is present.

Clause 304 provides for the giving of notice of an annual general meeting and a general meeting of a society to each member of the society.

Clause 305 provides for the voting entitlements of members of a society.

Clause 306 states that the rules of a society may provide for proxy voting.

Clause 307 specifies the requirements relating to special resolutions of a society.

Clause 308 requires a society to cause full and accurate minutes to be kept of every meeting of the society's members.

Division 4—Meetings of Members of a Benefit Fund

Clause 309 provides for the application of this Division.

Clause 310 provides that a meeting of members of a benefit fund must not deal with an item of business unless a quorum (as prescribed by the society's rules) is present.

Clause 311 provides for the giving of notice of a meeting of members of a benefit fund.

Clause 312 provides that each member of a benefit fund, other than a member who is also a representative of a corporate member, is entitled to exercise one vote on any question arising for determination.

Clause 313 provides for proxy voting at a meeting of members of a benefit fund.

Clause 314 specifies the requirements relating to special resolutions of members of a benefit fund.

Clause 315 requires a society to cause full and accurate minutes to be kept of every meeting of members of its benefit funds.

Division 5—Registers and inspection

Clause 316 requires a society to keep prescribed registers at their registered office or, with the written consent of the SSA, at an office other than its registered office.

Clause 317 requires a society to keep a register of its directors and secretaries, containing certain specified information.

Clause 318 requires a society to keep a register of members of the society and members of each benefit fund.

Clause 319 provides that a register of members of a society and a register of members of a benefit fund is evidence of membership of the society and of the benefit fund respectively.

Clause 320 requires a society to keep a register of holders of permanent shares.

Clause 321 empowers the Court to rectify the register of holders of permanent shares.

Clause 322 requires a society to keep a register of options granted to persons to take up permanent shares in the society.

Clause 323 requires a society to keep at its registered office available for inspection without fee by members and creditors of the society: (a) relevant legislation; (b) a copy of the rules of the society; (c) a copy of the last accounts of the society and the auditors report on those accounts; and (d) a copy of the last director's report. A member may request a copy of a register or any part of a register kept by the society under the Code.

Clause 324 provides that a society complies with the requirements of this Division relating to location of a register if the register is stored on computer and is kept at a place other than the place where the register is required to be kept and the society has served the SSA with notice that this clause is to apply to the register.

Clause 325 provides that a register may be kept or prepared by making entries in a bound or loose-leaf book or by recording or storing matters using a mechanical, electronic or other device or in any other way approved by the SSA.

Division 6—Accounts

Clause 326 provides that the financial year of a society is the period from 1 July to the following 30 June.

Clause 327 provides that a society's directors must ensure that the financial year of each entity controlled by the society coincides with the financial year of the society.

Clause 328 requires a society to keep accounting records in the prescribed form.

Clause 329 requires a society to make its accounting records available for inspection at all reasonable times without fee by any director of the society and by any other person authorised or permitted under the friendly societies legislation to inspect the records.

Clause 330 requires the directors of a society to cause to be prepared a profit and loss account and balance sheet before the day on which notice of an annual general meeting of the society is given.

Clause 331 requires the directors of a holding society to prepare consolidated profit and loss accounts and consolidated balance sheets.

Clause 332 requires directors of a society to ensure that accounts and group accounts are audited.

- Clause 333 requires the directors of a society to ascertain certain matters prior to preparation of the profit and loss account and balance sheet.
- Clause 334 requires the directors of a society to ensure that the accounts and group accounts comply with the prescribed requirements and applicable accounting standards.
- Clause 335 requires the directors of a society to prepare and sign a directors' statement to be attached to accounts laid before an annual general meeting. The statement must contain certain prescribed particulars.
- Clause 336 requires the directors of a society to prepare a report in accordance with a resolution of the directors and signed by at least 2 directors, containing certain specified matters pertaining to the directors in office at the date of the report.
- Clause 337 requires directors of a holding society to obtain information from entities controlled by the society in order to prepare group accounts.
- Clause 338 requires certain accounts, statements and reports to be laid before each annual general meeting of the society.
- Clause 339 imposes penalties on directors of a society for contravention of Division 6.

Division 7—Audit

- Clause 340 prescribes the qualifications for an auditor of a society.
- Clause 341 prescribes the procedures for appointment of auditors of a society.
- Clause 342 prohibits a society from appointing an auditor unless the auditor has been nominated.
- Clause 343 provides for the removal and resignation of auditors.
- Clause 344 provides that an auditor of a society ceases to hold office if the society is wound-up.
- Clause 345 requires a society to pay the reasonable fees and expenses of an auditor.
- Clause 346 requires an auditor to report to the members on the accounts and group accounts (if the society is a holding society). The auditor's report must contain certain prescribed particulars.
- Clause 347 specifies the powers and duties of an auditor including right of access to accounting and other records, power to require information from officers and

entitlement to attend meetings and receive notices. An auditor has a duty to inform the SSA as to certain non-compliances and contraventions.

Clause 348 requires the auditor to prepare a final report if the society is dissolved as part of a merger or transfer of engagements or converts to a company or an incorporated association.

Clause 349 requires a society to ensure that the accounts and accounting records of an entity controlled by the society are audited in accordance with Part 6.

Clause 350 prohibits an officer of a society from obstructing an auditor and imposes certain penalties.

Clause 351 specifies the circumstances in which an auditor has qualified privilege.

Division 8—Actuaries

Clause 352 provides that a society must appoint an actuary and prescribes the necessary qualifications of such an actuary.

Clause 353 provides for the cessation of appointment as an actuary of a society.

Clause 354 provides that a society must give the SSA certain information regarding an actuary appointed by the society.

Clause 355 specifies the powers of an actuary of a society.

Clause 356 requires the actuary of a society to draw certain matters to the attention of the society or the SSA.

Clause 357 provides that a person who is or has been the actuary of a society has qualified privilege in respect of certain statements.

Clause 358 requires a society to arrange for its actuary to investigate the financial condition of the society at certain specified times.

Clause 359 provides for additional actuarial investigations at times other than those specified in clause 358.

Division 9—Returns and Relief

Clause 360 requires a society to lodge returns with the SSA in the form prescribed.

Clause 361 permits the directors of a society to apply to the SSA for relief from the requirements relating to accounts, audit and actuaries.

PART 7—MERGERS OF SOCIETIES AND TRANSFERS OF ENGAGEMENTS

Division 1—Preliminary

Clause 362 sets out definitions of "certificate of confirmation", "transferee society" and "transferor society" for the purposes of this Part.

Clause 363 provides that nothing in this Part authorises the restructure or termination of a benefit fund otherwise than in accordance with Part 4A.

Division 2—Mergers and Transfers of Engagements Between Societies

Clause 364 provides for an application for registration of a merger or transfer of engagements between societies.

Clause 365 specifies the circumstances in which the SSA may register a merged society.

Clause 366 specifies the circumstances in which the SSA may issue a certificate confirming a transfer of engagements between societies.

Clause 367 specifies the circumstances in which the SSA may direct a society to totally or partially transfer its engagements to another society if the board of the other society has by resolution consented to the proposed transfer.

Clause 368 empowers the SSA to amend the rules of a society to facilitate a transfer of engagements and the method of giving notice to members of such an amendment of the rules.

Clause 369 provides that a society must take all reasonable steps to comply with a direction by the SSA to transfer its engagements under this Division.

Clause 370 provides for the issue of certificates of confirmation by the SSA where the SSA has directed a transfer of engagements between societies.

Clause 371 provides that the SSA must give a certificate of confirmation to each of the societies in the case of a partial transfer and to the transferee society in the case of a total transfer.

Clause 372 provides that a transfer of engagements takes effect on the issue of the certificate of confirmation or such later date as specified in the certificate.

Clause 373 provides that the SSA must cancel the registration of the transferor society when a total transfer of engagements takes effect.

Clause 374 describes the effect of a merger between societies under this Division.

Clause 375 describes the effect of a transfer of engagements between societies under this Division.

Division 3—Mergers and Transfers of Engagements Involving Foreign Societies

Clause 376 defines a "foreign society" as a society in another participating State, whether or not it is registered as a foreign society under Part 11 of this Code.

Clause 377 provides that, for the purposes of this Division, a reference to a transfer of engagements involving a society and a foreign society is to be taken to be a transfer of engagements from the foreign society to the society.

Clause 378 provides for an application for registration of a merger or transfer of engagements involving a society and a foreign society.

Clause 379 specifies the circumstances in which the SSA may register a merged society for the purposes of this Division.

Clause 380 provides for the issue of a certificate of confirmation by the SSA on a transfer of engagements between a society and a foreign society.

Clause 381 requires the SSA to give a certificate of confirmation to each of the societies in the case of a partial transfer and to the transferee society in the case of a total transfer.

Clause 382 provides that a transfer of engagements takes effect on the date of the issue of the certificate of confirmation or such later date as specified in the certificate.

Clause 383 describes the effect of a merger between a society and a foreign society.

Clause 384 describes the effect of a transfer of engagements under this Division.

Clause 385 requires a society to pass a special resolution where it proposes to merge with or transfer all or any of its engagements to a foreign society.

PART 8—CONVERSIONS TO COMPANIES AND INCORPORATED ASSOCIATIONS

Division 1—Conversion to Company

Clause 386 provides that, subject to its rules, a society may apply to the SSA for approval of a proposal to convert to a company.

Clause 387 provides that, prior to a society applying for approval to convert, the society must obtain the approval of its members by a postal ballot. The ballot papers must be accompanied by specified information and must be sent to the members of the society at least 21 days before the day on which the ballot papers must be returned.

Clause 388 provides that the SSA may, after a postal ballot has been held, substitute a percentage less than the 20% of members required to vote for the purpose of clause 387 where the SSA is of the opinion that it is in the interests of the public and of the members of the society to do so.

Clause 389 requires a society to apply to the SSA, in the prescribed form, for approval of a proposal to convert to a company.

Clause 390 describes the effect of conversion of a society to a company.

Clause 391 requires a society to surrender its certificate of incorporation where it proposes to convert to a company.

Clause 392 provides that the SSA may, on application by the company resulting from a conversion, issue a certificate to the company, stating that a conversion under this Part has taken effect.

Division 2—Conversion to Incorporated Association

Clause 393 provides that a society without a benefit fund may apply to the SSA for approval of a proposal that the society convert to an incorporated association.

Clause 394 provides that before a society applies to the SSA for approval to convert to an incorporated association the proposal must be approved by a special resolution of the society's members. The society must send a statement setting out specified information to each of its members not later than 21 days before the date of the meeting at which the resolution will be determined.

Clause 395 requires a society to apply to the SSA, for approval of a proposal to convert to an incorporated association.

Clause 396 describes the effect of a conversion of a society to an incorporated association.

Clause 397 requires a society that proposes to convert to an incorporated association to surrender its certificate of incorporation to the SSA.

Clause 398 provides that the SSA may, on application by the incorporated association resulting from a conversion, issue to the incorporated association a certificate stating that a conversion under this Part has taken effect.

PART 9—EXTERNAL ADMINISTRATION

- Clause 399 provides that Parts 5.1 and 5.9 of the Corporations Law apply to a society, with all necessary modifications and any prescribed modifications, in relation to a compromise or arrangement between a society and its creditors or a reconstruction of a society.
- Clause 400 provides that Parts 5.2 and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, in relation to receivers and other controllers of property.
- Clause 401 provides that a society may be wound-up voluntarily or by the Court or on a certificate of the SSA.
- Clause 402 specifies the circumstances in which a society may be wound-up on a certificate of the SSA and deals with the appointment of a liquidator by the SSA.
- Clause 403 provides for the application of the Corporations Law to the winding-up or dissolution of a society or to a defunct or dissolved society.
- Clause 404 provides that, where a society is being wound-up voluntarily, a person employed in the office of the SSA may be appointed as liquidator and specifies the circumstances in which that person may be appointed.
- Clause 405 provides that the SSA may appoint a liquidator where there is a vacancy in the office of liquidator on a voluntary winding-up.
- Clause 406 provides that the remuneration paid to the liquidator of a society wound-up voluntarily must not exceed the amount fixed by the SSA.
- Clause 407 prescribes the order of priority of the application of assets of a society on a winding-up.
- Clause 408 provides that the liquidator must determine amounts to be treated as liabilities to persons who have an interest in a benefit fund.
- Clause 409 provides that, as soon as practicable after the society is dissolved, or is taken to be dissolved, the SSA must register the dissolution and cancel the registration of the society.

PART 10—SPECIAL INVESTIGATIONS

Clause 410 defines "officer" for the purposes of Part 10 and provides that a reference to a society in Part 10 includes a reference to a related body corporate and a services corporation.

Clause 411 provides for the appointment of investigators by the SSA to investigate the affairs of a society where this is considered desirable for the protection of the public or members or creditors of the society or is in the public interest.

Clause 412 permits an investigator to investigate the affairs of a related body corporate of the society if the investigator thinks it necessary.

Clause 413 specifies the powers of investigators. An investigator's powers include powers to require an officer of a society to produce documents, give the investigator all reasonable assistance and appear before the investigator for examination on oath or affirmation.

Clause 414 imposes obligations on officers to comply with the requirements of an investigator, and provides for the examination of officers before an investigator. A legal practitioner is permitted to attend the examination of an officer.

Clause 415 provides that an officer is not excused from answering a question or producing a document on the ground that the answer or production might tend to incriminate the officer. However, neither the answer, nor the fact that the officer has produced the document, is admissible in evidence against the officer in a criminal proceeding if the officer claims that the answer or production of the document may tend to incriminate him or her.

Clause 416 specifies the circumstances in which an officer who is a legal practitioner may refuse to give information or produce a document to an investigator.

Clause 417 permits an investigator to certify a failure of an officer to comply with a requirement of the investigator and empowers the Court to make certain orders or impose certain punishments upon the officer.

Clause 418 provides for the recording of questions asked and answers given at an examination under this Part.

Clause 419 empowers an investigator to delegate certain of his or her powers under Part 10.

Clause 420 requires an investigator to report to the SSA in relation to the investigation.

Clause 421 requires the SSA to institute a prosecution against a person following an investigation if the SSA is of the opinion that an offence may have been committed by the person and that a prosecution ought to be instituted.

Clause 422 provides for the admissibility of an investigator's report as evidence in legal proceedings.

Clause 423 provides for the payment of expenses of an investigation.

Clause 424 provides that a person who interferes with documents relating to a society, the affairs of which are being investigated, commits an offence.

Clause 425 provides a defence to a prosecution under clause 424 if the person charged proves that he or she did not act with intent to defeat the purposes of Part 10 or to delay or obstruct the carrying out of an investigation under Part 10.

PART 11—FOREIGN SOCIETIES

Clause 426 defines an "applicable standard" and "carrying on business" for the purposes of this Part.

Clause 427 provides for the registration of foreign societies by the SSA.

Clause 428 provides that a foreign society must appoint a person to act as agent for it in this State.

Clause 429 provides for the termination of a person's appointment as an agent of a foreign society.

Clause 430 sets out the liability of an agent of a foreign society for all acts, matters and things that the foreign society is required to do under the Code and for contraventions of the Code.

Clause 431 provides for service of documents on the agent of a foreign society.

Clause 432 provides that the prescribed provisions of the Code apply with all necessary modifications and any prescribed modifications to a foreign society as if the foreign society were a society.

Clause 433 requires a foreign society to notify the SSA of certain changes affecting the foreign society.

Clause 434 requires a foreign society within 6 months of the end of its financial year to lodge with the SSA a copy of its balance sheet.

Clause 435 requires a foreign society to inform the SSA within 7 days if it ceases to carry on business in the State.

Clause 436 provides for the issue of a certificate by the SSA where a society proposes to be registered as a foreign society in another participating State.

Clause 437 provides that the SSA, on the request by the SSA of a participating State in which a foreign society is registered must provide copies of certain public documents that are held by the SSA.

PART 12—ASSOCIATIONS

Clause 438 provides that an association may be formed by 2 or more societies.

Clause 439 specifies the objects of an association.

Clause 440 provides for registration of an association by the SSA.

Clause 441 provides that the SSA must issue a certificate of incorporation to an association after it has been registered under this Part.

Clause 442 describes the effect of incorporation as an association.

Clause 443 provides that the members of an association are the societies by which the association is formed and any other societies admitted to membership.

Clause 444 provides that the share capital (if any) of an association must be divided into shares in accordance with the rules of the association.

Clause 445 provides for the convening and conduct of meetings of an association.

Clause 446 provides that prescribed provisions of the Code apply, with all necessary modifications and any prescribed modifications, to an association as if the association were a society.

PART 13—REVIEW OF DECISIONS

Clause 447 provides that every decision of the SSA made under the friendly societies legislation (other than specified exceptions) is reviewable by the Appeals Tribunal.

Clause 448 provides that a person whose interests are affected by a reviewable decision may apply to the Appeals Tribunal for review of the decision and that the Appeals Tribunal has the power to review any decision in relation to which

application is duly made to it under the friendly societies legislation for review of the decision.

Clause 449 applies the AFIC Code to the review of reviewable decisions by the Appeals Tribunal.

Clause 450 provides that a person whose interests are affected by a decision of the SSA may, by written notice given to the SSA, request the SSA to review the decision. The SSA may confirm, vary or reverse the decision after giving the person an opportunity to appear before the SSA and make a submission in relation to the decision.

PART 14—MISCELLANEOUS

Division 1—Evidence

Clause 451 provides that certificates, authorities or copies of documents appearing to be certified as such by the SSA are evidence of the matters stated in the certificate, authority or copy.

Clause 452 provides that a copy of the rules of a society certified by the society's secretary is evidence of the rules.

Clause 453 provides that the registers kept under the Code are evidence of the particulars directed or authorised by or under the Code to be inserted.

Clause 454 describes the evidentiary effect of certain entries in the minutes.

Clause 455 provides for the admissibility in evidence of copies of certain entries in a book of a society.

Division 2—Offences

Clause 456 requires a society to comply with a lawful requirement under the friendly societies legislation to give information to the SSA or another person.

Clause 457 provides that a society must not contravene a restriction imposed on its powers, or in relation to the exercise of its powers, under the friendly societies legislation.

Clause 458 prescribes offences by officers. Offences include: (a) failure to fully and truly disclose information concerning the property of the society and the circumstances of its disposal; (b) failure to deliver up certain property or documents of the society; (c) concealment, fraudulent removal or destruction of certain property of the society; (d) fraud or false misrepresentation in

relation to property of the society; and (e) knowingly making material omissions, or preventing the production of any document, in statements relating to the society's affairs.

Clause 459 provides that an officer of a society who was knowingly a party to the contracting of a debt not likely to be paid, and a person who was knowingly a party to the carrying on of the business of a society with intent to defraud the society's creditors or creditors of another person or for any fraudulent purpose, are guilty of an offence.

Clause 460 empowers the Court to make certain declarations of liability against persons convicted of an offence under clause 459.

Clause 461 prohibits a person from providing inducements relating to the appointment of a liquidator or official manager.

Clause 462 prohibits an officer of a society or other prescribed persons from falsifying the records of the society.

Clause 463 prescribes certain offences against officers of a society who commit fraud.

Clause 464 provides that a person must not make available or give information required for the purposes of the friendly societies legislation that the person knows is false or misleading in a material particular or contains a material omission.

Clause 465 provides for a mechanism by which a defaulting officer or former officer may be examined by the Court as to his or her conduct and dealings as an officer of the society.

Clause 466 empowers the Court to make certain orders in relation to damages against certain persons.

Clause 467 prohibits a person from giving or making false copies of the rules of a society.

Clause 468 prohibits a person from obtaining possession of property of a society by false representation or imposition and withholding or misapplying such property or wilfully applying any part of such property for unauthorised purposes.

Clause 469 prohibits an officer of a society from accepting any commission, fee or reward from any person (other than the society) in connection with that person's transaction with the society.

Clause 470 extends references in the Code to an officer in default to any officer of the society or other body corporate who is in any way knowingly concerned in, or party to, the contravention or offence.

Division 3—Proceedings

Clause 471 provides that proceedings for an offence against the Code may be brought by the SSA or any person authorised in writing by the SSA, and specifies the period within which proceedings may be started.

Clause 472 provides for reciprocity in relation to offences.

Clause 473 provides for continuing offences.

Clause 474 empowers the Court to grant injunctions restraining persons from engaging in certain conduct.

Clause 475 provides a mechanism by which the SSA or a person authorised by it may serve a penalty notice in the prescribed form on persons suspected of committing a prescribed offence.

Clause 476 empowers the Court to grant relief from liability to certain persons.

Division 4—Other Matters

Clause 477 provides for secrecy of protected information and protected documents.

Clause 478 empowers a society to make certain payments in relation to money of members who have died.

Clause 479 limits the doctrine of ultra vires in relation to the transactions of societies.

Clause 480 abolishes the doctrine of constructive notice.

PART 15—TRANSITIONAL

Clause 481 provides that a continuing society continues in existence and is taken to be registered under the Code.

Clause 482 requires the SSA, on application by a continuing society, to issue a certificate of incorporation to the continuing society.

Clause 483 provides that a benefit fund of a continuing society existing under the previous law is deemed to be established under this Code and continues as a benefit fund of the society.

Clause 484 provides that the rules of a continuing society, in force immediately before the commencement of this clause, are its rules under the Code. A continuing society must, within 2 years after the commencement of this clause, take all

necessary steps to ensure that any rules which do not comply with the Code, the regulations or the standards do so comply.

Clause 485 provides that a continuing society that, immediately before the commencement of this clause, is the holder of a subsidiary may continue to hold the subsidiary.

Clause 486 provides that 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 of this section ends immediately before the re-election of directors at the third annual general meeting of the society or at the end of the third annual general meeting of the society after the commencement.

Clause 487 preserves extensions of time previously granted in respect of the holding of a continuing society's annual general meeting.

Clause 488 allows a previously passed (but not registered) special resolution to be registered by the SSA under the Code.

Clause 489 provides that a register kept by the SSA under the previous law may be incorporated in a register kept by the SSA under the Code.

Clause 490 provides for the continuation of winding-up proceedings commenced prior to the commencement of this clause.

Clause 491 preserves the validity of certificates and documents issued or registered by, or filed or lodged with, the SSA under a previous law.

Clause 492 provides that the provisions in Part 4B of the Code apply to a disclosure document issued after the commencement of the Code.

Clause 493 requires a foreign society which carried on business in this State prior to the commencement of the Code to notify the SSA that it is carrying on business and to apply to the SSA for registration as a foreign society under Part 11 within 6 months after the commencement of this section.

SCHEDULE A

MISCELLANEOUS PROVISIONS RELATING TO INTERPRETATION

PART 1—PRELIMINARY

Clause 1 provides that the application of this Schedule may be displaced by a contrary intention appearing in the Code.

PART 2—GENERAL

- Clause 2 provides that a reference to the Code, AFIC Code or an Act includes a reference to statutory instruments made under or in force under those Codes or an Act.
- Clause 3 provides that the Code is to be construed so as not to exceed the legislative power of the Victorian Parliament.
- Clause 4 provides that every clause of the Code has effect as a substantive enactment.
- Clause 5 prescribes the material that is, and is not, part of the Code.
- Clause 6 describes what constitutes adequate citation of Commonwealth and State Acts.
- Clause 7 provides that references in the Code, AFIC Code or an Act, or a provision of those Codes or an Act, include references to any amendments to, or re-enactments of those Codes or an Act, or a provision of those Codes or an Act.
- Clause 8 describes the meaning of a reference in the Code to the commencement of the AFIC Code or a provision of the AFIC Code.
- Clause 9 provides that the interpretation that best achieves the purpose of the Code is to be preferred to any other interpretation.
- Clause 10 describes the material which may be used as extrinsic material and the circumstances under which that material may be used to assist in the interpretation of the Code.
- Clause 11 provides that: (a) changes of drafting practice are not to affect the meaning of the Code; and (b) if the Code includes an example of the operation of a provision, the example is not exhaustive and, in cases of inconsistency, the provision is to prevail.
- Clause 12 provides that substantial compliance with forms prescribed or approved by or for the purposes of the Code is sufficient.

PART 3—TERMS AND REFERENCE

- Clause 13 contains a number of definitions which are primarily concerned with interpretation of expressions used in the Code.

- Clause 14 makes provision for the use of defined terms in the Code and also provides that: (a) words indicating a gender include each other gender; and (b) words in the singular include the plural and vice versa.
- Clause 15 provides that, in relation to a power contained in the Code, "may" indicates that the power may be exercised or not, at discretion, and "must" indicates that the power is required to be exercised.
- Clause 16 provides that words and expressions used in statutory instruments made or in force under or for the purposes of the Code have the same meaning as they do in the Code.
- Clause 17 deals with the effect of express references to bodies corporate and individuals.
- Clause 18 deals with references to Ministers.
- Clause 19 relates to the production of records kept by means of a mechanical, electronic or other device.
- Clause 20 provides that offences, forfeiture and penalties contained in the Code apply to both individuals and bodies corporate.
- Clause 21 provides that references to persons, statutory bodies, localities or jurisdictions are references to those persons or things in and of Victoria.
- Clause 22 provides that references to officers and holders of offices are to include references to persons occupying or acting in the office concerned.
- Clause 23 provides that where a reference to a provision in the Code does not include a number of the provision or reference to the Code, the reference is to be taken as referring to the relevant part of the Code.
- Clause 24 provides that the word 'and', 'or' or 'but' at the end of a paragraph or other provision are to be treated as part of the provision concerned.
- Clause 25 provides that a reference to a portion of the Code, an Act or the AFIC Code includes a reference to provisions that form the beginning and end of the portion.

PART 4—FUNCTIONS AND POWERS

- Clause 26 deals with the performance of statutory functions.
- Clause 27 provides that the power to make an instrument or decision includes a power to repeal, amend or modify the instrument or decision.

- Clause 28 deals with the matters for which statutory instruments may make provision.
- Clause 29 provides for a presumption of validity and power in the making of statutory instruments.
- Clause 30 allows for appointments to be made by name or office.
- Clause 31 provides for the appointment of a person to act in an office.
- Clause 32 provides that powers of appointment include certain incidental matters.
- Clause 33 deals with the delegation of powers under the Code.
- Clause 34 provides for the exercise of powers between the enactment and commencement of the empowering provision in the Code.

PART 5—DISTANCE, TIME AND AGE

- Clause 35 deals with matters of distance, time and age.

PART 6—SERVICE OF DOCUMENTS

- Clause 36 provides for the service of documents on an individual or body corporate.
- Clause 37 prescribes the manner in which documents may be served by post.
- Clause 38 provides for the time at which an expiring provision of the Code is to cease to have effect.

PART 7—EFFECT OF REPEAL AMENDMENT OR EXPIRATION

- Clause 39 provides that an amended or repealed provision of the Code is not later revived if the Act or provision which effected the amendment or repeal is itself later amended, repealed or expires.
- Clause 40 provides for the saving of the operation of repealed provisions of the Code.
- Clause 41 provides for the continuance of repealed provisions until commencement of the new provisions.
- Clause 42 provides that the Code and all Victorian Acts amending the Code are to be read as one.

PART 8—OFFENCES UNDER CODE

- Clause 43 describes the effect of a penalty placed at the end of a provision.

- Clause 44 describes the effect of a penalty other than those at the end of a provision.
- Clause 45 specifies whether offences are summary or indictable offences.
- Clause 46 provides that a person is not to be punished more than once for an act or omission which constitutes an offence under the Code and another law of a State or Territory.
- Clause 47 provides that a person who aids or abets the commission of an offence against the Code or attempts to commit an offence against the Code is taken to have committed the offence and is liable to the penalty for that offence.

PART 9—INSTRUMENTS UNDER CODE

- Clause 48 provides for the application of the Schedule to statutory instruments under the Code.

