

Friendly Societies (Victoria) (Amendment) Bill

EXPLANATORY MEMORANDUM

Background

This Bill makes amendments to the **Friendly Societies (Victoria) Act 1996** which was passed by the Victorian Parliament in the Spring 1996 Session and which is intended to come into operation on a national basis on 1 July 1997. In particular, this Bill amends the Friendly Societies Code set out in Schedule 1 to the Act, and which is template legislation for all participating States and Territories.

The amendments to the Code address some practical problems and interpretation difficulties which have been identified in a number of provisions in the Code. The Bill also amends the Code to include some important amendments to the Financial Institutions Code which are to be simultaneously introduced into and passed in the Queensland Parliament. These amendments ensure consistency between the two Codes.

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 defines "Code" for the purposes of the Act.

PART 2—AMENDMENT OF FRIENDLY SOCIETIES (VICTORIA) CODE

- Clause 4 amends the definition of "friendly societies legislation" in section 3 of the Code.
- Clause 5 amends section 77 of the Code to clarify the application of the Code to rules of a registered society made under the National Health Act 1953 (Cth).
- Clause 6 amends section 80(1) of the Code to clarify that paragraphs (a) to (d) are alternative criteria for membership of a society.
- Clause 7 amends section 81(3) of the Code to remove the restriction on membership of persons under the age of 10.
- Clause 8 makes amendments to section 87 of the Code as a consequence of AFIC becoming responsible under the AFIC Code for approval of an application by a society for use of a name other than a registered name.

- Clause 9 makes an amendment to section 88(2)(b) of the Code as a consequence of AFIC becoming responsible under the AFIC Code for approval of an application by a society for use of a name other than a registered name.
- Clause 10 amends section 92 of the Code to provide that a friendly society must use its registered name on specified public documents and that a society must use either its registered name or an approved name on any advertisement published or authorised to be published by the society.
- Clause 11 amends section 96 of the Code to provide that section 96(1) does not apply to amounts payable by a society as trustee for a superannuation entity within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth).
- Clause 12 amends section 98 of the Code to allow the SSA to refuse an application to register rules which establish a benefit fund if there is a good reason why the proposed rules should not be registered.
- Clause 13 amends section 107 of the Code to make a transfer of an asset from a benefit fund to a management fund subject to the requirements set out in sub-section (2) that a society must satisfy when transferring an asset from one fund to another.
- Clause 14 amends section 108(1)(c) of the Code to provide that a society cannot transfer a surplus in a benefit fund to the management fund of the society unless the society's rules provide for such a transfer.
- Clause 15 amends section 135 of the Code to provide that a society (or a foreign society) must lodge a disclosure document with the SSA (or, in the case of a foreign society, with the SSA of the participating State) if the society wishes to issue an invitation to contribute to, or accept a contribution to, a benefit fund.
- Clause 16 amends section 137 of the Code to provide that a disclosure document must comply with any requirements of the standards applicable to disclosure documents.
- Clause 17 amends section 140 of the Code by deleting the reference to application forms in subsections (2)(d) and (e).
- Clause 18 amends section 158 of the Code to provide that the SSA's power to give an exemption under sub-section (1) is subject to the prudential standards. The amendment also removes the power of the SSA to exempt a society from compliance with the standards.

- Clause 19 inserts a new section 196A which provides that the SSA may exempt a particular person or class of persons or particular benefits or class of benefits from compliance with the provisions of Subdivision 3 of Division 4 of Part 4B of the Code.
- Clause 20 amends section 290 of the Code to specify when a term of office of a director appointed to fill a casual vacancy ends.
- Clause 21 amends section 305 of the Code to provide that a member does not have more votes than the number of permanent shares held by the member and clarifies the matters required to be approved by the SSA before registering the rules relating to voting entitlements of members.
- Clause 22 amends section 352 of the Code to provide that an actuary of a society must be ordinarily resident in the State. The amendment also allows an SSA to provide an exemption from the residency requirement after consultation with AFIC.
- Clause 23 amends section 358 of the Code to require a society to arrange for its actuary to conduct a financial condition investigation in accordance with the standards. The amendment also repeals sub-section (2).
- Clause 24 replaces Division 3 of Part 7 of the Code by substituting equivalent provisions to those proposed in the amendments to the Financial Institutions Code relating to mergers and transfers of engagements involving foreign societies.
- Clause 25 amends section 426 of the Code by repealing the definition of "applicable standard" and amending the definition of "carrying on business".
- Clause 26 amends section 427 of the Code to provide that the certificate referred to in that section must have been issued by the SSA within the preceding 2 months. The clause also makes an amendment as a consequence of AFIC becoming responsible under the AFIC Code for the approval of an application by a society for use of a name other than a registered name. The amendment also specifies when a society is eligible for registration under the section, and provides that an application for registration must be accompanied by the prescribed fee.
- Clause 27 amends section 428 of the Code to provide that a foreign society must appoint an agent resident in this State; obtain the written consent of the agent; authorise the agent to accept service of processes and notices; and maintain an office in this State and ensure that the office is attended during ordinary business hours.

- Clause 28 repeals section 429 of the Code.
- Clause 29 repeals section 431(2) of the Code.
- Clause 30 amends section 433 to specify the circumstances in which a foreign society must notify the SSA of certain changes.
- Clause 31 repeals section 434 of the Code.
- Clause 32 amends section 437 of the Code to delete the reference to section 27 of the Code and replace it with a reference to the public office of the SSA in this State.
- Clause 33 amends various sections of the Code to provide for payment of a prescribed fee in respect of certain applications lodged with the SSA.
- Clause 34 amends section 483 of the Code to provide that a benefit fund of a continuing society which provided only non-monetary benefits before the commencement of the section does not continue as a benefit fund under the Code. Assets and liabilities of a benefit fund to which section 483(1) does not apply will form part of the management fund of the society.
- Clause 35 inserts a new section 489A which provides that for the financial year last ended before the commencement of the Code a society must prepare accounts either in accordance with the previous law or Part 6 of the Code.
- Clause 36 amends section 492 of the Code to provide a general exemption from the operation of Part 4B for a period of 6 months after commencement of the Code in respect of one or more benefit funds. The SSA may determine a longer period, not exceeding 12 months after the commencement of the Code, for a society to comply with Division 2 of Part 4B.

PART 3—AMENDMENT OF FRIENDLY SOCIETIES (VICTORIA) ACT 1996

- Clause 37 inserts a new section 21A in the **Friendly Societies (Victoria) Act 1996** to provide that an offence under the Code that is punishable by a period of imprisonment of more than 2 years is an indictable offence.

PART 4—AMENDMENT OF FINANCIAL INSTITUTIONS (VICTORIA) ACT 1992

- Clause 38 inserts a definition of "Friendly Societies Code" in sections 7(1) and 10(1) of the **Financial Institutions (Victoria) Act 1992**.

Clause 39 inserts a new section 54A in the **Financial Institutions (Victoria) Act 1992** to provide that an offence under the Financial Institutions (Victoria) Code that is punishable by a period of imprisonment of more than 2 years is an indictable offence.

PART 5—MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 40 makes statute law revision amendments to a number of provisions in the Code.

Clause 41 provides that the Acts specified in Schedule 1 are amended as provided in that Schedule.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

Schedule 1 sets out consequential amendments to a number of Victorian statutes.

