WEDNESDAY, 9 JULY 1997

Mr SPEAKER (Hon. N. J. Turner, Nicklin) read prayers and took the chair at 9.30 a.m.

PRIVILEGE

Minister for Tourism, Small Business and Industry

Hon. J. P. ELDER (Capalaba—Deputy Leader of the Opposition) (9.31 a.m.): I rise on a matter of privilege. Yesterday, the Minister for Tourism, Small Business and Industry said that he would table the report on his junket to South Africa. My understanding is that that report has not been tabled.

PETITIONS

The Clerk announced the receipt of the following petitions—

Maryborough Base Hospital

From **Mr Dollin** (7,600 petitioners) requesting the House to reconsider the decision to downsize the Maryborough Base Hospital and maintain the current level of hospital services and staffing levels to carry out these services.

Rural Schools

From **Mr FitzGerald** (1,496 petitioners) requesting the House to declare that the Government supports the system of education via small schools in rural communities as an integral part of rural family life, and which form part of a vital community infrastructure, and acknowledge that removal of children from rural schools to larger schools will be detrimental to the children, their families, community and businesses, and further to direct that the schools at Mulgowie, Thornton and Blenheim not be closed.

Airconditioning of Schools

From **Mr Pearce** (42 petitioners) requesting the House to direct the Premier and/or the State Minister for Education to provide the same $300,000 level of assistance as they have in three State schools in the central Queensland town of Moranbah to all other Queensland schools where Parents and Citizens Associations have carried out the same level of fundraising for school airconditioning projects.

Caboolture Airfield

From **Mr J. H. Sullivan** (706 petitioners) requesting the House to ensure the Bribie Island connector road is not constructed over the Caboolture Airfield, but is constructed along such a route and in such a manner so as (a) not to reduce the existing runway dimensions, (b) not infringe upon the take-off and approach paths to the existing runways, (c) not reduce the existing number of runways and (d) not obstruct vehicular access to the airfield, thereby guaranteeing the continued operation of warplanes and other aviation related activities and events upon the airfield.

Petitions received.

MINISTERIAL STATEMENT

Proposed Extension of Sunday Trading Hours

Hon. R. E. BORBIDGE (Surfers Paradise—Premier) (9.34 a.m.), by leave: Yesterday the State Government was advised that a joint application had been lodged in the Industrial Relations Commission by the Property Council of Australia, the Retailers Association of Queensland and the Women's Network Australia seeking an extension of Sunday trading hours for south-east Queensland, including Toowoomba. The Knox report last year provided for the continuance of wide trading outside of normal hours by small business. The Government takes the view that these arrangements fairly provide for consumer needs and that further extensions to hours would impact very heavily on small business.

The arrangements agreed last year also provided for an independent umpire, the Industrial Relations Commission, to hear applications for variation of hours and to arbitrate in any dispute. The Government notes the arguments being presented by some in the community in favour of a further extension of shopping hours. There is no doubt that many people would like to see this happen. The proper course at this point is to hear the case presented in the Industrial Relations Commission.

I wish to advise the House today that the Government reserves the right to present its own arguments in that forum. But at present we view the issue as one in the preliminary rounds of argument. I have asked the Minister for Training and Industrial Relations to report to Cabinet next Tuesday on the issues involved. I am encouraged by the responsible approach that the Property Council of Australia, the Retailers Association of Queensland and the Women's Network Australia have taken. The community always benefits from the rational debate of issues, particularly those which go to the heart of social questions. We are also concerned to give small business the best possible support in the trying trading times with which it must cope at present.

Mr Mackenroth: Two bob each way; "We support you all."

Mr BORBIDGE: The member should listen. He has missed the point. For the benefit of the honourable member opposite, I point out that the Government is giving notice today that it reserves the right to appear before the Industrial Relations Commission to support small business.

Small shops are an integral part of Queensland society. That is why we adopted the Knox report's other recommendation that rules governing what constitutes an exempt shop be changed under these arrangements. Shops employing up to 20 people are exempt from trading hours restrictions. The new legislation also requires the Industrial Relations

Commission to take account of the effect of any proposed changes on small business.

The variations now in place themselves demonstrate the flexibility embodied in the legislation. The Industrial Relations Commission is empowered to make such variations as it is persuaded should apply. This Government accepts the fact that small business is our biggest employer. This Government accepts the fact that small business is doing it tough, and on this particular issue small business can rest assured that this Government is on its side.

MINISTERIAL STATEMENT

Government Telephone, Travel and Fuel Arrangements

Hon. D. J. H. WATSON (Moggill—Minister for Public Works and Housing) (9.37 a.m.), by leave: I am delighted to announce that, thanks to the excellent work of my department, significant savings will be made for the taxpayers of Queensland on charges for Government telephone services, travel and fuel. The Queensland Government could cut its annual phone bill by up to $7m as a result of the new telecommunications facilities management deal with Optus Communications. The arrangement with Optus is an interim measure for up to 12 months and was awarded after a competitive selection process.

Consistent with our Telecommunications Strategic Review conducted by Cutler and Company, the Government will review its purchasing and management strategies for all telecommunications services during the next 12 months to take advantage of the emerging and expanding competitive marketplace. One of the main aims is to encourage increased contestability and competition in telecommunications so that business and consumers in Queensland, particularly in rural and regional areas, will benefit from improved services and better prices.

Significant savings will also be made on Government travel as a result of a new standing offer for travel arrangements. Six companies competed for the travel arrangements agreement, which was finally awarded to Qantas. The two-year agreement with Qantas will cover travel for four Government departments—Public Works and Housing, Training and Industrial Relations, Justice and Attorney-General and Environment—as well as the Clerk of the Parliament, WorkCover Queensland and the Queensland Audit Office. Qantas was selected because it offered significant financial advantages through rebates and financial incentives as well as greater efficiency and further savings through the use of advanced technology.

An Opposition member: How long was that contract?

Dr WATSON: Two years. The selection of Qantas was unanimously recommended by representatives of the participating departments and provides a travel deal superior to any other arrangement across Government. Qantas also demonstrated its strong support for local business and industry throughout Queensland via regional networks.

Finally, as to fuel—a new standing offer arrangement for the supply of automotive fuel and related products has been awarded to BP Australia Limited. The estimated value of the two-year arrangements is $40m per annum. All members of a selection panel, comprising representatives of Main Roads, DPI, Natural Resources, Training and Industrial Relations, Emergency Services, the Police Service, SEQEB and my department, supported the selection of BP. It offered significant financial advantages, enhanced fleet management through the use of advanced technology and management information systems, and a demonstrated support for local businesses and industry through regional networks. A feature of the arrangement will be the direct linking of user departments via EDI to BP's electronic fuel management system.

In conclusion, as the honourable member for Chatsworth has proved time and time again throughout his political career, talk is cheap. And for once he has got it right; because of the excellent work of my department, talking will be cheaper and so will flying and driving.

MINISTERIAL STATEMENT

Review of Police Powers Discussion Paper

Hon. T. R. COOPER (Crows Nest—Minister for Police and Corrective Services and Minister for Racing) (9.40 a.m.), by leave: Cabinet last week approved the release of the Review of Police Powers Discussion Paper. This paper is the culmination of more than seven years of research and consultation involving police, stakeholders, this Government and the former Labor Government and is the final stage of consultation with the community. It is the most honest document ever presented on police powers. It includes the powers sought by police and their justification for the increases, the Criminal Justice Commission position on the matter, the Parliamentary Criminal Justice Committee position and other for and against arguments as they have been brought to my attention.

In the process of putting the paper together I have already had exhaustive and wide-ranging consultation and discussion with a broad range of interested people, including civil libertarians. I want to make it clear that as much time has gone into ensuring the checks and balances are in place to guard against any abuse of the power as has been devoted to defining the powers. It is difficult to strike a balance which gives police sufficient powers to fight crime and protect people in their homes and at the same time provide those checks and balances. We intend to find that balance.

The consolidation and rationalisation of police powers into a single statute will extend some current powers and restrict others. We are inviting written submissions up until 8 August. A Statewide advertising campaign began last weekend and is continuing this week. Copies of the discussion paper are readily available from the joint working group, on the Internet and by e-mail.

Police powers will be the subject of extensive debate over the coming months. To help facilitate this necessary process, I will chair a series of public forums to give the people the opportunity to tell the Government what they want. The first forum will be held in the Parliamentary Annexe conference room on the fifth floor this evening. Others will follow on the Sunshine Coast on 23 July; at Maryborough/Hervey Bay on 30 July; at Townsville on 30 July; at Cairns on 31 July; at Toowoomba on 1 August; at the Gold Coast on 4 August; and at Mackay, Rockhampton and Gladstone, all on 6 August.

I want to make it crystal clear right from the start that this discussion paper contains proposals for discussion, not set in stone decisions. It is not a wanton grab for powers by police. Anyone who thinks it is will be sadly disappointed. This Government will be examining, in consultation with the community, the question of extending police powers. But we will be guided by the people. The legislation I hope to bring back to Parliament later this year will be what the people tell us they want for their police—how they believe police should be armed to protect them and to take on an increasingly sophisticated criminal enemy. I ultimately expect to draft one single, comprehensive piece of legislation that articulates those powers, rather than continue with the current scatter-gun set of police powers contained in a range of up to 90 different and sometimes obscure Acts.

The new Police Powers and Responsibilities Act will clarify, in one easy-reference document, what police powers are, making it much more clear and easily defined for officers and the public alike. The legislation will clearly define the rights of the people when questioned or arrested by police. Police will be required, by law, to advise people of their rights—to remain silent, to have access to legal advice, an interpreter or designated person. Any changes will be backed by an extensive public education campaign. Reports handed down by various commissions of inquiry into police services have all commented on the need for legislative reform, including police powers with adequate safeguards. We are determined to properly arm police for the fight against crime. I urge every member of this House to read the discussion paper and to make sure that they are fully informed when the issue comes back to Parliament later this year.

MINISTERIAL STATEMENT

Information Technology in Education Sector

Hon. R. J. QUINN (Merrimac—Minister for Education) (9.44 a.m.), by leave: It gives me great pleasure to inform the House that this Government is about to embark on an unprecedented roll-out of information technology in education. Towards the end of this month, my department will invite tenders for a multimillion-dollar contract to connect every one of our 1,300 State schools to the Internet by 1999. Education Queensland will take maximum advantage of the opportunities and innovations arising from full deregulation of the telecommunications industry just last week.

The Connect-Ed program will ensure that our 450,000 students and 30,000 teachers have access to state-of-the-art computer technology such as desktop video conferencing. It will provide sophisticated learning and teaching resources where they are needed most—in the classroom. It will enable us to extend individual school curriculums in subjects like foreign languages, science and information technology itself. It will greatly enhance distance education and home participation programs for remote, sick or disabled students. Our first 104 Leading Schools should be connected to the Internet within six months. Other schools will be brought on line throughout 1998.

The benefits of this program will extend far beyond education. For example, we are working with Queensland Health to also connect some 300 hospitals and health centres around the State, using satellite services for telemedicine applications. Connect-Ed will lay the foundation for our Schooling 2001 Project, in which we will invest more than $78m over the coming three years. Schooling 2001 will ensure that students and teachers are able to maximise the educational benefits of this accelerating technology. We want to develop flexible, challenging learning environments where they can access global information and communication networks.

By the year 2001 we plan to install computers with Internet access in every classroom for every year level throughout the State, at a ratio of one computer per 7.5 students. That will require a massive investment in infrastructure such as computer hardware and fibre-optic cabling. We will also be devoting considerable resources to training our teachers in this exciting technology so that they can apply it effectively in all learning areas from preschool to Year 12. The level of improvement in student results will be closely monitored to ensure the maximum return for our Education dollar.

These classroom-focused initiatives will continue to be supported by enhanced management technology in our schools. In fact, this Government will greatly accelerate implementation of the Schools Information Management System, known as SIMS, during the next 12 months. That will eliminate unnecessary paperwork through electronic reporting and greatly improve administrative efficiency. Our 2,000 schools and other education locations throughout the State will be able to access and share the most up-to-date information available at the touch of a button. Over time, there will be significant savings through more timely decision making, reduced duplication and better management overall.

Our massive investment in school-related information technology initiatives alone will exceed $56.7m, with a further $41m committed elsewhere in Education. In other words, the total IT budget for Education this year will top $97.7m. As I said at the outset, that level of investment is unprecedented in the history of this State, and the big winners will be our 450,000 students.

MINISTERIAL STATEMENT

Dugong Protection; Great Barrier Reef Marine Park Authority

Hon. T. J. PERRETT (Barambah—Minister for Primary Industries, Fisheries and Forestry) (9.48 a.m.), by leave: On 14 June this year the Great Barrier Reef ministerial council met to discuss the Great Barrier Reef Marine Park Authority—or GBRMPA—measures to protect dugong in Queensland. Ministers in good faith took dugong protection measures on the basis of GBRMPA advice. Since then, I have learned that the threat to dugong may have been deliberately overstated by GBRMPA. What was understated, however, is the impact that this will have on the fishing and seafood industries and on Queensland's communities.

Serious doubt has been thrown on the truth of the advice provided by GBRMPA to the ministerial council. I believe GBRMPA deliberately misled Ministers in the way it presented its advice and research on the status of the dugong population. For example, the scientific adviser to GBRMPA said in his secret report that—

> "Addressing the dugong decline should not be considered as a problem but as a great opportunity to achieve a lot of major conservation actions."

This is the real agenda. GBRMPA is pandering to the conservation groups and their agenda to ban net fishing along the whole Queensland coast. The heavy-handed bans demanded by GBRMPA will throw hundreds of Queensland fishing families onto the dole queues and have serious implications for these communities. Last year I sought and received an undertaking from the Queensland Commercial Fishermen's Organisation to urgently address the issue of mesh netting. The QCFO did so. It did so in a very responsible manner and in cooperation with my department, the Federal Government and various agencies.

The agenda of GBRMPA and the more extreme conservation groups should not be allowed to influence Government decisions without being subject to challenge. It is time that GBRMPA laid on the table its full agenda. We owe it to the Queensland seafood industry, the fishers, their families and their communities. The implications for our seafood industry have the potential to be very serious indeed through the loss of products and, ultimately, their livelihoods.

I am so dismayed at what has occurred that I have instructed my department to use all necessary resources to review every aspect of the GBRMPA recommendation on net closures. It is time that GBRMPA's scientific basis was subjected to close scrutiny. The Queensland Fisheries Management Authority will also re-examine GBRMPA's recommendations, particularly their impacts on Queensland's fisheries management arrangements. Let me re-emphasise that the management of Queensland's fisheries is the responsibility of the Queensland Fisheries Management Authority. I stressed at the last Great Barrier Reef ministerial council meeting the need for continued close collaboration with GBRMPA and other agencies. If GBRMPA's advice or actions are found to be open to question, I will move to have this whole issue re-examined and have the ministerial council reconsider its position.

MINISTERIAL STATEMENT

TAFE Queensland

Hon. S. SANTORO (Clayfield—Minister for Training and Industrial Relations) (9.51 a.m.), by leave: I rise to inform the House of a number of the Government's initiatives which clearly demonstrate the coalition's commitment to supporting TAFE Queensland. The need for staff permanency was highlighted last year in my Working Better Together strategy for TAFE Queensland. I am pleased to inform the House of a major achievement that illustrates this Government's and this Minister's commitment to the wellbeing of TAFE and TAFE staff.

As at 8 July 1997, the positions of 174 former temporary staff of TAFE Queensland had been converted to permanent status. Seventy teachers, 32 tutors and 72 administrative staff now have permanent positions. Institutes to benefit from the process to date are: Brisbane, Central Queensland, Cooloola Sunshine, Far North Queensland, Mount Isa, Open Learning, Southbank, Southern Queensland—

An Opposition member interjected.

Mr SANTORO: Wide Bay, yes, and Maryborough and Yeronga. The number of conversions to date reinforces my personal commitment to a skilled work force and a more stable working environment for TAFE staff. It also indicates the Government's intention to reverse the inequitable staffing practices of the previous Labor administration. Under the previous Labor Government there were more staff in acting positions in TAFE than there were in Actors' Equity.

As a result of the Working Better Together initiative, workshops are being conducted at all TAFE workplaces to provide opportunities for managers and staff to work together to determine mutually beneficial work practices which will enhance the competitiveness of individual institutes and, therefore, TAFE Queensland. The result will be increased employment security for all staff.

To date, outcomes of these workshops have been very positive, with staff providing valuable and innovative ideas on how they can work better together. The Government has also ensured that TAFE remains competitive through its initiatives to enhance delivery of services to the clients of TAFE Queensland. In short, the Government has invested more than $100m on the following information technology initiatives: the establishment of facilities to deliver training and services to clients over the Internet; the installation of an improved library information management system that will enable clients to access TAFE Queensland libraries' resources both locally and remotely via the Internet; and the outsourcing, for cost efficiency reasons, of all of TAFE Queensland's information technology

services, including systems maintenance and support, together with services related to business process improvement to Unisys Australia Limited. All permanent TAFE staff currently providing services which will be outsourced will be offered—and I stress "will be offered"—permanent employment with Unisys Australia Limited. That is one of the conditions of the outsourcing contract.

Other positive initiatives will see the Barrier Reef, central Queensland and southern Queensland institutes funded to provide "free-to-air" video conferencing services between their campuses. New communication bridges and Telstra connections will also enable greater client choice in rural and remote areas. The Government has invested in a range of capital works projects to consolidate TAFE's leading role as the public provider of training. The Government is proceeding with projects which include—

> Construction of horticulture facilities at the Bundaberg campus of the Wide Bay Institute. Construction commenced in April this year and is proceeding to schedule. Facilities should be available for teaching use by semester 1 1998.
>
> A client services building at the Bracken Ridge campus of the North Point Institute which should be ready for occupancy in August.
>
> Construction of the teaching and administration facility at the Redcliffe campus which commenced in March this year and is scheduled for completion in December.
>
> Construction of the student amenities facility at the Morningside campus of Southbank Institute commenced in January this year. Practical completion is expected in December and occupancy is anticipated in time for the first semester next year.
>
> The commissioning of a TAFE facility in Ingham.

All of these positive policy initiatives illustrate that this Government is determined to provide excellent working conditions for TAFE staff and a competitive edge that will secure TAFE's position as a quality trainer and educator. In addition to these initiatives, TAFE Queensland has gone about revitalising its senior management structure via the permanent appointment of four institute directors. These directors have been selected on the basis of merit and only after advertisements for their positions were placed Australia-wide. In the main, these directors have come from areas outside of TAFE Queensland and bring to the operations of the organisation a fresh, outside perspective.

In addition, much effort is currently going into satisfying one of the strongest demands of TAFE Queensland staff, this being the cutting back of red tape and the devolving of central office functions to the institutes and the component colleges. In the restructure of the department, the central office staff establishment is being reduced from over 180 staff to just over 40. The staff who are leaving the central office establishment are being placed within the institutes and the colleges they currently serve from the central office. Their jobs are being protected and they will now service the TAFE system much closer to the coalface than what has to date been the case.

Over the next few weeks I intend to keep on informing the Parliament and the public of Queensland of the many positive initiatives that the Government is undertaking on behalf of TAFE Queensland, the staff, the students and the communities that they are meant to be serving.

MINISTERIAL STATEMENT

Rabbit Calicivirus Program

Hon. H. W. T. HOBBS (Warrego—Minister for Natural Resources) (9.56 a.m.), by leave: Today I would like to brief honourable members on progress with the Rabbit Calicivirus Program, or the RCV. Rabbits cause extensive environmental damage, with an estimated cost to the Australian economy of between $600m and $1 billion annually. Queensland has completed a strategic release of RCV, with further assistance from a 1997-98 Budget allocation of $220,000 for the continued monitoring and assessment of RCV at selected sites in Queensland. The continued monitoring and assessment will lead to a greater understanding of how the virus spreads and affects rabbits under field conditions, and how the flora and fauna of an area respond to reduced rabbit numbers.

The additional $220,000 Budget allocation will be used to employ a rabbit zoologist and two technicians for the continued monitoring and surveillance of RCV in Queensland. To date, RCV has been released at more than 80 sites throughout southern and central Queensland following the first release at Inglewood on 14 October last year. Early indications are that the rabbit calicivirus has worked well in arid and semi-arid parts of western Queensland with an 85%-plus reduction in rabbit numbers. This success in arid areas is particularly pleasing because this is where the environmental damage has been most severe and where non-biological control methods are considered to be uneconomic.

However, the rabbit calicivirus appears to be less effective in the more eastern parts of the State, with a great deal of variation in results between neighbouring locations. Where RCV achieves an initial knockdown in rabbit numbers, it is important that land-holders use conventional rabbit control methods such as baiting, warren ripping and fumigation to remove or further reduce residual populations. A land protection officer has been especially appointed in my Department of Natural Resources to advise on these forms of control and to coordinate RCV with the release of the myxoma virus in Queensland. I will continue to keep the House informed at regular intervals as to the progress with RCV.

MINISTERIAL STATEMENT

Centenary of Australia-Japan Relations

Hon. D. J. SLACK (Burnett—Minister for Economic Development and Trade and Minister Assisting the Premier) (9.57 a.m.), by leave: I have

pleasure in informing the House of Queensland's eager participation in celebrating 100 years of Australia-Japan relations and in a program of events that cements the solid friendship and trading ties between our two peoples. As the member for Mundingburra could no doubt tell honourable members, Australia-Japan relations can be traced back to Townsville—the location of the first Japanese consulate in Australia. Our business and friendship ties run deep. Queensland has a sister-State agreement with the Saitama Prefecture and a friendship agreement with the Osaka Prefecture.

Japan ranks as our No. 1 export destination. More than $4 billion of goods were exported to Japan in the last financial year. That is 30% of all Queensland exports. To celebrate these ties, together with the 40th anniversary of the Australia-Japan commerce agreement——

Mr SPEAKER: Order! There is too much audible conversation in the Chamber.

Mr SLACK:—and the 20th anniversary of the Australia-Japan cultural agreement, this Government has taken the initiative of instigating the Queensland-Japan centenary celebrations programs.

Last month, the Government sponsored a conference opened by Premier Rob Borbidge on the "One Hundred Years of Australia-Japan Relations". It was a great success and a tribute to organisers, including the Australia Japan Society in Queensland and its past president, Mr Alex McArthur. Mr McArthur was awarded the prestigious Order of the Secret Treasure Gold Rays with Neck Ribbon by the Emperor of Japan for his services in furthering that relationship. Mr McArthur is one of only two Queenslanders living outside of Japan to receive this award. Honourable members would be aware of other events, such as—

the business mission led by the Premier to Japan in April;

a tour of Japan by the Queensland Youth Orchestra;

a visit to Queensland by 300 nurses from Osaka; and

a visit to Brisbane and Japan by the Japan Sumo Association.

The Queensland Government is working hard to promote trade and assist Queensland business to access the Japanese market. We are doing this at a time when business is being cautioned not to turn its back on the Japanese market nor take it for granted. That caution was issued yesterday by the Department of Foreign Affairs and Trade, and Austrade, at the Queensland launch of a special analysis of Japan—a launch in which I participated as key speaker.

The publication "A New Japan? Change in Asia's Megamarket" warns that Japan is being overlooked by business for the newer and perhaps more trendy Asian markets. Japan's recent comprehensive program of tariff and business reform is an incentive for Queensland business to reconsider Japan for fresh and processed foods—through to high-value-added manufactured goods.

My Department of Economic Development and Trade is assisting business to make the most of these opportunities. Preparations are under way by my Japan Secretariat to coordinate Queensland's presence at the Foodex Kansai trade fair in Osaka in September. This Government is building lasting and prosperous bridges with our northern neighbours. In celebrating our friendship with Japan, we also celebrate the many thousands of jobs—in which, I assume, the Opposition is interested—and the prosperity that has accrued from the very close trading and investment links that we have with Japan.

CRIMINAL JUSTICE COMMISSION

Publications

Hon. V. P. LESTER (Keppel) (10.02 a.m.): I lay upon the table of the House the CJC productions titled——

Opposition members interjected.

Mr LESTER: I just wanted to see if members were listening. The publications are titled "Criminal Justice System Monitor Series Volume 2—June 1997" and "Hot Spots and Repeat Break and Enter Crimes: An Analysis of Police Calls for Service Data."

My committee is tabling these documents as it believes that it is in the spirit of the Criminal Justice Act that all non-confidential publications by the CJC be tabled in the Parliament. However, the committee stresses that it has in no way conducted an inquiry into the matters that are the subject of these publications and that it is the CJC which has determined that these publications are not "Reports of the Commission" for the purposes of section 26 of the Criminal Justice Act.

NOTICE OF MOTION

Women's Crisis Centre Funding

Mrs EDMOND (Mount Coot-tha) (10.03 a.m.): I give notice that I shall move—

"That this Parliament—

(a) condemns the Treasurer and Minister for Women's Affairs and the Minister for Health for slashing funding to individual women's rape, crisis and sexual assault centres leading to closures and loss of services; and

(b) calls on the Government to revise that decision and again provide funding so that these victims of violence, sexual assault and rape will be able to access both acute and long term care, assistance and counselling."

SMITH FAMILY BLANKETS

Mr SPEAKER: Order! Before I call for private members' statements, I want to make an announcement that the Smith Family charity left blankets here so that every member can pick up a

blanket to donate to a charity or to someone in need in their electorate. There are still five in my office which no-one has collected. Those members who have not collected a blanket but would like one should get them now. If they do not, they may go to the Turner charity.

PRIVATE MEMBERS' STATEMENTS

Interoffice Memorandum re: Premier's Meeting

Mr BEATTIE (Brisbane Central—Leader of the Opposition) (10.05 a.m.): On 1 July, the Premier and his senior staff had a crisis meeting about the flagging fortunes of the Government. The Treasurer's office, in an interoffice memorandum, has provided me with the details of that meeting. This memo is dated 7 July from Chris Wordsworth to Paul Turner. What does this secret confidential memo say? It says—

> "As you are aware, the Premier raised with the Government's senior advisers, issues of concern to him with regard to the performance of the Government. Specifically, he addressed actual and perceived shortcomings in the way Ministers are being advised in matters of policy and public presentation."

How true! I agree with the Premier for the first time. But what would members think would be the issues that would be discussed for the return of a Government? What would be the first issue?

Opposition members: Jobs!

Mr BEATTIE: Jobs, health, education? Do members know what the first issue was on the list? It was, "Leaks to the media, specifically The Courier-Mail". What was the second issue on the list? It says that the next election will be "line ball". He is dead right about that! What was the fourth issue on the list? It was, "The media is unfriendly—we need to change that". No. 6 on the list says, "No overseas travel unless it is of demonstrable, short term benefit to Queensland". That has already happened. No. 7 on the list says that the Government has to "sell what the Government has done and what we're doing because nobody knows about it". Not only do people not know about it, no-one has heard of them. The eighth point states that there is "No point spending time in safe electorates—Ministers have to appear more often in marginal Coalition and Labor seats". So forget about the bush! But how about this: No. 10 says, "Ministers need to adopt a 'more relaxed look'. "

Time expired.

St Vincent's Hydrotherapy Pool, Townsville

Mr TANTI (Mundingburra) (10.07 a.m.): I rise today to acknowledge the combined decision by the Honourable Mike Horan, MLA, Minister for Health, and the Honourable Kev Lingard, MLA, Minister for Families, Youth and Community Care, to fund the St Vincent's hydrotherapy pool in Townsville. The hydrotherapy pool has received total funding of $80,000, comprising $40,000 from Queensland Health and $40,000 from the Department of Families. This funding will allow the hydrotherapy pool to remain operational for the next two years. The hydrotherapy pool is used for therapeutic and medical reasons aiming to ease the pain of those residents who suffer from the effects of arthritis, and increases their health and mobility. The hydrotherapy pool will also benefit those patients with brain damage, muscular and skeletal disorders, asthma, neurological disorders, and disabilities. The decision to fund such an important facility by the Minister for Health and the Minister for Families, Youth and Community Care has given these patients a chance to live in comfort. The pool is currently used by specialists, such as occupational therapists, and physiotherapists for the rehabilitation of patients.

The coalition has made it an objective to ensure that patient care again will be a personalised service. The hydrotherapy pool helps to provide the level of personalised care required to effectively treat these patients. The pool has assured the residents of Townsville and surrounding areas of the highest level of patient care available. The combined announcement by the Ministers has only strengthened the coalition's position. The coalition is continuing where the Commonwealth Government left off, providing evidence of the coalition's support for the Queensland population. With an increase in provision of services and facilities being a priority of this coalition, it is obvious that this result-driven Government is maintaining its promises.

Interoffice Memorandum re: Premier's Meeting

Hon. J. P. ELDER (Capalaba—Deputy Leader of the Opposition) (10.09 a.m.): This interoffice memo is a classic. The first point is that "we have to do something about leaks". It is lucky that we do not have this! The Treasurer will really have to work on how she can control her leaks. No. 3 is a classic. What is needed over there is "Greater team spirit". Can members imagine the re-run of the old National Party—the old coalition days: "What we need is greater team spirit"! Tell that to the Health Minister, who is waiting for the Premier to fall. Tell that to the member for Clayfield and the member for Indooroopilly when they have been out knifing the Deputy Premier and trying to get their candidate up—which they were successful in doing—at the Liberal Party conference. What they need is greater team spirit. Tell them that when there is a conflict of interest over prostitution policies.

Ministers must look more relaxed! They could not get a more comatose bunch. Perhaps Davo should have spent a month relaxing in Africa. There is not a more comatose bunch. If the Minister for Economic Development and Trade and the Minister for Education were any more relaxed, the Minister for Health would have to give them mouth to mouth resuscitation; he would be checking their pulse every morning to see whether they were alive. Further down the list it states—

> "Labor has changed tactics—adopted British Labor's election tactics of attacking 'integrity in government'."

We have not changed. We will attack the Government's integrity, because there is no integrity in this Government. It also states that the

Government cannot afford to make mistakes, that it must not appear arrogant, remote or out of touch. It states—

> "... the Government has to be seen to be with the People."

It cannot afford to make mistakes! It has made them from day one, and it is still making mistakes. It states—

> "Some Departments are 'upsetting people (the public)'."

They have been doing that for 18 months.

Time expired.

Language, Numeracy and Literacy Strategy

Mrs WILSON (Mulgrave) (10.11 a.m.): It is important to make sure that we do not have a lot of clowns on this side, because there are certainly a lot of clowns on the other side this morning. Although it is important to ensure that all Queensland has access to language and literacy programs, there is a particular need to develop a strategy that will ensure that such programs are able to be accessed in rural and regional Queensland. The coalition Government certainly is not forgetting rural and regional Queensland.

I am happy to inform the House that a forum conducted in April this year—which combined the efforts of industry, the community and the Government—considered the important issue of language, numeracy and literacy levels in regional Queensland. At that forum—which was attended by representatives of TAFE, private training providers, Skillshare, Queensland Corrective Services and community and industry groups—a number of strategies were put forward to boost literacy and numeracy levels across regional Queensland. The most important strategy that emerged was that a research project be undertaken to explore the use of technology to deliver literacy programs to adult learners in the bush.

I am happy to announce that that idea was adopted and a research project has been instigated. That will look at delivery of literacy courses in the Longreach area. The main goal of the research project is to provide advice on what types of technology would be the most efficient at delivering those much-needed programs to the bush. Only in that way can we ensure that the people of regional Queensland are not disadvantaged by the tyranny of distance.

To complement the drive to get numeracy and literacy programs out to rural and regional Queensland, the Government is holding professional workshops for literacy teachers throughout the bush in places such as Roma, Emerald and Warwick, to name but a few. I would like to commend those positive initiatives in numeracy and literacy as a step in the right direction. The people in rural and regional Queensland are certainly the winners in this initiative. Parents and students will be well attended to.

Time expired.

Rhinoceros Project

Mr SCHWARTEN (Rockhampton) (10.13 a.m.): Last session I mentioned the fact that we have a rhinestone Premier in this State. Now it seems that we have a rhino cowboy. What a delight it was to the viewers of Queensland to observe that latter day John Wayne, Hatari-style, driving around the veldts of South Africa. "What an absolutely brilliant success that has been," he said yesterday on the support ad.

Last week I was in north Queensland. Everywhere I went, he was the butt of every joke. One drinker in the Miriwinni pub suggested to me that he would like to know what the fence would be made of. A lady at the Gordonvale centenary said to me that that was the silliest idea that she had heard since Joh tried to make cars run on water. Another bloke in the Canegrowers suggested that perhaps we could collect the dung and use it as fertiliser for cane. What will we see next? Leopards lounging around the lagoons in Laura? Hippos hovering around Hughenden? Wildebeest wandering Winton? What about giraffes gambolling around Gogango? What about the ultimate prospect of unicorns unwinding out at Urandangi? For goodness' sake! What a splendid idea that would be. The Minister should change his name to Captain Cook, because he piloted a scheme similar to the Minister's 200 years ago when he dropped off a couple of pigs at Cooktown. What a roaring success that was!

The fact of the matter is that the Minister does not seem to understand that we have moved on since the days of cancer quacks in Queensland, the jojoba bean nonsense and bringing people in with names like Milan Brych. Joh had a fascination with those sorts of people. The Minister should do himself a favour. He should get back up there and grow his beard again. He was appreciated up there. He should save the people of Queensland from the continuing lunacy. The funniest thing that I have ever seen in my life was the Minister sticking his nose in with that rhino. It was crazy and it showed just how stupid the Minister really is. I really believe that he should do himself a favour and get back up there.

Time expired.

Land Transactions by Member for Chatsworth

Mr CONNOR (Nerang) (10.16 a.m.): I rise to speak in relation to land dealings of the member for Chatsworth. He has told today's Courier-Mail that he had advised the grand daughter of the woman from whom he purchased a house to apply for a home in the Ipswich suburb of Riverview, where there were no waiting lists, which was why she received approval on the same day that she applied. That is simply not true. I table a letter signed on behalf of the manager of the area office at Ipswich dated 24 August 1995, the very day the grand daughter applied for and received her Housing Commission three-bedroom home.

That letter shows clearly that the grand daughter was entitled to only a two—I repeat: two—bedroom home, and that she would have to wait two months for a home. Why was a letter produced saying that she was entitled to only a two-

bedroom home in two months' time when she received a three-bedroom home the same day? Clearly, the member for Chatsworth has misled the public. Clearly, this is an admission that he personally intervened when he was Minister. That is a gross conflict of interest and possibly official misconduct.

Mr MACKENROTH: I rise to a point of order. I take objection to that. It is untrue and I ask for it to be withdrawn. I did not intervene in anything.

Mr CONNOR: The document is here.

Mr SPEAKER: Order! The honourable member has found the remark offensive.

Mr CONNOR: I withdraw anything that he finds offensive.

Youth Unemployment

Hon. P. J. BRADDY (Kedron) (10.17 a.m.): Under Labor, Queensland had a proud record of making programs available for the young unemployed. We all have suffered the embarrassment this week of a conservative leader, the ACT Chief Minister, Kate Carnell, attacking Queensland on the basis of the abandonment of the unemployed, particularly the young unemployed, by the Borbidge/Sheldon Government. Under Labor, over $13m was put aside for labour programs; it has fallen to half a million dollars a year under this Government.

Under Labor, Queensland led Australia in terms of the programs available on the dollars per population in terms of those unemployed at over $83 per head. We have now fallen to a situation in which this Government apportions only $3.35 per unemployed person in this State for labour programs of that type. The situation is supposedly explained by the incompetent Treasurer of this State on the basis that we do not want bandaid programs. Every other State spends at least $40 per head on those sorts of programs for the unemployed. Perhaps that could be understood if this State had done well in terms of employment rates. What has occurred under this Government is that unemployment has risen. Currently, Queensland and South Australia alternate as the two worst mainland States in terms of unemployment rates. At the same time as that has occurred, this Government has cut labour programs to a shameful $3.35 per head for those who are unemployed. This Government is setting about a program similar to the United States.

Time expired.

Papaya Fruit Fly

Mr ROWELL (Hinchinbrook) (10.19 a.m.): The Department of Primary Industries' Papaya Fruit Fly Task Force is achieving heartening results in the fight to eradicate the pest. As expected during the cooler months, fly numbers are extremely low. In the past month, very few flies have been detected. Recently in a typical week, of the 982 fruit samples collected from the 492 sites, no flies were detected.

Areas in far-north Queensland previously known as hot spots—places where the fly has been prevalent—are also coming under control. In mid June, one papaya fruit fly was found at Palm Cove north of Cairns, which is located close to the problem area at Ellis Beach. Another fly was trapped at Ellis Beach itself. Ellis Beach continues to cause some concern. However, an area of native passionfruit, which has been discovered recently, may prove to be the host of the papaya fruit fly. Should that plant prove to be the host, measures can be adopted to rectify the problem.

In an effort to keep local householders fully up to date with the eradication effort, the department is endeavouring to organise letter drops to explain why spot treatments are to be carried out. That has taken place recently in the Mowbray Valley, which is located just south of Port Douglas where a number of flies have been found. Control measures have reached the point at which the Papaya Fruit Fly Task Force has decided to cut chemical treatment in areas throughout far-north Queensland. On 3 July, spot treatments in the area from the North Mossman River northwards, including Cow Bay, Cooktown, around Mount Molloy, Mount Carbine and south of Rocky Creek, taking in Atherton and Tolga on the Atherton Tableland, ceased until further notice.

Time expired.

Gill Netting; Dugong

Mr NUNN (Hervey Bay) (10.21 a.m.): The Federal Minister for the Environment, Senator Robert Hill, is proposing a blanket ban on gill netting over most of the Queensland coast, including the Great Barrier Reef Marine Park and most of Hervey Bay. Senator Hill has taken advice from the Great Barrier Reef Marine Park Authority, but has failed to consult with the people who will be most affected by this, that is, the hardworking professional fishermen of Queensland. As a result of the lack of balance in the evidence presented to him, to put it mildly, the Minister has been misled. As soon as I became aware of the situation, I organised for a delegation to meet the Minister for Primary Industries, Mr Trevor Perrett, who I must say gave the fishermen a genuine and largely sympathetic hearing.

The rationale behind Senator Hill's apparent position is the threat of extinction of the dugong which inhabit the seagrass beds off the coast of Queensland. In contrast to Senator Hill's position, it is the opinion of the fishermen that rather than imposing a blanket ban, more consultation should take place so that both the fishing industry and the dugong can be saved. I am pleased to say that, in a show of good faith at yesterday's meeting, the fishermen have volunteered to close a significant part of the Hervey Bay fishery. They recognise the dugong problem and they are prepared to give up the one area in which they claim to come into conflict with the dugong. They have also offered to make important concessions with regard to the use of set nets, especially in areas which are known to be inhabited by dugong.

It is important that Senator Hill take a step back and conduct a thorough investigation into the cause of dugong deaths in Queensland fisheries. The

fishermen are prepared to change some of their practices. This is a genuine attempt on their part to save Queensland's dugong population.

Personally, I support any action that will preserve the dugong herd and at the same time ensure the preservation of one of Hervey Bay's most important industries and the resultant effect on our already precarious unemployment situation. The matter of compensation also comes into it and the ramifications of that are horrendous. That will relate not only to the fishermen and those who process fish but also to the suppliers of fuel and people who work in the tourism industry.

Fire Risk

Mr ELLIOTT (Cunningham) (10.23 a.m.): I wish to bring to the attention of the House and the people of Queensland the potential disaster facing large areas of Queensland. Many areas of Queensland which have received good summer rains following long periods of drought are now covered in grass. A lot of those areas have been destocked or have hardly any stock on them. Consequently, those large areas of grass have created potential fuel for a fire.

Some areas are only six weeks away from experiencing the dry storms. Therefore, we face unprecedented problems. Owing to the disastrous economic circumstances in which many people in regional areas find themselves, many properties have been deserted. For example, I can tell members of one person who is caretaking eight properties, and they are all large properties. As soon as the dry storms start, we will see unprecedented disaster.

Because of the circumstances that exist in those areas, the graders on many of those properties have broken down or people do not have the money to put fuel in them. Whether we like it or not, there is going to be a need to draw on the assistance of local authorities and contractors, and Government funding will be necessary to enable the building of these firebreaks. If people are not careful, we will see a disaster such as the Ash Wednesday fires occurring in Queensland. Queensland will burn from one end to the other.

I believe that many people who live on the coast and who are in the bush fire brigades would be more than happy to go out to those deserted properties, put in tracks with graders, back-burn and make certain that there are firebreaks throughout the area. I know that the Minister is aware of this problem. I have brought it to his attention. A committee is actually looking into the problem.

Mt. Gravatt Showgrounds Trust

Ms SPENCE (Mount Gravatt) (10.25 a.m.): Yesterday's Courier-Mail highlighted the problems of the Mt. Gravatt Showgrounds Trust. In attempting to justify the member for Mansfield's shameful behaviour in using trust funds to secure contract work for his own family, the trust chairman, a prominent Liberal identity, stated that the member for Mansfield was the only politician to show an interest in the trust.

I ask members to imagine how offensive that untrue comment was to me! On many occasions in this Parliament I have spoken about the showgrounds and the trust. I have a thick file of correspondence that I have written on behalf of the trust and last Saturday week I gave four hours of my time to judge the Miss Mount Gravatt Showgirl competition. I take an active and enthusiastic interest in all of the activities at my local showgrounds. During the period of the Labor Government, Ministers Tom Burns and Bob Gibbs and Lord Mayor Jim Soorley all attended and officially opened the show. We have yet to see a Liberal Party or a National Party Minister do so.

In one year alone—in 1995, which was during the term of the Labor Government—over $250,000 was given to improve the showgrounds buildings. That performance should be compared to the dismal performance of Mr Carroll, who has tried to get money out of his own Government to make capital works improvements to the showgrounds. I table the begging letter that the member for Mansfield wrote to Minister McCauley and her firm refusal to him. Obviously, the member for Mansfield has no influence over the funding decisions of the Government's Ministers. He holds a marginal seat, yet the Government will not give him anything.

However, the Government is also prepared to see the Mount Gravatt area lose its only youth development officer. It was disappointing to me to learn that the trust could not find $14,000 to keep its part of an agreement with the State Government to continue funding the youth worker, yet it could find over $110,000 to fund employment projects for the family of the member for Mansfield.

Food Imports

Mr STEPHAN (Gympie) (10.27 a.m.): I refer to an article in today's Courier-Mail which contains comments by the director of Nestle that give the impression that food imports threaten Australia's economy. In that article, the director of Nestle stated—

> "Australian food producers must improve productivity or lose market share to imports."

He stated further—

> "Australian-based companies needed to grow exports into major growth regions, such as Asia, and prevent losing ground to food imports."

In that regard, I take this opportunity to congratulate Mr Doug Slack, the Minister for Economic Development and Trade, on the work that he has been doing in developing export markets for our products. Queensland has the ability to produce fruit and vegetables, milk and milk products for export.

Last year, in a trade delegation to Asia, it became obvious to me that an export market for those products could develop and that all that was needed was for that market to be opened up.

Morningside Juvenile Aid Bureau

Mr PURCELL (Bulimba) (10.29 a.m.): I wish to bring to the attention of the House the good work being done by officers of the Queensland Police Service, in particular two plain clothes officers based at the Juvenile Aid Bureau at the Morningside Police Station.

I refer to Plain Clothes Constables Kathleen Stones and Samantha Ramsamy, who have recently been commended by way of a letter of appreciation. On 20 March 1997, an offender was arrested in relation to the crime of robbery with actual violence, which was committed on that day at Bulimba. The offender was refused bail and lodged at the Sir Leslie Wilson Youth Detention Centre. He was located originally by Senior Constable Phil Lynagh and Constable Ann Manson, who are stationed at the Morningside Police Station.

The offender, along with other local juveniles, had been suspected of committing property-related offences such as breaking and entering. Previously, the offender had been profiled by staff of the Morningside Juvenile Aid Bureau and had been charged in relation to a small number of offences—breaking and entering, stealing and trespassing—but had never been fingerprinted. As a result of further investigations and an interview with the suspected offender by Plain Clothes Constables——

Mr SPEAKER: Order! Time has expired.

Mr PURCELL: Mr Speaker, I ask the indulgence of the House to have the rest of my speech incorporated in Hansard.

Mr GRICE (Broadwater) (10.30 a.m.): I move—

"That the document be tabled."

Mr SPEAKER: Order! Leave is granted. It will be incorporated in Hansard.

> ... Kathleen Stones and Samantha Ramsamy, the offender admitted several property offences in the Morningside Division.
>
> After further investigations by Constables Stones and Ramsamy and assistance from Senior Constable Matt Grafton from South Brisbane District Intelligence Office, the offender admitted a number of further offences and volunteered information implicating other juvenile offenders.
>
> Further information regarding offenders responsible for offences in Nambour was also obtained and referred to local police. Information was also obtained regarding a local drug dealer.
>
> On 18 April 1997, the offender was arrested by Plain Clothes Constable Stones and charged with a total of 109 charges, mainly within the Morningside Police Division.
>
> The rate of reported crime within the Morningside Police Division has reduced significantly since the apprehension of the offender.
>
> Another offender currently being investigated by Plain Clothes Constables Steve West and Corrine Brown is expected to be charged with over 25 counts of break/enter and unlawful use of motor vehicle.
>
> The confession made by the first offender charged and the information supplied to police by him are a result of some determined investigative police work conducted by Plain Clothes Constables Stones and Ramsamy who are both relatively junior in service and their commitment and dedication in this instance clearly warranted commendation.
>
> Inspector "Monty" retired last night. I wish him well after a very distinguished career in the Queensland Police Service. He was a mate to the good guys and sorted out the baddies.

QUESTIONS WITHOUT NOTICE

Public Disagreements Between Ministers

Mr BEATTIE (10.30 am): I refer the Premier to the Treasurer's ministerial office memo, which I table, that was leaked to our office concerning his crisis meeting with senior advisers on 1 July 1997 and that warned against leaks to the media and asked advisers to assist in avoiding public disagreements between Ministers. I point out that point 11 says, "No public disagreements between Ministers". I ask: given the public brawling between the Treasurer and the Minister for Health over abortion clinics and funding for rape crisis centres, the public disagreements between the Treasurer and the Minister for Mines and Energy over privatisation, the public brawling over the prostitution review and the public disagreements about sending senior public servants to London, would the Premier outline to the Parliament how he will avoid those public disagreements, or does he agree with point 7 of the memo that states that Ministers "Have to 'sell what the Government has done and what we're doing because nobody knows about it'"?

Mr BORBIDGE: I thought that this morning the Leader of the Opposition might have apologised to the Parliament for misleading the House yesterday in respect to drinks and food on the gravy train. As of this morning, I have not been advised that the Labor Party has repaid the taxpayers $2,775——

Mr BEATTIE: I rise to a point of order. The Premier is misleading the House. That bill was paid yesterday.

Mr SPEAKER: The honourable Leader of the Opposition has made his point.

Mr BORBIDGE: The cheque is in the mail! I would have thought that the Leader of the Opposition would have done the right thing and apologised to the House over the deception that he tried to perpetrate in this place yesterday when he said that the allegations that I made in this Parliament were incorrect and, I think, were a lie. He was caught out. He had a lovely old time on the gravy train at a cost of $2,775. It is interesting, because one of the criticisms that the Leader of the Opposition made of the Director-General of Public Works and Housing was that he would not have paid the money back if he had not been caught out. I will just have to accept that the Leader of the Opposition is an honourable man, that it was a genuine mistake and that he would have paid the bill if he had not been found out.

In respect of the various matters raised by the Leader of the Opposition, I say to him that, on key issues confronting the future of this State, the Government has done more in 16 months than Labor

did in six long years. Whether it be in education, law and order, health, roads or hospitals, this Government has done more.

Mr Hamill: Don't talk about jobs.

Mr BORBIDGE: The man who would be Leader of the Opposition interjects about jobs. We are leading Australia in job creation. He talks about unity. This morning when the Minister for Primary Industries made a ministerial statement about the dugong and the shadow Minister for Environment ridiculed the Minister across the Chamber, one of the group from up the back, the member for Hervey Bay, essentially supported the Minister. In respect of the privatisation of the TAB, the attitude of the former Minister for Racing, Mr Gibbs, has been at odds with that of the Leader of the Opposition. We still do not know what their policy is in respect of the privatisation of the TAB. Let us look at rhinos. The Leader of the Opposition and the Deputy Leader of the Opposition support the Minister for Tourism, Small Business and Industry while the member for Whitsunday, the shadow Minister for Tourism, says that she wants the rhino park in Bowen. She is going to South Africa to talk to President Mandela because she wants the rhino park in Bowen.

Mr BEATTIE: I rise to a point of order. The Premier has made an outrageous allegation to the House and I seek for it to be withdrawn. The allegation that the Deputy Leader and I——

Government members interjected.

Mr BEATTIE: Mr Speaker, this should be heard in silence! The thought that the Deputy Leader of the Opposition and I would support the Minister for Tourism is outrageous. I ask for that statement to be withdrawn.

Mr SPEAKER: Order! It was a genuine mistake.

Mr BORBIDGE: If it makes the Leader of the Opposition feel better, we do not need his support. The fact is that while the Leader of the Opposition and the Deputy Leader of the Opposition have been engaging in a political safari against the Minister for Tourism, Small Business and Industry, such is the cohesion and unity on the Labor side of the House that the shadow Minister, the person who would be Minister for Tourism, supports the initiative of Minister Davidson. In regard to the reopening of the Orchid Beach airstrip, which has been condemned by honourable members opposite, we have released details——

Mr GIBBS: I rise to a point of order. I am the shadow Minister for Tourism and at no time have I supported Mr Davidson on this particular issue.

Mr SPEAKER: Order! There is no point of order.

Mr BORBIDGE: I have learnt something: I did not know who the shadow Minister for Tourism was! Now we know. I thank the honourable member for informing the House of that fact. That is news to all of us.

Honourable members opposite criticised the Government for implementing an election commitment in regard to reopening the Orchid Beach airstrip. The member for Hervey Bay was also critical of the Government until we produced a bit of correspondence from him to former Minister Barton asking the former Labor Government to reconsider its closure. The performance of the Opposition speaks for itself.

Censure of Premier and Treasurer

Mr BEATTIE: In view of the unprecedented censure last night of the Premier and the Treasurer over the Suncorp/Metway matter, will the Treasurer now apologise on behalf of her Treasury officials and herself to the Parliament, and to the member for Gladstone for misleading her, or is she so arrogant and out of touch that she will continue to snub her nose at parliamentary tradition?

Mrs SHELDON: I thank the honourable member for his question and I ask him a question in return: will he apologise for the farce he perpetrated in this House yesterday which took up the valuable time of the Parliament? The community expects better——

Mr Hamill: Show a bit of humility for a change.

Mrs SHELDON: The member should just settle down.

Mr SPEAKER: Order! I warn the honourable member for Ipswich under Standing Order 123A.

Mrs SHELDON: The matter has been resolved, but the question of the credibility of the Leader of the Opposition has not been resolved.

Leader of the Opposition, Suncorp-Metway Ltd

Mr SPRINGBORG: I direct a question to the Deputy Premier, Treasurer and Minister for The Arts. As she would be aware, the Australian Financial Review has never been an apologist for the Queensland coalition Government in relation to the merger of Suncorp, Metway and the QIDC. I ask: will the Treasurer outline to the House what the publication says today about the interventionist stance of the Opposition Leader, Mr Beattie, on the issue of Metway's fees?

Mrs SHELDON: I thank the honourable member for his very good question. It is very important that the House and the people of Queensland know exactly what the financial press thinks of the Leader of the Opposition. The newspapers have called him a political hypocrite. It would be fair to say that the Australian Financial Review has not been an apologist for the coalition Government, but it has certainly hit the nail on the head when it comes to its observation that the Leader of the Opposition is playing politics, which is what he did in this House yesterday. Over the past three days, he has played politics over the airwaves, on television and in the print media. Today, the Australian Financial Review labelled the Leader of the Opposition a political hypocrite. I wish to share some of its words with the House. It is obvious that the Leader of the Opposition has also made himself a laughing stock in financial circles.

Mr Mackenroth: Do you believe everything you read in the paper?

Mrs SHELDON: The member would be amazed at the phone calls to my office from the business community over the past two days. Those callers have said that any shred of credibility that the Leader of the Opposition had in the business community has gone. The business community does not believe in a Government that intervenes in private business activities, and nor should it.

The headline in the Australian Financial Review reads "Political hypocrisy in Metway attack", and the article states—

> "What has now caused such turmoil north of the Tweed is a demand from Opposition Leader Peter Beattie that 'as the major shareholder in Suncorp-Metway, the State Government should ensure that pensioners are exempt from any fees or charges for their accounts'."

The Australian Financial Review goes on to state—

> "(In fact, they are if they have a Metway Pensioner Savings Account)."

It seems like we are seeing more political grandstanding and lies from the Leader of the Opposition.

Mr SPEAKER: Order!

Mrs SHELDON: Untruths.

The article then quotes the Opposition Leader as stating—

> "Under previous governments, Suncorp used to pride itself on having no fees or charges."

According to the Australian Financial Review—

> "These comments would indicate that Beattie is asking Treasurer Joan Sheldon to use the Government's shareholding muscle to intervene in the policy decisions of a publicly listed banking institution."

The Australian Financial Review goes on to state that a year ago the Opposition Leader—

> "... was warning that the Government's decision to gazump an agreed merger between St George Bank and Metway, and instead engineer its own merger of Metway, Suncorp and the QIDC risked the creation of another State bank a la Victoria or South Australia."

The Australian Financial Review also states—

> "... any deposit-taking institution with $19 billion in assets in July 1997 that doesn't regularly review fees and charges, risks undermining already thin margins in return for account volume of dubious quality."

Around the nation, the Opposition Leader's comments are sending a clear message to the business community that the Queensland Labor Government is prepared to use its political muscle to intervene in the policy decisions of publicly listed companies. That is going down very well in the boardrooms of the State and nation! That is a message on which the Opposition Leader will be judged very harshly, as he deserves. I point out to the Leader of the Opposition, Mr Beattie, that when he indulges in political grandstanding and scoring cheap political points, his actions will come home to roost. That is certainly what has happened in this case. The Opposition Leader, Mr Beattie, is not the social rationalist that he claims to be; he is just an irrational socialist.

Member for Mansfield

Mr ELDER: I direct a question to the Treasurer. I refer to the claims by the member for Mansfield yesterday that allegations in the Courier-Mail about the caretaker at the Mount Gravatt Showgrounds, his former brother-in-law, Gary Thompson, related to a period after his election when he was no longer a member of the trust. I also refer to the allegations in yesterday's Courier-Mail concerning the caretaker. The first was that Mr Carroll requested that quotes be obtained to build a flat at the showgrounds for the caretaker. That request was made at a meeting of the trust in September 1995, and I table the minutes of that meeting showing that Mr Carroll was the chairman. The second allegation referred to a letter from Mr Carroll as a member of Parliament recommending extra income for Mr Thompson, and I also table that letter. As there was no misleading allegation in relation to Mr Thompson and the major allegation related to a period while Mr Carroll was the chair of the trust, contrary to his assurance to this House yesterday, I ask: what action will the Treasurer take to show some leadership as Liberal Party Leader to discipline the member for Mansfield, and will she as leader refer his misleading of this House to the Privileges Committee?

Mrs SHELDON: The Mt. Gravatt Showgrounds Trust does not come under my ministerial responsibility.

Queensland Health Capital Works Program

Mr CARROLL: Will the Minister for Health please outline the completed expenditure status of the Queensland Health 1996-97 capital works program?

Mr HORAN: If anything demonstrates the way in which this Labor Opposition has been devastated by the success of the coalition Government it is the answer to this question. Over the past few months, the Opposition Leader, the Deputy Leader, the shadow Treasurer, Mr Hamill, and the member for Mount Coot-tha have been swanning around saying that the capital works budget has not yet been expended. They think that the financial year ends at the end of April or March. Those are the sorts of dates they have been citing.

Let us go back a touch in history to see what we inherited in capital works. I have told this House over and over again that there was a $1.2 billion blow-out between what the Labor Government had promised and what it could deliver. It had no cash to pay for the hospitals that it was promising around the State. Then we saw the disgraceful hijacking by the Opposition Leader, when he was Health Minister, of $34m from the Hospital Rebuilding Fund to

overcome the $34m black hole that he was going to leave behind in the budget. That was only part of the hole that he was leaving behind. That $34m was probably for the Caboolture Hospital or some other hospital, but we made sure that it remained in place.

For the 1996-97 year, we had $295m to spend on capital works, specialist equipment, information technology and minor capital works. We had only nine months in which to spend it, because the Budget came down in September. I express my gratitude and thanks to the hardworking people in Queensland Health, because that entire $295m has been spent. In fact, we have spent $300.7m. That has created jobs in over 50 parts of Queensland. At 50 different centres, major hospital and community health construction is going ahead.

The people of Queensland are amazed that this Government can deliver so many promises and so much work and construction in town after town, with no new charges or taxes. We are doing that without imposing any new taxes or charges. We are doing that with increased funding made possible through the efficiency and new functionality of the completed buildings that we have put in place. Unlike Labor, we are not building half-hospitals or no hospitals, we are delivering real hospitals that are fully funded and paid for. At the same time, we are delivering jobs for people.

Recently, I had the pleasure of inspecting a number of sites around Queensland. In particular, I inspected the Royal Brisbane Hospital, which is right in the middle of the Leader of the Opposition's electorate. If he cared to go down there, he would see that three major projects are under way. He would see about 200 tradesmen, workers, subcontractors, truckies and concrete truck drivers who are all getting work and real cash in their pockets to take home to feed their families.

The Opposition can go to any site it chooses. It should go to Thursday Island and see the three local apprentices working on the project up there. Later on, we will be opening Stage 1 of that project and the community health centre, as well as the community health centres on Badu and Boigu Islands. The Opposition should go to Cairns and see the work that is under way there. As Mr Hamill stands on the veranda of his colonial on the hill, right under his nose below him concrete trucks are travelling up and down the road to the projects at the Ipswich Hospital. We are well into that $75m project. That is taking place right under his nose. It is all happening.

Mr HAMILL: I rise to a point of order. I do not have a colonial on the hill and, furthermore, $3 billion should have been spent last year which was not spent.

Mr SPEAKER: Order! There is no point of order.

Mr HORAN: The shadow Treasurer is well aware that the work at Ipswich would not have gone ahead under Labor, because there was no cash to pay the workers. It overpromised by $1.2 billion. What would Labor have cut out—Ipswich, Caboolture, Maryborough or Cairns? We made sure that they all went ahead.

An Opposition member interjected.

Mr HORAN: The member knows that Noosa is costing nothing because it is being built by private enterprise.

In the coming year $554m will be spent on capital works under the Queensland Hospitals Rebuilding Program—the largest program ever undertaken across Australia. One can imagine the new hospitals that will be put in place and the jobs that will be created. What upsets the Labor Opposition is that we are creating jobs. Earlier we heard the member for Kedron talk about mickey mouse schemes. He does not want to see us building hospitals and having apprentices, subbies, tradesmen and contractors getting work, people working at the batching plants and steel fixers getting work. What he wants to see is people doing abseiling and confidence courses and painting rocks. He does not want to see real work. We are providing real jobs in Queensland.

Mr T. B. Sullivan: Five minutes!

Mr HORAN: Right under the nose of the member for Chermside we have the demolition and construction being undertaken at Prince Charles Hospital.

Mr T. B. Sullivan: Eighteen months late.

Mr SPEAKER: Order! The member for Chermside!

Mr T. B. Sullivan: He provoked me, Mr Speaker.

Mr SPEAKER: Order! The member is provoking me, so I now warn him under Standing Order 123A.

Mr HORAN: All I can say is that the coalition Government has the runs on the board. I estimate that by the end of this financial year we will be at least half a billion dollars ahead of the Labor program. That is half a billion dollars of works which will provide jobs and hospitals that would not have been there under Labor. As I said, the coalition Government has the runs on the board. $295m worth of capital works for 1996-97—all spent, all happening. That is about $100m more than would have happened under Labor. All the members of the Opposition who have scurrilously claimed that those funds would not be spent should hang their heads in shame. All they try to do is white-ant Queensland and destroy confidence in this great State.

Mt. Gravatt Showgrounds Trust

Ms SPENCE: I refer the Minister for Emergency Services and Sport to his assurances yesterday that he would investigate allegations concerning breaches of section 10(1) of the Mt. Gravatt Showgrounds Act by the member for Mansfield in the granting of contracts worth tens of thousands of dollars to members of his family by the Mt. Gravatt Showgrounds Trust. In particular, I refer the Minister to the awarding of contracts to G. Boughton & Associates for mowing and the fact that G. Boughton & Associates is neither a registered business name in Queensland nor an incorporated company. I now table a letter from the chairman of

the Mt. Gravatt Showgrounds Trust to G. Boughton & Associates at the member's home address. I ask: will the Minister now forward the matter to the Criminal Justice Commission to investigate breaches of the Act by the member for Mansfield in relation to benefits from mowing contracts, especially considering that the trust sent cheques for G. Boughton & Associates to the member's home address?

Mr VEIVERS: I have to say, "Tut-tut." I informed the House yesterday—and obviously the member for Mount Gravatt was not listening—that I would discuss this matter with my director-general and department. That is happening. I have nothing further to add.

Information Technology in Education Sector

Mr WOOLMER: I ask the Minister for Education: can he please inform the House how the new information technology initiatives outlined in his ministerial statement this morning will benefit Queenslanders, especially when compared with the previous Government's lack of IT initiatives for Queensland schools and communities?

Mr QUINN: I thank the honourable member for his question and, at the outset, acknowledge his interest in information technology and the work that he is doing on behalf of the Government in progressing several very key initiatives that the Government is putting in place. As I said in the ministerial statement, there is a significant commitment by this Government to information technology usage within our schooling system—almost $100m this year. In my opinion, that will take our schooling system to the forefront in terms of the use of IT in schools across Australia. To a large extent it will eliminate the tyranny of distance which has in the past prevented our department from providing high quality educational programs to students right across Queensland, wherever they may live and whatever their particular circumstances.

I was particularly interested in and somewhat dismayed by comments by the Opposition that Queensland was in danger of falling behind in the IT race in terms of using that sort of technology in our schools. I asked my department to make some comparisons to see how we were travelling in terms of the expenditure that the previous Government put in place and whether in fact we were falling behind. There is no doubt that if the Labor Party had continued in office we certainly would have been falling behind in terms of IT usage in our schools. It has been this Government that has ramped up expenditure on IT in our schools, to the point at which we are now in a position to claim that we are going to proceed to put in place one of the most sophisticated, one of the most complex but also one of the most beneficial systems to Queensland students, no matter which schools they attend.

Some of the figures are very interesting. When one considers what the Labor Party had been doing in its term of office, one gets some idea of the enormous commitment that this Government has made in terms of IT expenditure within our schools. For instance, in the last Budget handed down by Labor in 1995-96, IT expenditure in schools was $24m. In this Budget, our IT expenditure in schools is more than double that—$56m.

Mr Bredhauer: How much of that is rollovers?

Mr QUINN: Even if one takes into account $12m of rollover funds, we are still almost double the expenditure of the Labor Party in its last term of office. If one extends that further and goes back two years and examines the school-related expenditure in IT—in 1994-95 and 1995-96, Labor had a total expenditure of $34m. In our two Budgets, 1996-97 and 1997-98, we have committed $73m—again, more than double what the Labor Party was spending on IT in school-related initiatives. But if one looks at the overall total information technology funding within Education, again we have committed more than double the amount committed by Labor. In the last two years of Labor's term, it committed $78m in terms of expenditure. In its two Budgets the coalition Government has committed $143m—roughly double again. As can be seen, it has been this Government that has taken information technology in our schools to the forefront in terms of new initiatives. It is this Government that is making sure that we will not fall behind. For the Opposition to claim that Queensland was in danger of falling behind is simply hypocritical. If the Labor Party was in power, there is no doubt that we would have been miles behind and continuing to fall miles behind.

At the end of the day, the enormous investment that this Government is putting into IT initiatives within our schools will benefit every student across the State, no matter where they live. We have made the commitment that all schools should be connected to the Internet—not just the metropolitan schools, not just the schools along the eastern seaboard where it is easy to provide those services, but all schools throughout Queensland—so that students, no matter where they live in this State, will have equal opportunities to participate in those sorts of high-tech initiatives and have delivered to them quality education—the innovative programs that this sort of technology will allow us to deliver. I think this is an enormous and exciting initiative for this State Government and one which will benefit all students, no matter where they live in Queensland.

Activities of Prisoners on Day Release

Mr BARTON: I refer the Minister for Police and Corrective Services to a further wild sex romp in Queensland prisons under his administration where a bus load of prisoners visited the Gold Coast for a barbecue as part of Lifers Day. During the day a convicted murderer, who was also caught by police driving at high speed in a Corrective Services vehicle and who is reportedly having an affair with a female prison officer, left the party for a romantic liaison with a senior female Police Service employee. I ask: in view of the Minister's promise to get tough on prisoners convicted of serious offences, including the sacking of the previous Parole Board, how can he plausibly explain these events, and can he guarantee this House that he is running an effective

prison system instead of a Corrective Services Melrose Place?

Mr COOPER: I wish I could say that the member opposite actually composed the wording of that question himself. He can paint these things into terrific pictures. I happen to have been briefed on that matter about three weeks ago. We wanted to allow the police to do their job, which they have done and done extremely well.

Mr Elder: Which job?

Mr COOPER: Do not be rude about it. We have to try to be serious about these things. But let us not forget that I knew this sort of thing would tickle his fancy. I am talking about the member for Waterford—not mine, his. A few weeks ago he was sniffing around the alleged brothels around Brisbane. He was sniffing around at night-time trying to shanghai journalists into going with him.

Mr BARTON: I rise to a point of order. If the Minister is inferring that I was seen around brothels, that is totally untrue and offensive, and I demand that it be withdrawn.

Mr SPEAKER: Order! The honourable member has found the remarks offensive.

Mr COOPER: I will withdraw. I am sorry to spoil his fun. It is honestly the sort of thing that he is into. I reckon he will jump at this. He will love this; he will love every bit of it. But as far as the actual issue is concerned, yes, there are human beings involved in the prison system, just as there are in here and elsewhere around the place. It is amazing as far as—

Mrs Edmond interjected.

Mr COOPER: As far as the honourable member is concerned, she is okay. She should not worry about it.

As far as the issue of humanity, human frailty, sexuality and those sorts of things are concerned, I am amazed at the sorts of things that have occurred, especially when the member opposite was in Government. When we put human beings together, be they in gaol or not, amazingly these things are going to occur. It is incredible how they do. It is amazing. It does really surprise us, but it does happen from time to time. As far as I am concerned in this instance, if the honourable member opposite wants any guarantees that male and female are not going to get together occasionally, he is kidding himself. He can give all the guarantees he likes, I will go with humanity because that is the way it is, the way it has been for hundreds of years and the way it always will be.

As far as the issue is concerned, it is how we deal with it. It is all credit to the Corrective Services Commission and the CSIU, because the moment this was drawn to their attention they brought in the police.

Mr Barton: Drew it to their attention! They did it!

Mr COOPER: The CSIU?

Mr Barton: The Corrective Services Commission.

Mr COOPER: The Corrective Services Commission did not do it. That was a couple of individuals, my friend. Would the honourable member like a further brief? I have never seen the QCSC copulating with prisoners. Is that what he is talking about now?

Mr Barton: At least one of them is.

Mr COOPER: What flights of fancy is the honourable member going to get into next? What a stupid arrangement. As far as the issue is concerned, the QCSC moved immediately. It had the CSIU immediately start surveillance. It brought in the Queensland Police Service and both operated extremely well because they caught all the offenders. All the offenders have been dealt with. As far as I am concerned, just as it used to happen in the past and will happen again, anything like that will be dealt with in the most severe way because, as far as we are concerned, it is not on. That does not mean to say that it is not going to happen again. Even people like the member opposite, whom most people would have given up on long ago, have a chance.

Taylor Made Marketing

Mr RADKE: I ask the Minister for Tourism, Small Business and Industry: can he inform the House of the validity of the allegations regarding a Mr Peter Taylor made yesterday by the member for Bundamba?

Mr DAVIDSON: I thank the member for his question. Yesterday in this House the member for Bundamba asked me, "Is it true that the owner of Taylor Made Marketing, Peter Taylor, has legal links to the Chancellor group?" The owner of Taylor Made Marketing is Mr Richard John Taylor. We have done a Dun & Bradstreet search. I had my staff ring Mr Richard Taylor, the owner of Taylor Made, who yesterday said that he does not know a Mr Peter Taylor, he is not related to a Mr Peter Taylor, and he has never had any business interest with a Mr Peter Taylor.

The member for Bundamba is now just fabricating information and is disgracing himself. The member has made a number of false allegations in this House. He has no credibility and no interest in Queensland. If it he wants to make further allegations, let him produce documented evidence before he makes a fool of himself.

Carramar Centre, North Ward

Mr SMITH: I refer the Minister for Families to the contradictory statements that he has made to the residents of North Ward about the Carramar facility in North Ward, Townsville, and I ask: when is he going to give local residents a straight answer about the centre's future; can he tell us why the Premier's representative in north Queensland, the member for Burdekin, had to disown him and his evasive answers on the centre; and is this not yet another example of Government disunity as evidenced by the memo in circulation?

Mr LINGARD: A very prominent ALP official in Townsville said that he would not support the ALP

because for six years the Labor Party did absolutely nothing to try to improve the situation in Hanran Park. The only thing it did was allow a senior department official to go up there before the last by-election and try to improve the situation for its ALP candidate. But over six years it did absolutely nothing.

Mr Elder: Be careful.

Mr LINGARD: I thought I was very careful in my comment that absolutely nothing happened in six years until after the local government elections, because I did not want the whole matter to come up during the local government elections. Within two or three months I personally went up there to promote a diversionary centre concept. I have always said to Townsville that I am not impressed with a diversionary centre where many Aboriginal and Islander people go in there every afternoon, get a free meal at night, get free accommodation, go out the next morning but still continue to go back. I do not support that concept of a diversionary centre, but I do support an overall diversionary concept.

In Townsville this involves Echlin Street, one of the places over which the Labor Party suffered a massive revolt up there in Townsville. Echlin Street is an absolute credit to the people who use it now—the older people. I would take anyone around to Echlin Street and say, "This is one of the successes of the diversionary concept."

We have spent $370,000 on Ki-meta, which will have 24 beds upstairs for crisis accommodation as well as a doctor, dentist and nurse to look after the people who are affected by alcohol, especially the people in Hanran Park. Downstairs in Ki-meta will be the diversionary centre where those people who are affected by alcohol will be taken and assessed. Carramar will be part of the diversionary concept—listen to the words—where young teenage women, especially if there are very young children, will be taken and assessed. They will not live at Carramar; they will go in by car, they will go out by car, they will be in after 5 o'clock in the afternoon and they will be out before 8 a.m. the next day. They will not live there. Carramar has always been a place which has been used by young people. There is no concern whatsoever about it.

I have said to the people of North Ward that I have to run the concept of Tara, a young youth referral service right next to Carramar. I will run Tara in the very strict way. Similarly, I will run Carramar in a very strict way, so there will be no-one walking in and walking out. They will go in by bus and they will come out by bus. It has worked very well.

I will be up there on Sunday, which is much different to actions of the member opposite when he was Minister for Lands. Why does he not tell us about all the people who used to go around to him on a Sunday morning with their concerns and he said, "I don't work on a Sunday morning. Sunday is my private day." I will be up there on Sunday. I will be there to have a look at the concept at the Bohle. I will be up there to have a look at Echlin Street. I will be up there to have a look at PIADRAC. I will look at Ki-meta and I will also look at Carramar. I can say to him once again: at least we have gone in there hard; at least we have made a decision; and at least we have done something—something that the Labor Party did not do for the whole six years that it was in office.

Mice Plague

Mr ELLIOTT: I ask the Minister for Natural Resources: with regard to the disastrous mice plague on the Darling Downs and in southern Queensland areas, what is the Department of Natural Resources doing to assist grain growers to limit the impact of mice in central and southern Queensland?

Mr HOBBS: As the honourable member said, mice have caused havoc not just on the southern downs but throughout the whole of Queensland, particularly central Queensland. For a long time we have been trying to get approval to use zinc phosphide. In the past we have also been able to use other chemicals, but they have had some residual effects, so we have not been able to use those on this occasion. However, there are some traditional baiting methods that we can use.

Zinc phosphide baiting for mice will officially begin today following the application approval from the national registration authority, but it will be done in a very specialised and professional way and only through aerial application by those pilots who have special chemical rating licences. We will do the first trial in the Moura region to see how it goes. We recommend that land-holders also undertake other normal types of control measures. Although this chemical should be very, very effective as it is put on, land-holders still need to be able to put appropriate registered chemicals around their sheds. They should also be able to slash verges and establish bait stations. If those methods are adopted as well, we believe that the zinc phosphide will be very successful.

One of our very serious concerns about zinc phosphide is the problems that we may encounter with the handling of the product itself. Tests have been conducted, and we believe that we have done everything possible in our power to make sure that all the health checks and balances are in place. We believe that the chemical is as safe as it possibly can be. It is used overseas. I am very pleased that we are able to at least provide some additional assistance for those people who are facing these very severe mice plague problems.

Port of Brisbane Rail Link

Mr MACKENROTH: I refer the Minister for Transport to pages 72 and 73 of the Integrated Regional Transport Plan for South East Queensland, which states—

> "The configuration of the current rail network through the metropolitan area also means:
>
> there are limited opportunities for high volume freight traffic travelling from Toowoomba to the Port of Brisbane to pass through the suburban networks; and
>
> ...

> Unless the ability to deliver a service competitive with road freight is to be severely compromised, it will be necessary to develop new freight rail facilities, with the long term aim of segregating metropolitan passenger and freight activities on to dedicated rail systems."

I ask: as this is code for the need for a new rail corridor, can the Minister advise this House what areas are being considered, and will he rule out the former corridor under investigation for a coal freight line from Parkinson through southern suburbs, particularly Gumdale, to the port of Brisbane?

Mr JOHNSON: As the honourable member would be well aware, the Integrated Regional Transport Plan, which was formally put in place by his administration and launched by us, will be considering the transportation needs, corridors and other issues affecting people living in south-east Queensland over the next 25 years. The honourable member asks about a second corridor to the port of Brisbane. Yes, certainly within the Integrated Regional Transport Plan we are looking at a second corridor. We are not ruling that out. I know that the honourable member for Bulimba would be very interested in this answer. I know that the honourable member for Sunnybank would be, too, because he is a very negative person who does not want to see progress at any expense.

Queensland Rail is considering this corridor. We will be looking at putting in place how we will be managing this over the next two years. Parkinson has been looked at as part of a rail freight network for Queensland Rail. All these issues that the honourable member has addressed in his question are essential to the future viability of the port of Brisbane and the transportation needs of south-east Queensland. This Government is not going to walk away from the hard issues, and we will not on this occasion.

Air Pollution Levels

Mr J. N. GOSS: I direct a question to the Minister for Environment. Several weeks ago, the Opposition spokesman for Environment made a negative and unfounded allegation about the level of air pollution in the Brisbane area. Would the Minister advise the House of the coalition Government's latest initiative with regard to advising people of air quality in this region?

Mr LITTLEPROUD: I thank the member for Aspley for his question. It is obvious that, because he comes from south-east Queensland, he is fully aware that there is concern in south-east Queensland about the quality of the air shed. For quite some time the Department of Environment, through the Scientific Assessment Section, has been monitoring the quality of air across Queensland. I made a statement in the House during the previous sitting that we have nothing to be worried about because, in spite of the growth and development in the south-east corner of Queensland and the increase in the number of motor vehicles and all the emissions coming from them, the general air quality in Queensland remains pretty good.

We have been collecting data for a long time. Some media outlets have been using that data to give an indication to the people of Queensland just what the pollution levels are. I take this opportunity to make it known to the people of Queensland that, just because there is sometimes some fog and some mist over Brisbane, it does not mean that there is pollution there. Pollution, of course, comes from smoke particles from fires, ozone gases, motor vehicle emissions and engine emissions.

Because we have been able to put together data from monitoring stations right around Brisbane for the past 10 or 20 years, using meteorological information from the Bureau of Meteorology we can now predict what pollution levels might be tomorrow. We have been making that data available at the end of each day. We are now moving towards a situation in which we will be able to forecast ahead. That started on Monday. It is interesting to note that the forecast made for Monday was that pollution levels would be low. On 7 July, a graph was printed out to show what the pollution levels were. I will table these two graphs, which show that the forecast was correct. I know that some people, especially farmers, would wish that the long-term weather forecasters who predict rain would be just as accurate.

This means a step up in terms of monitoring the quality of the air shed across Brisbane. It also has a flow-on effect for people who have medical problems, such as asthma and allergy problems. They have been making contact with us. They recognise that, if they can be told beforehand what the pollution levels might be tomorrow, they can take some sort of precautions. That is acknowledged by people with those problems and people in the medical profession.

We are moving forward. There is no reason to be complacent about what we might do. The regional transport strategy for south-east Queensland has taken into account what should be done with motor vehicles. My colleague the Honourable Vaughan Johnson made statements about that last week. Also, in our own budget Estimates this year we have cranked another half a million dollars into finalising the air quality strategy for south-east Queensland. We are working on that with the Minister for Local Government and Planning, the Brisbane City Council and some of the other local authorities so that we will have that strategy in place. All this data that we are putting in place is aiding and abetting what we want to do in that regard. People can have confidence that the air quality over Brisbane is being monitored. Now the forecasting is under way, and the first two forecasts have proved to be very accurate. I table those two graphs.

Spending on Labour Market Programs

Mr HAMILL: I refer the Treasurer to reports that Queensland spends as little as 4% of that spent by other Australian States on labour market programs and also to her 1995 election campaign launch speech in which she announced a plan to provide land tax rebates to businesses on the condition that—

> "To successfully apply for a rebate, businesses will need to qualify for a program designed to boost youth employment in Queensland."

As the land tax rebates she has announced make no mention of any requirement for business to participate in a youth employment program, I ask: how does she sleep at night knowing that she has broken her election promise to 70,000 Queenslanders under the age of 25 who cannot find a job just to hand out $37m in land tax rebates to her developer mates? Will she now endorse Labor's $200m community jobs plan to boost youth employment in Queensland?

Mrs SHELDON: Unfortunately, what the honourable member is articulating about his $200m jobs plan is yet another unfunded Labor policy.

Mr Hamill: What about your promise?

Mrs SHELDON: The honourable member has had his turn to ask a question; I am answering it now.

Mr SPEAKER: Order! The Honourable Deputy Premier and Treasurer is answering the question. I ask for order. The honourable member has already been warned once under Standing Order 123A.

Mrs SHELDON: When the coalition Government came to power, we found to our horror that we faced a long list of unfunded Labor policy promises. Once again, we face the same thing. Members opposite can pluck any figure out of the air and say that they will put it into job development programs and have no money to fund it. The difference with the policies that we make is that they are funded and they are all in the Budget. There is no funding for the $200m rash promise made by members opposite. I know what they will do: they will put up taxes. They will do what the Labor Government did in New South Wales, that is, tax the family home. For the first time ever, Labor in New South Wales has taxed the family home. I understand that policies to do the same are being developed by the Labor Party in Queensland.

In our Budget, we put aside $23m for a youth development program. That is the first Budget that has ever had a youth development program. That specifically homed into jobs for young people. We have done away with a lot of the make work programs that Labor put in place, which were similar to their shonky $200m for youth that they are touting now and cannot fund. We decided that those programs, which were just a con on our unemployed youth—and they know it was a con—would be replaced by money being put into real training programs. That is exactly what Minister Santo Santoro has been doing. There has been a direct channelling of money into real programs for real training, so that youth will be trained and able to get a job as a result.

Under our youth development program, the $23m that has been provided to cross-Government portfolios is targeted absolutely at job creation. As a spin-off, in addition to the $23m, we have reduced land tax, which was an election promise. We keep our election promises, which the members opposite never do. That will enable small businesses to be more productive and to put on more people, particularly young people. All told, our Government has delivered on our program for youth. All the members opposite are putting up is another unfunded shonk.

Kidsafe Week

Mrs GAMIN: I ask the Attorney-General and Minister responsible for consumer affairs: what important child safety activities were planned as part of the recent Kidsafe Week?

Mr BEANLAND: I thank the member for Burleigh for that question. She has always been a very active consumer advocate not only within her electorate but also within Queensland generally. The Child Accident Prevention Foundation of Australia, that is, Kidsafe—which is an organisation with which this National/Liberal coalition Government is proud to be associated—has been doing a great job for thousands of Queenslanders around the State. Kidsafe Week commenced on Tuesday, 10 June. Once again it was my pleasure as the responsible Minister to launch the week. It was an important week because, in common with other weeks that involve consumer affairs, it highlighted a number of issues, in this case children's safety.

Not only did we focus on the theme of that particular week, children's safety, but also safety in the home where our children should feel safe but where, from time to time, so many accidents occur. During Kidsafe Week we not only talked about the issue of ensuring children's safety but the Government also banned the Magic Bomb toy, which turned out to be yet another unsafe cheap import coming onto the Queensland marketplace. I am pleased to say that retailers have withdrawn that product, which has now been banned from the marketplace in the interests of the safety of our children.

In conjunction with Kidsafe Week, the Office of Consumer Affairs also undertook a widespread public education campaign on the risks associated with children's night clothes. During winter months, it is very easy for children to get into trouble with night clothes that are loose fitting and made of very flammable material. They can brush up against heaters and candles that are left burning in a house. We all know the results when a child is burnt.

The Office of Consumer Affairs produces a wide range of educational brochures and fact sheets that are freely available throughout the State. This year we also funded the production of a brochure for the Child Accident Prevention Foundation.

Kidsafe also plays an important role in assisting members of the community to help themselves. It assists thousands of Queenslanders with ready advice and information as to how they might assist themselves. That is an important matter. A number of times a year all members are in Brisbane and I invite them to visit Kidsafe House, which is next to the Royal Brisbane Hospital. That is a facility of which we as members of Parliament can all feel proud. There is nothing more important than safety.

This Government rejigged, reorganised and revamped the Consumer Safety Committee, which the former Government allowed to run down. That organisation is now very active and focuses particularly on issues that relate to children's safety. Kidsafe Week was a week of great activity and a week in which we could highlight to members of the community that they have to be very much aware of issues that relate to the safety of our children in the community.

Sale of Gold Reserves

Mr McGRADY: I refer the Minister for Mines and Energy to the coalition's decision to sell off billions of dollars in gold reserves. I ask: what impact will that disastrous coalition policy have on the smaller goldmining operations? What actions is the Minister taking to help stabilise the Queensland gold industry?

Mr GILMORE: For the information of the honourable member and the House, I point out that I do not run the Reserve Bank in this country. I have very little input indeed into the decisions that it makes.

Mr McGrady: What have you done?

Mr GILMORE: My God! The member asks what I have done. May well he ask what I have done. It was such a lunatic question to ask in this place that I wonder that he is not embarrassed by the shape of his own head.

I assure the House and the people of Queensland that, unlike members on the Opposition side, as the Minister for Mines and Energy I am very supportive of the mining industry in this State. We are doing everything possible to change the structure of my department to make sure that the service provided by this Government to the industry in this State is beyond reproach and is better than anything provided anywhere else in the country. Any opportunity that is available to the mining industry in this State becomes available because of the functionality and efficiency of my department. One would have thought that would pass without a statement.

However, the question was what have I done in respect of the Reserve Bank. Sad to say, I have not contacted the Reserve Bank, but I will have to contemplate that this afternoon. I will probably have to set up a committee of some kind so that we can have some discussions about whether I should, indeed, contact the Governor of the Reserve Bank and ask him if he will reconsider that matter. I have to say that I am astonished and somewhat dismayed——

Mr SPEAKER: Order! The time for questions has expired.

REVENUE LAWS AMENDMENT BILL

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (11.31 a.m.), by leave, without notice: I move—

"That leave be granted to bring in a Bill for an Act to amend certain Acts administered by the Treasurer."

Motion agreed to.

First Reading

Bill and Explanatory Notes presented and Bill, on motion of Mrs Sheldon, read a first time.

Second Reading

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (11.32 a.m.): I move—

"That the Bill be now read a second time."

This Bill effects several significant changes to revenue legislation which will ensure clarity and equity in revenue legislation, give effect to the revenue initiatives which I announced in the Budget and prevent avoidance of the tobacco licence fee.

The coalition Government came to office with a clear commitment to enhancing Queensland's status as the low-tax State through the phasing out of land tax and reduction in payroll tax. I also made it clear that the coalition Government was committed to the implementation of tax reform through improvement in taxation administration. This Bill delivers on both of these commitments.

As I announced in the 1997-98 State Budget, the centrepiece of the taxation concessions is a $20m land tax package. These concessions provide a general rebate of 5% of the land tax assessed for all taxpayers. In addition, the statutory deduction for individuals will increase from $160,000 to $200,000 and the exemption threshold for companies and trusts will increase from $60,000 to $100,000 and from $40,000 to $100,000 for absentees. As a result of these changes, approximately one-third of all land tax payers will not pay the tax in 1997-98 and all remaining taxpayers will pay less than they otherwise would have.

These concessions are in addition to the three-year averaging initiative which was announced in the 1996-97 Budget. The combined effect of the averaging initiative, which also first has effect in the 1997-98 year, and the initiatives effected by this Bill, will be a saving for land tax payers of some $37m. Another significant Budget initiative is an increase in the payroll tax exemption threshold from $800,000 to $850,000 on and from 1 January 1998. This follows the initiative provided in the coalition's first Budget last year where the threshold was increased from $750,000 to $800,000 from 1 January 1997. The effect of these arrangements is that 95% of Queensland employers are not required to pay payroll tax and preserves Queensland's payroll tax arrangements as clearly the most favourable to business of any State or Territory.

As part of the coalition Government's commitment to reviewing the effect of land tax on landowners, two additional land tax measures are effected by this Bill. The first measure ensures that the principal place of residence concession

continues to apply where a property owner resides in residential premises with other persons. Without this amendment, the effect of a 1996 Land Court decision would have been to deny the principal place of residence concession where other people reside with the landowner, even though the property is not used for income-producing activities. This would be clearly anomalous and would have represented a significant change in practice and an increase in liability for many land tax payers.

A land tax deduction is available where land is used for the business of agriculture, pasturage or dairy farming. However, the concession does not currently extend to Australian citizens residing overseas, discouraging the acquisition of farming land in Queensland. The second land tax measure will extend the deduction to Australian citizens residing overseas and to trustees of trusts in which beneficiaries are Australian citizens residing overseas so that the value of the land may be deducted when determining land tax liability.

As I announced on 21 May when I launched Future Directions for the Office of State Revenue, the coalition Government's commitment to a low-tax policy must be complemented through modernisation of taxation administration. An important part of modern tax administration is commitment to client service, the sharing of information between tax administrators and taxpayers, and an understanding of the impact of taxation administration on commercial decisions.

In Queensland, the CitiSecurities dispute highlighted this point. That case raised issues regarding reinterpretation of stamp duty law and the extent to which taxpayers are entitled to certainty as to their taxation obligations. This Bill ensures clarity and certainty in relation to the operation of the Stamp Act where CitiSecurities issues arise, reflecting the results of consultation with industry. The object of these amendments is to ensure that securities which directly or through other arrangements secure the payment or repayment of an amount lent or to be lent, advanced or paid, will be liable to duty regardless of whether the holder of the security is the lender or payer or the giver of the security is the borrower or payee. Clear examples of the way in which these arrangements will operate are provided in the Explanatory Notes to this Bill.

In 1996, a package of measures was introduced to reduce mortgage stamp duty costs where people purchase their first home or refinance home loans. The package included new arrangements for calculating stamp duty on further advances. The flexibility and range of financing options available is such that the further advance provisions now need to be relaxed to extend the earlier concessions to financing through fluctuating accounts and line of credit facilities. The change involves adopting the general regime for calculating mortgage stamp duty, whereby stamp duty is levied on the highest amount advanced. The change will see stamp duty costs reduced and administration of the concessions simplified.

Finally, this Bill will ensure equity and efficiency in administration of the tobacco licensing scheme by allowing the commissioner to issue tobacco licences which better reflect the circumstances of individual licenses and to ensure that all licensees fairly meet their obligations under the licensing scheme so that no-one in the industry may derive an advantage over others.

The complex manner in which the tobacco licensing scheme operates makes it susceptible to abuse by licensees purchasing large quantities of tobacco with a view to retiring the licence without paying licence fees based on those sales. For instance, because a licence for a particular month is based on sales made two months prior, licensees are able to obtain an initial licence based on low estimated sales, sell substantially more than that amount and retire the licence without paying fees which reflect those sales.

At the moment, these types of arrangements cannot be effectively monitored and regulated because the commissioner cannot impose conditions on a licensee regarding the product sold or purchased. The inability of the commissioner to issue licences subject to conditions also fails to reflect the fact that some tobacco merchants specialise in the sale of certain product or sales to certain markets and therefore require a licence with conditions different to those which should apply to, say, larger merchants.

Also, where the commissioner discovers that a licensee is in breach of the Tobacco Products (Licensing) Act, the licence may be cancelled only at the end of the current licence month, which allows improper activities to continue for that period.

To counter avoidance opportunities and to better facilitate administration of the Tobacco Products (Licensing) Act, this Bill will permit the commissioner to issue licences which are subject to conditions, including conditions to regulate the distribution, sale and purchase of tobacco. It will also provide that, where a person breaches a licence condition, they must immediately notify the commissioner, who may cancel the licence where appropriate. To ensure that unscrupulous operators are not able to continue to sell tobacco in breach of the Act, this Bill will also allow the commissioner to cancel a licence during a licence month where the licensee is acting contrary to the Act, or is no longer a fit and proper person to hold a licence.

These arrangements have been designed to ensure that honest licensees' interests are protected while allowing the commissioner to move quickly to prevent avoidance by unscrupulous operators. Early notification of licence condition breaches will allow the commissioner to consider the reasons for the breach and to cancel a licence where appropriate, effectively ensuring that activity which is contrary to the Act ceases immediately. Where the commissioner is satisfied that the licensee remains an appropriate person to hold a licence, a new licence which takes into account any additional factors and revises previous conditions to better reflect the applicant's circumstances may be issued.

Rights of objection and appeal will be extended to persons affected by a decision to issue a conditional licence, to cancel a licence and to impose

a fee for failure to notify of a breach of a licence condition. At the same time, the Tobacco Products (Licensing) Act will be amended to allow the commissioner to take into account individual circumstances by, where appropriate, partially or fully remitting the penalty which is currently automatically imposed where persons engage in unlicensed activities. I commend the Bill to the House.

Debate, on motion of Mr Hamill, adjourned.

JAMES COOK UNIVERSITY OF NORTH QUEENSLAND BILL

Hon. R. J. QUINN (Merrimac—Minister for Education) (11.40 a.m.), by leave, without notice: I move—

> "That leave be granted to bring in a Bill for an Act about the James Cook University of North Queensland."

Motion agreed to.

First Reading

Bill and Explanatory Notes presented and Bill, on motion of Mr Quinn, read a first time.

Second Reading

Hon. R. J. QUINN (Merrimac—Minister for Education) (11.42 a.m.): I move—

> "That the Bill be now read a second time."

I present to the House a Bill to provide for the improved management and administration of the James Cook University of North Queensland. The Bill is the first of six Bills which I propose to introduce over the next few months to bring the legislation establishing and providing for the operations of Queensland's six public universities into line with the provisions of the Legislative Standards Act 1992. While the Bill makes no significant changes in the powers and functions of the university and is based substantially on the provisions of the James Cook University of North Queensland Act 1970, the Bill reduces the administrative burden on the university, and on the Government, by simplifying the requirements on the university to make subordinate legislation and provides for the university's financial affairs to be managed under the Statutory Bodies Financial Arrangements Act 1982, rather than under the Act establishing the university. The Bill also provides for some policy changes in the membership structure of the university's governing body, the council, which will result in the council having a membership of up to 27 members, rather than 35 as is presently the case.

I propose to deal first with the changes to the structure of the university's governing body. The James Cook University of North Queensland was established initially as a college of the University of Queensland in 1961. In 1970, it became an independent university under its own Act, the James Cook University of North Queensland Act 1970. In 1981, the then Commonwealth Government adopted a number of policies aimed at rationalising the provision of higher education opportunities in Australia and many single-purpose colleges of advanced education, former teachers' colleges, were amalgamated with adjacent colleges or universities. As part of this process, the Queensland Government agreed to the amalgamation of the then Townsville College of Advanced Education with the James Cook University. To enable this amalgamation, the James Cook University of North Queensland Act 1970 was amended by the addition of a number of special provisions to protect the interests of the former college and its staff and students in the amalgamated institution. These included provisions for the representation of advanced education students and staff on the university's governing body, the council, and provisions for Governor in Council appointees to the council to include persons with expertise in advanced education.

In 1988, the Commonwealth Government initiated a further restructuring of higher education. The most significant feature of these reforms was the end of the so-called binary system, under which colleges of advanced education had been distinguished from universities, and the creation of the unified national system of higher education in which all institutions became universities either in their own right or by amalgamation with existing institutions. The last of the former colleges in Queensland ceased to exist as such in July 1991, bringing to an end the advanced education sector and rendering the special provisions added to the James Cook University of North Queensland Act 1970 obsolete. These changes have made it both irrelevant and, in practical terms, very difficult to identify staff and students of the university and members of the community whose interests are chiefly in the advanced education sector as required under the existing Act.

It is therefore now proposed to restructure the council of the James Cook University of North Queensland to provide for a reduction in the total number of members of the council from 35 members to 27, including a reduction from 11 to 9 in the number of members appointed by the Governor in Council and the removal of the requirement that five of those members should be persons with a particular interest in advanced education; a reduction from four to three in the number of members who are elected directly by the academic staff of the institution and the removal of the requirement that one such member should have a particular interest in advanced education; a reduction in the number of elected student members from three to two, and the removal of the requirement that one student should be enrolled in a course in advanced education; and a reduction in the number of convocation representatives from seven to three. These changes were the subject of extensive consultation with the university, both the Cairns and Townsville communities and with the bodies whose representation was to be affected, and were widely supported. I commend them to the House as representing both an improvement in the relevance of the council's structure to its present task and an

improvement in overall efficiency for the institution's governance.

I now wish to deal with those changes which are designed to bring the form and style of the legislation into line with the legislative and drafting standards adopted for State legislation with the passage of the Legislative Standards Act 1992 and the Statutory Instruments Act 1992. The most significant of these changes are those relating to the number of matters on which universities may make statutes and the approval process for such statutes. Historically, universities in Queensland have been authorised to make statutes for the good governance of the institution and have done so on a wide range of matters, giving rise to as many as thirty statutes for some institutions. Each new statute requires drafting by the Office of Parliamentary Counsel and is subject to approval by the Governor in Council. The need for ongoing review and frequent amendment to such instruments has been a significant administrative burden on institutions and on the Government.

The Bill now provides for the council of the university to make statutes only about matters of a legislative character, reducing the number of statutes to eight. It also declares statutes to be "exempt instruments" under the Legislative Standards Act 1992 and "subordinate legislation" under the Statutory Instruments Act 1992. This means that statutes made by the council will no longer be drafted by the Office of the Parliamentary Counsel or approved by the Governor in Council, but will still be published in the Government Gazette, tabled in the House and be subject to disallowance by the Parliament. The effect of this change is to ensure that universities have considerably enhanced control over the management of their own affairs, while at the same time providing for the scrutiny by the Parliament of those statutes which universities are authorised to make.

The Bill also provides for some changes in the way in which the university's financial affairs are regulated. The university's powers to borrow funds and to invest have been enshrined in the James Cook University of North Queensland Act 1970 and in a statute on investment made pursuant to that Act. In passing the Statutory Bodies Financial Arrangements Amendment Bill 1996, the Parliament adopted arrangements for the financial affairs of statutory bodies which were designed to clarify the financial powers of such bodies by standardising and updating the range and description of the powers, centralising the powers in one Act and simplifying the approval processes for the exercise of such powers. Under this regime, the James Cook University of North Queensland Bill 1997 no longer provides for borrowing and investment by the university, but declares the university to be a statutory body for the purposes of the Statutory Bodies Financial Arrangements Act 1982.

I will now set out the effects of this change for university management. The Statutory Bodies Financial Arrangements Amendment Act 1996 has removed the express borrowing powers provided in the authorising Acts of universities. The borrowing powers for universities will now derive solely from the Statutory Bodies Financial Arrangements Act 1982. Under this Act, universities are still required to seek the approval of the Treasurer for borrowings, as was previously the case. However, they are no longer required to seek the Treasurer's sanction to initiate negotiations for borrowings, or Governor in Council approval for borrowings as was previously required.

With respect to the university's investment powers, universities have been allocated Category 3 investment powers by regulation made under the Statutory Bodies Financial Arrangements Act 1982. This category covers the majority of forms of investment currently available to institutions under their authorising legislation. The range of investments available to universities under Category 3 is enhanced further by the power in Part 7 of the amended Statutory Bodies Financial Arrangements Act 1982, which authorises a university to appoint a funds manager with comprehensive powers of investment. An institution can also seek the approval of the Treasurer to enter into other financial arrangements.

In similar vein, university authorising Acts have traditionally contained a number of provisions with respect to a university's financial operations and reporting requirements, even though these aspects have been regulated under the Financial Administration and Audit Act 1977. Because of the potential, under this arrangement, for conflicting provisions to arise over time in the separate sets of legislation, the Bill no longer provides for the financial operating and reporting requirements of the university to be in the authorising legislation, but declares the university to be a statutory body for the purposes of the Financial Administration and Audit Act 1977, in which provisions concerning the financial operating and reporting requirements of statutory bodies, including public universities, are centralised.

The last set of changes relates to the inclusion in the Bill of a number of new provisions relating to the university's powers to control traffic and parking, and the conduct of persons on the university site. Currently, such powers are provided for by university statutes. However, because these significant powers may impinge on the rights of individuals, it is now deemed more appropriate to provide for them in the university's Act, and this is done in the schedule to the Bill.

For much of the 1970s, Queensland's public higher education system contained three universities and 10 colleges of advanced education, as well as McAuley College. Since the Dawkins reforms of the late 1980s, the system has compressed to six universities, each operating from a number of campuses, as well as the Australian Catholic University McAuley campus and the Sunshine Coast University College. In the case of the James Cook University of North Queensland, while students always have the right of choice as to which university they attend, the university has primary responsibility for developments in the northern, far northern and north-west statistical districts. These areas combined

hold more than 13% of the State's population but, more importantly, contain just on 40% of the State's geographical area.

Universities are large corporations, managing significant budgets of both public and private monies, and with a responsibility to establish teaching and research operations which meet the needs of the community now, and to manage their affairs to ensure the quality and continuity of their activities for centuries to come. Like all other publicly funded bodies, they are under constant pressure to develop more cost-effective and efficient management practices in a climate of increasing competition and restricted resources. The legislative changes proposed in this Bill will assist James Cook University both in terms of responsiveness to its community and in its capacity to administer its own affairs. I commend the Bill to the House.

Debate, on motion of Mr Bredhauer, adjourned.

PROFESSIONAL ENGINEERS AMENDMENT BILL

Hon. D. J. H. WATSON (Moggill—Minister for Public Works and Housing) (11.53 a.m.), by leave, without notice: I move—

> "That leave be granted to bring in a Bill for an Act to amend the Professional Engineers Act 1988."

Motion agreed to.

First Reading

Bill and Explanatory Notes presented and Bill, on motion of Dr Watson, read a first time.

Second Reading

Hon. D. J. H. WATSON (Moggill—Minister for Public Works and Housing) (11.54 a.m.): I move—

> "That the Bill be now read a second time."

The current Act describes a process whereby complaints against engineers are investigated, prosecuted and heard by the Board of Professional Engineers of Queensland. This process has been challenged for want of natural justice or procedural fairness. This Bill amends the disciplinary process to introduce an independent panel that will be responsible for hearing disciplinary matters against engineers. The panel is to be called the Professional Engineers Disciplinary Panel.

The panel will comprise a pool of appropriately qualified persons, including both lawyers and professional engineers. The Professional Engineers Disciplinary Panel will be administered by a chairperson who is to be a lawyer appointed by the Governor in Council. The chairperson would be responsible for the selection of a panel from the pool of qualified persons to hear a particular proceeding. A panel for a particular proceedings will comprise three members—one lawyer and two engineers. The lawyer is to act as the Presiding Member in the hearing and rule on points of law. This obviates a difficulty faced by the present board in hearings.

The present board consists solely of engineers who, while considerably experienced in practical engineering matters, are not experienced in legal matters. The board will continue to be responsible for the investigation and prosecution of engineers whose conduct has been the subject of complaint. The introduction of this independent panel aims to ensure that engineers who have been the subject of complaint are afforded natural justice and procedural fairness in the conduct of their disciplinary matter. If disciplinary matters are processed under the present Act, there would be concern that natural justice had not been afforded to the engineers under review. Any proceedings under the present legislation would be open to challenge.

Given that perhaps the most valuable asset owned by an individual is his or her home, the continuing practices of engineers that fail to meet the relevant standards of strength and safety have a far-reaching effect on the individual. Structural failure may result in serious financial and emotional hardship to the owner or occupier of the building, whether it is a residential or commercial building. Failure to deal expeditiously with unsatisfactory engineering practices will result in continuing financial detriment or other hardship, as engineers whose inadequate designs have caused such hardship will remain in practice and have ongoing opportunity to continue those inadequate practices. I commend the Bill to the House.

Debate, on motion of Mrs Bird, adjourned.

FRIENDLY SOCIETIES (QUEENSLAND) BILL

Second Reading

Resumed from 8 May (see p. 1594).

Hon. D. J. HAMILL (Ipswich) (11.56 a.m.): The legislation before the House this afternoon is welcomed by the Opposition. It is the policy of the Labor Party—and it has been our policy for some time—to bring the operation of friendly societies within the purview of the standards and the oversight of the supervisory bodies of non-bank financial institutions. It is the work of the former State Labor Government that has culminated in this legislation today.

The Friendly Societies (Queensland) Bill seeks to take the Friendly Societies Code, which has been enacted in the Victorian Parliament, and incorporate it as part of Queensland State law. Again, this is an action in line with a decision made back in 1994 by the ministerial council meeting which would mean that the day-to-day supervision of friendly societies in Queensland would be brought under QOFS in its role as the State supervisory authority under the AFIC code.

The House will soon debate another piece of legislation which is essential to take the supervisory arrangements that obvious and next step, and that is to bring the Friendly Societies Code under AFIC. The framework of the legislation is very clear. It means that the friendly societies will pay a supervision levy to their respective State supervisory authority into its supervision fund. Mechanisms will be put in place such that an

advisory committee will operate in relation to the actions of friendly societies in this State.

Friendly societies have a long history. In Queensland, they still play an important role, particularly in relation to health, medical and funeral benefits. Although friendly societies are by no means in command of assets that are anywhere near comparable to those of their Victorian cousins, friendly societies in Queensland are important non-bank financial institutions. In 1996, it was estimated that of 200 friendly societies existing in Australia—and they command assets of some $7 billion—the friendly societies in Queensland held assets in excess of $300m, with most of those being in the areas of health and funeral benefits. Victoria was chosen to enact the template code because of the much greater importance that friendly societies have in Victoria. Two or three societies in Victoria hold assets of up to $1 billion. They are much greater in magnitude than those in Queensland. In contrast, many of the Queensland societies have 10 or fewer employees. They are an important part of the small-business life of the State. Nevertheless, the incorporation of the code is equally as important to Queensland friendly societies as it is to those in other States and Territories.

The future for friendly societies is somewhat uncertain in terms of where the regulatory regime may take us. As I said, the friendly societies that exist in Queensland fall generally into that sickness, funeral and health benefit provision category and among them have about 98,000 members. But whilst we are bringing friendly societies' supervision—which is already delivered in Queensland through the Queensland Office of Financial Supervision—further through QOFS's role as the State supervisory authority under the AFIC code, there is some suggestion that friendly societies may in future fall under the purview of the Commonwealth itself, although that of course is a matter for future debate and discussion. But certainly there were some suggestions in that direction contained in the recently released Wallis committee report.

I want to make a few specific comments in terms of the structure of the legislation that we have before us. As I said, the Opposition supports the legislation in principle, but we certainly do not support the framework which has been put forward in the Bill that is before the House in the sense that it effectively asks the Queensland Parliament to sign a blank cheque, a blank cheque in this regard: the code, which is to be incorporated as part of Queensland law, is not actually attached to the Bill that we have before us. In fact, the Treasurer, when she presented the Bill for its first reading and in her second-reading speech, circulated with the Queensland Bill a copy of the Victorian Act and its Schedules, Schedule 1 and Schedule A, those two Schedules to the Victorian Act being the Friendly Societies Code, that portion of the Victorian legislation which the Bill that the Treasurer is sponsoring in the House seeks to incorporate as part of Queensland law. But I think all honourable members ought to be aware that even though the Friendly Societies Code was circulated, it was not the most up-to-date version because already the Victorian Parliament had amended that code. That highlights a very grave problem with the way in which the Treasurer has sought to structure this legislation.

This very grave problem was in fact discussed at great length in correspondence between the Treasurer and the Scrutiny of Legislation Committee of the Parliament. The Opposition concurs absolutely with the views of the Scrutiny of Legislation Committee in this respect: it is totally unacceptable for the Government to propose legislation which would seek to incorporate the legislation and the regulations under that legislation which are passed through another Parliament without having any opportunity in our own legislation to pass a critical eye over any subsequent amendments or any regulations that are made under that legislation and the code—in this case, the legislation and the code enacted in Victoria.

I note particularly the Treasurer's correspondence with the Scrutiny of Legislation Committee, but I want to put this in its context. I note that in the Scrutiny of Legislation Committee's Alert Digest, which was issued yesterday, there is a quote from correspondence received from the Treasurer in a letter dated 25 June 1997. At page 2 of the Treasurer's letter to the Scrutiny of Legislation Committee she states—

> "As noted in Paragraph 2.14, a copy of the Code has been provided to all Members of Parliament. At this time, it is not possible to amend the Bill to attach the Code as suggested by the Committee. However, I have no objection to moving an amendment in Committee requiring that future proposed amendments be tabled and that regulations made pursuant to that law also be tabled. It was always my intention to do this as a matter of course."

I accept the sentiment behind the Treasurer's comments to the Scrutiny of Legislation Committee, but frankly, it does not go far enough and it did not go far enough. It did not delight the members of that committee, and it certainly did not delight the Opposition either.

For the Treasurer's information, I point out that fully a week before the Treasurer penned off that epistle to the Scrutiny of Legislation Committee in which she stated that it would not be possible to amend the Bill by way of attaching the code as suggested by the committee, I had already been in touch with the Parliamentary Counsel's office and indicated there that I would be seeking some amendments to be drafted to do exactly what the Scrutiny of Legislation Committee had thought desirable and exactly what the Opposition believed to be absolutely necessary, and that was to put forward an amendment here which would not only attach the code, which the Treasurer said would not be possible, but also to insert a provision into the Bill which would require the Minister who had administrative responsibility for this legislation to table in the House any amendments to the legislation which were being enacted from time to time by the Victorian Parliament—and of course that flows on to

any amendments that might occur from time to time to the Friendly Societies Code—and also any amendments which may from time to time occur to regulations made under that Victorian legislation. I do not know where the Treasurer got her advice from in this regard, but it certainly was not the advice that I received from Parliamentary Counsel that such an amendment was not possible.

I further report to the House that after having further discussions with Parliamentary Counsel in relation to this matter I indicated that I would be delighted for Parliamentary Counsel to contact the Treasurer's office to advise the Treasurer's office that I would be moving such an amendment, because I was very conscious that the amendment that I would be moving—and I foreshadow that I will move that amendment today—would make up a very significant document. As honourable members would be aware, the Friendly Societies Code extended for about 400 pages in the Victorian legislation. So that I would not be accused of being some sort of wilful environmental vandal and wanting to see a whole forest clear-felled in Queensland so that each member of the House could have their own copy of my amendment to the Treasurer in perpetuity, I indicated that I would be happy for the Government to be advised of my intention to move the amendment. In fact, I received a telephone call from my friend and colleague the Parliamentary Secretary to the Treasurer in which we discussed this very amendment going forward. I thank the honourable member for that contact. I thought it was appropriate, and it was in the spirit of cooperation that ought to be part of the hallmark of the legislative process in this place.

What the Parliamentary Secretary, the honourable member for Mount Ommaney, and I agreed in that telephone conversation was that in getting this amendment prepared it would be satisfactory, we believed, for both sides of the House that a limited number of the full amendments would be prepared, so there would be about two or three copies for the use of the respective members of the Government and the Opposition and so that we could also provide——

Mrs Sheldon: I note that you are attributing it all to yourself.

Mr HAMILL: I will take the interjection from the Treasurer and I will expose the Treasurer for the mean-spirited person that she is in relation to this matter. I am reporting accurately what in fact was transacted between myself and the Honourable the Treasurer's Parliamentary Secretary. So——

Mrs Sheldon interjected.

Mr HAMILL: Mr Deputy Speaker, am I to infer from the interjections of the Treasurer that she is disputing the accuracy of my statement in the House? I take the Treasurer's apology then. What I stated—and the Parliamentary Secretary could bear out my account of this matter; I take the honourable member's nod as an assent—is that we agreed that we could distribute this limited number of copies to save the impact on the trees of Queensland and also—

Mr Elliott: $70,000.

Mr HAMILL:—$70,000 of the Budget, to save in excess of $70,000 of the Budget of the Parliament, I think.

Mr Elliott: $9,000.

Mr HAMILL: I am told $9,000. It was suggested to me that it would be a much larger sum. Anyway, a significant sum of money was to be saved by operating in this way. Imagine my surprise, therefore, when having had this agreement to facilitate the distribution of this rather extensive document that the Treasurer has deigned to circulate her own version which, surprise, surprise, is exactly the same amendment that I am proposing, exactly the same amendment that I discussed with the Parliamentary Secretary last week and exactly the same amendment that the Treasurer told the Scrutiny of Legislation Committee in her correspondence of 25 June was not possible. This was not possible, the Treasurer told the Scrutiny of Legislation Committee in her letter of 25 June, noted in the Alert Digest which was distributed in the Parliament yesterday.

They say that politics is the art of the possible. All I can say is that this gesture of the Treasurer really says much more about the nature of the Treasurer than about the processes of the Parliament. I would have thought that any reasonable person, including the Treasurer, given the advice that she would have received from her Parliamentary Secretary that this amendment was being moved in this way to obviate costs to the Parliament to enhance the legislation, would not have gone to the additional effort and bother to replicate the Opposition amendment and to have her version of our amendment distributed in the House this morning. Really, it is extraordinarily petty of her to conduct herself in this fashion.

While I am on the issue of pettiness, I have to say that it does not end there. I foreshadow another amendment in relation to this Bill which I intend to move at the Committee stage. It relates to the date of proclamation of the Friendly Societies Bill. It is a matter which is of vital concern to the State's friendly societies. There has been a general expectation out there in the financial community in relation to both the Friendly Societies (Queensland) Bill, which we are now debating, and the associated piece of legislation to which I earlier alluded, that is, the Financial Institutions Legislation Amendment Bill that both of these pieces of legislation would have in fact been passed by this Parliament and proclaimed by 1 July this year—at least that was the expectation of friendly societies and the Australian Association of Permanent Building Societies in relation to that Financial Institutions Legislation Amendment Bill.

I was somewhat taken aback in my meetings with representatives of friendly societies to be told by them how disappointed they were that the Friendly Societies Bill had not been passed through the Parliament by 1 July and how disappointed they were that the Opposition had held up the passage of that Bill.

Mrs Sheldon: You filibustered, didn't you, for weeks on end?

Mr HAMILL: I take the Treasurer's interjection and for the information of all honourable members in the House I table a memo from the Friendly Societies Association which was sent out to its members by the head of operations dated 11 June 1997 in its Friendly Societies Information Bulletin. I will read from this information bulletin for the information of all honourable members. It states—

> "Friendly Societies (Queensland) Bill 1997
>
> Queensland Treasury has advised that the Friendly Societies (Queensland) Bill 1997 was not debated in parliament as scheduled during the week of 3 - 5 June 1997. The budget took precedence, and the Opposition refused a request from the Treasurer to schedule more time for the debate of these bills.
>
> The next sitting day in Queensland is 8 July 1997. Therefore, the legislation will not be commencing in Queensland until after that date."

It is signed Puay Sim, head of operations, and is dated 11 June 1997. I table that because it exposes the total duplicity from this Treasurer and her officials which we and the member for Gladstone complained about. Last night the issue was the grossly misleading statements that this Treasurer, her officials and, in that case, the Premier engaged in to cajole the member for Gladstone to support the Government on its Suncorp-QIDC sell-out to Metway Bank. The House last night censured the Treasurer not once but twice for her misleading of the House, the people of Queensland and the member for Gladstone in relation to that matter.

Here is another example where the Treasurer shamelessly goes out of her way to blame the Opposition for her failure to deliver on a promise that she or her officers had obviously made to the friendly societies and, I might say, also to the Association of Permanent Building Societies that this Bill and the other Bill, the Financial Institutions Legislation Amendment Bill, would be passed by the Parliament in its previous sitting week. Let me remind the Treasurer, who so dishonestly peddles these sorts of statements to the financial community——

Mr Livingstone: A fraud.

Mr HAMILL: Yes, she is indeed a fraud, and she is exposed as a fraud. Let me take the Treasurer back to that last sitting week. The letter said that the Budget takes precedence. Who I might ask is the Minister responsible for the Budget? None other than the Minister who is currently leaving the House, the Treasurer! Who was the Minister who claimed that, because the Budget took precedence and the Opposition would not cooperate, this legislation was not enacted? Again, the Treasurer!

Let us just cast our minds back to that last week when we sat. Again, I remember a conversation that I had with the honourable the Parliamentary Secretary to the Minister who wandered up and asked whether I had any objections to the Treasury Bills coming on. Does the Parliamentary Secretary remember that? I remember that. I said to the honourable the Parliamentary Secretary to the Treasurer that I would prefer that they did not. I think they were my exact words—that I preferred that they didn't—and the Parliamentary Secretary took my response, and that was the end of the matter from that discussion.

At no time did the Parliamentary Secretary tell me that the Treasurer had promised the Friendly Societies Association or the Association of Permanent Building Societies that the two Bills in question were to be passed through the Parliament that week. At no time was I told that that had been a commitment given to the financial industry. Had I been told that, I may have actually had a different view, but I expressed my preference.

Also, of course, if the Government had truly wanted to have this legislation enacted such that it could be proclaimed by 1 July—as it had indicated to the industry—then what was to stop the Government having the Parliament sit on that Friday? What was the problem with the Government having the Parliament sit on that Friday or, indeed, into the Saturday morning, as the Government saw fit to do when we previously sat and when the Government previously believed that it had legislation which it urgently wanted enacted?

Mr Palaszczuk: We supported that.

Mr HAMILL: Yes, we supported that. In fact, this Opposition has been prepared to accommodate the Government's mismanagement of its legislative program when a good case has been made as to why certain pieces of legislation ought to be enacted. Consequently, I take great offence at this Treasurer and her minions going around and blaming the Opposition for their own incompetence and their failure to live up to their own promises. That is just not good enough. In fact, the Treasurer ought to apologise not only to the Opposition but also to the Association of Friendly Societies and the Association of Permanent Building Societies in relation to this matter.

The Association of Permanent Building Societies actually wrote to the Leader of the Opposition on 11 June expressing its disappointment at the failure of the Bills to be considered by Parliament prior to 8 July. It actually asked the Leader of the Opposition whether, when Parliament resumed on 8 July, he would be in a position to facilitate debate and the ultimate passage of the legislation. We had to write back to the Australian Association of Permanent Building Societies to inform it that, contrary to its impression, the Opposition does not run Government business in the Parliament; the Government actually runs Government business in the Parliament and, generally, the Government can rely upon the loyal voting support of the member for Gladstone to do just that.

Let there be no mistake about who is at fault for disappointing the friendly societies and the permanent building societies. The buck lies straight opposite. The buck lies with the Treasurer and her Government. I have made no bones about getting that message clear to the friendly societies and the building societies. In fact, they will be getting a copy of this speech as well, just to make sure that they understand how incompetent the Government is, how it mismanages its legislative program and how

deceitful it is in trying to direct the blame away from its incompetence.

These are important matters. In fact, on the subject of the date of proclamation, a number of important issues arise. One of the problems that the friendly societies have is not so much with the legislation itself or the code but rather with the prudential standards which are still to be finalised by AFIC and which are to come into effect. In particular, in relation to those funds that manage funeral benefits, there are some very real problems. Because the Government basically and totally mismanaged its legislative program, friendly societies will be put to a lot of additional trouble and expense in handling these new requirements. That is why I foreshadow my other amendment that the date of proclamation for this Bill should be 1 January 1998.

If the Government goes ahead and decides to proclaim the Bill from 1 August or whatever, even though it should have been proclaimed from 1 July, friendly societies will have to rule off their books to make their end-of-year statements for the financial year ended 30 June. They will then have to rule off their books again under the pre-existing regime as at the end of 31 July and start up a new set of books.

Friendly societies concur absolutely that a 1 January start-up date of proclamation would be in their interests, because at least it would be a half year within which they could fall under the new standards. As I said, many of the prudential standards are yet to be promulgated. It puts the onus back onto AFIC to get its house in order. That is why I foreshadow amendment No. 1 standing in my name. It is something which the industry itself requested because the Government let them down. It was requested because the Government did not have the intestinal fortitude to own up to the fact that it overlooked the industry's particular needs. The Opposition will not overlook those needs, in the same way as it will not overlook the Government's deceit in trying to somehow blame us for its failure to deliver to the friendly societies.

As I said, I foreshadow those two amendments. The first one deals with the date of proclamation. It is there to help the friendly societies that the Government has let down so badly. The second amendment would restore this Parliament to its rightful position as a Legislature in relation to the friendly societies code. It would be most unfortunate and, as the Minister for Mines and Energy would recognise in relation to his own legislation, it would be lamentable if this Parliament did not attach the friendly societies code as a part of its own legislation. This Parliament must require the responsible Minister to table any amendments to that code and any regulations made under it in the Parliament in the normal way so that they can be subjected to debate and disallowance in the normal way under the processes of this Parliament.

Mr HARPER (Mount Ommaney) (12.26 p.m.): It is a pleasure to rise and speak in this debate in regard to friendly societies. First of all, I recognise the importance of friendly societies in our world today and in the community. Indeed, I also recognise the importance of financial institutions, which we will be debating later today. Although I will not be taking part in that debate, I will just state for the record that, in my opinion, both friendly societies and financial institutions are certainly very important to today's communities given the changing nature of our world and the changing nature of finances, banking, etc. Those bodies fill a very important place and play a very important role in helping people in their everyday life. This Government well and truly recognises that.

It is worth noting that friendly societies may be divided into four broad categories: those offering flexible insurance products; those operating dispensaries; fraternal and social societies; and single benefit societies. Of these, the flexible insurance societies are the largest in asset terms.

The first friendly society in Moreton Bay was established in 1848, only eight years after free settlement was permitted in the area. So they certainly have a long history in this State. Friendly societies originally provided assistance to members in cases of hardship, such as sickness, death or unemployment. After nearly a century, by the 1930s, they were well known as major providers of welfare benefits. This role was much reduced as the Government took on the function of providing social security.

Friendly societies received a new lease of life in the early 1980s when, largely because of the associated taxation advantages, they introduced the single premium insurance bond. Due mainly to this product, between 1986 and 1989 total assets managed by societies throughout Australia increased from $1 billion to $9 billion. These tax advantages have now been largely removed, however, and total assets under management currently stand at $7.7 billion. So there has been a drop there. Queensland has 59 societies, which account for approximately $320m of the national total. The State's 15 flexible insurance societies hold about $158m, that is, around half of the total assets of Queensland's friendly societies.

Although friendly societies are not deposit-taking institutions—and that needs to be noted—they provide financial services and benefits to members and others. As such, they provide a useful financial service to the household financial sector. The advantages of integrating friendly societies into the Financial Institutions Scheme include the uniformity of legislation and supervision across State boundaries. That provides certainty for members and the public that all societies that offer similar products meet similar prudential requirements. Societies are also certain that the requirements for clients are uniform throughout Australia. That also is an advantage. In addition, the use of AFIC as a coordinating and standard-setting body means that the scheme can adapt quickly to changes in the financial markets. Given the way that the world moves today, particularly the financial world, that is very important. Prudential standards also provide the flexibility to take into account variations in the make-up and character of the bodies that operate within the scheme.

An emphasis on risk management is another aspect. It is a tenet of the scheme that the primary responsibility for the prudential management of each society rests with the management of the society itself. It is the role of AFIC and the State supervisors to ensure that risks are identified and managed prudentially within the guidelines set down in the legislation and the standards. That needs to exist for the reassurance of the general population.

I comment now on a couple of issues raised by the Opposition spokesman, the honourable member for Ipswich. I thank the honourable member for his cooperation in regard to the printing of the amendments, which he has already discussed. That cooperation resulted in a saving of around $9,000 in printing costs and 70,000 sheets of paper. That is quite a few trees. It was not $70,000. When an amendment of this nature is introduced, with so many pages attached to it—some 400—it is important to consider whether we need to print mass copies. I thank those who assisted me in ascertaining what could be done in that regard, including the Clerk of the Parliament, Parliamentary Counsel and people in Treasury. I approached the Opposition spokesman and suggested that we could save some money for the Parliament and the people of Queensland.

In relation to there being an amendment from both the Opposition and the Government—and especially given the length—it is important to note that when that matter was discussed with the Opposition spokesman, he advised me that they would be attaching the code and that was fair enough. At that stage I did not have the detail. Until I saw the Opposition's amendment today, I did not have the exact detail of how they proposed to attach that. If one reads the two amendments that have been distributed, one will realise that there are some differences. That needs to be noted.

Mr Hamill: Where?

Mr HARPER: The member asked me where. A quick reference to the first two pages will quickly show that. He is introducing, as he has foreshadowed, his first amendment, which, of course, we are not.

The societies are also keen to start, as has been noted, as are the financial institutions, which are covered by the Bill that is soon to be debated. The draft standards that have been discussed and that are yet to be finalised have been circulated among the societies for some time. They have been available so that the societies would be aware of them and their contents. As to having a clean cut-off date that is not the end of a financial year—in cooperation with the societies, the Government is considering the possible date of 1 October. If it is to be mid year or part way through a year, that is a clean date after three months. In terms of administrative procedures and the preparation of financial reports, there is no difference between three months and six months. No doubt the Treasurer will be referring in the Committee stage of the Bill to the Government's opinion in relation to getting on and starting that as soon as possible.

It is very important for the House to note that any changes to the Victorian legislation have to be discussed and agreed to by all of the States and the Ministers responsible before those changes could go ahead. However, following extensive discussion with various people and with me, the Treasurer agreed that we should, as was raised by the Scrutiny of Legislation Committee, attach the actual code. That is being done. I support the Bill.

Mr CAMPBELL (Bundaberg) (12.36 p.m.): It was refreshing to hear the member for Mount Ommaney indicate that he appreciated the work of the Opposition spokesman. I, too, recognise the work of David Hamill in addressing one of the major concerns through the amendments that he has foreshadowed. I believe that both amendments should be supported by the House. The member for Mount Ommaney also indicated the importance of friendly societies today. They have been an important part of Queensland for over a century. They have played a very important role in regional centres such as Bundaberg and Maryborough. I recognise the role that they have played in providing services to their members in our regions.

The first Friendly Societies Bill was introduced in this House on 10 November 1876. In his second-reading speech, the Honourable F. T. Gregory said—

> "... the existence of such societies was very much for the benefit of the communities in which they were established; their tendency was to promote self-reliance, and to induce persons to make provision for their families at an age when they were best able to do so; to unite the bonds of society by a variety of mutual interests, which was, in every way, highly beneficial."

He then raised the concerns that have since come to light, that is, the difficulties of maladministration. The speech continues—

> "... some of the societies were thrown into confusion, out of which they had great difficulty in extricating themselves by proceedings at law."

At that time, they used an Act that was passed in England. It was a very comprehensive Act, very carefully digested and widely and judicially approved. It is interesting that we have used a template legislation that will exist for all Australia to use. It is important to realise how things have changed.

Some friendly societies have become fairly substantial financial institutions, offering insurance and superannuation and providing investment through insurance. However, as has been raised previously, some single-interest friendly societies are now too small to afford to come under this legislation. The reporting requirements through the Australian Financial Institutions Commission are fairly extensive and costly. I know that this point has been raised before, but I will raise it again. Some small mutual benefit associations find it very difficult to fit in anywhere. They do not quite come under the Associations Incorporation Act. In future we should ensure that they are supported in some way.

The Opposition spokesman indicated that there were concerns about the necessity to table any

amendments that may be made in Victoria. That has been a very important contribution. We have to be certain that we do not give Victoria a blank cheque, that we are sure of what is happening in Victorian legislation and that those amendments would be brought before this House. I believe that it is very important for us to be masters of our own destiny. When any amendments occur, we should have a chance to examine them and to ensure that they are debated, if required, by members of this House.

However, the one point that concerns me is the childish action of the Treasurer in proposing to introduce amendments that are word for word or similar to the amendments that are proposed to be moved by the Opposition. In that regard, I believe that the process should have been conducted in a bipartisan manner. If a concern is raised by the Opposition and is accepted by the Government as being the subject of an appropriate amendment, why cannot the Government acknowledge in a very reasonable manner that that concern was brought to the attention of this Parliament by the Opposition?

The second amendment that the Opposition spokesman has indicated he will move at the Committee stage gives a date for when this legislation will commence. By giving a starting date of 1 January 1998, friendly societies are given a clear indication of when they have to take account of the new legislation. I think that is only reasonable, and supporting the Opposition's amendment would be a good way of supporting our friendly societies.

Once again, I would like to acknowledge the important role that friendly societies have played in Queensland, especially in our provincial cities. I know that this legislation—especially the amendments to it, which will be moved by the Opposition—will have the support of all members.

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (12.41 p.m.), in reply: The first friendly society in Moreton Bay was established in 1848—only eight years after free settlement was permitted in the area. Friendly societies provided assistance to members in cases of hardship such as sickness, death or unemployment. By the 1930s, they were well known as major providers of welfare benefits. Today, friendly societies across Australia have $7.7 billion in total society assets under management. Queensland has 59 societies, which account for approximately $320m of the national total, and the State's 15 flexible insurance societies hold about $158m in assets under management.

Although Governments have by and large taken over the role of providers of social security, friendly societies continue to provide financial services and benefits to their members and the public, particularly to the household sector. In several jurisdictions, legislation governing friendly societies was amended in a piecemeal fashion to reflect the operation of the industry at the time. That has resulted in legislation that in a number of instances is outmoded and difficult to understand. The tremendous surge in investment products offered by friendly societies in the 1980s resulted in substantial changes to the character of much of the industry and heightened the need to review the current legislation relating to societies.

In 1994, Ministers from each State and Territory who had the responsibility for State-based financial institutions agreed to develop and establish a uniform program for the supervision of friendly societies. That strategy was designed to replace the fragmented and disparate approach to regulation that exists currently throughout Australia. That uniform legislation regarding friendly societies will form part of the Financial Institutions Scheme, and to a significant extent the friendly societies legislation mirrors the Australian Financial Institutions Code. The continued success of the Financial Institutions Scheme is tangible evidence of cooperation between the States and Territories in this important area of legislative reform.

The advantages of integrating financial societies into the Financial Institutions Scheme include the uniformity of legislation and supervision across State boundaries, which will provide public certainty that all societies offering similar products must meet similar prudential requirements. Similarly, friendly societies can be confident also that the requirements for compliance are uniform throughout Australia. That will result in savings to societies in relation to product design and administrative and legal costs.

The ability of the Australian Financial Institutions Commission to develop uniform prudential standards for the industry means that there will be closer and more effective prudential supervision of friendly societies and that societies will be able to adapt quickly to changes in the financial markets. Also, prudential standards provide supervisors with the flexibility to take into account variations in the operations and character of friendly societies that operate within the scheme. Supervisors under the Financial Institutions Scheme are well equipped and experts in their field. They are State based, have strong local knowledge and are readily available for consultation with the industry.

This legislation will empower friendly societies with the opportunity to provide effective and efficient services to members across Australia and to meet the challenges of the new millennium. It will provide investors with greater confidence that societies are being well managed and supervised.

Unfortunately, we had a little bit of mean mindedness by the shadow Treasurer. However, I am afraid that at the moment that is his hallmark. In relation to the amendments that he has circulated—and we will discuss those in more detail at the Committee stage—I say it is essential that the provisions of this Bill begin to operate as soon as possible. We cannot accept the shadow Treasurer's date of 1 January 1998. That is too late. The societies themselves and the institutions want this legislation to get going as soon as possible. That has been our commitment to them.

With regard to the amendment circulated, when my Parliamentary Secretary discussed this issue with me—which was some time ago—and when we received the letter from the Scrutiny of Legislation Committee, at that time, because we received the

letter from the Scrutiny of Legislation Committee just before we were about to debate this Bill, there was absolutely no time to get the code ready to attach as an amendment as we have currently. However, as was said aptly, although it was not put in this tone in the letter that was sent to the friendly societies, which they put in their information bulletin, because of considerable filibustering by the Opposition——

Mr Hamill: What a load of nonsense!

Mrs SHELDON: The shadow Treasurer deliberately took up time in this House, and he knows that he did.

Mr Hamill: When?

Mrs SHELDON: The shadow Treasurer does so constantly, so I do not know why he would ask when. We could not get the Bills through.

Mr Hamill: Rubbish!

Mrs SHELDON: We let them know just that. The shadow Treasurer has been found out, and he does not like it. That is what it amounts to.

Mr Hamill interjected.

Mrs SHELDON: The shadow Treasurer should not yell at me. When we considered the suggestions that were made by the parliamentary committee—and they were not made by the Opposition—and we knew that we would have the time to do it, we agreed. During that time came the information from the shadow Treasurer that he wanted to put forward this amendment. There was no suggestion by the shadow Treasurer, Mr Hamill, that he intended limiting this at all. I was gravely concerned about the cost of printing and, indeed, counsel discussed that with us. So as we had the time and as we agreed with the suggestions made by the parliamentary committee—not by the Opposition—we attached the code as a proposed amendment to the Bill. That is the history of my amendment, which I will move at the Committee stage.

I thank members for their contributions, particularly my Parliamentary Secretary, Mr Harper, who has done a great deal of work on this legislation and consulted with the friendly societies about their needs and their requirements.

Motion agreed to.

Committee

Hon. J. M. Sheldon (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) in charge of the Bill.

Clause 1, as read, agreed to.

Clause 2—

Mr HAMILL (12.49 p.m.): I move the following amendment—

> "At page 4, line 7, 'a day to be fixed by proclamation'—
>
> omit, insert—
>
> '1 January 1998'."

This amendment would replace an indeterminate date of commencement for this legislation with one that at least gives some certainty. The amendment that I foreshadowed in my speech during the second-reading debate is that the date for commencement of the legislation be 1 January 1998.

In speaking to this amendment, I cannot go past the deliberately misleading statements that have been made again by the Treasurer in relation to this debate. The gall with which this Treasurer continues to babble untruths in relation to this and other matters of State is extraordinary. Yes, it is true that friendly societies desired an early proclamation of legislation. Yes, it is true that there was an expectation that this legislation would be proclaimed so that it would come into effect on 1 July this year. Had that happened, there is no doubt that the friendly societies would have been satisfied. Yes, they would still have been concerned that the prudential standards that have to be established by AFIC were not ready by 1 July, and that is a problem, but they would have accepted the situation and would have gone on to argue their case with AFIC. However, it is absolutely dishonest of the Treasurer to claim that alleged Opposition filibustering prevented the Friendly Societies (Queensland) Bill from being enacted and proclaimed by 1 July.

As I stated in my speech during the second-reading debate and as I will state again, the last sitting week of the Parliament was the week in which the Budget was debated. The Government controls the business of the Parliament, and the honourable member for Lockyer nods assent, and so he ought because he is, in fact, the Leader of the House and the Leader of Government Business. The Treasurer is really trying to say that the member for Lockyer is incompetent and that he did not run the business of the House properly in the last sitting week because the Treasurer did not get her legislation through. Every member of the House knows, maybe even the Treasurer knows, that it is possible for the member for Lockyer to have the House sit on a Friday if urgent business has to be completed.

THE TEMPORARY CHAIRMAN (Mr Stephan): Order! This is irrelevant.

Mr HAMILL: It is not, with respect, Mr Temporary Chairman. It is very germane to the day of proclamation and it is very germane to the issue in the clause about the start-up date. For example, the member for Lockyer has advised us that the House will sit this Friday. I well remember the member for Lockyer had the House sit on a recent Friday till 3 a.m. on Saturday morning because of business that the member for Lockyer——

The TEMPORARY CHAIRMAN: The honourable member will come back to the Bill.

Mr HAMILL: Indeed I will, because the proclamation date is the issue in clause 2. According to the Treasurer's own words, it is an issue because the House did not actually see this legislation because the Opposition allegedly frustrated the Government. Dear me!

Mrs Sheldon interjected.

Mr HAMILL: I take it as something of a badge of honour for the Treasurer to suggest that we might be frustrating. It must be frustrating for a Government that would try to tell the public one

thing when we know that the truth is to be found elsewhere. It must be very frustrating for the Treasurer to be so badly caught out as she has been in relation to this measure.

I move this amendment because of the Government's incompetence and because it is the heartfelt desire of friendly societies to see an early proclamation and its belief that an indeterminate proclamation—for example, to take effect on 1 August or 1 September—would actually create more problems for friendly societies than it would actually solve. In correspondence I have received from the Australian Friendly Societies Association dated 23 June 1997, a reference is made to a recent meeting which I had with representatives from that association. The letter states——

> "We explained to you at our meeting that once the deadline date of July 1, 1997 was missed, the commencement date becomes a critical issue.
>
> At the moment under current legislation there are different systems and requirements for processing 'end of year' work. This includes bonus calculations and distributions, annual accounts, promotional literature and annual meetings to name a few.
>
> To introduce a new piece of legislation on, say August 1, 1997, would complicate the many 'end of year' issues that would not be complete by that date. In addition there are still a number of issues that need to be resolved with AFIC that could have a major effect on Friendly Societies and their business.
>
> These include, among others, the treatment of Funeral Directors who under the legislation will need to be Licensed in order to promote their own prepaid funeral plans, and the treatment of the 'old' friendly Society products, which under the proposed legislation will need to have a very expensive disclosure document prepared. The contribution rates for some of these funds is around $20 per year and they have been in operation for many decades."

The letter goes on to state—

> "We would prefer that the legislation be passed but that it not come into operation until the issues relating to the Prudential Standards are settled and we would expect that a commencement date of January 1, 1998 would be preferable."

Those are not my words; they are the words of the Australian Friendly Societies Association.

The amendment that I moved is one which the industry itself has requested because the Government could not manage its own affairs properly to get the legislation into place by 1 July. In order to effect a smooth transition, the industry says that 1 January 1998 would be highly desirable in the interests of the friendly societies. May I remind the Treasurer that that would also be in the interests of the 90,000-odd Queenslanders who are members of friendly societies in this State. That is why we have moved the amendment. It is an important amendment and one that the industry itself seeks. I hope that the Treasurer would at least pay some heed to the wishes of the industry, because it desires to have the new framework in place. It would have liked it in place already, but that has not been achieved. Now it wants the next best option, and the Opposition is proposing to give it the next best option.

Mrs SHELDON: The Opposition may be trying to give the next best option, but we are giving the best option. Whether members opposite believe it or not, we have discussions with the friendly societies. My advice is that they would like this implemented as soon as possible, and I can understand why. They are certainly quite awake to the member opposite and to his political games and point scoring.

It is very important that the legislation commences at the same time as similar legislation in other jurisdictions, and friendly societies also want that to happen. Therefore, the date needs to be left open to accommodate that coordinated approach. We hope to be able to do this by 1 October. That is the date that we are working towards. I am quite sure that the friendly societies would prefer that date if it can be achieved rather than the Opposition's arbitrary date of 1 January. We are doing this to ensure that this legislation is enacted and in place as soon as possible for the benefit of the friendly societies. Therefore, I cannot agree with the Opposition amendment.

Mr HAMILL: I know that comments such as those of the Treasurer that allege political games are being played and that people are point scoring are par for the course. I can only reiterate what was said in the correspondence that I received from the Australian Friendly Societies Association. The Treasurer talks about advice. I cited some of the Treasurer's advice in my speech on the second-reading debate when she said in her advice to the Scrutiny of Legislation Committee that it would not be possible to attach a code to the Queensland legislation. So much for the advice of the Treasurer!

The advice to me and the advice to members of the Parliament from the Friendly Societies Association is quite clear: having seen 1 July go, their next best option is 1 January. That is why I moved this amendment. The date was not arbitrary; it arose out of consultation with the industry. It would not hurt the Treasurer to take heed of that point about consultation with the industry. She should take notice of and listen to what the industry says and she should act upon that advice, instead of simply listening to her own advice.

The correspondence from the industry goes on to state that if 1 January cannot be achieved, a quarter date would be the next best option. The industry is trying to be reasonable. It actually wants to see this in place. It says that 1 July has gone and that the Government really stuffed up on that because it did not make that date. The next best option is 1 January 1998, but if 1 January 1998 is not acceptable, then only after that would 1 October be acceptable.

Sitting suspended from 1 p.m. to 2.30 p.m.

Mr HAMILL: Before the luncheon recess, I was commenting in relation to the amendment that I

have moved in respect of clause 2. The Treasurer gave us to believe that the friendly societies were anxious to have the legislation in place and proclaimed as soon as possible. The Treasurer implied that 1 October would be her favoured date for proclamation. I would be pleased to hear from the Treasurer whether she could give the Chamber some assurance that she will heed the third-order advice from the friendly societies and accept the proposition that a quarter date is the preferred date for proclamation. The proclamation date might be 1 October or 1 January, as I have moved in the amendment. If things are still dragging on—and we hope that that would not be the case—then the proclamation date could even be 1 March. We would hope that at least one of those quarter dates would be the chosen date of proclamation. If that assurance could be given, I would be happy not to pursue the amendment any further. At the very least, that would be the next best proposition for the friendly societies. When the Treasurer desires to pop in and see us, I will invite her to respond in relation to that matter.

Mr FITZGERALD: I am advised that the date has been left open so that cooperation and consultation with the other States can result in a common date. I am also advised that they would certainly bring in a common proclamation date to suit the various friendly societies. It is not the will of the Government that this date be set in legislation at this stage, but it well could be 1 January 1998. There is every possibility that that date could be the proclamation date. However, as the Treasurer has adequately explained previously, the date has been left open because it is the desire of the friendly societies to have this piece of legislation proclaimed at the earliest possible time. I note the concerns raised by the shadow Treasurer and I can sympathise with him about the fact that he believes that there should be a very convenient date——

Mr Hamill: For the friendly societies.

Mr FITZGERALD: Yes, for the friendly societies. This legislation is being put in place not only for the friendly societies but also to protect those people who use them—in other words, the whole friendly society industry. I do not think there is anything further that I can say. I note what the Opposition desires. That could well be the date that is selected, but the Government does not wish to be tied down. The Parliamentary Secretary to the Treasurer is the one negotiating with the friendly societies. He may wish to add some further advice to the Chamber on this matter.

Mr HARPER: What we are looking at here——

Mr Hamill: Filibustering until the Treasurer gets here.

Mr HARPER: That is not the case at all. I am more than happy to comment on this. I went through the same situation in the electricity industry when I worked in that industry. Changes were brought in by members opposite, who were then Government members, that did not coincide with the end of the financial year. Decisions were made to change things mid year or part way through the year.

The issue is about accounting and when it is convenient to close off annual accounts. I fully concur that choosing a mid-month date—for example, the 15th of the month or even the 7th of the month—would be nonsensical. The Opposition's amendment suggests a mid-year date—1 January. I fully concur that it is best to make the break at the end of the month. It is nice to divide the year into quarters. In that way, the year can be divided into neat compartments. We are talking about the ability to draw up and finalise accounts under one structural regime and then using the best management system so as to commence neatly and effectively with the accounts under the new regime.

The Opposition is attempting to split hairs by distinguishing between ending dates of 30 September and 31 December. From my years of experience of doing annual accounts, I believe there is no difference. Ending on 30 September gives a neat three months. Regardless of whether the legislation is proclaimed on 30 September or on 31 December, the accounts will have to be drawn up for a certain period in a financial year. That is why I and the Government reject the Opposition's amendment to wait until 1 January to bring in the new regime.

Bringing in the new regime as soon as possible is desired by all of the parties we have mentioned. Even the Opposition said that it would be desirous for the legislation to be proclaimed early. By doing so on a date such as 30 September or 1 October, we would still be making it easier for the entities to finalise the part-year accounts. Given that all parties involved are desirous of bringing this legislation into effect as soon as possible, I believe it is imperative that we introduce it now and proclaim it so that we can have the societies in line with the rest of Australia. That should be done as soon as possible. To me, a proclamation date of 1 October is just as effective as a date of 1 January, but it also has the advantages that I have spoken about. That is why we reject the Opposition's arguments for bringing in the legislation on 1 January.

Mrs SHELDON: I understand that the shadow Treasurer has called for some assurances. If at all possible, we intend to bring in the legislation on 1 October. I have had discussions with my officers. They tell me that, if the legislation cannot come in on 1 October, it may well be better for a friendly society's accounting procedure to bring it in at the beginning of the next quarter. We would certainly consider doing that. We are approaching this matter with very clean hands and we want only what is best for friendly societies. We will not accept the Opposition's amendment, and I think we have given an adequate explanation of our intention.

Mr CAMPBELL: Can the Treasurer give an undertaking that the proclamation date will be acceptable to the friendly societies? We are trying to make certain that the legislation will be brought in on a date that is acceptable to them.

Mrs SHELDON: With respect to the whole administrative procedure of putting this regime into place, it is important that we have a date that is acceptable also to the friendly societies in the other States. That is why we have sought uniformity with

the other States. We are trying to achieve legislation that is accessible, easy and of benefit to the friendly societies. That will mean that we will have legislation that is easily able to be accessed by them and by their friendly society counterparts in the other States. That is why we cannot give a definite date, but we hope to have it ready by 1 October.

Mr HAMILL: Without wishing to labour the point, I want to take up a couple of the comments made by the Leader of Government Business in relation to this legislation. I take account of the fact that perhaps the Leader of Government Business is not as conversant with this measure as he might be; he, after all, was stepping into the breach somewhat. I draw the attention of the Committee to the fact that the legislation which was tabled by the Treasurer when she presented her second-reading speech was the Friendly Societies (Victoria) Act. If we have a look at that, we find that the Friendly Societies (Victoria) Act was assented to on 23 December 1996, so it has already been in place now for eight months. The commencement of the legislation was given as the day upon which the Act received royal assent. The code and the legislation have already been operable in Victoria now for some months. So it is a bit of a nonsense to talk about uniformity among the States in terms of the commencement date, because all the States were aiming, as I understood it, to have their legislation which incorporated the code enacted by 1 July.

There was only one matter on which I was really seeking an assurance from the Treasurer. I said before the Treasurer came back into the Chamber that if we are not going to agree upon 1 January—and I am not hard and fast about that; I put that forward as an amendment—if we could have an assurance from the Treasurer that it would be either 1 October or 1 January or 1 March, but at least one of those quarter dates, that would be in line with the expressed wish of the Friendly Societies Association. We are all as one on this, I would have thought, in that we want to see the legislation in place and proclaimed and the new system operable as soon as possible. But to be plucking other dates out arbitrarily—like 1 August or 1 November—is only going to create a certain amount of inconvenience which really ought to be avoided at all costs. If the Treasurer were prepared to indicate that a 1 October or 1 January or 1 March take-up date would be the preferred outcome, then I am happy to let it rest at that.

Mrs SHELDON: I thought I had already indicated that we were aiming toward a 1 October outcome. The Victorian Act has not been proclaimed and two of the other States have not passed their legislation yet, so there is some uncertainty about when we can get this as a national concept. I reiterate that we are working towards 1 October. We hope that we can deliver on that. That is the commitment I made when we first came in, but I cannot guarantee that date.

Amendment negatived.

Clause 2, as read, agreed to.

Clauses 3 to 13, as read, agreed to.

Clause 14—

Mrs SHELDON: I think the Government gets the first call on this.

Mr HAMILL: I rise to a point of order. Mr Chairman, I thought you gave me the office that I should rise on clause 14.

The CHAIRMAN: I had.

Mr HAMILL (2.45 p.m.): There are specific matters here that need to be addressed in order to protect the Parliament. That is why the whole framework here needs to incorporate protections for the Parliament so that we can own the legislation. There are a number of definitions in clause 14 in relation to the framework and operation of the regime in terms of the taking up of QOFS as the State supervising authority. In that regard—and here we are requiring State instruments to administer this particular legislation—we need to ensure that this Parliament owns its legislation. While we certainly are not opposing the framework of clause 14, I draw to the attention of the Committee the fact that there is a clear reference there to the Friendly Societies (Queensland) Code, which of course is the code that is incorporated from the Victorian legislation. I foreshadow at this point that I will be moving the amendment to insert after this clause the words which I have circulated in the Chamber as amendment No. 2. Following the adoption of clause 14 as it stands, I will then be seeking to move my amendment.

Clause 14, as read, agreed to.

Insertion of new clauses—

Mrs SHELDON (2.47 p.m.): I move the following amendment—

"At page 10, after line 2—

insert—

'Copies of certain Victorian legislation to be tabled in Legislative Assembly

'14A.(1) A copy of each amendment of the Friendly Societies Code passed by the Parliament of Victoria after the commencement of this section must be tabled in the Legislative Assembly by the Minister within 14 sitting days after the amendment receives the royal assent.

'(2) A copy of each regulation made under the Friendly Societies (Victoria) Act, part 4, must be tabled in the Legislative Assembly by the Minister within 14 sitting days after it comes into force in Queensland.

'(3) This section does not affect the operation of sections 5 and 6[1]

'(4) In this section—

' "Friendly Societies Code" means the code set out in the Friendly Societies (Victoria) Act, schedule 1.

'Attachment—Friendly Societies Code

'14B.(1) Attached to this Act is a copy of the Friendly Societies Code set out in the Friendly Societies (Victoria) Act, schedule 1 (as amended by the Friendly Societies (Victoria)

(Amendment) Act 1997 (Vic)) (the "Friendly Societies Code").

'(2) The attachment must be revised so that it is an accurate copy of the Friendly Societies Code as amended from time to time.

'(3) The revision under subsection (2) must happen in the first reprint of this Act after an amendment of the Friendly Societies Code.

'(4) However, subsection (2) does not apply if the Friendly Societies (Queensland) Code is reprinted as a separate reprint and the revision mentioned in subsection (2), to the extent it applies in Queensland, is contained in the first reprint of that code after an amendment of the Friendly Societies Code.

'(5) Despite subsection (2), the attachment is not part of this Act.'.

[1] Sections 5 (Application in Queensland of the Friendly Societies Code) and 6 (Application of regulations)"

I indicated why I would be moving this amendment and gave an explanation of it in my reply, but if the shadow Treasurer wants me to comment further, I will. The Scrutiny of Legislation Committee drew attention to the fact that it felt that appended to our Bill should be a copy of the Victorian code. We got that letter very close in time—extremely close in time—to when we thought we would be debating the Bill in the Chamber. Because of the voluminous nature of that code, we did not have the time to facilitate the Scrutiny of Legislation Committee's request, and I so told them. Some time has elapsed, and we have had time to comply with the committee's request. My Parliamentary Secretary, Parliamentary Counsel and I discussed whether we would have to attach a copy of the code to all of the amendments. The shadow Treasurer may subsequently have changed his mind when he found out how thick the code was. But we then found out that we could—and I think this was agreed to by the shadow Treasurer—just attach a copy of the code to a couple of the amendments so that this would negate the need for numerous copies to be printed and the waste of paper that that would involve. This is really a response to the request by the Scrutiny of Legislation Committee. I draw the attention of the Committee to the fact that clause 14B(5) states—

"Despite subsection (2), the attachment is not part of this Act."

So it is not part of our legislation; it is an attachment. The legislation that we are currently debating is the legislation presented to the Parliament, but we have attached the code to the Bill at the request of the Scrutiny of Legislation Committee so that no confusion whatsoever would exist.

Mr HAMILL: I formally move amendment No. 2 standing in my name.

The CHAIRMAN: That is not in order. We have an amendment before the Committee.

Mr HAMILL: I rise to a point of order. I had foreshadowed an amendment. Is it not competent to deal with more than one amendment at the same time?

The CHAIRMAN: No.

Mr HAMILL: No, it is not the same amendment.

The CHAIRMAN: I do not believe so. We have to deal with the one before the Committee.

Mr HAMILL: Mr Chairman, if that is how we must proceed then I will oppose the amendment that has been moved by the Treasurer. I foreshadow the amendment No. 2 standing in my name.

In opposing the Treasurer's amendment, my opposition is really questioning the framework of the Treasurer's amendment. The amendments look almost identical. In fact, it was only upon very close reading that I noticed that the Treasurer has included a subsection (5) to the proposed new section 14B. I will come to that in a moment. I want to say, however, that I am very pleased that the Government has accepted the proposition that the Parliament of Queensland is entitled to have any amendments and regulations made to the code tabled in this Chamber. I believe that by virtue of proposed section 14A—and we are not arguing about 14A—that would allow any regulations, for example, to be subject to the normal disallowance procedures of the Parliament. After all, I assume that they become our regulations and this Parliament must be entitled to debate those regulations if the Parliament sees fit.

If the Parliament believes that those regulations are inappropriate, we ought to be in the position of being able to send a message and the Minister, who is responsible for legislation, ought to be able to take that message back to his or her colleagues, who are similarly charged with handling that legislation, for their respective Parliaments to thrash the matter out. We are committed to uniform legislation, but we must be committed to uniform and good legislation. We should not just simply accept blindly everything that the Victorian Parliament may throw up from time to time and meekly agree to it.

That leads me to my concern about the Treasurer's amendment. I would have thought that the whole point of this debate was to incorporate the code as part of our legislation, as part of our Act, in the same way as I saw here with the Victorian legislation. It is okay for the Victorian Parliament to have its Friendly Societies (Victoria) Act and then to have two schedules to it, one being the Friendly Societies Code. The Opposition is therefore submitting that Queensland should not be in any different situation from that prevailing in Victoria. As the code is part of the Victorian enactment, why should the code not be part of the Queensland enactment? Why does the Treasurer want to tell us that the code which we all believe should be part of the Queensland legislation—in a way, it should be patriotic for Queensland—should not be part of our Act? I have heard no reason from the Treasurer in her moving of her amendment which would lead me to conclude that there is a good reason to state that the code is not part of a Queensland Act.

I think there is a real problem here that if the Government is going to have regulations made under the legislation, it is difficult to have regulations being made pertaining to the code being disallowable instruments. I always understood that regulations

needed to be made under legislation in here so that they could be tabled and, therefore, it would be competent for this Parliament to be able to move disallowance if this Parliament so desired. I think what the Treasurer is doing here is effecting the same sleight of hand which concerned the Opposition and which concerned the Scrutiny of Legislation Committee. I would have thought that, if the code is not part of our Act, it is untouchable. The Government may as well not even move the amendment in relation to proposed section 14A, because what is the point of tabling regulations and amendments if it cannot then debate, discuss and oppose them, if oppose them one should? I think that is a very important point and I hope that the Treasurer will address it. If she fails to satisfy us on that issue I can suggest only that the Committee should resoundingly defeat the Treasurer's amendment and support the Parliament by supporting the amendment that I foreshadowed.

Mrs SHELDON: I really do not understand where the shadow Treasurer is coming from. His No. 1——

Mr Fouras: That's not unusual.

Mrs SHELDON: If the member opposite listens, he may for once in his life understand something. If Opposition members look at the amendment which they may not have, although I have a copy of it and I am happy to show it to them so they can see where I am coming from, they will see that their Nos 1, 2, 3 and 4 are exactly the same as our Nos 1, 2, 3 and 4. The shadow Treasurer's amendment No. 1 says—

"Attached to this Act"—

not part of it, attached to this Act—

"is a copy of the Friendly Societies Code ... "

He then says in No. 2—

"The attachment must be revised so that it is an accurate copy of the Friendly Societies Code as amended from time to time."

We have no problem with that. No. 5 in mine says—

"Despite subsection (2), the attachment is not part of this Act."

We also have subclause (2) in ours, which says—

"The attachment must be revised so that it is an accurate copy of the Friendly Societies Code ... "

We are agreeing to that. All we have said is, as a matter of clarity, despite subclause (2), the attachment is not part of this Act, and it is not.

Mr Hamill: Why?

Mrs SHELDON: Because it is an attachment to the Act.

Mr J. H. SULLIVAN: With as much respect as I can gather up, what the Treasurer has just said is a load of codswallop. Subclause (5) of the amendment, which is the only difference from the amendment drafted by the Opposition, was drafted by the Treasurer in order to circumvent section 14 of the Acts Interpretation Act which may have been interpreted to say that an attachment is part of the Act. Section 14 of the Acts Interpretation Act mentions by name appendixes and schedules, although it does not mention attachments, but it could well be argued that an attachment may in the same fashion form part of the Act.

Why would the Treasurer not want it to be part of the Act? That is the question at hand. The question is really quite simple. I have spoken in this Chamber on a number of occasions on what happens with national scheme legislation. This is a national scheme of legislation in which this Parliament is being asked to cede away some of its powers. In this instance we are being asked to cede away the powers in relation to friendly societies and, by and large, I do not have any problems with national schemes of legislation. They do enhance the legislative framework in which companies operating throughout this country apply. But we should know and we should be very clear as members of this Legislature that, every time we enter into one of these, we give away some of our powers.

In particular, in relation to this issue, I am going to talk about the powers to amend the code—the powers to make regulations under this Act. But importantly, in terms of this subclause that the Treasurer has brought to this Parliament as part of her amendment, what do we give up? We give up our right as a Parliament to amend the Queensland Friendly Societies Code. We give up our power to amend the code because it is not part of our Act. If it is not part of our Act, this Parliament cannot amend it.

What does that mean? I would suspect that by amending the code, because of the agreements that have been made by the MINFIN, the finance Ministers' regular national gatherings, we would expel ourselves from the friendly societies scheme as being set up by this national legislation. What is the Treasurer doing? By the inclusion of subclause (5), the Treasurer is taking away from this Parliament our power to determine whether or not we should be in that scheme.

Did this Parliament determine to be in that scheme yet? No, it has not. We have had presented to us a scheme—albeit a very good one—that has been cooked up by the Executive Governments of the various jurisdictions in this country, not by the Parliaments of the various jurisdictions. Did the Treasurer or anybody representing the Treasurer come to this Parliament and ask for permission to engage in a scheme to regulate friendly societies in this country? The answer is: no, she did not. I am sure that she asked the Cabinet for approval. Before entering into this scheme, the Cabinet will have given that approval. That is okay. But what we are seeing is the entrenchment of Executive Government in this State; and in subsection five of this amendment, we are not only entrenching it, we are loudly proclaiming its supremacy.

This Parliament ought to be able to amend the Friendly Societies Code in Queensland, if it so desires, albeit in the full knowledge of the consequences of doing so. This Parliament should be able to take a decision that it can make an amendment to that code even though the

consequence of that decision is to expel itself from that scheme. We ought to be able to do that. What we are being asked to do by the Treasurer is to give up our right to be able to do it. I do not believe that she should be bringing that kind of provision into this Parliament.

As I have said, honourable members give up a lot of rights as parliamentarians and as Legislatures throughout this country when we engage in national schemes of legislation. A report was tabled in this Parliament last October which spoke about the types of schemes of legislation that are used in putting together national schemes. In relation to this particular report, if members turn to page 47 they will see structure three, which is the type of structure of national scheme that covers this one. It talks about amendments—the specific thing that I have been mentioning here in terms of the code.

Amendments to these schemes can come about in several ways. The amendment in this one is automatic. It is an automatic amendment scheme. If members look at sections five and six of the Bill, they will see that those amendments made in the Victorian Parliament are automatically adopted in Queensland. How are those amendments authorised? There are several ways that those amendments could be authorised. I do not believe that the Treasurer has given this Parliament any detail on how that will happen, but hopefully she will. However, let me outline the means by which those amendments can be authorised.

Amendments that are authorised can be unanimously agreed by the finance Ministers from all States, or all participating jurisdictions; by a two-thirds majority of the finance people from the ministerial council; by a simple majority; or by the fact that the ministerial council may only have to be consulted. These are the kinds of structures for amendments that exist in other legislation, and we do not know what structure exists for amendments in this one. If the Treasurer has entered into a scheme in relation to a friendly societies national scheme of legislation which does not require the unanimous vote of all the finance Ministers in order to approve an amendment—and I do not know that it does not, because the Treasurer has not given us that information, which I believe is vital for this Parliament——

Mr Harper: You weren't here and listening this morning.

Mr J. H. SULLIVAN: I must admit that I was attending a meeting this morning. The member has attended some today, too. If we do not have that, then the issue here is that even the finance Minister of this State cannot veto amendments. In subsection five we are giving away unnecessarily our rights to determine our future. This particular Friendly Societies Code is being applied as the law of Queensland. This is the law of Queensland which this Parliament cannot touch. I believe that we ought to be very careful.

Mrs Sheldon: We can. It is in Part 2.

Mr J. H. SULLIVAN: The Treasurer interjects that this is untrue.

Mrs Sheldon: No, I said that Part 2 of the Bill addresses that. You obviously have not read the Bill.

Mr J. H. SULLIVAN: Which part?

Mrs Sheldon: Part 2 of the Bill.

Mr Radke: It comes after Part 1.

Mr J. H. SULLIVAN: Has the member been drinking wine again at lunchtime? Which particular section of Part 2? Would the Treasurer please direct me?

Mrs SHELDON: Mr Chairman, we debated this Bill, and the second reading of the Bill was passed when the member was not in this Chamber. I do not see why we should go back now. However, I will refer to that when I answer the member's question.

Mr J. H. SULLIVAN: Fine.

Mrs SHELDON: I am not trying to hide anything. However, if members want to speak to the Bill, it would be nice if they were here at the right time. Part 2 of the Bill on page 5 states—

> "The Friendly Societies Code set out in the Friendly Societies (Victoria) Act, schedule 1, as in force for the time being—
>
> (a) applies as a law of Queensland; and
>
> (b) as so applying may be referred to as the Friendly Societies (Queensland) Code."

The shadow Treasurer wanted that as part of it. Okay?

Mr J. H. SULLIVAN: Fine.

The CHAIRMAN: Order!

Mrs SHELDON: Mr Chairman, with all due respect, I have not finished speaking. The member did ask me for——

Mr J. H. SULLIVAN: I am grateful for the explanation from the Treasurer.

The CHAIRMAN: Order!

Mrs SHELDON: I thought that the member wished me to refer to what he was asking. That is why I am on my feet.

Mr J. H. SULLIVAN: The Treasurer can sit down now.

Mrs SHELDON: I am happy to let the member speak.

The CHAIRMAN: Order! The member for Caboolture will continue.

Mr J. H. SULLIVAN: I am going to come precisely to the point which the Treasurer addressed. Part 2 of the Bill is the section by which we apply the legislation as amended in the Victorian Parliament. Nothing in Part 2 gives this Parliament the power to amend the code that is set up for friendly societies. This is where the Treasurer is wrong.

Mrs Sheldon: Yes, it does.

Mr J. H. SULLIVAN: No, it does not. The amendment that the Treasurer has brought forward does nothing more than say that, in Queensland, we have to print the thing and keep it up to date as it is amended in the Victorian Parliament. It does not give this Parliament the right to amend it. The Treasurer

should know a little more about legislation if she is going to run around the State and the country introducing it. There is nothing in this Bill and nothing in the Treasurer's amendment that allows this Parliament to take control of its own destiny. The Treasurer is wrong, and she should be condemned if she thinks she is right.

Mrs SHELDON: I would just like to comment on that. Could the member show me then in the shadow Treasurer's amendment where that provision is?

Mr J. H. SULLIVAN: Mr Chairman, I am happy to take my second five minutes on this now.

Mrs SHELDON: Feel free. I asked the member a question. I would like him to answer it.

Mr J. H. SULLIVAN: I certainly shall.

Mr HAMILL: I rise to a point of order. Mr Chairman, I thought that it was contrary to the Standing Orders of the Parliament for the Treasurer to conduct question times with members of the back bench and the Opposition. Mr Chairman, I seek your ruling that the behaviour of the Treasurer in this regard is detracting from the decorum of the Chamber, and I believe that it would be helpful for the passage of the Bill if we could settle down and debate the issue.

The CHAIRMAN: Order! There is no point of order. I call the member for Caboolture.

Mr J. H. SULLIVAN: We come to the point of the foreshadowed amendment by the member for Ipswich, the shadow Treasurer. The Treasurer has queried where, in that particular amendment, the power for this Parliament to change or amend the code exists. I would contend—and I think that anybody using the debate in this Parliament as extrinsic material to determine the matter in a court of law would now contend—that the very fact that the Treasurer felt it necessary to bring to this Parliament an identical amendment with the inclusion of one clause to expressly wipe it out as part of this Act could be taken as evidence indeed that the amendment brought forward by the shadow Treasurer does, in fact, allow this Parliament to amend the code, because it does attach the code and make the code part of the Queensland Act. I believe that the Treasurer, by her action in bringing forward an amendment that precludes that possibility, expressly or impliedly—take your pick—indicates that the amendment that the shadow Treasurer has foreshadowed does include the power for this Parliament to make that amendment.

I say again that this Parliament ought to be able to make that amendment. This Parliament ought to, at the time that it made an amendment to that code, fully understand the consequences of it, which I would understand to be exclusion from the national scheme of legislation. But we should be able to do it. What is happening throughout this country right now with national schemes of legislation is, on the one hand, good because it does regularise things throughout the country but, on the other hand, we have to understand that sitting in this place we are becoming more and more irrelevant in the scheme of things. We might just as well appoint an administrator and all go back to our homes and look after our families and not bother coming in here.

The actions of the Treasurer, the actions of Ministers of this Government and the actions of Ministers of former Governments going back to the early 1980s, when this kind of legislation came about, have been gradually eroding what we are able to do in this Parliament and what we as members of Parliament are able to decide on behalf of our constituents. We should be able to do that. There is no excuse for a Minister to bring legislation of this nature into this Parliament, specifically excluding us from making a determination about the future and business of our State.

I am not saying for an instant that I am opposed to a national scheme of legislation to regulate the operations of friendly societies in this country. In fact, on the surface and even at some depth, this appears to be a very good idea. However, I have some reservations about the process through which it is being done. I find the action of the Treasurer in amending the shadow Treasurer's amendment to be repugnant, because the Treasurer is expressly excluding me, the member for Archerfield, the member for Mount Ommaney——

Mr Pearce: Me.

Mr J. H. SULLIVAN: Yes, the member for Fitzroy. We are being excluded from playing any role in the destiny of this particular industry in our State.

Mr Ardill: And we object to it.

Mr J. H. SULLIVAN: I take the interjection from the member for Archerfield: we object. I think that I have made it quite clear to honourable members thus far in the debate on this amendment that I object strongly. There is no excuse for what is being done today. The Treasurer ought to be ashamed, because what she has done is to stand up here and say to us, "Well, honourable members, we are going to rape you, but it is good for you."

Mr Smith: Would you say she is shameless?

Mr J. H. SULLIVAN: "Shameless" is probably a good word.

This is not a good thing for us to be doing. I believe that honourable members on both sides of this Parliament have enough intelligence to make those decisions.

Time expired.

Mr FITZGERALD: I note the vigour with which the member for Caboolture has put forward his arguments. The member for Caboolture has argued along those lines for a number of years, even against his own Government. I have some sympathy for the arguments that he is putting forward.

Mr Hamill: He has worn us down.

Mr FITZGERALD: Yes, he has worn down members opposite. He has convinced them at last, but he did not convince them before. I recall when Labor introduced the building societies uniform legislation and the credit union uniform legislation——

Mr Lucas: Are you trying to bail the Treasurer out?

Mr FITZGERALD: If the member for Lytton does not mind, I am being serious. I am trying to be constructive.

When uniform legislation is agreed to, one Parliament provides the legislation and the legislation of other States falls into line. What the member for Caboolture is saying is true to the extent that, after a certain process has been followed—whether it be a majority or unanimous agreement of Attorneys-General, that is, the Executive Government—the Parliament that has the responsibility for the uniform legislation amends it. Those amendments are debated in that Parliament and it becomes part of the laws of those States that have adopted that legislation as their uniform legislation. That means that we do not debate amendments in this Parliament as a matter of course.

I know that the member has pursued that argument many times. There is some sympathy for his argument. However, if the amended legislation does not suit a State, a State has the right to withdraw. That Parliament has every right to introduce its own legislation or to take the unamended legislation as its legislation. As the member rightly pointed out, the consequence of that is that that State is no longer part of the uniform code. This is a major problem that States have had ever since they were colonies. This State has a railway gauge that is three foot six inches and elsewhere in the country the gauge is four foot eight and a half inches. I do not know which is the best size. I presume that four foot eight may be the better size.

However, it is a nonsense to think that, if all the Ministers agree that they want to make a minor adjustment to amend the legislation, that amendment should go before all the Parliaments of Australia. That would be the consequence of every Parliament having the right to debate every amendment that is moved. When the member was in Government, he voted for uniform legislation on a number of occasions. I do not have them all listed in front of me now. I understand that when operating under a framework of uniform legislation we accept the code of Victoria as amended from time to time as our code; therefore, we have the right to pull out of the uniform code and have our own legislation at any time. That is not usurping the rights of this Parliament. This Parliament has the right to do that at any time. It is not giving another State that right forever. We do not cede those powers to the Commonwealth. We do not cede those powers to Victoria. We say that, for the time being, we have entered into an agreement whereby we will accept the Victorian code as amended from time to time as our code. That is the only way that we can get uniform legislation to work in Australia; otherwise some bright spark might get up in one of the Parliaments and move another amendment. Western Australia might move an amendment. Victoria might move a slightly different amendment because the Parliament in that State feels that it should work differently in Victoria. In no time we would be back to our current position of trying to achieve uniform legislation so that the industry—in this case the friendly societies—can work with uniform legislation from one end of Australia to the other.

If the honourable member is suggesting that we should have six, seven—or possibly eight some day—different codes throughout Australia and attempt to keep them uniform, I say that that is a nonsense. I believe that we should have uniform legislation, with the right to withdraw at any time. We believe that the Parliament is sovereign and that it should have the ultimate power. I believe that that is responsible. Why is the member trying to do this to the first piece of uniform legislation? He is not attacking the legislation; he is attacking the principle. He has never before succeeded in that attack.

Mr HAMILL: In relation to the amendment that has been moved by the Treasurer, I move—

"That subclause (5) of 14B be deleted."

In formally moving that amendment, I wish to address the points that have been raised by the Leader of Government Business in his contribution. I want to take a little bit of time to put this whole matter into perspective. The Labor Opposition is committed to uniform legislation governing the activities of friendly societies. That has been our policy for some considerable time. It was an objective for which the former Labor Government worked in office. We are pleased to see the framework for that scrutiny come into place.

What we are distressed about is the proposition that we, the Queensland Parliament, cannot own our own legislation in relation to this matter. The reason I was seeking to move an amendment that would require the Treasurer to table any amendments that were made to the code and table any regulations that had been made in relation to the code was so that members of the Queensland Parliament could be kept abreast of any changes that may occur from time to time with respect to this legislative and regulatory framework. That is why I would have thought the Treasurer has also been so motivated, after being prodded along by the Scrutiny of Legislation Committee, to move the amendment in similar terms. That is why we want the responsible Minister to be charged with the duty of coming into this Chamber and tabling any amendments or regulations.

The act of being able to table a regulation must surely give rise to the power of Parliament to move disallowance as the Parliament sees fit. That would not be something that would be taken lightly. I would have thought that, if we are working within a framework of uniform legislation, any amendments and any regulations that are from time to time made by the host Parliament in Victoria would not be made unilaterally. They would be made only after full and proper consultation with the other participating jurisdictions. So we would not have the situation that was prophesied by the Leader of the House of the various jurisdictions going their own ways. Surely, we are in a bond and we have the desire to have uniform legislation. That is why we go to such enormous lengths to have a host jurisdiction legislate and for the other jurisdictions to fall into line.

However, I would have thought that no-one should simply and meekly sit back and say, "Whatever the Victorian Parliament may do from time to time should be the law of the land here." The very thing that the Leader of the House was talking about, that is, the capacity of one jurisdiction to go off on its own merry way, is the thing about which we must be concerned. Why should we put our faith blindly in the Victorian Parliament and simply act only when all the other jurisdictions are prepared to act? Why should we be dragged along in the future simply because someone in the Victorian Parliament may have a rush of blood in relation to the Friendly Societies Code?

The safeguard that I am seeking through this amendment is a real safeguard for this Parliament and for the operation of friendly societies in Queensland so that if the Victorian Parliament wants to get out of step with the other participating jurisdictions, it means that we do not necessarily fall in step with Victoria. If at some time in the future a Victorian Parliament said, "We do not want to participate in this any longer", and it repealed its Act and code, where would it leave us? In terms of our legislation, with a great empty hole. This Bill that we are debating simply incorporates into Queensland law the law of Victoria. I say to all honourable members that if we are going to have uniform legislation, it behoves all jurisdictions to operate in a system of trust and cooperation. However, surely it does not require us to simply hand over all care and responsibility to the Victorian Parliament.

In relation to the Treasurer's amendment and the subclause which I believe needs to be removed, I find it extraordinary that the Treasurer would go to such lengths to tell us that the code which, after all, is referred to as the Friendly Societies (Queensland) Code in clause 14—and that is why I addressed clause 14—cannot be part of the Queensland Act. For goodness' sake, it is good enough to be part of Queensland law but it is not good enough to be part of the Queensland Act. It is illogical, it is inconsistent and, frankly, the Treasurer should be ashamed of herself for peddling that particular line.

In relation to this matter, I do not know what the Treasurer is frightened of. All members seem to be committed to the uniform legislation. I thought that there was an understanding that all members were rightly concerned that the Bill, as it was presented originally, effectively gutted the powers of scrutiny that the Parliament is supposed to exercise in relation to all legislation and subordinate legislation. It is only by the removal of subclause (5) can we assure the Parliament's role in relation to not only the regulations but also the code. To remove the code from the Queensland legislation is to say that the Queensland Parliament is not as responsible as the Victorian Parliament. If it is good enough for the Victorian Parliament to have the code as part of its legislation, why is it not good enough for Queensland to have the code as part of its legislation? After all, it is our code as much as it is Victoria's code. Part 2 of the Bill is all about incorporating the Victorian code. The Queensland legislation does not describe the code as the Victorian code, it describes it as the Queensland code. That is how it appears in clause 14, which the Committee has just adopted.

I say again that if it is the Queensland code, then why is not the Queensland code part of the Queensland legislation in the same way as the Victorian code is part of the Victorian legislation? The Chamber should stand up for its rights and amend the proposition that has been put forward by the Treasurer. I believe that the Treasurer's amendment has been moved in good faith. However, I believe that, on this particular point, she is wrong. The Queensland Parliament has an opportunity to stand up for its rights and to properly take the legislation as its own.

Mrs SHELDON: At first I thought that the shadow Treasurer was just trying to be his usual difficult self. However, after listening to him, I do not really think that he understands. Attachment 14B says that attached to this Act is a copy of the Friendly Societies Code as set out in the Friendly Societies (Victoria) Act. Schedule 1 is amended by the Friendly Societies (Victoria) Amendment Act (1977) and the Friendly Societies Code. If we accept the Victorian Act and its code as part of our legislation then, indeed, if the Victorian Government amends its code——

Mr HAMILL: I rise to a point of order. I believe what the Treasurer has just said is incorrect. We are not adopting the Victorian legislation, we are adopting the Victorian code. We have our own legislation. That is what we are debating here. We are only adopting the Victorian code.

Mrs SHELDON: If the code is amended in Victoria, we have to accept that as an amendment here. It may well be that we do not want to accept that amendment here. Indeed, I would think that this amendment gives some credibility to the discussion that is going on.

An Opposition member: You're thick.

Mrs SHELDON: No, I am afraid that the member is. The fact of the matter is that the Government has incorporated this into its proposed amendment to clarify the situation and to make it very clear where it was coming from. I think that all we have seen is a muddying of the waters because Mr Hamill did not think to put it in his proposed amendment. The member is talking a load of nonsense. The fact of the matter is that we stick by our subclause (5). It was put in there, and it will stay there.

Mr J. H. SULLIVAN: I support the amendment moved by the shadow Treasurer. I want to deal with a couple of comments that were made earlier by the Leader of the House. I also want to deal with what the Treasurer just said. As a reason for not accepting the shadow Treasurer's amendment, that is, the deletion of subclause (5), the Treasurer has said that if we delete subclause (5), Queensland is going to have to accept amendments made by the Victorian Parliament and that we might not like that. I refer the Treasurer to clause 5 of the Bill, which says precisely that. Once this legislation is passed, we have enacted, in clause 5, that we are going to accept any amendment or, in clause 6, any regulation

made in Victoria. We do not have any choice in the matter. These particular clauses have been passed and were not commented on by the Opposition in this place. It is accepting that. That is not an argument at all for not including the code in this legislation.

Earlier, the Leader of the House said that if we are going to have national scheme legislation, this is how it has to be. For the information of the Leader of the House, I point out that there are at least seven structures by which national scheme legislation can be achieved. Although I am not going to live or die on it, I believe that the Leader of the House referred to the uniform consumer credit laws. The uniform consumer credit laws were achieved by a structure different altogether from the structure by which this particular scheme is being achieved. The uniform consumer credit laws are achieved by the alternative consistent legislation, which sets out core principles. Recently in this Parliament, we have had national scheme legislation that sets out core principles which must be the same. The jurisdiction is entitled to buffer those core provisions in a way that it sees fit.

Mr FitzGerald: How about the building societies or credit unions?

Mr J. H. SULLIVAN: That is the other point that I want to make to the Leader of the House. Bad practice is bad practice.

Mrs Sheldon: You voted for it. You didn't vote against that when you were in Government.

Mr J. H. SULLIVAN: As a party leader who has had the opportunity in her party room to actually argue for a position, the Treasurer and, indeed, the members of her party understand quite clearly that they will often come into the Parliament and debate for a proposition which they argued against in the party room. That is the nature of Government and it is the nature of Opposition. The Treasurer cannot condemn me for losing arguments amongst my colleagues and then coming into this Parliament——

Mrs Sheldon: You voted for bad legislation, did you?

Mr J. H. SULLIVAN: That is quite right, but in this instance I do not have to vote for the Treasurer's bad legislation, and I do not intend to, either.

Mr FitzGerald: You're a frustrated Attorney-General.

Mr J. H. SULLIVAN: That makes two of us: me and Denver Beanland, the member for Indooroopilly.

The issue is simply this: if subclause (5) of the Treasurer's amendment is allowed to stand, then the Parliament gives away its opportunity to make any change to the code. We can change the Act.

Mrs Sheldon: It is our Act.

Mr J. H. SULLIVAN: We can change the Act, but we cannot change the code. Clause 5 states that the code is part of the law of the State over which this Parliament has no control. The Government cannot expect me to be happy about a situation——

Mrs Sheldon interjected.

Mr J. H. SULLIVAN: We could do that, but why is the Government then not giving us the opportunity to do that in another way? Why is it taking away the right of the Parliament to deal with the code?

Mrs Sheldon interjected.

Mr J. H. SULLIVAN: This also has some relevance to the next clause of the Bill and I will talk to it then, rather than be dragged into it now by the Treasurer. The Treasurer is taking away the Parliament's right to amend the law of this State. The Parliament ought to be able to amend the law of the State and it ought to be aware of the consequences of doing so. By not including the code in our legislation, we achieve nothing. The Treasurer spoke about savings in printing costs, but there are no savings in printing costs to be had, because part of the Treasurer's amendment says that it has to be kept up to date and reprinted.

Mr Harper: You are getting mixed up.

Mr J. H. SULLIVAN: No.

Mr Harper: There are two separate issues.

Mr J. H. SULLIVAN: Under the amendment, the code has to be kept up to date and reprinted. If that has to happen anyway, it should be done as part of the Act. The Parliament should not give away its sovereignty. The Leader of Government Business spoke about the sovereignty of the Parliament. I know that he believes in it because I have served on committees with him and I have watched him argue fiercely for it. The Parliament should not give up its sovereignty in relation to the code.

The ministerial council is paranoid about members of Legislatures across the country getting their grubby hands on its work and changing it. The code is not in the Bill and thus is not to be included in the Act, because the ministerial council does not want us to get our grubby hands on it. The scenarios put forward by the Leader of Government Business simply do not exist because, under this particular style of national scheme, if Queensland made a change it would be out of the scheme. If New South Wales made a change, it would be out. If Western Australia made a change, it would be out. The point raised by the shadow Treasurer has some relevance. By not having a code in our scheme, the minute the Victorian Parliament withdraws and repeals, our friendly societies lose their protection. By putting the code into the Act and amending it from time to time, as the Victorian Parliament does and as we would be dictated to by clause 5 of the Bill, then no matter what happened in the host jurisdiction, the friendly societies in this State would be protected because the code would continuously be the law of this State.

If the Victorian Parliament withdrew, we would have to rush in here as a matter of urgency or, worse still, the Treasurer would have to enact a regulation of several thousand pages overnight. We give friendly societies in this State protection by including the code in the Act. We protect them against a hostile action of the Victorian Parliament, and the Victorian Parliament is pretty hostile towards Queensland at the moment over who gets the most

money out of the Feds. It does not like us much! We would be protecting our friendly societies. We would be creating no mischief by including the code in the Act of the Queensland Parliament. The Parliament ought to protect our friendly societies. The code ought to be included in the Act. I am very pleased to support the amendment brought forward by the shadow Treasurer.

Mr HARPER: It is surprising to me that for once I totally agree with the member for Caboolture. I did not think that I would stand up and say that, but I agree with him about the fact——

Mr Schwarten: You're a bit like him; you're a frustrated Attorney-General.

Mr HARPER: The member for Rockhampton should just wait. Perhaps there are not many members on the other side of the Chamber who agree with the member for Caboolture either, so this might be a rare occasion for him. I fully agree with the honourable member on one point: that this Parliament has to be master of its own destiny entirely. However, at that point we diverge totally because he seems to think that in this case we are not.

Mr Hamill: You are only a fair-weather friend.

Mr HARPER: I am sure that that is the way the member would want me to be, given his sentiments!

As Government members have already pointed out, members opposite have voted for national uniform legislation when in Government. With uniform legislation whereby one jurisdiction is entrusted and becomes the host, one either has uniformity or one does not. In agreeing to have uniformity, one does not give up the control of one's own destiny, because one can always go back. I will talk about that in a moment. Whilst still supposedly prescribing to national legislation on a particular matter, if we start to make changes to that legislation, perhaps by tinkering around with only one section or with many, then it is no longer national legislation. The legislation is no longer uniform and we will begin to experience problems. This Bill deals with a matter that crosses borders and affects organisations and the people who deal with those organisations.

Let us look at what would have to happen if Victoria, which in this case is the host, changes the legislation that it is entrusted with and that we follow. First of all, a meeting of Ministers has to be called and an agenda must be drawn up. The issues have to be put on the table and a majority of the Ministers have to agree to the changes.

Mr J. H. Sullivan: The majority.

Mr HARPER: I will deal with the majority in a second. The vote might only be 4-6 and Queensland might be out of step with the other States, but it is important that each State, including Queensland, has fair warning that a matter is on the agenda. If we feel strongly enough about an issue, it is more than likely that any competent Minister, no matter which side he or she came from, would start to test the waters and would know whether they could succeed at the coming ministerial meeting. If the State Government of the day felt strongly enough about a matter but realised that it may not succeed, surely it would start to make moves to address the point. For example, if Victoria was planning to repeal the legislation, the State Government would have advance warning and would have the time to do something about it.

Even after the meeting of all of the Ministers, Victoria still has to have the Bill drafted and have it passed by its Lower and Upper Houses. So the time is there. If the Government of the day in Queensland disagrees strongly enough with what is going to happen and which does happen, it can put a Bill before this Chamber taking us out of the national scheme and adopting our own Bill with the full code. We have that ability. We are not giving it up. For the member for Caboolture and other members opposite to say that we are giving up control is absolute rubbish.

I have gone through those steps. Several steps are involved. If we feel strongly enough about it, we would pull out of it and no longer be part of it. Obviously, if the Governments of Australia want that sort of national scheme to succeed, that would surely bear on their mind in their discussions. For example, a third of the States might disagree with something that is happening. That would be the process. I do not think that has been taken into account by members opposite today, and especially by the member for Caboolture.

We have not given up our right. We have not handed over something and let another State entirely run our State. That is absolute rubbish. This Government never intended to do that and never would. We are masters of our own destiny. The controls and processes are in place to allow us to still control what is happening and to have ample input into the predebate and then, if we are not happy with it, to do something about it ourselves. We can bring it back to this Chamber and let all members on both sides take part in that debate and decide whether to pull out of that legislation because of problems presented by it.

Mrs CUNNINGHAM: There seems to be quite a polarisation in respect of the effect of leaving in subclause (5) of the amendment. I say with some caution that I understand the principle of national scheme legislation. I endeavour to understand the principles of national scheme legislation. If other States followed suit, there is a concern that, if that attachment became part of the Act and if an amendment were passed in Victoria or Queensland, there would be a risk that to effectively maintain national scheme legislation all of the other jurisdictions would have to adopt that amendment and place it within their legislation. That would take time. Given the nature of the Parliaments across Australia, the risk is that there would be a lot of times when the Acts would be out of kilter. I can understand that.

Conversely, it worries me that we enter into national scheme legislation. The governance of the State in respect of that issue is very much by Executive Government, that is, by the Minister in this instance. My preference is to see the Parliament directly involved. I thought that without subclause (5) we may still have had the right of disallowance. However, I am advised that that is not true.

I have a question for the Treasurer which is dependent upon the current amended motion before the Chamber failing. What would the Minister's reaction be to adding two words—"and affirmed"—to 14A so that it read—

> "... the commencement of this section must be tabled and affirmed in the Legislative Assembly by the Minister within 14 sitting days."

That still means that there is a process. I understand that. But that would give the Parliament an active role in accepting the national scheme legislation and Victorian changes, but it is a positive role of affirmation. It would still give this Parliament a conscious right to not affirm the change and, in so doing, it would recognise the fact that it would remove the State from the national scheme. But it would be a pro-active way of still getting the Parliament to recognise the changes. I acknowledge the statements that have been made that the previous Government put through national scheme legislation without this provision.

My preference would be to see the Government actively involved in national scheme legislation at least to this effect in the future so that this Parliament was seen by the community to be actively involved in the legislative process, albeit national scheme legislation, by having to actively affirm proposed changes. We would still have the code as an attachment, but we would require that the attachment be affirmed by this Parliament. I am foreshadowing that, if the current amendment to delete subclause (5) fails, I will be moving that those two words—"and affirmed"—be added to 14A(1). That would still give us the right to be actively involved by affirmation in the legislative process of the national scheme, but it would not raise the spectre of legislation being out of kilter to the same extent.

Mrs SHELDON: What does the member understand to be the safeguard by including the words "and affirmed by the Minister"? I want to understand this. I can see that the member has some concerns. What extra safeguard is the member referring to?

Mrs CUNNINGHAM: The tabling is by the Minister; the affirmation would be by the Legislative Assembly.

Mrs Sheldon: Yes. But you would prefer to have it affirmed by the Minister?

Mrs CUNNINGHAM: No, by the Legislative Assembly—by the Chamber.

Mrs Sheldon: By "affirmed", do you mean "endorsed"?

Mrs CUNNINGHAM: Yes, endorsed.

Mr FitzGerald: How do we do that? Is that by a resolution of the Chamber?

Mrs CUNNINGHAM: That is right.

Mrs Bird interjected.

Mrs CUNNINGHAM: That is fine. If it gets a result, I do not have a problem.

Mr Elliott: We're having a good debate for a change. You should be delighted.

Mrs Bird interjected.

Mrs Sheldon: Are you suggesting that I don't answer the question?

An Opposition member interjected.

Mrs Sheldon: We would like to know. You had your go.

Mr HAMILL: Mr Chairman, no-one else is on their feet so I thought that I would seek the call. I want to speak again in relation to the amendment that I have moved. I bear in mind the comments made by the member for Gladstone, but I want to offer my interpretation in relation to the issues before us.

Ms Spence interjected.

Mr HAMILL: It is a shame, but I will persevere, anyway. Clause 5 of the Bill states—

> "The Friendly Societies Code set out in the Friendly Societies (Victoria) Act, schedule 1, as in force for the time being—
>
> (a) applies as a law of Queensland; and
>
> (b) as so applying may be referred to as the ... (Queensland) Code."

I would have thought that in the framework that the Opposition is proposing which would arise out of our amendment, if an amendment were made to the code—and after all that is but the schedule to the Victorian Act—and if the Victorian Parliament amended the schedule to its Act, we would require the Minister here to table that amendment. By virtue of clause 5, which we have unanimously agreed to, that amendment which was being tabled would automatically become the law in Queensland. By having the code as part of the Queensland Act, if the Queensland Parliament did not wish to agree to the amendment that has been passed through the Victorian Parliament, it would be able to amend its own Act, because the code is part of the Queensland Act.

Mr FitzGerald: The code as amended at the time, isn't it?

Mr HAMILL: The code as enforced from time to time. In other words, once the Victorian Parliament had amended its code, it would automatically become the law of Queensland. That is the force of what has already been adopted by the Parliament in the Bill.

If it were to be a case that the Victorian Parliament was acting unilaterally—in other words, tearing up the uniform framework for the supervision of friendly societies—and that Queensland and the other States which had adopted a similar framework as this said, "Hang on. We are not prepared just to be dragged along by a unilateral change that has come up through the Victorian Parliament", we could safeguard the position of our code by a simple amendment here in the Parliament, whereas if the code is outside of our legislation, we really cannot do much about it other than to throw out the whole thing and to legislate the code as specific law in Queensland.

The proposition that I have put forward safeguards the position of the Queensland Parliament therefore. The position we have put

forward means that friendly societies in Queensland can be assured that while Queensland wants to be part of the uniform regulatory framework, then that will be the case because we can protect friendly societies in Queensland from any unilateral action within another Parliament—in this case, the Victorian Parliament. In other words, it is a safeguard. The Parliament can obviously disallow regulations, but Parliaments do not disallow legislative amendments. Because of this rather unique arrangement that we are entering into, the absence of a mechanism for us to deal with a rogue amendment in another Parliament can best be overcome by our having the capacity here to either reject it or adopt it. I believe it is a better proposition than that which the member for Gladstone has put forward—and I hope the member for Gladstone can hear some of this discussion—because what she would require is a deliberative vote to be taken on every matter that came forward. I do not think that is the best way to go about it. That is a formula for maximum uncertainty because we would have to insert into the program of the Parliament a potential debate at any time. That is why I think our amendment is a very desirable one for the Parliament.

Mr J. H. SULLIVAN: I want to support the shadow Treasurer on those points and to express the hope that the Leader of Government Business might put this input into the excited group that is discussing the possibilities to his left. The facts are, as the shadow Treasurer has said, that clause 5 of the Bill really does make the code in Victoria as in force from time to time—which means instantly it is amended—the law in Queensland. What that means and what this amendment provides for is that the law in Queensland need only be tabled in this Parliament within 14 sitting days after it is made. That is the force of this amendment.

I refer honourable members to their sitting calendar for the rest of this year and ask them to calculate for themselves just how many weeks it would be before an amendment to the code made in the Victorian Parliament today would need to be tabled in this Parliament. For example, today does not count, so tomorrow is day one. Thursday is day one, Friday is day two, and then we have five weeks off. So in five and a half weeks' time, two days of the required time for the law of Queensland to be tabled in this Parliament have passed, although the law applies as of today. By the time that law is tabled in this Parliament, eight or nine calender weeks would have passed. I do not think that three months' time is quite acceptable to table the law of this State in this Parliament. After all, it is the law of Queensland.

There is no mischief that the inclusion of the code in our legislation would create other than to empower this Parliament with its own destiny in its own Act of Parliament. I do not accept the argument raised by the Parliamentary Secretary to the Treasurer when he said that if we do not like what they are doing, we can come back into this Parliament and create a new law. One has to ask oneself how long that process takes. The issue is that before lunch the Treasurer was lambasting the shadow Treasurer for delaying legislation in this Parliament. She said, "We haven't been able to bring legislation in because you guys want to talk on it." Of course we want to talk on it. That is what our people expect us to do. That is what the people in our electorates expect us to do, and that is what the people who support our form of politics expect us to do—debate legislation. I take the point of the member for Cunningham a moment ago when he interjected and said that for once in this Parliament we are having a decent debate. I think that that is good, and so we should. We should have more of them. The point that I reiterate is that there is no mischief that is cured by——

Progress reported.

PRIVILEGE

Document Referred to by Leader of Opposition

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (3.58 p.m.): I rise on a matter of privilege. Today in this House the Leader of the Opposition referred to a document that he said had been leaked from my office. I wish to inform the Parliament that today an original document, a copy of which was tabled in the House by the Leader of the Opposition, was not leaked, as the member claims, but would appear to have been stolen from my ministerial office. The original document cannot be located in my advisers' office or in our office in general.

Mr Hamill: Was it an inside job?

Mrs SHELDON: I think we will find out in due course who did it. Initial inquiries have also established that at least one individual was permitted unescorted access to my ministerial offices on Tuesday. It is possible that other documents have also been stolen. This matter has been referred to the police. I now challenge the Leader of the Opposition to detail to the Parliament how he came into possession of this document. As Leader of the Opposition, he claims to be a man of integrity. I seek his assurance in this House that he or his office was not in receipt of stolen property.

FINANCIAL INSTITUTIONS LEGISLATION AMENDMENT BILL

Second Reading

Resumed from 8 May (see p. 1595).

Hon. D. J. HAMILL (Ipswich) (3.59 p.m.): I made a number of comments in relation to the Financial Institutions Legislation Amendment Bill in the context of my contribution to the second-reading debate on the now recently adjourned Friendly Societies (Queensland) Bill. They pertained to the Government's lack of candour in relation to its legislative program where it sought to mislead the Australian Association of Permanent Building Societies to the effect that the Opposition had somehow filibustered or upset the Government's legislative program such that the legislation was delayed. I produce documents which came into my possession in relation to that issue. I do not intend to pursue that matter further. I believe the Government was adequately exposed earlier today.

The Financial Institutions Legislation Amendment Bill is an example of where we have the responsibility as the host jurisdiction to amend from time to time those arrangements pertaining to the AFIC code. The Opposition supports these amendments. They bring in the framework which is necessary to bring friendly societies under the jurisdiction of AFIC. They go hand in hand with the Friendly Societies (Queensland) Bill.

There are some amendments to the Financial Institutions Code in terms of the State supervising authorities which in Queensland, of course, is the Queensland Office of Financial Supervision. There are also some amendments relating to the activities of building societies, particularly in relation to the winding up of building societies and certain mergers. They are matters that are important, given the general state of the financial industry and the amount of activity among building societies and credit unions at this time seeking to forge strategic alliances, with some mergers taking place in what is a very rapidly changing environment in which financial institutions are operating. I presume we will see much more of that as some of the changes which were foreshadowed in the Wallis report come to fruition.

The Opposition supports the Bill and I hope that we will see its passage through the House a good deal more smoothly than we have seen in relation to the Friendly Societies Bill, which preceded it and will now, I presume, follow it.

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (4.02 p.m.), in reply: I thank the shadow Treasurer for his contribution. I also thank him for foreshadowing that he will accept the amendments as circulated. I thank him for his participation.

Mr Hamill: You have not got any other amendments?

Mrs SHELDON: No, just the ones that were circulated to the honourable member.

Motion agreed to.

Committee

Hon. J. M. Sheldon (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) in charge of the Bill.

Clauses 1 to 33, as read, agreed to.

Insertion of new clause—

Mrs SHELDON (4.04 p.m.): I move the following amendment—

"At page 27, after line 5—

insert—

'Insertion of new pt 14

33A. After section 165—

insert—

'PART 14—TRANSITIONAL

'Transitional provision for commencement of amendments for applying Code to friendly societies

'166.(1) The budget and levy provisions have effect, and may be applied, with all necessary modifications for changing AFIC's budget for the 97/98 financial year, and for changing the administration levies for funding its budget, to allow for the commencement, after the start of the 97/98 financial year, of the Financial Institutions Legislation Amendment Act 1997 of Queensland.

'(2) Additionally, the budget and levy provisions have effect, and may be applied, with all necessary modifications for changing AFIC's budget for the 97/98 financial year, and for determining an establishment cost levy to be paid by friendly societies, to allow for the recouping by AFIC of expenditure incurred by it in the 97/98 financial year and in previous financial years in preparing for the integration of friendly societies into the financial institutions scheme.

'(3) For the application of the modified budget and levy provisions for the purpose of subsection (2), a reference in the budget and levy provisions to the administration levy may be taken to be a reference to the establishment cost levy mentioned in the subsection.

'(4) In this section—

"budget and levy provisions" means the following sections—

- section 118 (Determination of AFIC's budget)
- section 119 (Administration levy)
- section 120 (Collection of administration levy).

"97/98 financial year" means the financial year starting on 1 July 1997.'.'."

Amendment agreed to.

New clause 33A, as read, agreed to.

Clauses 34 to 120, as read, agreed to.

Clause 121—

Mrs SHELDON (4.05 p.m.): I move the following amendment—

"At page 88, line 26 to page 89, line 7—

omit, insert—

'Amendment of s 411 (Powers about money of members who have died)

121. Section 411(1)(c)—

omit, insert—

'(c) in payment to anyone else who is, in the society's opinion, entitled to the amount, having regard to the will of the deceased person or, if there is no will, the laws of intestacy.'.'."

Amendment agreed to.

Clause 121, as amended, agreed to.

Clauses 122 to 128 and Schedule, as read, agreed to.

Bill reported, with amendments.

Third Reading

Bill, on motion of Mrs Sheldon, by leave, read a third time.

LOTTERIES BILL

Second Reading

Resumed from 4 June (see p. 2054).

Hon. D. J. HAMILL (Ipswich) (4.08 p.m.): The legislation before us opens yet another chapter in the long history of the Golden Casket office in Queensland. The legislation which is to be repealed by this Bill was enacted only in 1994, but there are a number of very significant changes which are incorporated within the clauses of the new Lotteries Bill. But the fundamental issue that is being sought in relation to the Golden Casket through this proposal is the corporatisation of the Golden Casket office. That entails the hiving off from the Golden Casket office of the various regulatory responsibilities which it has exercised in relation to the conduct of lotteries in the State and taking those responsibilities across to the Queensland Office of Gaming Regulation, leaving the Golden Casket office with the responsibility of running the commercial aspects of its previous responsibilities. The Opposition does not object to that taking place. In fact, it is very supportive of the Queensland Office of Gaming Regulation taking over this other area of gaming regulation in Queensland.

We note that the legislation contains the ability for an exclusive licence to be granted to an entity—and I presume the entity in question is the Golden Casket office—to operate the casket and the other existing games that it administers to the exclusion of other potential lottery licensees. However, from the Government's track record, I suspect that its intention here is potentially to sell off the Golden Casket office. That is a proposition that the Opposition does not accept.

We certainly believe that an exclusive licence is appropriate. However, we are concerned that Government policy may fundamentally affect not only the Golden Casket office but also a great many other small businesses that operate as agents to the Golden Casket office. I am thinking of a great many newsagencies that draw a significant part of their income from acting as agents for the Golden Casket office. In fact, the Golden Casket acts through over 1,000 agents across Queensland. One thousand small businesses draw part of their livelihood as agents for the Golden Casket. The value of that to small business is really quite considerable. In excess of $50m a year is paid out by the Golden Casket office to its agents by way of commissions and handling fees. That is a very substantial amount of funds—over $50m spread among 1,000 small businesses. We would be very alarmed indeed if the viability of those small businesses was under threat because of the Government's drive to potentially privatise the Golden Casket or at least to allow the existing agency arrangements to be overturned and for small business to be sold down the river by the Government in its drive for the almighty dollar. That is a real concern of this Opposition.

I believe that all honourable members would appreciate the significant role that the Golden Casket office plays. If members had recourse to the Golden Casket office's annual report for 1995-96, they would find in its core values a statement that the Golden Casket office "will continue to promote socially responsible gaming". When one looks at the history of the Golden Casket office one sees a snapshot of the evolution of gaming in our State. There are a great many people out there who still believe that Queensland's public hospital system runs on the proceeds of the Golden Casket. Probably a succession of Health Ministers wish that they could run the health system and fund it from the proceeds of the Golden Casket. But those halcyon days—if ever they were with us—are long gone.

It is worth while noting that the Golden Casket lottery is not one of the great performing games that is now operated by the Golden Casket office. I believe that says something about gaming in general. I have often made the comment in this place that, if we look at the various gaming or gambling activities that have taken place in this State over a period, they really are like fashion; they change constantly, and a game that was once very popular wanes in its popularity. As the Golden Casket office has been the pre-eminent player in this sector, it has had to bring out ever-new games to attract the public's interest and attention in order to pursue its fundamental goal, that is, to maximise its profitability from gaming in Queensland. Scratch-Its have peaked in their popularity and are relatively falling off in popularity; but whether it is the Golden Casket, Scratch-Its, Gold Lotto, the Soccer Pools, Powerball, Wednesday Gold Lotto or whatever, they all wax and wane in terms of their position as part of that basket of games that have been offered.

When one considers the significance of the Golden Casket office in terms of its contribution to State revenue, one must appreciate just how significant it is. In 1994-95, the Golden Casket office turned in an operating profit in excess of $163m. In fact, it remitted to the Treasury in that year $175m, which was used in the Consolidated Fund to provide finance for a range of Government services and capital works across the State. So whether it be schools, hospitals, or the staff of schools and hospitals, the Golden Casket office made a $175m contribution to that in 1994-95. In 1995-96, it remitted $172.5m, and about $14m in stamp duty. This year, when we look at the Budget papers, we find that the Treasurer is expecting the Golden Casket office to contribute almost $190m to State revenue. So it makes a significant contribution to the general pool of revenue from which Government services and facilities can be funded. It actually will generate that level of revenue to the Government from sales which will probably exceed $600m this year.

So we really have quite a significant entity and quite a significant commercial activity in the Golden Casket. It is one that I am sure the Government has its eye on from the point of view of privatisation, given the direction of Government policy as outlined in its Commission of Audit report last year. I suspect that the golden egg which has become one of the symbols of the Gold Lotto product is a golden egg

which this Government and this Treasurer would like to sell off. In this case it would be selling off the goose as well. But then again, it would not be the first time that we have called this Government a Government of geese. The goose that laid the golden egg here is the Golden Casket, and it is a significant contributor to State revenue.

The other point that I want to make is the relative position of the Golden Casket office vis-a-vis other forms of gaming and gambling in this State. It was not all that long ago that gaming expenditure in Queensland totalled in the order of about $240m. That was in 1984-85. Total gaming expenditure at that time was about $240m, and I presume that the Golden Casket office's activities constituted about 40% of that gambling activity. The other part of the gambling activity was the TAB. There were not as many choices on which people could spend their gaming dollar in 1984-85. Ten years later, we find an extraordinary expansion in gaming expenditure in this State. In fact, that figure of about $240m in gaming expenditure in 1984-85 has reached almost $1.3 billion only 10 years later. In other words, we have seen about a fivefold increase in actual expenditure on gaming in Queensland. Yet the Golden Casket office and its various activities have actually diminished as a proportion of that total activity. It now represents probably about 20% of that total expenditure. So while it has actually increased in dollar terms, its share of the gambling market and the gaming dollar has diminished. In fact, as a proportion it has probably halved over that 10-year period. The TAB has also endured a significant diminution in its share of the gambling dollar. The slack, if one likes, has been taken up by the range of other products that are out there on the market—among them, of course, casino gaming and gaming machines.

A considerable amount of concern has been expressed in the community about this enormous expansion of gaming activity. Recently, a decision which this Parliament took in relation to the extension of Keno came to fruition with the introduction of what had previously been a game that was restricted to casinos now being extended to licensed clubs. A couple of months ago we debated the legislation to enable that to occur.

I would be remiss if I did not canvass in the Parliament this afternoon the very real concerns that are being expressed by a significant sector of the business community in Queensland regarding what it sees as an explosion of gaming activity. I believe that honourable members can understand the concern that has been expressed by small business in particular and also a number of community groups and agencies about the significant increase in the gambling dollar that is spent. The Queensland retailers have made an approach to Government in relation to the more recent expansion of Keno.

The Retailers Association of Queensland wrote to the Opposition, and I presume that it has written also to the Government, expressing its concern about not only the impact of Keno but also the Government's intention to increase significantly the numbers of gaming machines available to hotels and registered and licensed clubs in this State. If I may quote from a letter that the Leader of the Opposition received on 26 June this year from Patrick McKendry, the Executive Director of the Retailers Association of Queensland, I think honourable members will appreciate the depth of concern that exists in that very important sector of activity in Queensland. Mr McKendry wrote—

> "... the Gaming Machine Amendment Bill has now been passed allowing clubs to have up to 280 gaming machines and hotels up to 40 from 1 July, 1997.
>
> The Retailers Association of Queensland (RAQ) is concerned about the effects of gaming on the retail industry, and has put forward a proposal that Treasury conducts an Economic Impact Study on this issue before more gaming machines are permitted in the state's hotels and clubs.
>
> The retail industry is one of Queensland's largest employers and generates $14 billion in sales each year. However the viability of the industry is threatened by the expansion of gambling opportunities.
>
> Since the introduction of gaming machines the retail industry has witnessed a downturn in sales, affecting investment in retailing and jobs in regional areas.
>
> A study by the Victorian Gaming Authority found that total retail sales had increased since the introduction of gaming into hotels and clubs. However, the increased spending was directly attributable to food and beverage sales in hotels and clubs with gaming machines. Other sectors, such as grocery, restaurants and apparel, all suffered."

Mr McKendry adds—

> "This is an important issue for our members and we will keep you informed of our activities in this area."

I think that McKendry's letter highlights a significant issue in the wider community. I believe that it probably is timely that an assessment was made of the economic impact of not only gaming machines but also the whole of gaming in this State.

Dr Watson: Victoria has already done that recently.

Mr HAMILL: The Honourable the Minister says that Victoria has already done that. I would like to know the situation in Queensland. The demographics of Victoria are vastly different from the demographics of Queensland. The Honourable Minister should appreciate that in Victoria if one drives for four hours, one is out of the State virtually. The greater urban area of Melbourne, including the Mornington Peninsula, and Geelong and Ballarat, which are only an hour up the road, constitute the majority of the population of Victoria. Queensland, of course, has a vastly different demography. I suspect that we should not expect much more from the Liberal member for Moggill who lives probably only 15 minutes from this place. He really does not have an appreciation of the vastness of Queensland and the importance of the regional centres such as those

that are represented by my colleague the honourable member for Whitsunday. The electorate of Whitsunday is a very good case in point. It stretches from areas just north of Mackay——

Mr Woolmer interjected.

Mr HAMILL: The geographically illiterate member for Springwood interjects. I was seeking to make the point that the electorate of Whitsunday is a very good example of the diversity that exists in Queensland. That electorate is made up of larger centres and smaller centres. That is why an economic assessment of gaming as requested by the Retailers Association of Queensland may well be warranted. What the impacts may be on Kenmore in the honourable member for Moggill's electorate may be very different from what they are on Calen in the honourable member for Whitsunday's electorate. That is the point that I was seeking to make.

There are some aspects of this legislation that have caused some considerable concern for the Opposition. They relate to the levying of taxation. The framework of the existing Lotteries Act was very simple. Section 30 of the Lotteries Act of 1994 stated that the corporation must, as directed by the Minister, pay into the public accounts amounts surplus to the corporation's requirements. That is a very simple provision. Basically, where there is an operating profit, the operating profit could be remitted back to Treasury. The corporatisation model that is being proposed by the Treasurer in her new Lotteries Bill offers something rather different, because it seeks to establish two mechanisms for revenue raising: a licence fee and a lotteries tax. Interestingly enough, it does not seek to establish the lotteries tax by way of a specific legislative enactment backed up by some subordinate legislation; rather, it would appear from the proposition that is before the House that the Government would see that the tax and the licence fee ought to be negotiable with the licensee in terms of the licence that is issued to the provider of lottery services in Queensland. What we would have would be a bit like the old Bjelke-Petersen coal rail freight regime. Individual lottery operators could well be paying quite different lottery taxes alongside quite different lottery licences.

Dr Watson: Another Treasury innovation in the nineties.

Mr HAMILL: I thought it was another leap back in time from a coalition Government that has learnt nothing. It picks up a theme that I was addressing last night, when I referred to Back to the Future stuff and turning back the clock. From the mouth of the former Parliamentary Secretary, who probably had a hand in drawing this up, we find that it was just the old Treasury leap back into the dark, into the land of lack of transparency, a land where quite exploitative agreements could be entered into with individual players. I do not think that that is good enough.

I foreshadow that at the Committee stage of the Bill I will be moving amendments to those provisions that relate to the collection of lottery tax, because lottery tax should be just like land tax, payroll tax, tobacco tax, the motor vehicle registration fee—and we can call that a tax as well—all other State taxes. There ought to be transparency. We should not be having some sort of backroom negotiations taking place with individual lottery operators in terms of how the taxation regime should apply to them. That leaves the door open to a whole range of unsavoury sweetheart deals and other less savoury practices in negotiation. So I suggest that it is in the public's interest that, in the Committee stage, there should be support for the Opposition's amendments in relation to the levying of lotto tax.

I have a number of other issues to raise, but the more appropriate time to raise those is in the Committee stage so that they can be addressed specifically. Suffice to say the Opposition does not oppose the general thrust of the legislation. It will be seeking some amendments and it will be seeking some iron-clad assurances for the 1,000 agents of the Golden Casket office who, among themselves, share some $50m of income a year. The Opposition wants some assurances for their continued role in their businesses. The Opposition will also want to see the viability of the Golden Casket office and its staffing assured for the future.

On that issue of staffing, I have one other closing comment to make: I seek information from the Treasurer in her reply as to the impact of this legislation on the Queensland Office of Gaming Regulation. Obviously, certain personnel at the Golden Casket office are charged with administering the regulatory function that is to be hived off from the Golden Casket office. In relation to those employees of the Golden Casket office, I want some assurances as to what the future holds for them. In that regard, I note particularly the Ministerial Program Statements of the Treasurer, which were examined recently during the Estimates hearings, which reveal in the Forward Estimates the creation of only one additional position in the Queensland Office of Gaming Regulation. Maybe the Treasurer could explain that for us later. However, it seems to me that it is probably the case that more than one person is employed at the Golden Casket office in administering the regulatory functions. If that is so, I want to know what will happen to his or her colleagues. Clearly, from the Treasurer's own departmental documentation, only one additional position is to be created in the Queensland Office of Gaming Regulation in 1997-98 which, of course, would oversee the implementation period for the changes that the Treasurer is seeking to effect in the Golden Casket office through this legislation. It is a very serious issue and one that deserves to be explained by the Treasurer. On that note, as I said, the Opposition supports the general framework of the Bill with those reservations and it will pursue the matter in greater detail during the Committee stage.

Mr NUTTALL (Sandgate) (4.34 p.m.): I wish to address a number of issues that relate to this Bill. The shadow Treasurer touched on a couple of those issues in his closing comments. However, I will refer to them later on in my speech.

This Bill provides for the corporatisation of the Golden Casket Lottery Corporation. We are really seeing a clearing of the decks and the allowing of the possibility of the privatisation of the Golden Casket.

We are well aware that at the moment there is general discussion and debate within the community about the future of the Queensland TAB. It may well be that the future of the Golden Casket Lottery Corporation will be included in those discussions and debate. Whether or not the Golden Casket Lottery Corporation is to be included in discussions about the future of the TAB is a matter for debate. However, quite clearly this Bill allows for that to happen at a later date.

As the shadow Treasurer has said, it is a good thing that the regulation of these commercial lotteries comes under the auspices of the Queensland Office of Gaming Regulation. I think that is a sensible and wise move. Over the years, we have seen a growth in the number and types of gambling and lotteries that are controlled by the Golden Casket Lottery Corporation. Many years ago, all we had was the Golden Casket, then we had the Soccer Pools and now, of course, we have Scratch-Its, Lotto, Powerball, Wednesday Lotto, Saturday Lotto and Oz Lotto. So people have many opportunities by which they can have a punt and see if they can win some money. One of the benefits of that increase in gambling opportunities is the increase in the number of places that receive funding, and I will refer to that later on in my speech.

One point that is alarming to note is that although the operating profits are up on the profits generated in 1995, the operating revenue has decreased from that time. Despite the influx of new games, new ideas and much more promotion by the Golden Casket, we still see a decrease in the operating revenue. To a large degree, when there are so many other forms of gambling that are available, such as poker machines, casinos and racing, one should accept that. However, that is a concern that needs to be addressed—the decrease on the 1995 year in terms of the actual returns to Queensland Treasury and in terms of stamp duty.

In relation to the performance of the Golden Casket in comparison with 181 lotteries worldwide, in terms of overall sales it ranks about 29th in the world; in terms of Lotto sales it ranks about sixth in the world; and in terms of Instant Scratch-Its, it ranks about eleventh in the world. I do not know what that says about the good citizens of Queensland—whether it says that we are big punters or whether it says that many of us chase that elusive dream of winning a lot of money—but it indicates clearly that the gambling dollar plays an important role in the economy of this State.

The shadow Treasurer also touched on the issue of staff. It would be pleasing to hear from the Treasurer in her reply if she is aware of when this restructure——

Mr Hamill: It would be pleasing if the Treasurer was here.

Mr NUTTALL: It would be nice if the Treasurer was here. However, we know her form and we cannot expect miracles. In relation to staff, I ask: when the new regulation comes into effect and the regulation of lotteries is handed over to the Office of Gaming Regulation, will there be a restructure of the Golden Casket Lottery Corporation? If so, what is to happen to those 190 employees? I can only go on that figure of 190, which is contained in last year's annual report. Given the number of redundancies that we have seen through the merger of Metway, Suncorp and the QIDC, it is a major concern. Will this corporation be affected by the changes that are about to take place? I think that is a matter that needs to be addressed and those questions should be answered this afternoon. Certainly, as far as I am aware it is of grave concern to the employees of the corporation.

The other matter that I think needs to be addressed is the community support given by the Golden Casket Lottery Corporation. We are aware that, last year, $1.5m from the Golden Casket Lottery Corporation was given to the Mater Children's Hospital and the Royal Children's Hospital. They each received half a million dollars and the other money was allocated to various areas of Queensland Health. That is a great thing. That money does not actually come from the overall revenue. Clearly, it comes from only the Jackpot Casket, of which I am proud to say I am a strong supporter. I am hoping to one day be a major winner. We continue to dream on, as the honourable member for Springwood has said. As the old saying goes, you have to be in it to win it.

The Golden Casket was also a major sponsor of the Australian Olympic team which competed in Atlanta. With the Olympic Games to be held in Sydney in the year 2000, I would be pleased to know if the Treasurer is aware of whether the Golden Casket intends to become a major sponsor of the Olympic team. If so, is she aware of the form that that sponsorship may take? Again, while Queenslanders do not mind having a gamble, we also like to know that some of those moneys support such programs. I look forward to hearing from the Treasurer regarding those matters.

Mr PURCELL (Bulimba) (4.42 p.m.): I would like assurances from the Treasurer on a few items. I reiterate the comments of the previous two Opposition speakers. Firstly, I will turn to the privatisation of the lotteries. It would be a shame to see a revenue maker for Queensland, which continues to put good revenue into the coffers of the Queensland Treasury, sold to international or Australian entrepreneurs. It would also be a shame if the thousands of small businesses that hang off the proceeds of lottery tickets and rely on lottery business were squeezed. If we sell the lottery to one of Kerry Packer's companies or some other large organisation such as his, they will squeeze it for every last dollar that they can get. Selling casket tickets on behalf of the Government is a very important part of small business. In my electorate, small businesses are doing it very tough. To deprive them of that sort of revenue would be a crime.

I would like some assurances from the Government that it will not privatise the new lottery organisation and that small businesses will continue to be able to sell tickets for the lotteries. I would also like an assurance that the lottery will not go into the large conglomerates such as Franklins, Coles Myer and so on, as that would greatly affect the small, predominantly family businesses.

I believe that the Government is obliged to give its employees assurances about their security of tenure, assurances that the lottery will not be privatised and assurances that they will continue to be employed. Government employees have given us a lot of loyalty over many years. In many cases, as we all well know, they probably are not the highest paid employees in the State because they work for the Government, but they give a lot of loyalty to their employer, whatever the Government of the day may be. The very least that they deserve is an assurance that they will keep their jobs. In some cases those people are the major bread winners of their families; in others, they may be working to earn a little extra for the family through providing a second income.

Through the Treasurer, I would ask for assurances on Government employees' job security and small businesses retaining the right to sell lottery tickets. I would also like an assurance that the lotteries office will not be privatised in the future.

Mr HARPER (Mount Ommaney) (4.46 p.m.): In rising to speak to the Bill, I felt it would be pertinent to trace a little of the history of lotteries and the Golden Casket, as we have all known it for decades. The casket, as it is commonly called, commenced in 1916 during World War I as a means of raising funds to help ex-servicemen and war widows and children. The Golden Casket was the first lottery in Australia to be entirely administered and controlled by a Government, and that makes it unique. As the laws of the day prohibited cash prize lotteries, prizes of golden caskets were offered, hence the name. Those caskets were bought back from the winner at a value equal to the prize offered. That was a sneaky way of getting around the laws of the day, but that is how the casket started.

In 1931 it became legal for the Golden Casket to issue cash prizes. At that time I guess that they recognised that the laws of the day were being got around by the Government.

Mr Hamill: The price of gold may have knocked it back during the Great Depression.

Mr HARPER: Indeed. The drawing of the first Golden Casket in Queensland was held on 14 June 1917. I guess not too many honourable members would remember that! In those days, tickets cost five shillings, or 50c, and the first casket was valued at 5,000 pounds, or $10,000. Those early caskets took about five or six months to sell. Recently, a casket was being sold and drawn every day! In those days, most of the work was done by volunteers, which is another contrast. However, the popularity of the caskets continued to increase until about three were drawn per week. The Government allowed the Golden Casket to continue after the war but diverted funds into public hospitals. When asked why the Golden Casket was started, many people will say that it was for the benefit of hospitals; but, as I have said, it was originally to help victims of the war.

In 1920, a manager and a committee were appointed by the Government and procedures were then set down for selling tickets, drawings and prize payments. Owners of businesses in the metropolitan area were appointed as agents. Selected businesses in country areas were permitted to accept orders for tickets. The involvement of small business goes back to that time. I take note of the issues raised by the member for Bulimba and others about small business. I fully agree that it is important that small businesses be supported. I will talk more on that shortly.

Caskets were originally drawn using a barrel of wooden marbles numbered from one to 100,000—that must have been some task! In 1932, this method was replaced by a Lund Drawing Machine, a revolving barrel with five compartments each containing numbered discs. In 1978, a random number generator was acquired. That was another progression brought about by computers and modern technology. This small computer selects numbers at random and prints them in numerical order, which is how the casket is drawn today.

In 1981 the Golden Casket Art Union Office expanded the games it offered with the introduction of Gold Lotto. Like the member for Bulimba, I have to confess to being a bit of an addict to that game. One has to live in hope. Whether one would retire from here or just create havoc if one won the first prize is another matter.

Mr FitzGerald: You don't have to retire from here to cause havoc.

Mr HARPER: Indeed. In 1981, the Golden Casket Art Union Office expanded the games that it offered with the introduction of Gold Lotto in Queensland. It further expanded its products range in 1984 with the marketing of Instant Scratch-it tickets. The name of the Golden Casket Art Union Office was officially changed to the Golden Casket Lottery Corporation on 7 December 1995 following the introduction of the Lotteries Act 1994.

It should be stressed that the Lotteries Bill 1997 is not a device to increase the number of lotteries operated commercially in Queensland. Rather, it is a consolidation and standardisation of the regulatory provisions of the Lotteries Act 1994 and other gaming Acts currently in force. This Bill will ensure that all commercial lotteries are conducted with the highest level of integrity and in accordance with the principles of responsible gaming.

I wish to address a concern of a number of people, including me. It must be recognised that the majority of the Queensland adult population who participate in gaming activities do so in an enjoyable and harmless manner. However, this Government also recognises that for a minority of the population gaming can become a problem—and we recognise that—thus having adverse consequences on those individuals, their families and the broader community. To address this problem, and as a means of promoting responsible gaming in the community, all gaming legislation contains provisions to minimise the negative impacts of gaming on the community. That is something that we well and truly recognise.

Those provisions include controls in respect of the advertising and promotion of lawful gaming activities, prohibition on the participation of minors in all commercial forms of gaming, and specific controls over the locations of play. The Government is also continually monitoring these controls to ensure their continued effectiveness. In addition, funds are made

available from the Gaming Machine Community Benefit Fund and the Casino Community Benefit Fund to help promote responsible gaming in the community.

For example, through the application of funds from the Gaming Machine Community Benefit Fund, the Department of Families monitors the social impact of the gaming industry on individuals, families and the community. That is very important. That subsequently allows the department to undertake research into the causes and consequences of addictive gambling, to work with industry in the development of community awareness strategies and to provide appropriate services for people with gambling addictions. This Government's recognition of some of those issues extends to credit betting, an activity which the Government does not support.

I will conclude by addressing a number of points with respect to the objectives of this Bill. It is very important that we consider the objectives of this Bill. We believe that there has been some misunderstanding in the community of what we are really trying to do with this legislation. I will address those points now. Under the current regulatory regime, the Lotteries Act of 1994 allows the Golden Casket Lottery Corporation to conduct commercial gaming operations within Queensland and, in line with this activity, to develop the rules for lottery games, to supervise the drawing of lotteries, to authorise the appointment of new agents and to dispose of unclaimed prizes.

Given the significant changes occurring in the gaming industry at present, the potential impacts of interactive gaming and the possible outcome of the review of the TAB, it was timely to review the Government's oversight of Queensland lotteries. That is why we set about this in a responsible manner. The Government has also recently reviewed the operation of gaming machines. That has been referred to. That was done by my predecessor leading up to the legislation in that area. We are currently assessing the effectiveness of the art unions legislation. The Bill before us is heavily based on the provisions of the Keno Act, which was assented to on 15 November 1996. It will bring the Golden Casket into line with existing legislation which regulates casinos, gaming machines, keno and art unions. It is bringing them into line and putting them under a common control and operation.

The Lotteries Bill specifically provides for the separation of lottery regulatory and commercial functions and thereby provides a new regulatory framework for the operation of commercial lotteries in Queensland. The Bill transfers all regulatory functions from the Golden Casket office, where it presently resides, to the Queensland Office of Gaming Regulation. The Golden Casket office will no longer be both regulating and conducting. In my opinion, that is a vast improvement. This is consistent with the other gaming Acts in ensuring that all gaming activities in Queensland are operated lawfully and are conducted with a high level of integrity and probity by an independent, separate organisation.

The separation of the regulatory functions of the Golden Casket from its commercial functions will also result in an operational environment for the corporation which will enable it to function as a commercial operator, thus encouraging flexibility and efficiency and allowing it to compete on an equal footing with its competitors. That will provide for it to be more efficient, not to waste money and to act effectively. The people of Queensland will gain from that flow of funds. That will happen notwithstanding whether there is an increase or decrease in sales. We are simply talking about the mechanics of the way in which that office will run.

That includes putting in place appropriate taxation arrangements, including explicit payments for licence fees, gaming tax, income tax equivalent payments and a commercial level of dividend, rather than the return of surplus funds from the Golden Casket operations being paid into the Consolidated Fund as per the current situation. All of that will be much more visible and open to scrutiny by the community as well as this Parliament. The Government will continue to have control over the disbursement of these funds. The provision of funds for social programs, such as child health, will not change as a result of this Bill. That is important to note. This is not changing where those funds will flow to. This is not about promoting increased sales. It is about the way in which the office operates and the separation of those regulatory powers.

The provision of lottery products will not be affected by the introduction of the Lotteries Bill, and the small-business retailer will continue to be the provider of these services. In particular, all lotteries currently offered for sale in the existing lottery agent network will not be affected by the introduction of the Lotteries Bill. That is important to note. The corporatisation of the Golden Casket office will not be visible to most of those agents in their day-to-day dealings with the Golden Casket, be that in the way in which they set up their promotional stands, in their daily operations and so on. The change will not be detrimental and will not be visible to those small businesses.

In conclusion, I wish to state clearly that this Bill is not about privatisation. It is about two things—separating the regulatory functions from the Golden Casket office so that it no longer regulates itself and being consistent with all of the other gaming in the State, and it is also about corporatising the Golden Casket office, which will continue to run the lotteries, caskets and so on, and making them more effective. As I have already said, we also recognise the importance of lotteries and Golden Caskets to small businesses. We recognise the effect on the income of those small businesses. This Government is very supportive of small business. That is something that we well and truly recognise. This Bill is not about making changes that will be detrimental to small businesses. It will not take away their rights and privileges or intrude on them.

In relation to this aspect, as with all other aspects, the Government will continue to be supportive of small-business people, be they newsagents or others, who currently have Golden

Casket and Lotto in their shops. We will continue to be supportive of them. We recognise, as does the Golden Casket, that we already have a very effective network throughout Queensland for the sale of these products and that the network is working well. It serves the people well and promotes the effectiveness of the Golden Casket. Very importantly, it serves the small-business people who run it and who rely on it for a substantial part of their income. That is something that we recognise.

As I said, this Bill is about separating two different sets of functions and powers and making the system more effective. With those words and my indication of the Government's strong support for small business, I indicate my support for the Bill. I believe this will be a positive and worthwhile step into the future.

Mrs CUNNINGHAM (Gladstone) (5 p.m.): In discussing the Lotteries Bill, I want to raise one issue in particular. In the interests of saving time I will concentrate on only that issue. It has been touched on by almost all of the speakers to date. I refer to the issue of small businesses and the opportunity for them to retain the status of outlet for the Golden Casket and lottery in general. I know that the Treasurer has indicated in conversations that it is intended to stay with small business. The Parliamentary Secretary has done the same in discussions with me about the issue. But I would have to say that small businesses—newsagents and other small businesses which currently sell the casket—are very concerned and feel very vulnerable about their retaining the market in this area.

The Parliamentary Secretary rightly said to me that they have never had legislative cover in terms of sole operation. That may be true, but the climate has changed. Fifty years ago or 30 years ago or 20 years ago or 10 years ago, there was not the push for commercialisation and the transparent competition proposed by Hilmer. Small businesses can justifiably feel fairly vulnerable, not because of the Government of the day but because of the agenda that is being pushed as a result of the Hilmer reforms. With the agenda that is being pushed in so many areas, small-business operators are certainly feeling uncomfortable.

I intimated a little while ago to the Treasurer that I intend to move an amendment to clause 79 at the Committee stage. It specifically provides that an agency agreement with a person can occur only if it is entered into in relationship to a small business. It goes on with a qualification of what a small business is. The immediate response that people have is that that is contrary to the ACCC. I will be interested in that argument. The reality is that we have all stated today and have stated on previous occasions that we need to protect small businesses as they are the backbone of our economy and are the most important employers in the State and the nation. We have to put our money where our mouth is. We have to be prepared to give them an effective assurance that their market share is protected.

Over time, the range of goods that newsagents and small shops has been able to provide to the customer has been gradually undermined. The large supermarkets carry a lot of the stationery requirements, they carry a lot of the paper—they carry many of those bits and pieces that used to be the strength of small businesses. Over time small businesses have seen almost all of their niche markets disappear. The Premier only this morning rose in this House and said—

> "Small shops are an integral part of Queensland society. That is why we adopted the Knox report's other recommendation that rules governing what constitutes an exempt shop be changed under these arrangements. Shops employing up to 20 people are exempt from trading hours restrictions."

While not intending to throw anything back in the Treasurer's face, I want to read something that she has said because it says it so well. Back in 1995 Mrs Sheldon, as Leader of the Liberal Party in Opposition, in discussing a Bill relating to the Golden Casket office, said this—

> "My other concern is that there is no real protection for the current small operators, mainly newsagents, who are the agents of the Golden Casket Art Union Office. It is fair to say that most, if not all, of these agents now make the majority of their income from lotteries. I have concerns, and I know members of the industry have concerns, that this amendment may jeopardise this income. Under the amendments to section 4, under the title of 'agency agreements', I believe the Government and the Treasurer have left the door open for an extension in the scope of agents for the Golden Casket Art Union Office. The biggest fear of existing agents is that the big operators—Coles, Woolworths, Franklins ... will move into the lotteries industry and force the small operators out of business.
>
> ...
>
> The larger traders already control a huge percentage of the retail sales sector, and I believe that the current system of leaving lottery sales with small agents, mainly newsagents, is the right system. By removing the licensing component of the agreement between the Golden Casket Art Union Office and the agents and replacing it with a contractual arrangement, the Treasurer has set the scene for a widening of the current circle of agents."

I meant that as a compliment. I believe the Treasurer expressed very succinctly the concerns of small business that have been expressed to me. In the climate of transparency and competition, small businesses are feeling even more like a threatened species. They are looking for assurances. More than just verbal assurances, they want something that is enshrined in the legislation. That is the genesis of my amendments. Once they have formally been through the final process with the OPC, they will be circulated. I commend those amendments to the House. They give tangible proof to small businesses in the State that it is this Government's and this Parliament's intention to give them some real protection—not to give them monopoly status, not

to give them a protected share of the market, but to ensure their viability. It will be on that basis that I will be moving these amendments at the Committee stage.

Hon. J. M. SHELDON (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) (5.06 p.m.), in reply: I thank all honourable members for their contributions to the debate on the Lotteries Bill. As indicated in my second-reading speech, the introduction of this Bill provides for the separation of the regulatory functions of the Golden Casket from its commercial functions. The Queensland Office of Gaming Regulation, which is currently responsible for regulating machine gaming, casinos, art unions and Keno, will assume the regulatory responsibility for lotteries under the new legislation. This will ensure that all gaming activities in Queensland maintain a consistently high level of integrity and of probity.

The legislation will provide for the issuing of lottery licences by the Minister for the conduct of commercial lotteries in Queensland. It is envisaged that a licence will be issued to the Golden Casket which will enable it to continue to operate the lotteries which are currently operating in accordance with the Lotteries Act 1994. The terms and conditions of this licence are still subject to negotiations between the Government and the Golden Casket. This legislation will enable the Government to regulate the operation of commercial lotteries in Queensland in a manner which is broadly consistent with other forms of lawful gaming in the State while ensuring that both the highest standards of integrity are present in all commercial lotteries and that the revenue generated by lotteries for the State is protected.

The Bill is designed to ensure that commercial lotteries are conducted in accordance with the highest levels of integrity and probity, and to ensure that the Bill contains provisions which will ensure that all persons holding key positions within a lottery licensee's organisation or who have substantial influence over a lottery licensee's commercial operations meet a consistently high level of integrity.

The Bill also contains a number of compliance requirements designed to ensure that the appropriate control and monitoring systems for commercial lotteries are in place. Supporting these provisions, an extensive list of offences in relation to the conduct of lotteries is included in the legislation. Moreover, this legislation contains provisions, to mention a few examples, which will ensure that all advertising of lottery products is based on fact, is not offensive and is not misleading or deceptive; which prohibit minors from participating in commercial lotteries; and which specify the locations where lottery tickets may be procured. As already mentioned, the Bill is the result of extensive consultation within Government and with the major stakeholders in the industry, namely, the Golden Casket Lottery Corporation and the Golden Casket Agents Association. All parties support the introduction of this Bill, and I thank them for their support.

I will turn now to comments made by honourable members in relation to the Bill and endeavour to answer those comments. I think that my Parliamentary Secretary adequately explained that this Bill is not about privatisation; it is about shifting the regulatory operations to the Office of Gaming Regulation. Questions have been asked about the taxation component, but I think we will discuss those issues when we get to the Committee stage of the Bill.

It must be reiterated that the Government strongly supports the continued focus on the distribution of lottery products through a network of small-business retailers. This has been brought up on a number of occasions. However, it must also be remembered that the existing network is broader than the distribution through newsagents, and that is the situation right now, although it is fair to say that the majority of the small businesses are newsagents and the Government has absolutely no intentions of changing that.

I have in my hand a letter from newsagents concerned about that situation. It is the Government's policy, as the Premier mentioned in a statement to the House this morning—not specifically about this legislation, but when speaking about small business—that we do support small business; it is our policy to do so. Golden Casket knows that that is our policy, and I have acted quite publicly within a fairly short period of time to make sure that Scratch-It vending machines would not be going into major supermarkets because I was concerned about their accessibility to minors. In fairness to Golden Casket, after discussing this with them in some detail, I do not think that they fully intended to do this. However, it was a proposition that they were considering. We, the Government, made very clear to them our policy in regard to that. Of course, they agreed with that policy, as they must do.

Notwithstanding that commitment, in my discussions just now the Government also recognises that Golden Casket is a corporate entity—a commercialised entity—operating in a highly competitive leisure and entertainment industry, and it needs to have an element of flexibility to respond to changing market forces. It should also be noted that the Government regulates the operator of lottery products and ensures that the operator has appropriate controls over its agents. It is not appropriate for the Government to be involved in the detail of the operator's commercial dealings with its agents.

I have a little concern with the amendment—and I will discuss this in more detail when we get to it—that has been foreshadowed by the member for Gladstone. The advice given to me is that we cannot legislate under the National Competition Policy to exclude or eliminate certain people, such as the Golden Casket Corporation, who may make a bid to be agents of such an operation. That does not mean to say that they will get it; however, we have a difficulty if we try to legislate to prevent them from doing that. Depending on the wording of the amendment which has just been given to me—and I will study it in more detail later—we could have problems in that regard.

I would like to reiterate our sympathy with the newsagents. We do understand their difficulty. I have had considerable discussions and briefings with Golden Casket. The great majority of its agents are newsagents. They see no need to change that and, indeed, nor does the Government. There are, however, other small businesses operating out there that do have the ability to manage the products of Golden Casket, and we really could not exclude those businesses.

There has been mention of a loss of jobs if the regulatory powers are handed over to the Office of Gaming Regulation, which is what is happening via this Bill. There will not be a loss of jobs. I have just reconfirmed that with the chief executive of Golden Casket. I can understand why people raised that issue, but I think that we can put their minds at rest in that respect. The matter of additional lotteries has also been raised. Any additional lotteries that are conducted have to be approved by the Minister. That is contained within the Act. Lotteries under this legislation will be able to be conducted only by a lottery licensee. So there is a large control mechanism in place.

I think I have really covered most of the issues that were raised by the members. I think it is fair to say that the main issue was the issue of small business, and I do hope that I have put newsagents' and small-business persons' minds at rest in my summing-up.

Committee

Hon. J. M. Sheldon (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) in charge of the Bill.

Clauses 1 to 38, as read, agreed to.

Clause 39—

Mr HAMILL (5.17 p.m.): Clause 39 is certainly an important provision of this legislation. It is an ouster clause in terms of judicial review in relation to decisions about holders of a lottery licence. That in itself is a serious matter, but I note that similar types of provisions have been included in relation to other legislation that pertains to gaming and the operation of casinos in this State. However, it is not a provision that the Parliament should include lightly. I note also that this clause came in for some rather critical comment from the Scrutiny of Legislation Committee because of the fact that it seeks to totally set aside any jurisdiction that there may be in the courts to deal with these decisions that are made by the Minister or Governor in Council.

The particular point that I want to raise in the context of clause 39—and one that no doubt would be of interest to the Treasurer—is whether it is intended that the ouster of the jurisdiction of the courts here should also extend to the jurisdiction of that institution so favoured by this Government, the Criminal Justice Commission. The Criminal Justice Commission does have a very important responsibility in relation to official misconduct and corruption. It is not my wish to make the association of gaming and corruption, but there needs to be comfort for the Legislature that we do not leave wide open avenues for organised crime and other unsavoury elements to get into the very lucrative gaming industry.

We spent a lot of time in the Parliament debating the Government's amendments to the gaming machine legislation. We had an extensive debate about the licensing operations in that respect, who could hold licences and so on. I want some comfort that the body which is the watchdog against corruption in the State will have the power to be able to investigate matters the subject of a complaint to it, or is it intended that all manner of judicial and quasi-judicial overview is to be set aside by the Treasurer by virtue of this particular clause?

Mrs SHELDON: I will read to the member the letter that we sent back to Mr Tony Elliott, who is the Chairman of the Scrutiny of Legislation Committee. This answer went back only today because we got the Scrutiny of Legislation Committee's comments only late yesterday. That committee raised the question of sufficient regard to the rights and liberties of individuals—that judicial review ousted clause 39. In that letter I said—

> "Commercial lotteries are currently conducted in Queensland by the Golden Casket Lottery Corporation ... as a statutory body under the provisions of the Lotteries Act 1994. Under that legislation, the Corporation reports directly to the Under Treasurer.
>
> In order to ensure that the integrity of commercial lotteries is not diminished it is absolutely essential that decisions with respect to the operator's licence are final and conclusive and free from the risk of legal challenges. This accords with provisions in the Keno Act 1996.
>
> Information and reports, that are considered by the Governor in Council and Minister, will often contain confidential and highly sensitive material. They may include details from informers, subjective opinion of intelligence material and other information of varying degrees of confidentiality from which a court of law might consider falls short of required evidentiary standards. It is the role of the Governor in Council and the Minister to carefully evaluate the information and to prevent dishonest persons, under the guise of an orchestrated legal respectability, from entering into lottery operations.
>
> Allowing an avenue of review by the courts may hamper the ability of the Governor in Council and the Minister to act swiftly and decisively and, thus, could be potentially detrimental to the operations of lotteries in the public interest.
>
> It should also be stressed that the provision proposed in the Lotteries Bill is aimed at lottery licence applicants only and is consistent with normal practices in other Australian jurisdictions for the regulation of casino, keno and lotteries.
>
> In relation to the Committee's query about whether this provision ousts the jurisdiction of

the Criminal Justice Commission, it should be stressed that the provision is intended to make final the Minister's decision in relation to a lottery licensee or an application for a lottery licence and is not intended to impinge on the power of the Criminal Justice Commission to investigate complaints of official misconduct.

Accordingly I do not propose any changes to the legislation."

Clause 39, as read, agreed to.

Clauses 40 to 78, as read, agreed to.

Clause 79—

Mr HAMILL (5.22 p.m.): In my comments during the debate on the second reading of the Bill, I alluded to the Opposition's concerns about the agency agreements that may flow following the corporatisation and potential privatisation of gaming in this State. I raised my concern about the multitude of small businesses that operate as agents for the Golden Casket office. I stated that there are over 1,000 agencies operating. Many of them are truly mum and dad businesses. They employ numbers of people, many of whom are casual employees. Between them they share in about $50m worth of agency fees, commissions and handling fees paid out by the Golden Casket office. There is very great concern among people in that small-business sector that they could be shut out altogether if the Government is in pursuit of the big buck in relation to this legislation and is seeking to change fundamentally the way in which agencies currently operate.

As an exclusive licence is presumably to be given to the Golden Casket office, I do not anticipate any immediate change. However, as it stands, this clause really asks us to trust the Treasurer in relation to what may be the eligibility criteria which are produced by way of regulation. Clause 79(1) makes it absolutely clear that a lottery licensee may enter into an agency agreement only with a person prescribed under a regulation as a person eligible to be a lottery agent. It then goes on to talk about the agency agreement, prescribed forms and so on. But what we do not know from this is whether the Government has a picture of what the regulation ought to be outlining the eligibility for an agent. I certainly would be most disturbed if the agency arrangements were opened up to other commercial interests—bigger and more affluent and perhaps more influential commercial interests than the multitude of small businesses that currently are the backbone of the agency arrangements with the Golden Casket office.

I have received a copy of a foreshadowed amendment by the member for Gladstone. I want to hear the member's comments in relation to it. I serve notice that I want to hear from the Treasurer the sort of eligibility criteria that the Treasurer deems to be appropriate. And as to any regulation that does not meet the safeguards that we want to see in place for small business, I will be absolutely earnest in my endeavour to have it disallowed in this Parliament, because we are talking about the livelihood of many families and small businesses in Queensland who rely upon their existing agency arrangements to support their viability as businesses.

Mrs CUNNINGHAM: I move the following amendments—

"At page 48, lines 4 to 6—

omit, insert—

'79.(1) A lottery licensee may enter into an agency agreement with a person only if—

(a) it is entered into in relation to a small business owned and operated by the person; and

(b) the person is prescribed under a regulation as a person eligible to be a lottery agent.'.

At page 48, after line 17—

insert—

'(4) In this section—

"small business" means a business undertaking—

(a) that is wholly owned and operated by an individual or individuals in partnership or by a proprietary company within the meaning of the Corporations Law; and

(b) that is managed personally by the owner or directors; and

(c) that is not a subsidiary of, or does not form part of, a larger business or enterprise; and

(d) in which no more than 20 persons are employed.'."

I can deal with these amendments together because they are contingent amendments. I have specifically placed an amendment of this nature before the Committee because, in spite of a lot of assurances, and very genuine assurances, small business is still feeling vulnerable because of this legislation—not because the status quo has not been in operation for many years but because the business environment has changed so much over the last few years with this competition requirement. Every member of this Chamber has defended the importance of small business. I think that, without exception, every member has said how important it is to retain this element of business for the smaller business community. Therefore, it is incumbent on us to give weight to those assurances.

The proposed amendment to clause 79(1) places two qualifications on a potential agency agreement. Firstly, it must be a small business. That is later qualified. Secondly, it allows that, provided they are not contradictory regulations to subclause (1) (a), they must comply with the regulations as set out subsequently by the Minister. In common with the shadow Minister, I would be interested to hear what some of those regulations may be.

The second part of the proposed amendment after line 17 qualifies what "small business" means. It is not identical, but it is similar to the definition of "small business" in what is now a repealed Act, namely, the Queensland Small Business Corporation Act 1990. The only element that is left out of that qualification is a section that talks about market share. So the intent of that definition is to target what

the shadow Minister and everyone else in this Chamber has said are the business areas of concern: small businesses. I refer to the wholly owned and operated individual partnerships, which may be proprietary companies because of the legal protection that this gives, the family operation, the corner store, or the newsagency that is run by a husband and wife, a partnership of brothers or whatever the configuration is.

Proposed subsection (b) again targets the family business—not the one that is subcontracted by someone who lives overseas or interstate, but the owner-operator of the business. Proposed subsection (d) states that it must not employ more than 20 people. I have included (c) because it is possible to have a business that employs only 15 people but it could be a subsidiary of a larger business that is operating independently but is still part of a larger business chain. That is the background to those qualifications. If I have failed to explain them properly, I would certainly be willing to do all that I can to clarify them.

I cannot stress enough that we have to be prepared to put our money where our mouths are. Words on paper without legislative backing are not giving the assurances to the small businesses that are currently operating in this sector and which, in many instances, are fairly dependent on this work. Already a couple of initial concerns have been raised with me. I am not saying whether they are or are not valid concerns. I feel very strongly that it is incumbent on this Committee to take some action to definitively say to small business, "We are going to protect you. We do see the very particular role that you play in the community, not only for your own family for work but also for the employees to whom you give regular employment, and we are prepared to back up that undertaking with legislative empowerment." I commend the amendments to the Committee.

Mrs SHELDON: I would like to answer firstly the queries raised by the shadow Treasurer. At the moment, there is no restriction whatsoever on who can have a licence. We intend to tighten that up. The provisions as we see them in draft regulations are that a person must be an owner of a retail business, an owner of a business operated from a retail shopping premises, or an owner of a business operating as a mail order agent. As honourable members would know, there are mail order agencies now. The regulations will tighten up the scene, which is now wide open. It offers more protection. More detail is provided than has previously been provided.

In answer to the member for Gladstone, Mrs Cunningham—we have some concerns with what she is putting forth, but not with her intent, which is to put forth the very real interests of small business. The interests of the Government are the same. I have referred tonight to our commitment to newsagents and to small business. That has not changed. With the amendments as put forth by Mrs Cunningham, there are problems in that any attempt to artificially constrain the range of agents may be discriminatory. Certainly, it would be difficult to administer. Many existing agencies could be excluded under the proposed amendments, because some of them are not owner managed and some of them certainly now have more than 20 staff. The Golden Casket may be prevented from proper commercial development of its network, which would not necessarily adversely affect existing business. Also, they raise serious national competition issues.

This afternoon we have had a discussion with our national competition group within Treasury as to whether the amendments would go against the National Competition Policy and the Bill that was signed by the previous Labor Government both State and federally under which provisions we now act. Our advice is that they could adversely affect the concept of National Competition Policy. They certainly raise some concern about national competition issues. It would be difficult to show adequate public interest grounds for such a provision as it currently stands. Under the National Competition Policy—and this goes right across-the-board—one has to look at not only the circumstances of whoever may be involved, and in this case it most probably is newsagents, but also the public interest. The public interest covers a wide spectrum.

I am now expressing my own thoughts, because the amendments have not been put to the public interest test, as must all matters relating to National Competition Policy. I believe that, if we as a Government were to look at the way this happens, we would see that the matter was covered by public interest on two facets. It is in the public interest for small business to access that network. It is also in the public interest, I would think, to have an organisation running it that is more likely to have total control over what it is doing in the interests of its customers. I was talking about exclusion under the provision of the amendment of not employing 20 people or more. Some newsagencies in retail shopping centres operate seven days a week and employ 20 or more casual staff. Such agencies generate a significant level of turnover and thereby assist the economy. They create jobs and they create revenue.

Although I think the intention of the member for Gladstone is certainly worthy and I support that intention myself, I do not think that for the reasons I outlined we can enshrine that in legislation. However, I reiterate the policy of this Government. I have heard the policy of the Opposition as put forth by the shadow Treasurer and the policy intent of the Independent member. They are all the same. That would be our policy and direction to Golden Casket.

Mr HAMILL: The Opposition is very supportive of the sentiment expressed by the member for Gladstone in relation to the amendments that she has moved. Certainly we have no problem at all with amendment No. 1 that she has moved. The Opposition will be supporting that amendment. In relation to amendment No. 2, I share some of the concern that was expressed by the Treasurer in relation to that amendment. I want to address those points. Firstly, the Treasurer's concerns focused on the impact of National Competition Policy. I can understand where the Treasurer is coming from on that score. We spent considerable time debating the

Queensland Competition Authority legislation in the Parliament not long ago.

At that time I moved significant amendments to ensure that the operation of the Queensland Competition Authority did not entail simply the efficient allocation of resources and the slotting in of economic rationalist stuff. I put in the stuff that Treasury finds less attractive—things such as regional employment impacts, the social considerations that must be applied when determining matters in relation to competition policy in Queensland, or indeed anywhere else for that matter. I would have thought that issues such as employment impacts, particularly in regional areas, are the very essence of what we are trying to protect in relation to the Golden Casket agency arrangements. Where are those 1,000 small businesses that we are talking about? They are over the length and breadth of Queensland. I do not think that there would be too many centres in the State that would not have a newsagent that would sell Scratch-Its. They are the people about whom we are worried in relation to this.

While recognising the Treasurer's concern, I point out that I do not share her view in relation to the application of the National Competition Policy. However, I share her view in relation to what may be the restrictive nature of the second amendment in the name of the member for Gladstone, in particular that part that relates to proposed section 79 (4)(d) . The member for Gladstone—I believe in good faith—has sought to arrive at a figure in terms of employment numbers that would reflect what would be a small business. She has arrived at the figure of 20.

I think that was a reasonable proposition. However, I think that we need to be cognisant of some of the realities within industry, particularly within the newsagency industry. My understanding of that industry is that a newsagent can operate three stores. When we talk about the numbers of people employed by newsagents, who probably make up the bulk of the agents for the Golden Casket, there could be quite a number of people employed—many of them part-time, casual employees. Although 20 might be an appropriate figure for one particular store, the fact that one newsagent may be able to operate three stores would mean that the figure of 20 would, in fact, blow away a number of small businesses, which would be contrary to the express desire of the member for Gladstone and, indeed, for that matter, myself.

Therefore, I am going to propose a further amendment to amendment No. 2 standing in the name of the member for Gladstone. I propose that in relation to amendment No. 2 relating to clause 79 standing in the name of the member for Gladstone with respect to subclause (4), subparagraph (d), which currently reads "in which no more than 20 persons are employed", the figure "20" be deleted and a figure of "50" be substituted.

I believe that by arriving at that figure of 50, we should overcome what would be a very real concern that the proposition that has been put forward to us in good faith may well have the unintentional outcome of closing down some agencies that exist currently. I am aware of some people who operate in the industry who employ around 25 to 30 people across a couple of locations. I know that it would not be the intention of the member for Gladstone—nor, I would hope, the intention of anybody else in the Chamber—to throw those people out of their businesses as casket agents and probably, in turn, throw a few of those people who currently work in the agency out on the street. That would be my greatest concern about the amendment as it stands. I commend to the Committee my amendment to amendment No. 2 in the name of the member for Gladstone.

Mrs CUNNINGHAM: Given the comments that have been made about the possibility of newsagents having triple licences—and this is not an issue with which I am familiar—and one owner operating three stores, although 50 employees sounds like a huge small business, in the circumstances that have been outlined I am more than happy to accept that change to the amendment.

In relation to the issue of the public benefit test as it affects the competition policy—I have absolutely no hesitation in believing that it can be shown very easily to be in the public interest to retain some security for small business. However, I know that there has not been a lot of time to test that. This is not just about the protection of jobs in rural Queensland. If members walk through the shopping centres in Brisbane, they would see newsagencies that have the plastic drums with all the Scratch-Its in it. They are in every shopping centre, and in big shopping centres there can be two or three newsagencies located in the various wings of the centre. So right across the spectrum of the community in Queensland, the public benefit of giving protection to those small businesses to ensure that they retain a niche market in the commercial area is to protect those jobs. I cannot think of anything more important and in the public interest. I do not believe that there is a problem in proving a public benefit. I would certainly commend the amendment, and thank the shadow Minister for his support.

Mrs SHELDON: We have discussed these amendments in some detail and still have some very serious concerns about them. I point out to the member for Gladstone that all the way through the Golden Casket Agents Association has been consulted about this Bill. I think that there has been more consultation on this Bill than any previous Government has undertaken on such an issue. The members of the association agree with all the provisions of the Bill. Obviously, the Golden Casket Agents Association comprises a heck of a lot of newsagents, because they form the bulk of the agents. That association would certainly have some trouble with some of the propositions that have been put forth in these two amendments.

I will deal firstly with amending clause 79(1)(a), which refers to a small business owned and operated by the person. A lot of those businesses are not owned and operated by the same people. They may be owned by the same people, but other people may be operating them. So that amendment would take

out a lot of people who are currently running newsagencies. That is one of our concerns.

In relation to the second amendment to clause 79, we have a concern about (b), which states "that is managed personally or by the owner or directors". Our concern is for the same reason, that is, we are going to be cutting out people who have licences currently. That is a problem with both the amendments to clause 79.

I also have a concern with (c), which states that a small business means a business undertaking that is not a subsidiary. My understanding is that many newsagents operate pretty big companies and, indeed, operate subsidiary companies that run their newsagencies. A lot of them have other interests; they have their own subsidiaries and those subsidiaries run the newsagencies. So again, through this amendment, newsagents are being limited, and also there is the possibility of taking people out of the field who are currently in the field. I have had discussions with the CEO of the Golden Casket about these issues.

I also have concerns about putting a number in the legislation. I know why the Opposition and the member for Gladstone are proposing to put a number in the legislation—be it 20, 50 or whatever—but what happens when a newsagent who operates a number of newsagencies under the one company exceeds the number of 50 employees? If that newsagent has 51 employees, what happens? Do we take away that newsagent's licence? That is why prescribing numbers such as this number into legislation creates problems.

The member for Gladstone brought up the issue of the National Competition Policy public benefit test. However, that has to be put down and shown. It has to be agreed to not only by the Federal National Competition Council but also by our own authority which we put in place so that we would have more control over State issues. For that reason, I have difficulties with the amendment. I do not think that I could accept the amendment as put forward by the member for Gladstone.

Mr HAMILL: These matters are absolutely vital to the business viability of many small businesses in Queensland. The Treasurer's comments contained nothing about what she thought she might include in the regulations which would give the sort of surety that we are seeking for those who currently operate as agents of the Golden Casket. There are real concerns out there among newsagents in particular that their businesses are extraordinarily vulnerable to a policy decision by the Government that would wipe away a significant part of their livelihoods.

By virtue of these amendments, we are seeking to safeguard those small businesses and to safeguard the jobs that are within those small businesses. Otherwise, we are simply saying, "Trust me". We do not want to see any of the agencies that currently operate find themselves cast aside because of a new policy of a Government that regards the issuing of a lottery licence as a mechanism to generate significant funds for Government and to start new businesses in the wider community that are perhaps owned by one or other of the magnates in the gaming industry in Australia. That is really where our concern with the Treasurer's proposition lies.

As I said before, I can understand some of the Treasurer's concerns about the amendments, but I have to say that the propositions put forward by the member for Gladstone, at least as amended by me, make a lot of good sense and would give the comfort that small-business operators crave. We come to the point of asking: what is a small business? In this context, a small business is generally a family-run enterprise which often employs members of the family and a few other casual or part-time employees. The vast majority of agents for the Golden Casket are newsagencies and some small-mixed businesses that operate a bit of news agency on the side and may sell a few Scratch-Its as well. They are really concerned that their may lose their agencies or that they will not have the influence to continue as agencies if the arrangements in the industry are dramatically, and probably irreversibly, changed. Those are the people whom we are trying to protect by way of these amendments.

As I said before, my view on the National Competition Policy is a fairly simple one. I believe in competition and I believe that we need to strive for efficiencies because they will benefit our community and economy overall. However, while some efficiencies are worth having, the cost of others is such that they are not worth having.

Mrs Sheldon: The public benefit test.

Mr HAMILL: That is what I am saying. That is why, when we debated the national competition legislation, I argued as strongly as I did about having a strong public benefit test. I argued that the test should not benefit only the public interest of Australia as a whole, but that it should be a test whereby we could take into consideration what is in the interests of the people of Rockhampton or Longreach or Brisbane. Theirs will not always be the same interests as those of the people of Campbelltown or Geelong or Perth. That is the thing that the Government has to get through its head in relation to competition policy.

Mrs Sheldon: We've been trying to get it through your head since this started.

Mr HAMILL: I take the Treasurer's intemperate interjection.

Mrs Sheldon: You've been intemperate yourself.

Mr HAMILL: I have been trying to debate this matter calmly with the Treasurer. I know that she does get a little excited and she likes to snap away at the heels of other speakers when they say things with which she does not necessarily agree.

The documents that the former Government signed in relation to the National Competition Policy were full of the very safeguards that I inserted into the Queensland competition authority legislation and which the Treasurer knew that she needed to accept, and I was pleased that she did. I said that at the time.

Time expired.

Mr HARPER: We need to step back a pace or two. I would like both the member for Gladstone and

the Opposition spokesman to consider what this Bill is about. When looking at these amendments, we really need to think about that because they deal with things that the Bill really does not deal with. The guarantees that are being asked for do not currently exist. If this Bill had not been introduced, the issue would not have been raised in the Chamber at this time and there would have been no opportunity to make those sorts of guarantees. It is important to realise that.

It is also important that people are concerned about this issue. As the Treasurer, other Government speakers and I have stated, the Government is well and truly aware of the situation faced by and is well and truly supportive of those small-business people who, in this case, happen to sell casket tickets and Lotto tickets, be they newsagents or others. Some towns have no newsagents and another small-business will sell the tickets. We are very supportive of those small-business people.

However, the Bill that we are debating today and which the crux of these amendments deals with is about taking the regulatory functions away from the Golden Casket office and putting them into the Office of Gaming Regulation, along with the rest of the State's gambling, so that there cannot be any conflicting interests in the Golden Casket office. Then the Golden Casket office will be corporatised to allow it to operate in an efficient manner in terms of taxes, dividends and so on. It will be quite clear as to what is expected of it. A program will be initiated every year to outline what is to be done and the responsible shareholding Ministers will sign that off. That is what this Bill is about.

The Bill is not about opening up the market to every identity, organisation or large chain store. Nowhere in the Bill does it say that. Nowhere does the Bill change who can and cannot sell casket tickets. While I fully agree with the sentiments of the member for Gladstone about supporting small business, the amendments are really restrictive. It has been stated already that if these amendments are passed—either or both of the amendments of the member for Gladstone with the changes proposed by the Opposition and agreed to by the member for Gladstone—there will be cases where the current operators will lose their licences. I am sure that that is not acceptable to this Committee. It is certainly not acceptable to the people involved or to the two bodies representing them.

We really need to look at what the Bill is about. It is about something entirely different from the amendments. Over and over again we have stated our commitment to supporting small business, as has the Opposition.

Progress reported.

SITTING HOURS; ORDER OF BUSINESS

Sessional Order

Mr FITZGERALD (Lockyer—Leader of Government Business) (5.58 p.m.), by leave, without notice: I move—

"That notwithstanding anything contained in the Standing and Sessional Orders, for this day's sitting, the House will continue to meet past 7.30 pm.

Private Members' motions will be debated between 6 and 7 pm.

The House will then break for dinner and resume its sitting at 8.30 pm.

Government Business will take precedence for the remainder of the day's sitting, except for a 30–minute adjournment debate."

Motion agreed to.

WOMEN'S CRISIS CENTRE FUNDING

Mrs EDMOND (Mount Coot-tha) (5.59 p.m.): I move—

"That this Parliament—

(a) condemns the Treasurer and Minister for Women's Affairs and the Minister for Health for slashing funding to individual women's rape, crisis and sexual assault centres leading to closures and loss of services; and

(b) calls on the Government to revise that decision and again provide funding so that these victims of violence, sexual assault and rape will be able to access both acute and long term care, assistance and counselling."

These latest attacks on women's health services have caused outrage from one end of Queensland to the other. They have come as part of a package of attacks by the Health Minister on the right of women to have responsibility for and control of their own bodies. This comes on top of Federal cuts to family planning services, the State defunding of Children by Choice pregnancy counselling services and even, believe it or not, the defunding of family birthing centres. It is clear that the Minister for Health believes that Queensland women are not able and should not be allowed to have input into health services for women; that the Minister will tell them what is good for them.

In common with most members of Parliament, I have had many calls from women affected by these cuts—women who do not understand how they can be dismissed so easily. Rape is simply unlike any other crime. It cannot be fixed by a simple insurance payout. I speak of women, because well over 90% of rape victims are women and over 99% of perpetrators are male. Rape takes what should be an act of joy and love and turns it into an act of violence and aggression. We often hear the victims of burglary say how they feel personally violated by the intrusion into their home, personal lives and possessions. They feel more violated by that intrusion than by the theft of their possessions.

But how much more personally violating is the intrusion into one's own body? It leaves the victim feeling both physically and psychologically violated. Many women speak of feelings of abhorrence,

uncleanliness, shame, fear of sexual acts and emotions and of guilt. Why guilt? Because we still must fight the belief that somehow women who are raped asked for it. That seems to be the belief of the Minister for Health, too. What other rationale could be used to defund support services for these women and tell them that they can call a pager number?

Most people understand the need for acute health and support and forensic services for women who have been violently battered and raped. However, it seems that unless women have broken arms, black eyes and knife marks, there are still many in our community—indeed, some sit opposite—who simply do not believe that they are rape victims. When dealing with this issue, the Minister should be made aware that only 10% to 15% of rape victims actually report the crime to the police. That is for two reasons. Most women actually know their rapist. About 50% of rapes occur within the family. Many women still feel that the court process is too traumatic. A "secondary rape" is how it is frequently described, and with acquittal rates of 60% largely because of a lack of witnesses it just does not seem worth the added trauma.

Most women seeking counselling fall into that category of women who have not reported the crime to the police because the offender was someone they knew and because they did not want the added trauma. Many turned to counselling months or years after the crime. Often their partners also need help in handling what has happened. It is also recognised nationally that higher socioeconomic groups are more likely to report rape to police than others. Typically, it is the most disadvantaged women who are the least likely to report rape and also the most likely to experience this trauma. Therefore, it should not be a surprise that existing rape crisis centres are placed in areas that reflect these trends.

The Minister continues to make claims that overall services have increased, but that is contrary to the clear message that members are hearing, as the list of centres with closures and cuts to services continues to come in. These cuts are not matched by the small increase of a handful of sexual assault workers, including one additional Aboriginal sexual assault worker in Logan—and I am pleased about that—and, against all of the recommendations, a number of single sexual assault workers attached to other health centres in Emerald, Gladstone and perhaps Longreach.

As we have come to expect, the Minister is fudging his figures. In the 1994-95 Budget, over $10m was allocated for a whole range of Government programs in the areas of sexual assault, rape and domestic violence, with separate funding for services that the Minister now seems to be trying to squeeze out of the Prevention of Violence Against Women Program. In 1994-95, $4.2m alone was allocated to the Prevention of Violence Against Women Program. According to the Women's Affairs Budget Outlook, in 1997-98 the figure allocated to the Prevention of Violence Against Women Program is still $4.2m. There has been no increase since 1994-95. There has been no increase for the growth of services, for the CPI and for what the Health Minister has called that greedy and callous SACS Award to pay workers in this difficult area a reasonable—not a high, not even a middling—wage. Effectively, there has been a substantial cut, therefore, in real terms of about 15%—at least over his administration—in what was fairly basic funding. I table the relevant pages of the Budget documents.

In real terms, I am advised that with other grants the funding available was closer to $5.7m, which has now been cut to $4.2m—an actual cut of $1.5m, with the SACS Award costing another $400,000. The majority of the centres across the State have been cut by $20,000 to $30,000. The Minister also claims that those cuts are the result of a review of sexual assault services across the State started by Labor. Again, that is not true.

While that report recommended that there needed to be an increase in services in rural and regional areas and a maintenance of community-based rather than hospital-based services, except for forensic and medical needs, it did not suggest cutting existing services. It did not recommend cutting the 1800 phone number that made support and counselling available to all women in Queensland, even those in the most rural and remote areas—those who will be most disadvantaged by this Government's callous action. It actually recommended such a crisis line. It even called for expressions of interest for a crisis line, and now the Minister tells them that he knows best and to call a pager number.

The other claims are that the changed service is a response to police statistics. I have already spoken about how unreliable that can be in terms of rape and sexual assault. Such statistics are simply not a good indicator, even when factoring in the 80% to 90% of victims who do not report offences. But even that is not accurate. For example, the Sunshine Coast had an increase in sexual assault and rape crimes of about 50%. However, we saw the rape crisis centre funding in that area drop by nearly 60%, halving the work force and removing the ability to provide acute 24-hour care. This is being repeated across the State.

The number of workers indicated by Queensland Health as being needed as a result of the police statistics is far greater than those being funded. I will also table that information for the benefit of the Minister, who does not seem to have a clue what is going on and what the advice is from his department. The Minister cannot even argue this case on economic grounds, because community-based rape crisis services have proven to be cheap, effective ways of providing women with both acute advice and ongoing support and counselling that can reduce the possibility of longer term and more severe psychiatric problems, such as depression, which so easily follow such a traumatic incident.

As I indicated earlier, this is yet another attack on the health needs of the women of Queensland by a Minister who is determined to force his narrow-minded concepts on all Queensland women. He has tried to justify this by fudging budget figures, reports and statistics, but he cannot fudge the outrage of the women of Queensland at his actions. No woman

deserves to be raped. No woman who is raped or sexually assaulted deserves to be denied care and support, and it is simply not acceptable to say that the services to some women victims must be stopped so that other women may be supported. That adds another tier of guilt to women who already must cope with guilt feelings that they have somehow been to blame for what has happened to them. Clearly, that is what this Minister intends, and I say on behalf of all Queensland women: shame, Minister, shame.

Ms SPENCE (Mount Gravatt) (6.08 p.m.): It is my pleasure to second the motion moved by the shadow Minister for Health this evening. Queensland women are now asking themselves what this Minister representing Women's Affairs and her Office of Women's Affairs are doing for women in this State. Is she ensuring that money for services important to women, such as child care, sexual assault counselling, pregnancy counselling and domestic violence services, is maintained? She is not. No doubt women initially thought that the Treasurer, as the Minister for Women's Affairs, would herald a new era of funding guarantees for women's services. They were wrong.

I wish to have it recorded in Hansard that the Treasurer, Mrs Sheldon, is not present in the Chamber to listen to this debate tonight. This Treasurer has as much influence over the spending decisions of her Ministers as she has over their outspoken and anti-women public comments. She certainly has no influence over her renegade Health Minister, who wants to put an end to abortion, criminalise prostitution and starve sexual assault services of essential funding. Obviously, this Health Minister does not consult Mrs Sheldon or the Office of Women's Affairs before going public on issues concerning women. No doubt he is a public embarrassment to the Treasurer. However, as the Deputy Premier, Mrs Sheldon ought to be able to discipline the Minister.

In this debate tonight, the women of the Labor Party will detail the funding cuts to women's rape crisis and sexual assault services. From Ipswich to the Sunshine Coast, from Brisbane to Mackay and Cairns, these services have been cut. The Minister for Health has done this, but that is not surprising. Here is a Minister with no understanding or compassion for these issues. What is disappointing is that the Treasurer, the Minister representing women, says nothing. She will not even meet with the groups affected by her cuts. Her unwillingness to meet with women's organisations involved in service provision is legendary in this State. Word has it around town that people know that their only chance of meeting Joan is to go to an opening night in Brisbane.

We saw in the Estimates hearings a stunning example of the lack of coordination and the dearth of common purpose amongst these Government Ministers. The Government's right hand never knows what its left hand is doing. No wonder its Ministers are all fighting amongst themselves. During the Estimates hearings we saw Minister Horan call the SACS Award an example of the greed and callousness of the union movement. In the Treasurer's Women's Budget Statement, she said—

> "Assistance will be provided to funded agencies across the State, including those in rural communities. The SACS Award will benefit women employed by funded community based agencies and women and girls who are clients of these organisations."

This disagreement is not just about rhetoric. Mr Horan has not been given extra funding to cover the SACS Award. The introduction of the SACS Award requires an additional $400,000 to the Prevention of Violence Against Women Program. The budget allocation for this program has not been increased to provide for this new expense. It is estimated that these costs in reals terms equate to 10 workers. Services were required to find these funds from within existing budgets in the 1996-97 period. In addition, the 1997 Budget did not allow for the $10 per week pay rise or severance pay, both of which are requirements of the award. The Treasurer has allocated funds to support the SACS Award implementation, yet Mr Horan has not accessed them. His apparent policy of withholding access to this resource has implications for all health services influenced by the award. The lack of support for this award, which covers what is predominantly a female-dominated industry, has broad implications for women's health in Queensland. We believe that in the previous financial year the Prevention of Violence Against Women Program operated on accumulated funds of $5.7m. This year the actual expenditure pool is depleted and the program is now required to operate on $4.2m—a significantly lesser figure—and support increased expenses associated with the award. This demonstrates a real loss of approximately $1.5m in actual available revenue to support the program.

The squabble between these two Ministers has gone beyond personalities and politics. It is now hurting Queensland women. Where do these Liberal/National politicians get off? In the last 12 months we have seen the closure of family planning clinics, birthing centres, sexual assault services, the defunding of Children by Choice and cuts to child care. The Government does not want women to have access to contraception; it does not want them to have abortions; it does not want them to access child care. Obviously this Government wants women at home with a houseful of kids. That is the Government's agenda. It is a conservative agenda that dominates this country's decision making.

Time expired.

Hon. M. J. HORAN (Toowoomba South—Minister for Health) (6.13 p.m.): I move the following amendment—

> "All words after 'this'—
>
> omit, insert—
>
> 'House support measures directed to reducing the impact of rape and sexual assault on women, where these measures and services are—
>
> - based on evidence of need from crime statistics and other data;

- funded through expressions of interest sought through advertisement;
- selected with criteria set out in specifications; and
- fairly geographically distributed;

and further note that—

- the Review of Prevention of Violence Against Women Program, which found it to be poorly planned, managed and defective, was commissioned by Minister Beattie, and
- the implementation of the review by Minister Horan, which is consistent with the review—
    - has provided coverage to many areas which were unfairly disadvantaged; and
    - includes establishing four new services in Cape York, Emerald, Gladstone and Logan, enhancing GMO services in Ipswich, Logan and Townsville, increasing funding to ten existing services, and maintaining the overall level of funding.'."

I want to talk tonight about the extension of services that the coalition Government has provided under the Prevention of Violence Against Women Program. Full funding has been maintained—the $4.2m plus $600,000 which has seen a major extension of services, particularly through the provision of GMO services in north Queensland, Logan, Ipswich, Beenleigh and throughout the State.

Under the previous Labor Government, a review was ordered by the previous Health Minister, Mr Beattie. That review demonstrated quite clearly the serious problems that existed in the Prevention of Violence Against Women Program—the lack of accountability, the lack of direction and the lack of process. We have brought about a system that extends the services available to those women in Queensland who had nothing—who did not have a service. We have brought about an extension of this service to those women who it was recommended under that program should have access to this special service—indigenous women, non-English-speaking women, women in rural areas, women in mining towns and young women. I have not heard one word from the Opposition about the new services that we have provided, about all the services that received an increase, about the young women's services that received an increase, about the migrant women's service or about the indigenous service.

Mrs Edmond interjected.

Mr SPEAKER: Order! The member for Mount Coot-tha must not interject from other than her own seat.

Mr HORAN: Members opposite do not care. They do not want this service to be extended. They do not want it to go to Emerald, to Gladstone, to the cape or to the Torres Strait. They do not want indigenous women to have a Statewide service. They want to see all the services that we are going to open closed down and see the money spread around the few people who currently have access to it.

Once again, we have been the ones who have cleaned up the mess that Labor left. Under Labor there was no leadership and no direction for these particular services. I have taken the time to speak personally with women's groups. I have taken the time to talk to rape victims. As a result of that, we have allocated $600,000 on top of the $4.2m to put in place good, practical, caring systems such as GMOs and rosters of female general practitioners at places such as the Gold Coast, Townsville and Ipswich. These measures have helped women at the time when they are most vulnerable and when they desperately need support. All we hear from Opposition members is bleating and complaining about their not wanting us to provide these services.

We now have a system that is open and accountable, a system based on public advertisement, a system based on indices on where the actual sexual assaults have occurred around the State, with an allowance for the fact that women often do not report offences. All of that has been factored in. Three panels comprising eight women and one male have assessed that information so that we now have a fair and just system. We now have a system based on a 24-hour acute response. All of the services now provide that level of response. Previously only 13 services provided an acute response. All of them now will be required to provide an acute response. The member for Mount Coot-tha knows what the acute response involves: the provision of beepers and phones and, in rural areas where there are limited numbers of staff, victims can be directed to the other sorts of services that we are putting in place—the GMOs, the rosters of female GPs and so forth. This is a caring, extended system which makes the maximum use of the available funding to provide services to all women around this State.

It is disgraceful that Opposition members want to deny services to all the women of this State, hiding as they do under their mantle of care. They really do not care about those women for whom we are making funding available. They do not care about the extension of services. They do not care about the special needs. Once again, we are the ones who are cleaning up the Labor mess and providing much-needed services.

Until 16 July we are in a process of review as we go through the change to the structured grants. I have given specific guarantees to a couple of organisations that I will examine whether we can rejig the figures to provide for two particular areas of Queensland that I believe are not adequately covered. I have also given an open guarantee to the BRICC that I will look at the funding for the 24-hour phone service. I believe that it is an important service. If we funded that on the basis of the tender, it would wipe out four or five of these other services around the State. I intend to look elsewhere outside this scheme to secure the funds because I believe in that service. I think it is important. We will back up the 1800 numbers that we currently have in three

parts of Queensland and the 24-hour acute service we are providing.

In summary, the women of Queensland are now better off. We have an open and accountable scheme that is providing services all around the State, not just in certain locations, and is looking after indigenous women, non-English-speaking women, young women and women with disabilities. Once again, the coalition is getting back to basics. It is taking a practical approach and delivering real, caring services.

Time expired.

Ms WARWICK (Barron River) (6.18 p.m.): I rise to second the amendment moved by the Minister for Health. It is appropriate in this context to draw the attention of the House to the strong support that the Deputy Premier and Treasurer has given the women of Queensland in her role as the Minister responsible for women's affairs. Since long before assuming the portfolio responsibility, she has been a strong advocate for women in this State and has earned their respect for her practical approach to their needs and concerns.

It is also incumbent upon me to contrast that performance with the shambles on the other side of the House in relation to this vital area of women's affairs. This is due largely to the abject failure by the Opposition spokesperson on women's affairs, the member for Mount Gravatt, to execute anything approaching responsibility for the women of this State. In fact, it would perhaps be helpful if the Opposition Leader could confirm to the House that the member for Mount Gravatt still is the spokesperson on women's affairs, as it is increasingly evident that her portfolio responsibilities have been taken over by other members of the Opposition. I ask for this confirmation because if she still was the Opposition spokesperson on women's affairs, would it not have been reasonable for her to have put the question about the Prevention of Violence Against Women Program to the Deputy Premier yesterday? Would it not be reasonable to assume that she might have been conducting the scurrilous media campaign which is being run on this subject by the Opposition, instead of the hatchet job which is being done by the spokesperson on Health? I ask the Leader of the Opposition: who is running what in the Opposition?

It is well known that both the member for South Brisbane and the member for Mount Coot-tha have had to carry women's affairs issues for some time because the spokesperson cannot think up a question, let alone any answers. First, the member for South Brisbane had to be brought in to try to regain some credibility in the community sector when the member for Mount Gravatt was a total flop. Then the member for Mount Coot-tha decided to have a go for a while. I should point out that neither of these stand-ins is displaying any understanding of the demands of the women's portfolio.

The member for Mount Coot-tha, for example, is trying to mislead the media this week on the subject of funding under the Prevention of Violence Against Women Program and has talked of the role of the Queensland Office of the Status of Women. As the Deputy Premier pointed out yesterday in this place, there is no such body in Queensland. There is an Office of the Status of Women in Canberra, however. Perhaps that is what she meant. How reliable is the information we get from the member for Mount Coot-tha when she is standing in for the hapless Opposition spokesperson if she cannot actually grasp the name of the agency which runs women's affairs in Queensland? I am sure everyone else in this House knows, because executive director——

Mrs EDMOND: I rise to a point of order. I object to that. What the member is saying is untrue and offensive. I have checked Hansard and I asked for the Minister responsible for women's affairs, which is what the Minister calls herself.

Mr SPEAKER: Order! There is no point of order.

Ms WARWICK: I am sure that everyone else in this House knows because the executive director, Meredith Jackson, does not let anyone forget that the agency is the Office of Women's Affairs, which is regarded very highly indeed by the women of Queensland, as indeed is the Minister responsible for women's affairs—a bit too highly regarded for the Opposition's comfort, no doubt.

How in touch with the community is the member who has apparently not heard the news that every service funded by the Government needs controls and guidelines attached to it so that taxpayers have some idea of what they are getting for their money? The tragedy with this is that the losers in this whole scenario of failure and farce on the part of the Opposition are Queensland women. Instead of being made aware of the facts in relation to the Prevention of Violence Against Women Program and a whole host of other issues, they are being treated to a desperate misinformation campaign about sexual assault and rape crisis services.

This issue of sexual assault and rape crisis services is of great importance to women, who will see that this Government is handling it with intelligence and fairness. It is far too important to be in the hands of various Opposition spokespersons who do not have a clue about what is going on in women's affairs. If honourable members want further evidence of that, I refer them to the various media reports that have resulted from their ridiculous campaign to somehow assign blame to a Government for handling the program correctly, indeed handling it in a way that just a year or two ago it fully supported—that is another backflip from the Beattie Opposition.

I refer the House to the review of the program, a review commissioned by no less a person than the current Opposition Leader when he was Health Minister in the dying days of the Goss Government. As honourable members might expect from the current Opposition Leader, he condemned the former Goss administration's handling of the Prevention of Violence Against Women Program. That was quite right; as the review clearly shows, the program was in a mess.

Time expired.

Mrs CUNNINGHAM (Gladstone) (6.23 p.m.): As a number of speakers said earlier, particularly the shadow Minister, no woman deserves to be raped and no woman deserves to be denied support. That is an extremely true and very accurate statement. It is very difficult for women who have not suffered that type of invasion to fully understand the desperation that a victim feels. However, perhaps we have a closer understanding because we are of the same gender. It is a difficult issue in that—as, again, the shadow Minister has already outlined—not all of the incidents are reported. It is one of those silent crimes which is only ever found out a long time later because the woman has felt too embarrassed, too ashamed, too dirty or something else—something that she does not deserve—to go and get help at the time.

Like most of the women in this place and in this State, we want to see services retained. As soon as notice of the motion was given this morning, I sought some information as to the changes to the funding of support centres and the reasons for those changes. The Minister for Health has already mentioned that the genesis of the review occurred when the current Leader of the Opposition, Mr Peter Beattie, was Health Minister. He had some concerns about the actual functioning of the fund—the accountability mechanisms and the set-up of it. He initiated a review by the Consultancy Bureau.

I have not seen the whole document, although I have seen a summary of it, but the result of that review was that there were concerns about fundamentals, such as the absence of soundly developed goals and objectives, rapid increases in funding for the program over a short period of time—I do not have a problem with rapid increases in funding, but they must be trailed and accountable—defects in service agreements, lack of clarity in delineation of policy, high staff turnover and a few other issues that have been raised. That demanded a response and I think that, if the Minister got a report that was critical and failed to take corrective action, we would have a different debate here in this House; it would be no less critical of the current Minister for Health if he failed to respond to such a report.

I asked the Minister which centres had lost the funding because I expected that there were going to be quite a number of centres which had ceased to be funded. There was one which had had funding stopped totally—that was in Mackay—because there was a duplication of services; there were two services in Mackay. One had the funding removed and the other service is still funded. There were 10 services which received increased funding, four services have started up and eight have suffered reduced funding—and some of which is significant, from $20,000 right up to $150,000. I am advised by the Minister that some of those folk have been in to seek a review of the drop in funding. I hope that the Minister will advise the House of the outcome.

One of the new services is in my electorate. I was pleased to have that confirmed only today. It will work out of the women's health centre. The folk there do an excellent job. They cover a broad range of issues, but they will deal with——

Mrs Edmond: That is against the recommendations.

Mrs CUNNINGHAM: I do not know all of the recommendations. I know the centre in Gladstone, I know the framework that it works under and I know the people who work there. I believe that they do an excellent job. They will support women in need and in crisis, so I am pleased with the funding.

I was pleased to see that the funding will have a very defined criteria. It will be based on population and crime reports. I was pleased to see that it will also include a factor for unreported crime, because that recognises the very real concern of the shadow Minister, and I am sure other women here, that a lot of these types of crimes are not reported. I was pleased to see that, included in the criteria, was a contingency allocation for unreported crime.

I have read the amendment and I have read the original motion, but I am going to support the amendment. I do ask that the Minister keep the Parliament advised on the issue of rape crisis. It is a major issue. It is an issue that affects not only the woman but also it affects her family, her societal interaction and the ability of her and her family to be able to function normally, healthily and wholesomely in the community. I am pleased that the funding has not been reduced as I initially feared. I am pleased that there are some new services.

Time expired.

Mrs BIRD (Whitsunday) (6.28 p.m.): I have to express my disappointment that the Treasurer and the spokesperson for women's affairs is neither in the Chamber nor even speaking tonight; she is not on the speaking list and she is not even here to listen to the debate. Three years ago almost to the day I officially opened the Mackay women's support service. It was very welcomed by the women of Sarina in particular, Mackay, the Whitsundays and indeed the hinterland. Women were comforted by the fact that at long last, despite much pooh-poohing by many uninformed, mainly conservative people, there was somewhere in acceptable surroundings where they could seek comfort, counselling and security against sexual abuse. The service received $121,000 in the 1996-97 year. So it is interesting and disappointing to note that on 24 June the service then received correspondence from Ms Batchler saying—

> "... we regret to advise that your expression of interest has been unsuccessful and that therefore no further ... funds will be available for your organisation after 30 June 1997."

That is disappointing. However, what is more disappointing is that the Minister then went on radio in Mackay and said that no services had been closed, some services had been cut, but there had been a reallocation of funds and some services may be a little limited.

Mr Horan: I didn't say that. I said that Mackay got extra money.

Mrs BIRD: The Minister should put his tongue between his teeth and keep it there. He has had his say.

So imagine our shock that this sexual assault counselling service is about to close because its funding has been withdrawn. Why would any forward-thinking Government cease to pay money—a small amount: $120,000—to a service which is worth much, much more to our community? The service has proved to be a tremendous asset to women from the whole region, not just Mackay. In its editorial on 2 July, the Daily Mercury stated that "Mackay women will be the big losers". That is not entirely true, because it is the women of Mirani, Mackay, part of the southern part of the Whitsunday electorate and the hinterland who will be the losers. I am shocked that the member for Mirani has not accepted any responsibility for this decision. Another article that appeared on 4 July headed "Government turns deaf ear to women" told of sexually abused women in the hinterland who were screaming for support but not getting help because of the lack of State Government funding.

The incidence of sexual abuse and assault in mining areas and remote areas, including the island resorts in the Whitsundays, is high. In the past three years it has left counsellors overworked and all counselling organisations overloaded. We need more funding, not fewer workers in the region. The regional support service needs more workers out in the field. It is determined to keep going. However, it will be forced to do volunteer counselling in people's own homes and will be very much weakened by the loss of its psychologist and part-time worker.

Gender-based violence is an offence that violates every human right. For decades we in Mackay have struggled to get women to come forward and report the crime and get much-needed counselling. Despite that, under 10% of these crimes are reported and those women presented for treatment. There are women in every street of any town in this State who have at some time in their lives been sexually assaulted, physically or psychologically, or sexually harassed. As a result, sexual assault services are very much dealing with a small percentage of services. These services have very many demanding facets. At this point centres have provided only counselling, education, security and protection. Despite their greatest efforts, many facets remain untouched. We need more experienced professional people in the field if we are to make even the most minor advance in decreasing the numbers of untreated victims. Crisis counselling is the best that can be coped with under the present resource counselling.

As a former counsellor, I recognise the need and necessity for prompt multi-interview procedures and the need for prompt transfer to appropriate health services, including immediate caring access attention to post-forensic personal needs, such as showering and toileting. These things require resources. In regional Queensland this is not happening and has not happened. There is little doubt that, in my experience, this is yet another thinly veiled——

Time expired.

Miss SIMPSON (Maroochydore) (6.33 p.m.): In past years there has been a shocking lack of coverage of critical rape, crisis and sexual assault services in this State. These are services that we wish were not necessary. Tragically, they are. Attacks on women happen regardless of women's backgrounds. Sexual assault is a social problem whereby many suffer terrible guilt for something they never asked for. I want to make it clear that the Health Minister has not cut total funding for the services across the State. In fact, new services have been funded under new, more accountable and professional guidelines that recognise that services across the State needed to be a hell of a lot better than they were.

Some towns and districts had nothing. In other areas there were duplications. Under the Minister's leadership, there are now communities, such as Emerald, Gladstone, Logan—which has a new indigenous women's service—and the Torres Strait that will have services. Women need practical crisis services, 24-hour services, with people on pagers to respond to their needs following rape and sexual assault. New services which recognise Aboriginal and Islander women, young women, disabled women and non-English-speaking women have been introduced.

With regard to the Sunshine Coast Women's Crisis Service—funding is not final, and I am confident that we will see another funding allocation to recognise the need for coverage of Gympie in its service outreach. I have taken up this matter with the Minister, and only this week he had a very positive meeting with that group. I also acknowledge the hard work that these women do in providing counselling services to women in need.

I understand that there is an appeal time for a review of these allocations, which is only practical. I also want to recognise that there are some very positive things happening with regard to having rosters of female doctors available to do Government Medical Officer work. That is very crucial when women report a sexual assault to police. The Sunshine Coast GP division has been working with the director of GMO services for Queensland, and training will be happening with female GPs to provide this important service to help ease the trauma of sexual assault and to help women take legal action against the perpetrators. This has been happening in other centres around Queensland. I acknowledge the involvement of Judy Gamin, the member for Burleigh, with female Gold Coast GPs. A roster system has been set up and is working together with the State GMO.

I want to talk more about the extension of GMO services. When people are presenting to police and wanting their issues to be followed up and the necessary forensic tests undertaken, it is critical that they are not sitting around for unnecessarily long periods. Because of the extra trauma and stress associated with these cases, we have to have GMOs available. This has been a real problem in the past. Ongoing programs are in place to try to address this problem. Recently, a director of GMO services for

Queensland was appointed. He is responsible for the administration, recruitment, education and training of full-time and casual GMOs. For example, on the Sunshine Coast those people might not be full-time GMOs. However, they can be trained in those techniques so that they can still do the court work and the necessary forensic work but not be called upon to handle other matters that have nothing to do with sexual assault. I commend the work that has been done in that regard, especially by the Sunshine Coast GP division.

There have also been recent appointments of a deputy director of GMO services and an additional full-time GMO to cover the Logan, Beenleigh and Ipswich areas. As well, two new full-time GMO positions will service the newly established Townsville GMO office. This service will cover the far-north Queensland area and will provide specialist support for forensic and GMO services and an outreach service to rural and remote Queensland.

Recently, funding was provided for the establishment of a sexual assault roster for medical practitioners in the Townsville area. A review of the current GMO fee schedule is also being undertaken. This is an issue that has to be dealt with if we are to attract and keep people who want to work and help in this sector. Negotiations are currently under way between Queensland Health, the Department of Justice and the Queensland Police Service to review and revamp the current schedule of fees payable to GMOs. I hope that some of our judiciary will also allow more teleconferencing so that we do not have people sitting around unnecessarily outside courts and then finding that they are not needed. There must be ways in which we can encourage our judiciary to make the system more workable.

Time expired.

Mrs ROSE (Currumbin) (6.39 p.m.): I rise to support the motion moved by the shadow Minister for Health which condemns the Treasurer and Minister responsible for Women's Affairs and the Minister for Health for slashing funding to individual women's rape crisis and sexual assault centres. I noted the comment by the member for Maroochydore that a 24-hour GP roster system is operating on the coast. That is true. They leave their pager numbers with the hospital and police. Staff have their pagers on 24 hours a day to provide an immediate phone response service and to go out and see any recent rape victims. However, what the member failed to say was that the future of the Gold Coast sexual assault support service hangs in the balance. Why? Because not only did the Government cut nearly $20,000 from its overall budget, it also did not provide any funding component for the service to pay rent.

Until now, the service has been operating out of the former Department of Housing building in Southport. It has been able to occupy that building—very happily—rent free. The service is very grateful that it has been able to use that building. However, the Health Department has bought that building for use by the Gold Coast Hospital, and this has left the service having to find new premises for which it is going to have to pay commercial rents. Did the department take that into account when it decided what the funding offer should be? No, it used the operating budget from last year with no rent component. It cut that by nearly $20,000 at a time when the service desperately needed a boost in funding to meet increased demands.

So the Gold Coast service has been offered $54,035 to operate for the next 12 months. That amount is barely sufficient to pay rent, let alone to pay any operational costs. That is one of the services that is asking for a review. At the very least, it needs additional funding of $70,000 on top of the $54,000 to keep the service in accommodation and operational. It is currently rewriting part of its tender for an increase in the funding offer and will resubmit it next week. I appeal to the Health Minister and the Treasurer to approve the funding needed to keep the Gold Coast service operational. I call on all Gold Coast members, particularly the member for Burleigh—and I can hardly wait to hear what she has to say—to put their support behind the Gold Coast service and to impress upon their Ministers in the Government the need for adequate funding to keep the service operational.

The formula that the department uses to determine the funding for an area is poor. It is unworkable as it understates the real needs and demands in a region. The formula is based on police statistics that relate to the proportion of women who are reporting rapes or sexual assaults. However, as the Minister said, a lot of women do not report. I point out to the Minister that 70% of women do not report because of fear of the police and the legal process. The 1995-96 figures show that 7,169 contacts were made with the Gold Coast service, which is an increase of 19% on that of the previous year. The figure for the 1996-97 financial year will undoubtedly reflect another huge increase in the number of contacts.

The Gold Coast Sexual Assault Support Service provides a service for women from Coomera to the border and also covers the hinterland region. The rapid population growth of the Gold Coast region brings with it an ever-increasing demand on the already stretched resources of the Gold Coast service. The Gold Coast is unique in that the demands on the Sexual Assault Support Service increase dramatically at peak holiday periods when the population swells on the Gold Coast.

Members need to be reminded that the Sexual Assault Support Service—SASS—is not a welfare organisation; it is a specialised organisation with professional workers trained to help victims of sexual assault. This Government needs to be reminded about the very vital services that SASS provides to our community. Some of the contacts made with the service in recent weeks include a woman in her mid to late thirties who was raped in her home by a stranger. Another woman answered an advertisement for shared accommodation and was raped when she went to have a look at the premises.

Time expired.

Mrs LAVARCH (Kurwongbah) (6.44 p.m.): I rise to support the motion moved by the shadow Minister for Health. The slashing of funding to

women's rape crisis and sexual assault centres is yet another example of the utter contempt that the Minister for Health has for the women of this State. What makes it even worse and even more outrageous is the silence of the Treasurer and Minister responsible for women's affairs. Do the women of Queensland not deserve her support? Or is it that the women whom she represents do not fall within the statistics of the one in four women who have been violated by sexual assault? I bet the women whom she represents do not have unplanned pregnancies, either.

I can tell honourable members that I will not be silent when it comes to the health and wellbeing of the women of Kurwongbah or the other women of Queensland, especially those whose lives have been shattered by sexual abuse or assault. Over 100 women in the Pine Rivers Shire are now having their personal trauma added to unnecessarily by these funding cuts. Until recently, women within Pine Rivers who had been sexually abused could access ongoing counselling through the Pine Rivers Sexual Assault Service. That service rented a house in Strathpine, which served as a safe house for victims of sexual abuse—as it were, a "man-free zone"—where a counsellor was available throughout the day. The service provided individual and group counselling for up to 12 women at a time. The service opened in June 1995. Its success is marked by the use of that service between January and December 1996. In that time, it provided 80 half-day support and therapeutic group programs with groups of 12 women. It provided 207 one-hour over-the-phone ongoing counselling sessions and 1,202 two-hour face-to-face counselling sessions. To provide that vital service to the women of Pine Rivers the service had two full-time counsellors and one part-time counsellor.

The Minister for Health's funding cuts in that region have jeopardised that service. I understand that the Pine Rivers Sexual Assault Service has been asked to tender for up to $60,000. That is barely enough to pay for one qualified counsellor. All indications are that the Pine Rivers Sexual Assault Service will no longer be able to provide the quality and level of service upon which many women in Pine Rivers rely. Over the past few weeks, I have had increasing contact from women in Pine Rivers stressing the importance of the service and their fear of its loss.

The loss of the service in Pine Rivers will mean that, although the woman abused today will receive acute care from the Royal Women's Hospital and an abused child will have available the services of the Child Protection Unit, women who suffer from prolonged psychological problems and who require ongoing counselling will have to resort to checking themselves into psychiatric wards. Take for example a woman coming to terms with the fact that her father abused her as a child. She cannot call upon the acute service, because it occurred some time ago. She cannot call upon the services of the Child Protection Unit, because she is no longer a child. Where does the Minister suggest that she go to receive the vital help that she needs? In fact, the Minister is saying, "If you were abused as a child, you must report it as a child. If you do not report it until you are an adult, we don't care. We will not provide counselling." Given that most children are too afraid to report cases against their family or, in many cases, simply do not realise that they can, the Minister is wiping his hands of the child victims of sexual abuse.

I want to record tonight a story of a constituent of mine. She recently came to me in a similar situation. She was raped by her father from the age of one up until she was 14. She was raped at least once a week. She is now coming to terms with that and has been receiving counselling from the Pine Rivers Sexual Assault Service. She recounted to me the times when she smelt the aftershave that her father wore and suffered panic attacks. She is now an adult woman and today that smell still causes her to have panic attacks. Luckily at this stage she can travel to the safe house where she knows that she will receive immediate counselling. What would the Minister have her do now? It is obviously her fault! She should have reported the abuse when she was a kid!

Time expired.

Ms BLIGH (South Brisbane) (6.49 p.m.): This evening the Minister has been able to present only one defence for the savage attack that he has made on services to the women of Queensland. His defence is this: there is no cut; all that he has done is rejig the existing dollars to more effectively target the funds. That is too cute by half. He might be able to fool himself and he might be able to fool his own back bench; however, I can tell the Minister that he cannot fool the workers who are losing jobs in those services, he cannot fool the communities who are losing those services, and he cannot fool the women of Queensland.

Mr Horan: What about the $600,000 for the GMO services?

Ms BLIGH: I will get to the GMO program in a minute.

The truth is that, in the face of an expanding need, the Minister is cutting existing services. He is doing more with the same despite increasing demand. No matter how the Minister tries to dress that up, that means cuts in services from the so-called back to basics coalition. It is back to basics, all right—back to the basic 1980s when the coalition gave sexual assault services nothing. It is a fraud being perpetrated by this Government. It has stolen $850m from the electricity industry and it can find $128m to remove the tollway in the Treasurer's electorate, but it cannot find the money to increase the number of sexual assault services and place them where they are needed. It is a disgrace!

This evening, there is no better place to see the full extent of the Minister's fraud than his own amendment to the motion. On behalf of the Opposition, I make it absolutely clear that it will be opposing this amendment. It is nothing more than a web of lies and deceit. In the first instance, it proposes that this House should support the funding of these services based on a number of measures. No Opposition member has suggested that any Government funding should be provided on anything

other than through a legitimate advertisement process, selected with criteria set out in specifications, and fairly geographically distributed. I suggest that the Minister for Health provide that kind of criteria to the Minister for Families.

There is some doubt about how funding rape crisis centres on the basis of crime statistics and other data actually works. However, it is absolutely hopeless to come into this place and suggest that this amendment to the motion in any way substitutes the call to reinstate the funds to those services that have lost them.

The Parliament is being asked to note two further points: firstly, that the review of the Prevention of Violence Against Women Program found it to be poorly planned and managed, and defective. The Minister cannot help himself. He takes every opportunity he gets to condemn, to criticise and to kick the community sector in the guts. It is a despicable attack. Every time the Minister gets the opportunity, the boot goes in.

In his amendment to the motion, as some kind of backhander, the Minister wants us to note that this review was commissioned by Minister Beattie, as he then was. As if there is any problem with commissioning a review! It is typical of this Minister to blame others. It is simply good management to review Government programs from time to time. However, let me make it clear that the Labor Government's review of this program was designed with the aim of improving and expanding services to Queensland women, not slashing them. As Minister, it is his responsibility to implement it.

What has the Minister done? He has taken responsibility for implementing it, and what has he done? His review suggested that there should be 4.6 workers at Gympie and on the Sunshine Coast, and they are getting two. There should be 2.6 workers in Ipswich; it is getting two. There should be 2.7 workers in Toowoomba; it is getting two. On the Minister's own criteria arising out of his own review, there should be 5.8 workers at the Brisbane Rape and Incest Crisis Centre; it is getting three. On the Minister's own criteria, there should be 3.3 workers in Rockhampton; it is getting two.

Let me tell members about the so-called new services. They are nothing more than a web of lies. There is no new service at Cape York. The Minister has cut the funding for Mookai Rosie-Bi-Bayan, which was providing services, and he has cut the Cairns centre, which was providing services to Cape York. There is no new service in Cape York. The Minister should go back to speak to his bureaucrats about that. They have cut the funding. If there is a service, it is a secret service.

To those members of this House who believe that one worker can provide services to rape victims 24 hours a day, 365 days a year, I say to them that I have done that job, and that it cannot be done. We have heard about the GMOs. The GMOs in Townsville got so sick of waiting, they volunteered and placed themselves on a roster.

Time expired.

Mrs GAMIN (Burleigh) (6.59 p.m.): In the brief time available to me, I will respond to the question asked by the member for Currumbin about whether I have been involved with or assisted the Gold Coast Sexual Assault Support Service. I remind honourable members that for many years before the member for Currumbin came into this Parliament, I was supporting, assisting and fighting for sexual assault services on the Gold Coast.

Back in 1989, I was instrumental in setting up the first centre. In those days, it was called the Rape Crisis Centre. The Minister of the day in the National Party Government was Ivan Gibbs. I took to him the deputations from the Gold Coast. Those people are still involved in sexual assault services. We identified an area at the Gold Coast Hospital in the cottage fronting Queen Street. I pushed the Minister into having the Gold Coast Hospital board of that day outfit the premises for that sort of service. In the last days, weeks and months of that Government, I fought for funding for it, and obtained it.

Time expired.

Question—That the words proposed to be omitted stand part of the question—put; and the House divided—

AYES, 44—Ardill, Barton, Beattie, Bird, Bligh, Braddy, Bredhauer, Briskey, Campbell, D'Arcy, De Lacy, Dollin, Edmond, Elder, Foley, Fouras, Gibbs, Goss W. K., Hamill, Hayward, Hollis, Lavarch, Lucas, McElligott, McGrady, Mackenroth, Milliner, Mulherin, Nunn, Nuttall, Palaszczuk, Pearce, Purcell, Roberts, Robertson, Rose, Schwarten, Smith, Spence, Sullivan J. H., Welford, Wells. Tellers: Livingstone, Sullivan T. B.

NOES, 44—Baumann, Beanland, Borbidge, Connor, Cooper, Cunningham, Davidson, Elliott, FitzGerald, Gamin, Gilmore, Goss J. N., Grice, Harper, Healy, Hegarty, Hobbs, Horan, Johnson, Laming, Lester, Lingard, Littleproud, McCauley, Malone, Mitchell, Perrett, Quinn, Radke, Rowell, Santoro, Sheldon, Simpson, Slack, Stephan, Stoneman, Tanti, Veivers, Warwick, Watson, Wilson, Woolmer. Tellers: Springborg, Carroll

The numbers being equal, Mr Speaker cast his vote with the Noes.

Resolved in the **negative**.

Amendment agreed to.

Motion, as amended, agreed to.

Sitting suspended from 7.02 p.m. to 8.30 p.m.

LOTTERIES BILL

Resumption of Committee

Hon. J. M. Sheldon (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) in charge of the Bill.

Resumed on clause 79, to which Mrs Cunningham and Mr Hamill had moved amendments.

Mr HARPER (8.30 p.m.): I reiterate, as I think I need to, that, although we agree in spirit with the intent of the amendment of the member for Gladstone, we still have a problem with its practicality. Above all else we need to ensure that whatever we do tonight is practical and workable for all involved—certainly for the small-business agents or potential agents of the Golden Casket—and, of

course, we must ensure that the interests of the public are served.

Let us look at a few examples of what the amendment could mean. For instance, if we set a limit of 50 or 20 employees—and the limit stands at 50—and a casket agent employs more than 50 people, what will happen to that agent if these amendments are passed? We are telling such agents that they should get rid of some of their staff and, as a consequence, scale down the amount of business that they do or the services that they provide to their customers. One only has to look around the State at small shops and businesses that employ a lot of young, casual people who need that extra income rather than a full-time job to realise how important that sort of business is. We need to control that and to ensure that those employees are protected. The Treasurer will deal with that later. Therefore, by passing these amendments as they are, are we saying to small-business people, "Sorry, but you have to scale down or you are out of business and we will have to withdraw your licence"?

The amendments also make it difficult for mail-order businesses. We know that such businesses exist and they certainly employ people. These strict definitions would make it difficult for them to retain that sort of business. Also, a small business may be operated or controlled by a person other than its owner. That occurs in many instances and for various reasons. Small business plays a very significant and important role within communities by providing employment for people, including those who manage the businesses. It is important that we look at who actually controls a business and who operates it. I hate to go over old ground——

Mr Hamill: Do you want me to organise a speaker?

Mr HARPER: Not at all. I am quite happy to talk on for a while.

Mr Hamill interjected.

Mr HARPER: "Get some more practice"; it is very kind of the honourable member to say that I can keep going.

Mr Hamill: Do you want some interjections?

Mr HARPER: Not at all. The member has given me enough interjections.

Mr Hamill: I could keep going.

Mr HARPER: Indeed. In conclusion, I reiterate what I have said, what the Treasurer has said and what the Government has said all along—and I have met with a delegation from the newsagents—that this Government is paramountly interested in the rights, the importance, the livelihood and the lives of small-business people, including those who run casket and Lotto agencies. As was indicated by members opposite, it is our intention to look after those people. As I have said before, in no way does the Bill change the existing situation. However, these amendments will create problems and we need to reject them.

Mrs SHELDON: I move—

"In the subclause (1)(a) proposed to be inserted by the amendment moved by the Member for Gladstone, 'operated'—

omit, insert—

'controlled'.

After the subclause (1) proposed to be inserted by the amendment moved by the Member for Gladstone—

insert—

'(1A) Subsection (1)(a) does not apply if the business in relation to which the agency agreement is to be entered into is—

(a) a business in relation to which a previous agency agreement applied; or

(b) a mail order business.'.

In the subclause (4) proposed to be inserted by the amendment moved by the Member for Gladstone, definition "small business", paragraph (a), 'operated'—

omit, insert—

'controlled'.

In the subclause (4) proposed to be inserted by the amendment moved by the Member for Gladstone, definition "small business", paragraph (b), 'personally'—

omit.

In the subclause (4) proposed to be inserted by the amendment moved by the Member for Gladstone—

insert—

' "mail order business" means a business intended to be operated by a person for selling tickets (whether by mail or otherwise) to persons outside Queensland.

"previous agency agreement" means an agency agreement that is, under section 243(1), taken to be an agency agreement duly made in accordance with this Act.'."

Mrs CUNNINGHAM: Can I just check: we have not dealt with the amendment that I moved or the amendment that the shadow Minister moved and which I have accepted. Now we have the amendments to the amendments.

Mrs Sheldon: That is right.

Mrs CUNNINGHAM: I wondered in what order we were going to deal with them.

Mrs Sheldon: Mine are amendments to the member's amendments.

Mr Hamill: As indeed is mine.

The CHAIRMAN: There is the amendment of the member for Ipswich which amends the member for Gladstone's amendment, which is before the Committee at the moment. The amendment of the member for Ipswich alters "20" to "50". That is the amendment to the amendment of the member for Gladstone.

Mr Hamill: My amendment relates only to subclause 4(d). I understand that the Treasurer has moved all of her amendments en bloc.

Mrs Sheldon: Yes.

Mr Hamill: May I speak to the Treasurer's amendments and also to my amendment?

The CHAIRMAN: I am advised that that is not in order. The amendment of the member for Ipswich should be put first.

Mr Hamill: Do I have no more time to speak in Committee?

Mrs Sheldon: The member has spoken to his amendment, has he not?

Mr HAMILL: I will only take a minute of the Committee's time. The Committee process has benefited by our having had a recess for dinner. From the point of view of the Opposition, the amendments which have now been moved by the Treasurer tidy up potential issues that may have arisen had the amendment of the member for Gladstone, as amended by ourselves, been adopted by the Committee. I say to the Treasurer and to the Government that the Opposition appreciates the constructive manner in which the Government has come back to the debate following the dinner recess. We will certainly be supporting the Government's amendments to the amendment to the motion. In other words, in a debate on lotteries and the Golden Casket agency, it is very appropriate that the Government is scratching our back as we scratch its.

Mrs CUNNINGHAM: I have already indicated a willingness to accept the amendment from the Opposition. I also endorse those comments. I appreciate the work that the Treasurer has been able to do over the break to tidy up that amendment. I certainly have no hesitation in accepting the Treasurer's amendments.

Amendments to the amendment agreed to.

Amendment, as amended, agreed to.

Clause 79, as amended, agreed to.

Clauses 80 to 93, as read, agreed to.

Clause 94—

Mr HAMILL (8.42 p.m.): Let us hope that the passage of this amendment is not as tortuous as that of the last. The Opposition is particularly concerned about the structure of the proposed lottery tax. In my speech in the second-reading debate, I drew the attention of the Chamber to the provisions of the existing Lotteries Act. Section 30 states that the corporation must, as directed by the Minister, pay into the public accounts amounts surplus to the corporation's requirements. That was a fairly easy provision in that the Minister responsible for the Golden Casket office could basically direct what sum of money could be paid over from time to time. That amount broadly mirrored the operating profit of the Golden Casket office in any one year.

The new proposition contained in clause 94 establishes the notion of a lottery tax and states that the tax is to be collected and paid in accordance with the conditions of the lottery licence. That is a funny way in which to establish a tax. I would have thought—and most people would expect—that the raising of taxation ought to be transparent. There should not be some sort of negotiation behind the scenes with a lottery licensee as to the level of taxation paid. We already have the proposition that there be such a thing called a licence fee which would be individually negotiated with a lottery licensee. But in having both a licence fee individually negotiated and a lottery tax individually negotiated, one must ask the Parliament: what is this Government trying to achieve? I suggest that it has tried to turn revenue raising into a pure commercial transaction. That is not the way that it works for other areas of gaming.

I draw an analogy with the operation of gaming machines. With respect to gaming machines, there is such a thing as the gaming machine tax. The head of power is contained within the legislation and the rate of tax is contained in the subordinate legislation made under the Act, and rightly so. That means that the rates of taxation that are from time to time levied upon the operation of gaming machines are brought back here to the Parliament. From time to time, the Minister may gazette rates of tax applying to gaming machines. Whether it was as it was in the past related to turnover or as it is now—that is, related effectively to profit—is immaterial. The facts are that those rates were gazetted. Therefore, they could be brought back to the Parliament and, on a motion of disallowance, the Parliament could reject those rates of taxation. No similar proposition is to be found in the proposed legislation before us. Rather, the rates of taxation become part of the confidential negotiation between the Government or the agency that is running the licensing operation and the would-be licensee. If ever there is a formula that is wide open to malpractice and maladministration, it is this sort of formula.

As a Parliament, we should not accept the proposition that taxation becomes an individual negotiation between a commercial entity and the Government. Taxation must be transparent and be able to be brought back to the Parliament for debate and disallowance if necessary. As I said earlier on in the debate, this smacks of the same approach that coalition Governments and National Party Governments applied to the State's mining industry when it came to the establishment of coal freight rates. Different coal freight rates applied to different mines, based on the principle applied by the Treasury that we charged them as much as we could get.

Mrs Sheldon: You didn't say "No" when you were in Government.

Mr HAMILL: The Treasurer said that we did not say "No." Quite to the contrary, we spent a considerable amount of time and effort negotiating with the mining industry to reorganise the regime which we inherited with respect to coal freight rates. We did that on the basis that royalties, which are State taxes, needed to be transparent, and the mining industry was greatly appreciative of the commitment of the former Labor Government to cleaning up a system which was capricious in its application to individual mining companies.

What we see in this Bill is yet another example of a coalition Government wanting to apply different rates to different mates or to different licensees.

Honourable members can use the terminology that they may prefer. But that is not the way that we should proceed. Certainly, the licence fee may be negotiated. The rate of tax should not be a matter for negotiation, it should be a matter which is common to all the licence holders. After all, it is a tax. A tax is levied with the authority of the Parliament. Over the centuries, blood has been shed over that fundamental principle. We should not walk away from that principle with respect to this legislation. That is why I move the following amendment—

"At page 56, lines 1 and 2—

omit, insert—

'(2) The lottery tax is to be calculated and paid in accordance with a regulation.'."

Those words will ensure transparency and that the Government will be obliged to gazette a regulation setting out the rates and incidence of that tax. That can come back to the Parliament and we can debate whether we consider it to be appropriate. That is the way in which we should proceed on taxation. No other way is acceptable.

Mr J. H. SULLIVAN: I rise to support the amendments moved by the shadow Treasurer. I guess most of us would like to have the opportunity—all eight million or so Australian taxpayers—to negotiate with the Federal Treasurer for our own income tax rate, but of course that is not practical, and neither should it be done because, as the shadow Treasurer has said, we in this Parliament need to be able to control taxation. It is not something that we should give up.

The amendment that the shadow Treasurer has moved is one that is generous to the requirements that the Treasurer may have and one that I, if given my head, might think is a little inadequate in terms of the Parliament's control over these matters. But I understand why that is so. I refer the Committee briefly to the provisions for keno tax in a Bill that passed through this Parliament less than 12 months ago.

An Opposition member interjected.

Mr J. H. SULLIVAN: No. 47 of 1996 is the number of the relevant legislation. It clearly set out that the calculation of the keno tax was to be based on a percentage of turnover. We have no means of calculating what it is. There is no means for the Parliament to determine how this tax is going to be calculated. In a sense, what we have is the Government, which is going to be in control of the corporatised lottery agency—the only owner—negotiating with itself how much money out of its corporatised body it is going to put into consolidated revenue for the State. The sin may seem to be diminished by that.

Despite the best efforts of the member for Mount Ommaney earlier to convince the Parliament that this is not about privatisation, the fact remains that this legislation establishes the preconditions for a number of things, one of which is the selling off of lottery operations. It also establishes the preconditions for the entry of other organisations into the lottery providers' market, if such a thing can be termed in such a way. Yet this same condition applies for each of those—the same condition that says that the Minister can have some sort of secret handshake agreement as to how much tax is going to come from those operators. Before anybody rushes to say, "But we have an exclusivity agreement for 10 years for the Golden Casket", the issue there is that an exclusivity agreement between the Government and a company 100% owned by the Government can certainly be reduced in time with the consent of both parties, which is the one party. So we really need to be a bit careful.

The amendment that the shadow Treasurer has moved would allow this Parliament to have a look at the mechanism by which taxation is going to be charged, to have a look at the rate that the taxation was going to be charged at and, if necessary, seek to disallow that regulation. So in a sense the Parliament does have some element of control over that process, albeit one in which, as will no doubt be the case after the next State election, however soon or far away that may be, we would anticipate no longer being in the hung Parliament situation we currently are and——

Mr Rowell interjected.

Mr J. H. SULLIVAN: The member who interjects talks about other Acts of Parliament. The member, interestingly enough, seems to have the view that an action once taken then legitimises that same action forever. I would be the last person to say—and the member ought to be one of the last people to accuse me of saying—that everything that was done by the former Government was Persil white. I do not believe that for a minute, and I think most people around here understand that I got myself into a bit of trouble by saying so on a few occasions. But the issue remains that an action of the former Government that is patently wrong ought not be an invitation for the current Government to continue to practise in that fashion. The member should not sit over there——

Mr Rowell: Do as I say, not as I do.

Mr J. H. SULLIVAN: I have always said these things, but the member should not sit over there and say that something that he criticised as being wrong at the time is now right because this Government is doing the same thing, which is pretty much the reverse of what he has just said.

In conclusion—because I know that we are all anxious to not go too late this evening—I think that what we have done does give this Parliament some modicum of control over the taxation measures taken in relation to this Bill. I would have preferred that the levying of tax against any organisation, citizen or company in this State be done by principal Acts of Parliament. That would be my preference. But what the shadow Treasurer has proposed, I understand, is an excellent compromise between the needs of this Parliament and the needs of conducting the business.

There is no reason why this cannot be done by regulation. One of the features of regulations, of course, is that they can be done very quickly. So before anybody leaps to their feet and claims that we are shackling the Government, I point out that a

regulation can be made, gazetted and in force within a matter of days. That is what they are used for—when a matter needs to be dealt with urgently. So it is not a great imposition on the Government. It requires a small amount of drafting—maybe four or five clauses, certainly a single-page regulation, and that would take somebody with that type of expertise less time than it would take the Treasurer to write a letter to the company telling it how much tax it had to pay. I believe that what the shadow Treasurer is proposing is a decent compromise. I am not getting everything I would personally like and the Treasurer is not losing everything that she would like. On that basis, this Committee ought to accept the amendment placed before it just now by the shadow Treasurer.

Mr HARPER: When we are considering this amendment we need to examine the process that is occurring. It is relevant to reiterate that the process which we are revising is different from that which was accepted and passed in relation to keno. When we are starting to look at different products that may be put in the marketplace by various organisations—not necessarily just by the one organisation, but even different products by the one organisation, and in that case we are probably mainly dealing with the corporatised Golden Casket—from product to product we must look at the impact of that product and its market viability and calculate an individual tax rate. That is what this legislation is proposing. The bureaucrats about whom some have expressed a concern are not the ones who will set that particular tax rate. The rate will still be set by the responsible Minister. When the licence is granted for a product, the tax rate would be contained in the agreement for that product, along with the other stipulations that go hand in hand to ensure that the product is the correct one for the market and has all the other interests covered. That is what our legislation is dealing with and, as I say, that is consistent with what already operates in relation to keno, yet now members are wanting to make changes which will be inconsistent with other gaming-type products that are already out there. I urge members to reject this amendment.

Mrs SHELDON: I would like to speak to this amendment. I find the inconsistency of the members opposite quite extraordinary. They agreed to pass the Keno Bill, which was exactly the same situation as this. Nothing has changed. So one has to ask: why the inconsistency? This is the same situation that is in the Keno Bill that the Opposition allowed to be passed in this Assembly a few months ago. I really cannot understand why this is necessary, unless it is purely a mechanism to draw things out and be difficult. For that reason, we believe——

Mr Fouras: Most of us want to go home.

Mrs SHELDON: I very much want to go home, but I think the honourable member opposite should realise where the filibustering and difficulties are coming from. The fact of the matter is that this amendment is not necessary at all. We put the provision here for the same reasons that we had this provision in the Keno Bill—flexibility. No-one is trying to hoodwink anybody, which I am sure Mr Hamill realises.

Mr Hamill: Why didn't you put it in the Gaming Machine Act?

Mrs SHELDON: Why did the member opposite not object to it when it was in the Keno Bill? If this is such a strong principle, why did he not object to it when it was in the Keno Bill?

Mr Hamill: I will respond to you in due course.

Mrs SHELDON: No doubt the honourable member will. The fact of the matter is that we believe that this is an adequate and a good provision. I would just like to finish on a note that really has very little to do with this, but the shadow Treasurer brought up the question of coal royalties that had somehow or other been imposed by the former coalition as some sort of secretive, sneaky tax. May I add that this State did extremely well out of coal royalties and that the money a Government makes goes into providing the schools, hospitals, roads and everything else that comes with the tax-raising ability of the State. It was very adequate when it was put in place. It was a good piece of legislation which provided for a good royalty for the State. It was well negotiated and the State did very well out of that when we were developing these coalmines.

The real reason why things have now changed—and, in fact, I have changed a number of these since I became the Treasurer—is that the commercial reality has changed. It is now quite different from what it was then. Instead of making these snide remarks about good legislation and good things that were put in place by former Governments—and I was not here at that time—I think we all should give credit where it is due and, really, let us just stick to the issue that is at hand.

Mr Hamill: I remember. I was here.

Mrs SHELDON: The honourable member was right here when those royalties were put in place? I do not think so. They were put in place so many years ago; a lot of those were brought in by Leo Hielscher, who was then the Under Treasurer. The honourable member opposite was not here when Leo Hielscher was the Under Treasurer.

Mrs CUNNINGHAM: I have just a couple of comments on the proposed amendments. I understand what the Treasurer said about keno. It is my understanding that that involved a single rate of tax, and it is possible—indeed, it is highly likely—that, because there are all sorts of different lotteries, the taxes could change and so there will not be a consistent rate of tax across each of the games. The Treasurer can correct me if I am wrong. One of the benefits of the regulation is that it allows transparent scrutiny of the relativities between the various games.

The issue that the Treasurer raised about flexibility and responsiveness is a fair comment from the Minister, but having it in a regulation should not impede that responsiveness. The regulation is set; it is accepted by the Governor in Council and it is immediately put in place. The process of disallowance is one available to the Assembly, but it does not hold retrospectivity if that regulation is disallowed. Anything that transpires between the implementation of the regulation and its disallowance

is deemed to be appropriate and acceptable. So the responsiveness is still there. I think that that is the main thing. I indicate that I will be supporting this amendment.

There were some discussions at one meeting that I was at to the effect that tax is a Government issue and that it needs to be transparent. I recognise that the Minister has said things such as, "We are being inconsistent"—and perhaps we are. At the risk of being inconsistent, I think that, where it is possible to get some transparency and some accountability, that is good. That is not intended as a barb at the Minister at all, but is intended to make sure that these types of taxes, which are set at various levels for different games which change because of the appeal of different games or otherwise, need to have some form of scrutiny.

Mr HAMILL: I thank the member for Gladstone for her contribution. I also want to thank particularly the member for Caboolture for the assistance that he has rendered to me personally. He has kindly provided me with a copy of the relevant sections from the legislation passed in relation to keno. I think it is worth the Chamber noting that, in the legislation which the Assembly passed in relation to keno tax, yes, there was a provision that is a lot like clause 94(1) in the legislation that we have before us, that is, something that would be called a lottery tax or, in the case of the keno legislation, it was called a keno tax. It says when it should be paid. There is then a separate section which outlines exactly how it shall be calculated. It points out—

> "The amount of keno tax to be paid is a percentage of the keno licensee's gross revenue for the month for which the keno tax is payable."

It states the basis on which the tax is to be collected. It also goes on to say that it relates to the associated keno agreement. I think the Treasurer ought to cast her mind back to the negotiations that took place prior to the extension of keno to licensed clubs. If my memory serves me correctly, keno had previously been a casino game. In fact, the rights to keno were held by Jupiters. There needed to be an agreement with Jupiters in terms of its ownership royalty to be able to extend the game out to other licensed clubs. Therein lies a very important difference because the whole basis of the keno legislation was to empower other clubs in this case to run the game, but under licence and under a commercial negotiation with the owners of the game, that is, the casino.

With respect to lotteries, it is not the same at all because the lotteries here are owned by the Golden Casket agency, to wit, they are owned by the Government. The provisions currently in the Bill state blandly that there shall be a lottery tax, but there is no further information as to how the tax shall be applied. That is the fundamental problem which the Opposition highlights here this evening.

I can reiterate only that the Opposition's commitment to the amendment which I have moved, amendment No. 1 standing in my name, is absolute and I entreat the Treasurer to accept this as a responsible action to ensure transparency when it comes to the revenue raising of the State.

Mrs SHELDON: Each lottery product is distinct and has different characteristics, such as the rate of returns to the players and prize money. It is intended that a tax rate will be specified for each individual lottery. A lot of these are now entrenched. If we just had totally new products, then a single rate of tax would no doubt be fine, but there are a large number of products already entrenched in the market out there. The competitive nature of the lottery industry certainly requires continual product development. It involves revision of existing products, the introduction of new products and the abandonment of non-performing products. The flexibility requirement makes it inappropriate to include references to specific lottery products in regulations. In such a manner, the ability of the licensee to rapidly respond to the commercial imperatives and commercial opportunities will be maintained. A link between the lottery product development and the position of separate tax rates on individual products necessitates a regulatory framework to respond to commercial imperatives. It is therefore considered that a licensed negotiator between the Government and the licensee is the most appropriate place to provide for those tax rates. All we are trying to do is make this flexible and workable.

Mr HAMILL: I have a couple of quick and final comments. The Treasurer seems to be suggesting that there ought to be a different tax for each and every separate product. That is not the suggestion that is in the legislation before us. What the legislation says is that a lottery licensee must pay a tax to the chief executive. It does not refer to a tax in respect of each and every product. It could well be the grossed-up proceeds—the grossed-up returns—from the range of products that the licensee is offering. For the Treasurer to suggest otherwise is really trying to pull the wool over people's eyes here this evening. What is the Treasurer trying to hide? The answer is: hide the rate of tax that the Treasurer wants to apply to separate individuals rather than having transparency upon which the Parliament can express an opinion in the usual way, as it does with gaming machine tax, payroll tax, land tax, motor vehicle tax, stamp duty and so on. Why should some lottery licensee be in a special position with respect to the State revenue?

Mrs SHELDON: The whole reason for that was to make it fairer for the licensee. Undoubtedly, under the Opposition's situation, the Government will get in more money. So be it. But we were trying to make it a fair and reasonable thing for the licensee—unlike the member, who obviously has no intention of doing anything like that.

Question—That the words proposed to be omitted stand part of the clause—put; and the Committee divided—

AYES, 42—Baumann, Beanland, Borbidge, Connor, Cooper, Davidson, Elliott, FitzGerald, Gilmore, Goss J. N., Grice, Harper, Healy, Hegarty, Hobbs, Horan, Johnson, Lester, Lingard, Littleproud, McCauley, Malone, Mitchell, Perrett, Quinn, Radke, Rowell, Santoro, Sheldon, Simpson, Slack, Stephan, Stoneman, Tanti, Turner, Veivers, Warwick, Watson, Wilson, Woolmer. Tellers: Springborg, Carroll

NOES, 44—Ardill, Barton, Beattie, Bird, Bligh, Braddy, Bredhauer, Briskey, Campbell, Cunningham, D'Arcy, De Lacy, Dollin, Elder, Foley, Fouras, Gibbs, Goss W. K., Hamill, Hayward, Hollis, Lavarch, Lucas, McElligott, McGrady, Mackenroth, Milliner, Mulherin, Nunn, Nuttall, Palaszczuk, Pearce, Purcell, Roberts, Robertson, Rose, Schwarten, Smith, Spence, Sullivan J. H., Welford, Wells. Tellers: Livingstone, Sullivan T. B.

Pair: Gamin, Edmond

Resolved in the **negative**.

Clause 94, as amended, agreed to.

Clause 95, as read, agreed to.

Clause 96—

Mr HAMILL (9.18 p.m.): Given the Committee's endorsement of the amendment that I moved to clause 94 requiring that the lottery tax be established by regulation, it is therefore necessary that the Committee similarly agree to amendment No. 2 standing in my name relating to clause 96. I formally move the following amendment—

"At page 56, lines 9 to 11—

omit, insert—

'96.(1) A lottery licensee must give the chief executive returns as required under a regulation giving the details required under the regulation for the calculation of lottery tax.'."

This ensures that the terminology in that clause reflects the decision that the Committee has already arrived at in relation to the levying of the lottery tax.

Amendment agreed to.

Clause 96, as amended, agreed to.

Clauses 97 to 246 and Schedules 1 to 3, as read, agreed to.

Bill reported, with amendments.

Third Reading

Bill, on motion of Mrs Sheldon, by leave, read a third time.

FRIENDLY SOCIETIES (QUEENSLAND) BILL

Resumption of Committee

Hon. J. M. Sheldon (Caloundra—Deputy Premier, Treasurer and Minister for The Arts) in charge of the Bill.

Resumed from p. 2484 on the insertion of new clauses 14A and 14B, to which Mr Hamill had moved an amendment—

Mr J. H. SULLIVAN (9.21 p.m.): I just want to finally say in relation to what I had been saying previously——

Mr Grice: You don't mean that.

Mr J. H. SULLIVAN: No, I do not. But in relation to what I have been saying previously, I mean it. The comment made by the Parliamentary Secretary assisting the Treasurer, the member for Mount Ommaney, in relation to the methodology by which an amendment to the Victorian schedule, which is the Friendly Societies Code, would be made does not excite in me any confidence.

The member for Mount Ommaney alerted the Parliament to my worst fear: an amendment to the code will be made by only a majority of the Ministers attending the particular ministerial council, MINFIN. That could mean that, along with abrogating the Parliament's ability to deal with its own law, we can have the law foisted upon us even though our Executive branch of Government disagrees with it. So the law in this State can change despite the views of the Executive Government and despite the views of the Parliament. The member for Mount Ommaney has not assuaged any concern that I have. In fact, he has excited me to a greater level of concern.

I believe that at this point we as a Parliament should stand up for our own rights. We ought to include the code in our own Act. There has not been relayed to me—either in this Chamber or in discussions that I have had with people outside the Chamber—any suggestion of the mischief that would be created by so doing.

Mrs CUNNINGHAM: I will address a couple of the issues that I have raised and on which I have since sought additional information. I have not changed my position. I believe that there should be a mechanism for a Parliament to reflect or respond to—preferably positively—changes in national scheme legislation. That is aside from the argument about similar legislation having gone through previously and nobody asking for this alteration. However, having talked with various groups, it has become apparent to me that it certainly is not as simple as one would have hoped. By rushing an amendment through tonight we risk jeopardising either the whole concept of national scheme legislation or of prejudicing Queensland's position in that regard.

The way the Treasurer's amendment stands with the code being an attachment to the Bill, as a Parliament we have neither the ability to amend the code nor an opportunity to review the code. We do not have any ability for disallowance. All of that is taken away. We are completely dependent on the persuasiveness of our Minister in those debates. As has just been said, the position is reached by the combined Ministers by majority. That is a concern. Conversely, I have found also that even with the inclusion of the Minister's proposed subsection (5), an opportunity is provided for a State Government to consider either a part of the Victorian legislation, which we are adopting as our own, or a proposed amendment that may subsequently occur. As a Parliament, we could pro-actively move an amendment to subclause (5), which would remove Queensland from the application of either part of this Bill or a subsequent amendment to the Bill. However, that removal can occur only at the agreement of the other Ministers in the other States. I ask the Minister to correct me if I am wrong, please. That has already occurred, because Victoria has already absolved itself from some of the constraints that the Victorian Act proposes currently and that other States have accepted. So there is a mechanism, but we are still dependent on the majority of Ministers, including our own, to be able to ensure that our input has effect in this national scheme legislation.

My concern is still to give this Parliament a pro-active involvement in national scheme legislation, and preferably in an affirmation manner in the same way that regulations are disallowed. What I would seek from the Minister is an assurance that this issue, rather than just dying at the passing of the Bill tonight, could continue to be considered so that an effective mechanism for review, an effective opportunity for Parliament to be involved in reviewing national scheme legislation and having a say, could be considered and, in the not-too-distant future, implemented. I am sure that there must be a way for a Parliament to confirm its Minister's actions without jeopardising the national scheme.

The operation of national scheme legislation has to be smooth. The problem with amendments to the Act and the problem with non-conformity among the States is the time it might take for an amendment to occur. I recognise those constraints upon trying to include an amendment tonight. I seek the Minister's undertaking that, in the not-too-distant future, we will consider a practical mechanism to give the members of this Parliament, the representatives of this State, the ability to positively affirm in some manner the national scheme legislation to which we are going to subject ourselves. I seek the Minister's comment on that prior to the debate proceeding any further.

Mrs SHELDON: I would certainly give the member the commitment to consider the possibility; I could not give a commitment that we may be able to act, because I do not know whether we will get to that point. We will certainly take note of her concerns and discuss that both among ourselves and with the other Ministers. As the member rightly said, the proposition of amending this legislation at the moment—for all the reasons that she has gone through—would cause problems with trying to comply with this national legislation. I certainly do not mind the Parliament of the State having a say, but at the same time I do not want to put something in place——

Mr Palaszczuk interjected.

Mrs SHELDON: No, we are discussing the complexities of national conformity.

At the same time, by doing that, we cannot throw the whole thing into chaos completely. I would be happy to take that on board, consider it and discuss it with the other Ministers. Possibly they have some similar concerns.

Amendment agreed to.

New clauses 14A and 14B, as read, agreed to.

Clause 15—

Mr J. H. SULLIVAN (9.32 p.m.): In keeping with the spirit of what has been happening in the Parliament today, during the dinner break my copy of the Friendly Societies (Queensland) Bill and the papers that I had with it seem to have been stolen. So I do not have the document from which I wanted to quote.

However, clause 15 contains a regulation-making power. The Treasurer might like to answer a number of questions that I have about this regulation-making power. Clause 6 is a regulation-making power. It gives the Victorian Parliament the power to make regulations and then, the Victorian Parliament having made those regulations, those regulations will be styled the Friendly Societies (Queensland) regulations. That is how we would usually style regulations made under a regulation-making power such as clause 15.

So I would be interested to know what we are going to call the regulations made, should there be any made, under clause 15. Are we going to call them the Friendly Societies (Queensland) Made in Queensland regulations? How are we going to distinguish them from those regulations that the Queensland Government makes? So the question I ask is: how do we distinguish local regulations from those that we adopt automatically from Victoria?

We have just seen the Parliament not include the code into our legislation. Therefore, this regulation-making power does not give us any power to make regulations in relation to matters contained in that code.

The other important thing to note about this clause is that it is a clause of a style that has not been brought into this Parliament for some time. Recently, we have seen a two-part regulation-making power which says, as this one does in Part 1, that the Governor in Council may make regulations under this legislation and, in Part 2, that regulations may be made with respect to items A, B or C, and sometimes the list goes down to W. So for some time in all the legislation that has been introduced into this Parliament, there has been a fetter on the issues upon which regulations can be made. Of course, some of the provisions about regulation making are not as we would like to see them. However, I ask the Treasurer: what does she envisage this Parliament making regulations about in relation to this matter? To state that the Governor in Council may make regulations under this legislation is a very broad delegation indeed.

Mr FitzGerald: It's the normal thing.

Mr J. H. SULLIVAN: No, I say to the Leader of the House that it is not normal any more. In fact, that has not been a normal regulation-making power since probably about the time he sat on the Subordinate Legislation Committee in the Forty-sixth Parliament.

Mr Nunn interjected.

Mr J. H. SULLIVAN: Mr FitzGerald, the member for Lockyer, should have heard that aside. However, I am saying that we have a very, very broad delegation. The Parliament should not gloss over the matter. The Treasurer should be explaining to this Parliament what regulations she proposes might be necessary to make in relation to this legislation.

Mr FitzGerald: Read clause 35. That solves the problem of why you have to have the head of power there.

Mr J. H. SULLIVAN: I do not think that it is necessary for clause 35, which relates to transitional regulations, to contain that power. If regulations are being made only for the purpose of transitional

matters, then the head of power is needed only in the transitional regulations. Clause 35 expires after two years. However, clause 15 does not. Clause 35, which relates to transitional regulations, has a purpose. However, it expires after two years. I am interested in knowing what is going to happen to clause 15 after two years.

I have two important questions to ask: firstly, how is the Treasurer going to style regulations made pursuant to clause 15? Usually, they would have been styled Friendly Societies (Queensland) regulations, but that styling has been used for the citation of regulations made by the Victorian Parliament. Secondly, how is it envisaged by the Treasurer that this very broad regulation-making power will be used in relation to the Friendly Societies (Queensland) Act, as it will become?

Mrs SHELDON: This is the Friendly Societies (Queensland) legislation regulations. They are the regulations for the purpose of this legislation. They are general regulations under the legislation and they will allow, as the member referred to clause 35, for transitional provisions. I do not know why the member is concerned about this matter. As with all regulations, the regulation will have to come to the Chamber and the Chamber will have the ability to disallow that regulation.

Clause 15, as read, agreed to.

Clauses 16 to 37, as read, agreed to.

Schedule, as read, agreed to.

Mrs SHELDON (9.40 p.m.): I move the following amendment—

"At page 26, after line 10—
insert—

'ATTACHMENT

section 14B

FRIENDLY SOCIETIES CODE[2]

PART 1—PRELIMINARY

Division 1—Introductory

Citation

1. This Code may be cited as the Friendly Societies Code.

Commencement

2. This Code comes into operation as provided in section 2 of the Friendly Societies (Victoria) Act 1996 of Victoria.

Division 2—Interpretation

Definitions

3. In this Code—

"accounting records" include—

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) documents and records that record such entries; and

(c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

"accounting standard" has the meaning given by section 9 of the Corporations Law;

"accounts" means profit and loss accounts and balance sheets, and includes statements, reports and notes (other than a directors' report) attached to or intended to be read with any of those accounts or balance sheets;

"advertisement" includes matter that is not in writing but because of the form or context in which it appears conveys a message;

"affairs", in relation to a body corporate, has the meaning given by section 53 of the Corporations Law;

"AFIC" means the Australian Financial Institutions Commission;

"AFIC Code" means the Code set out in section 21 of the Australian Financial Institutions Commission Act 1992 of Queensland;

"applicable accounting standard" means an accounting standard as applying under section 334 (Requirements applying to accounts and group accounts);

"Appeals Tribunal" means the Australian Financial Institutions Appeals Tribunal established under the Australian Financial Institutions Commission Act 1992 of Queensland;

"association" means a body registered as an association under Part 12 of this Code;

"bank" means—

(a) a bank as defined by section 5 of the Banking Act 1959 of the Commonwealth; or

(b) a bank constituted under a law of a State;

"benefit", in relation to a society, means an interest in a benefit fund of the society in accordance with the rules of the society relating to that fund;

"benefit fund" in relation to a society, means a fund established by the society in accordance with Part 4A;

"board", in relation to a society, means the board of directors of the society;

"body" includes an entity;

"body corporate" means any body corporate whether formed or incorporated within or outside this State, but does not include—

(a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown; or

(b) a corporation sole;

"borrow" means to obtain financial accommodation;

"building society" means a building society within the meaning of the Financial Institutions (Victoria) Code or a law of another State that corresponds to that Code;

"certificate of confirmation" has the meaning given by section 362;

"company" means a company incorporated, or taken to be incorporated, under the Corporations Law;

"consolidated accounts", in relation to a society, means all of the following—

(a) a consolidated profit and loss account that section 331 (Group accounts) requires to be made out in relation to a financial year of the society;

(b) a consolidated balance sheet that section 331 (Group accounts) requires to be made out in relation to the financial year of the society;

(c) statements, reports and notes (other than a directors' report) attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;

"Court" means the Supreme Court or a Supreme Court Judge of this State;

"credit union" means a credit union within the meaning of the Financial Institutions (Victoria) Code

or a law of another State that corresponds to that Code;

"debenture" has the meaning given by section 9 of the Corporations Law;

"director" has the meaning given by section 5;

"disclosure document" means a document lodged with the SSA under Part 4B and that complies, or ought to comply, with the requirement for disclosure documents under that Part;

"economic entity" means an economic entity for the purposes of Part 3.6 of the Corporations Law;

"employee", in relation to the SSA, includes—

(a) an officer of the SSA; and

(b) a person whose services are made available to the SSA; and

(c) a person engaged by the SSA on a contract for services;

"entity" means an entity for the purposes of Part 3.6 of the Corporations Law, and includes a society;

"executive officer", in relation to a society or entity, means a person (by whatever name called) who is concerned, or takes part, in the management of the society or entity;

"expert", in relation to a matter, means an independent person whose profession or reputation gives authority to a statement made by the person in relation to the matter;

"Financial Institutions Code" means the Code set out in section 30 of the Financial Institutions (Queensland) Act 1992 of Queensland;

"financial institutions scheme" means the scheme established and implemented by the financial institutions agreement and the financial institutions legislation within the meaning of the AFIC Code;

"foreign society" means a body registered as a foreign society under Part 11;

"friendly societies legislation" means—

(a) the friendly societies legislation of Victoria, namely—

 (i) the Friendly Societies (Victoria) Act 1996 of Victoria and the Friendly Societies Code set out in Schedule 1 to the Act; and

 (ii) regulations made under that Act; and

(b) the friendly societies legislation of the other participating States, namely—

 (i) the Acts and regulations of the other participating States that apply, complement or otherwise give effect to any part of the friendly societies legislation of Victoria; and

 (ii) the friendly societies legislation of Victoria as applying in those States; and

(c) the financial institutions legislation within the meaning of the AFIC Code so far as it applies or is otherwise relevant to the legislation mentioned in paragraph (a) or (b);

"fund", in relation to a society, means—

(a) a benefit fund of the society; or

(b) the management fund of the society;

"group" means an economic entity of which a society is a part;

"group accounts", in relation to a holding society, means a set of consolidated accounts for the group in relation to which the society is the holding society;

"holding body corporate" has the meaning given by section 6;

"holding society" has the meaning given by section 7;

"inspector" means a person authorised under section 33 (Inspectors);

"issue" includes circulate, distribute and disseminate;

"management fund", in relation to a society, means the fund of the society consisting of the assets and liabilities of the society that do not form part of a benefit fund of the society;

"member"—

(a) in relation to a society, means a person who is a member of the society under Division 5 of Part 3; and

(b) in relation to a benefit fund of a society, means a person entitled to a benefit from that fund in accordance with the rules of the society;

"national business names register" has the meaning given by the Corporations Law;

"officer" has the meaning given by section 9;

"participating State" means—

(a) Victoria;

(b) any other State in which there is in force a law corresponding to Part 2 of the Friendly Societies (Victoria) Act 1996;

"permanent share", in relation to a society, means a share in the society other than a redeemable preference share;

"profit or loss" means—

(a) in relation to an entity, the profit or loss resulting from operations of the entity; and

(b) in relation to 2 or more entities or an economic entity constituted by 2 or more entities, the profit or loss resulting from the operations of those entities;

"publish"—

(a) in relation to a notice under Part 4B, means publish by any means, including in a newspaper or periodical, by broadcasting or televising or in a cinematograph film; and

(b) in any case, includes issue;

"redeemable preference share" means a preference share in a society that is, or at the society's option is, liable to be redeemed;

"registered company auditor" means a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law;

"relevant agreement" means an agreement, arrangement or understanding—

(a) whether formal or informal or partly formal and partly informal;

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

"rules", in relation to a society, means rules of the society under this Code as in force from time to time;

"securities" has the meaning given by section 92 of the Corporations Law;

"services corporation" means a body corporate declared to be a services corporation under section 30 (Services corporation);

"share" means a share in the share capital of a body corporate;

"society" means a body registered under this Code as a society;

"SSA", in relation to a State, means the person or body declared by the friendly societies legislation of the State to be the State supervisory authority for the State;

"standard" means a standard in force under section 28 (Making etc. of standards) of the AFIC Code;

"State" means a State or Territory;

"subsidiary" has the meaning given by section 11;

"transferee society" has the meaning given by section 362;

"transferor society" has the meaning given by section 362.

Associate

4.(1) For the purposes of this Code, except Division 4 of Part 5 (Shareholding restrictions) and section 295 (Financial accommodation to directors and associates), a person is an "associate" of another, or is associated with another, if—

(a) they are partners; or

(b) one is a spouse, parent or child of the other; or

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

(d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body or entity; or

(e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body or entity; or

(f) they are related bodies corporate within the meaning of section 10; or

(g) a relationship of a prescribed kind exists between them; or

(h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(2) For the purposes of Part 4B, a person is an "associate" of another, or is associated with another, if—

(a) the person is such an associate, or is so associated, under sub-section (1); or

(b) the other person is a director of a body corporate of which the first-mentioned person is also a director and which carries on a business of dealing in benefits.

Director

5.(1) Subject to sub-section (2), for the purposes of this Code, "director", in relation to a body corporate, includes a reference to—

(a) a person occupying or acting in the position of director of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and

(b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; and

(c) in the case of a body corporate incorporated outside Australia—

(i) a member of the body's board; and

(ii) a person occupying or acting in the position of member of the body's board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and

(iii) a person in accordance with whose directions or instructions the members of the body's board are accustomed to act.

(2) A person is not to be regarded as a person in accordance with whose directions or instructions—

(a) a body corporate's directors; or

(b) the members of the board of a body corporate incorporated outside Australia—

are accustomed to act merely because the directors or members act on advice given by the person in the proper performance of the functions attaching to—

(c) the person's professional capacity; or

(d) the person's business relationship with the directors, the members of the board or the body.

Holding body corporate

6. A reference in this Code to the holding body corporate of another body corporate is a reference to a body corporate of which the other body corporate is a subsidiary.

Holding society

7. A society is a holding society in respect of a financial year of the society if the society controls another entity during all or part of the financial year.

Making a decision

8. A reference in this Code to the making of a decision includes a reference to—

(a) making, suspending, revoking or refusing to make an order or determination; or

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or

(d) imposing a condition or restriction; or

(e) making a declaration, demand or requirement; or

(f) retaining, or refusing to deliver up, an article; or

(g) doing or refusing to do anything else.

Officer

9.(1) Subject to sub-section (2), for the purposes of this Code, "officer", in relation to a body corporate or entity, includes—

(a) a director, secretary, executive officer or employee of the body or entity; and

(b) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity; and

(c) a liquidator of the body or entity appointed in a voluntary winding—up of the body or entity; and

(d) a trustee or other person administering a compromise or arrangement made between the body or entity and other persons.

(2) None of the following is an officer of the body corporate or entity—

(a) a receiver who is not also a manager;

(b) a receiver and manager appointed by a court;

(c) a liquidator appointed by a court.

Related body corporate

10. If a body corporate is—

(a) the holding body corporate of another body corporate; or

(b) a subsidiary of another body corporate; or

(c) a subsidiary of the holding body corporate of another body corporate—

the first body corporate and the other body corporate are related to each other.

Subsidiary

11.(1) Subject to sub-section (5), a body corporate is a subsidiary of a society if—

(a) the society—

(i) controls the composition of the body corporate's board of directors; or

(ii) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the body corporate; or

(iii) holds more than 50% of the issued share capital of the body corporate (other than any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the body corporate is a subsidiary of a body corporate that is a subsidiary of the society (including a body corporate that is a subsidiary of the society by another application of this paragraph).

(2) The composition of a body corporate's board of directors is controlled by a society if the society can appoint or remove all or a majority of the directors by the exercise of a power exercisable with or without the consent or concurrence of another person.

(3) For the purposes of sub-section (2), a society is taken to have power to make an appointment of directors if—

(a) a person cannot be appointed as director without the exercise of such a power by the society in the person's favour; or

(b) a person's appointment as a director follows necessarily from the person being a director or other officer of the society.

(4) Sub-section (2) does not limit by implication the circumstances in which the composition of a body corporate's board of directors is taken to be controlled by a society.

(5) In determining whether a body corporate is a subsidiary of a society—

(a) any shares held or power exercisable by the society in a fiduciary capacity must be treated as not held or exercisable by it; and

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for the society; or

(ii) by, or by a nominee for, a subsidiary of the society (other than a subsidiary that is concerned only in a fiduciary capacity)—

must be treated as held or exercisable by the society; and

(c) any shares held or power exercisable by a person under a debenture, or a trust deed for securing the issue of debentures, must be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, the society or a subsidiary of a society merely by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing financial accommodation must be disregarded.

(6) If it is relevant to determine for the purposes of this Code whether a body corporate is a subsidiary of another body corporate that is not a society and sub-section (1) does not apply, the first body corporate is a subsidiary of the other body corporate if it would be such a subsidiary under the Corporations Law.

Qualified privilege

12.(1) Where this Code provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing—

(a) has qualified privilege in proceedings for defamation; or

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person.

(2) In sub-section (1)—

"malice" includes ill-will to the person concerned or any other improper motive.

(3) Neither this section nor a provision of this Code that provides as mentioned in sub-section (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

Carrying on business: otherwise than for profit

13. A reference in this Code to a person carrying on business, carrying on a business, or carrying on a business of a particular kind, includes a reference to the person carrying on business, carrying on a business, or carrying on a business of that kind, as the case may be—

(a) in any case, otherwise than for profit; or

(b) in the case of a body corporate, otherwise than for the profit of the members or corporators of the body.

Businesses of a particular kind

14. A reference in this Code to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

Carrying on a business: alone or together with others

15. A reference in this Code to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.

Interpretation generally

16. Schedule A contains miscellaneous provisions relating to the interpretation of this Code.

Division 3—Operation of Friendly Societies Legislation

Extraterritorial operation of legislation

17. The friendly societies legislation applies—

(a) throughout Australia; and

(b) both within and outside Australia.

Division 4—Application and Adoption of Corporations Law

Definitions

18. In this Division—

"Corporations Law" includes the Corporations Regulations.

Corporations Law applying under its own force

19.(1) The provisions of the Corporations Law (other than the provisions of the Corporations Law mentioned in sub-section (2)) are excluded from applying under their own force to and with respect to societies.

(2) However, the following provisions of the Corporations Law are not excluded from applying under their own force—

(a) provisions applying to, or about, the following—

(i) bodies;

(ii) bodies corporate;

(iii) disclosing entities;

(iv) eligible bodies;

(v) persons;

(vi) securities, including securities of a particular type;

(vii) securities, including securities of a particular type of a body corporate;

(b) provisions applying to or about bodies or bodies corporate included in the official list of a securities exchange (including provisions of Chapter 6 (Acquisition of shares) applying to or about a company as defined for that Chapter);

(c) Part 7.11 (Conduct in relation to securities);
(d) Part 7.12 (Offering securities for subscription or purchase);
(e) provisions—
  (i) about the interpretation of a provision mentioned in paragraphs (a) to (d) ("non-excluded Corporations Law provision"), including a provision defining a word used in the non-excluded Corporations Law provision; or
  (ii) vesting power in the Australian Securities Commission, but only to the extent that they vest power for the purposes of a non-excluded Corporations Law provision; or
  (iii) empowering a court to make an order (including an order curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Law provision; or
  (iv) otherwise about the administration of a non-excluded Corporations Law provision.

(3) Sub-section (2) does not apply provisions of the Corporations Law that would not otherwise apply to societies or the securities of societies.

(4) Sub-sections (1) to (3) have effect despite any law of this State prescribed for the purposes of this sub-section.

(5) The expressions used in sub-section (2)(a), (b) and (e) have the meanings given by the Corporations Law.

(6) Sub-sections (1) to (3) are not intended to affect the operation, as intended under the Corporations Law, of a provision of the Corporations Law expressly excluding a provision of the Corporations Law from having application to societies.

Corporations Law adopted under a regulation

20.(1) A regulation may adopt, with or without modification, a provision of the Corporations Law for application to societies or the securities of societies.

(2) However, a regulation may not adopt a provision of the Corporations Law to the extent that the provision as adopted would be inconsistent with a provision of the friendly societies legislation.

(3) A regulation made as permitted by this section may create an offence with a maximum penalty of not more than the maximum penalty for the equivalent offence under the Corporations Law.

Adopted provisions of Corporations Law

21.(1) This section applies if a provision of the Corporations Law (the "adopted provision") is adopted for application to societies or the securities of societies with or without modification, under a provision (the "adopting provision") of this Code (including a regulation permitted by section 20 (Corporations Law adopted under a regulation)).

(2) Unless the adopting provision otherwise provides, definitions and other interpretation provisions of the Corporations Law relevant to the adopted provision are taken also to be adopted.

(3) "Gazette" and "Minister" in an adopted provision has the meaning given in this Code.

(4) Neither the adopting provision nor the adopted provision gives power to the Australian Securities Commission to administer the adopted provision for this Code.

PART 2—FUNCTIONS AND POWERS OF SSA

Division 1—General

Functions of SSA

22. The functions of the SSA under this Code are to—
(a) register, supervise and regulate societies; and
(b) supervise and enforce compliance by societies with this Code and with standards; and
(c) ensure that an effective and efficient system of prudential supervision is applied to societies; and
(d) protect the interests of members of societies; and
(e) facilitate or direct the transfer of engagements of, or the conversion or merger of, societies; and
(f) otherwise undertake the administration and enforcement of the financial institutions scheme so far as it relates to societies; and
(g) provide information and statistics to AFIC relating to—
  (i) societies; and
  (ii) the operation, administration and enforcement of the financial institutions scheme so far as it relates to societies; and
(h) advise, and make recommendations to, AFIC; and
(i) carry out such other functions as are conferred on it by or under the friendly societies legislation.

General powers

23.(1) The SSA has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under this Code.

(2) Without limiting sub-section (1), the SSA has such powers as are conferred on it by or under the friendly societies legislation.

SSA to comply with standards

24. In performing its functions, and exercising its powers, the SSA must comply with all applicable standards.

Application of variation under standards

25.(1) If a standard provides that the operation of the standard in relation to a particular society may be varied by a SSA by temporarily changing a requirement of the standard, the SSA may temporarily change the requirement as allowed under the standard.

(2) Sub-section (1) does not limit section 23.

SSA to keep Minister informed

26.(1) The SSA must keep the Minister informed of—
(a) the operations of the SSA in relation to this Code; and
(b) the operation, administration and enforcement of this Code.

(2) The SSA must give the Minister such reports and information in relation to those matters as the Minister requires.

Inspection of documents at public office

27.(1) The SSA must keep registers of documents and rules of societies at its public office.

(2) A person may, on payment of the prescribed fee—
(a) inspect at the public office of the SSA during ordinary business hours of the SSA at the office—
  (i) the rules of a society; and
  (ii) any other document of a prescribed class lodged with, created by or otherwise held by the SSA; and
(b) obtain from the SSA—
  (i) a certified copy of the certificate of incorporation of a society and a certified copy of, or of part of, the rules of a society; or
  (ii) a certified copy of, or extract from, another document that the person is entitled to inspect under paragraph (a).

Power of SSA to reject documents

28.(1) If the SSA is of opinion that a document submitted to the SSA—

(a) contains matter contrary to law; or

(b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or

(c) because of an omission or misdescription, has not been duly completed; or

(d) does not comply with the requirements of this Code; or

(e) contains an error, alteration or erasure—

the SSA may refuse to register, or may reject, the document and may request—

(f) that the document be appropriately amended or completed and resubmitted; or

(g) that a fresh document be submitted in its place; or

(h) if the document has not been duly completed, that a supplementary document be submitted.

(2) The SSA may require a person who submits a document to the SSA to also produce another document, or to give any information, that the SSA considers necessary in order to form an opinion whether it should refuse to register or should reject the document.

Extension or abridgment of time

29.(1) The SSA may, on receipt of written application by a society accompanied by the prescribed fee or of its own initiative, extend or abridge the time within which anything is required to be done under this Code or the society's rules.

(2) An application under sub-section (1) may be made to the SSA even though the time sought to be extended has ended.

Division 2—Specific Powers

Subdivision 1—Services corporations

Services corporation

30.(1) The SSA may, by Gazette notice, declare a body corporate, that provides or proposes to provide financial or other services to societies to enable them to further their objects, to be a services corporation.

(2) Subject to this section, a society may subscribe for or otherwise acquire shares in a services corporation.

(3) A society must not, without the written approval of the SSA, apply funds in excess of the prescribed amount or an amount calculated as prescribed, whichever is greater, in subscribing for or otherwise acquiring shares in any one services corporation.

Maximum penalty: $25 000

(4) On an application for approval under sub-section (3), the SSA may—

(a) give the approval; or

(b) refuse to give the approval.

(5) The SSA may—

(a) subject an approval to conditions; and

(b) at any time vary or revoke a condition imposed on an approval.

(6) If a condition (including a prescribed condition) to which an approval is subject has been contravened, the SSA may revoke the approval.

(7) The SSA must not—

(a) refuse to give an approval; or

(b) subject an approval to conditions—

without first giving the society an opportunity to make written submissions to it in relation to the matter.

(8) The SSA must not—

(a) vary a condition imposed on an approval; or

(b) revoke an approval—

without first giving the society an opportunity to be heard or, if the society prefers, an opportunity to make written submissions to it in relation to the matter.

(9) The variation or revocation of a condition imposed on an approval or the revocation of an approval takes effect on—

(a) the day that written notice is given to the society; or

(b) a day specified in that notice—

whichever is later.

(10) A society must not contravene any condition imposed on an approval.

Maximum penalty: $25 000

(11) The application by a society of funds in contravention of sub-section (3) is not invalid as regards a person transacting business with the society unless the person—

(a) has actual knowledge of the contravention at the time when the funds were applied; or

(b) has a connection or relationship with the society that is such that the person should have known of the contravention.

Subdivision 2—Enforcement powers

Obtaining information

31.(1) The SSA may, if it is reasonably necessary for the purposes of its functions under the friendly societies legislation, by written notice given to a society, or a body corporate related to a society, require the society, or body corporate—

(a) to give to it, within a reasonable period and in a reasonable way specified in the notice, specified information and reports; and

(b) to give to it, at the reasonable times and in a reasonable way specified in the notice, periodic reports on specific matters; and

(c) to notify it, within the reasonable time and in a reasonable way specified in the notice, if—

(i) a specified event or change of circumstances happens; or

(ii) the society or body corporate becomes aware that a specified event or change of circumstances is likely to happen.

(2) The SSA may, if it is reasonably necessary for the purposes of its functions under the friendly societies legislation, by written notice given to a services corporation, or a body corporate related to a services corporation, require the services corporation or body corporate to give to it, within a reasonable time and in a reasonable way specified in the notice, specified information.

(3) A society, body corporate or services corporation that, without reasonable excuse, fails to comply with a requirement under sub-section (1) or (2) to the extent that it is capable of doing so commits an offence.

Maximum penalty: $25 000.

(4) It is not a reasonable excuse for a society, or body corporate or services corporation to fail to comply with a requirement under sub-section (1) or (2) that complying with the requirement might tend to incriminate the society, body corporate or services corporation.

(5) The fact that information or a report or notification was given by a society, body corporate or services corporation under sub-section (1) or (2) is not admissible in evidence against the society, body corporate or services corporation in a criminal proceeding (other than a proceeding in relation to the falsity of the information, report or notification) if—

(a) the society, body corporate or services corporation, before giving the information, report or notification (the "relevant action") claimed that the relevant action might tend to

incriminate the society, body corporate or services corporation; and

(b) the relevant action might in fact tend to incriminate the society, body corporate or services corporation.

Obtaining evidence

32.(1) The SSA may, if it is reasonably necessary for the purposes of the friendly societies legislation, by written notice given to a person, require the person—

(a) to attend before an employee of the SSA authorised for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and

(b) to produce to an employee of the SSA authorised for the purpose, at a reasonable time and place specified in the notice, documents in the custody or under the control of the person.

(2) An employee before whom a person attends under sub-section (1)(a) may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the employee may administer an oath or affirmation.

(3) An employee to whom documents are produced under sub-section (1)—

(a) may keep the documents for 60 days or, if a prosecution for an offence against the friendly societies legislation of which the document may afford evidence is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding; and

(b) while the employee has possession of the document, may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the employee's possession.

(4) The regulations must prescribe scales of allowances and expenses to be allowed to persons required to attend under this section.

(5) The SSA may authorise an employee for the purpose of sub-section (1)(a) only if the person has, in the SSA's opinion, the appropriate expertise for the purpose (whether because of training or otherwise).

(6) A person who, without reasonable excuse, fails to comply with a requirement under sub-section (1) to the extent that the person is capable of doing so commits an offence.

Maximum penalty: $25 000.

(7) It is not a reasonable excuse for a person to fail to comply with a requirement under sub-section (1) that complying with the requirement might tend to incriminate the person.

(8) An answer given by a person under sub-section (1) is not admissible against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if—

(a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and

(b) the answer might in fact tend to incriminate the person.

(9) The fact that a document was produced by a person under sub-section (1) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the document) if—

(a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and

(b) producing the document might in fact tend to incriminate the person.

Inspectors

33.(1) The SSA may authorise a person, or a class of persons, to exercise all or any of the powers conferred by this Code on an inspector.

(2) The SSA may cause an identity card to be issued to an inspector.

(3) The identity card must—

(a) contain a recent photograph of the inspector; and

(b) be in a form approved by the SSA.

(4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the SSA.

Maximum penalty: $5000.

Inspector to produce identity card

34. An inspector is not entitled to exercise powers under this Division in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

Entry and search—monitoring compliance

35.(1) An inspector may, for the purpose of finding out whether the requirements of this Code are being complied with—

(a) enter any place; and

(b) exercise the powers set out in section 37.

(2) An inspector must not enter a place, or exercise a power under sub-section (1), unless—

(a) the place is premises occupied by a society or services corporation, or a body corporate related to a society or services corporation and the entry is made when the premises are open for conduct of business or otherwise open for entry; or

(b) the place is premises occupied by a banker or liquidator of a society, or a body corporate related to a society, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or

(c) the place is premises that are not occupied for residential purposes, the inspector believes on reasonable grounds that accounting records or other prescribed documents of, or any auditor's or actuary's working papers relating to, a society, or a body corporate related to a society, are kept or are to be found on the premises and the entry is made when the premises are open for conduct of business or otherwise open for entry; or

(d) the occupier of the place consents to the entry or exercise of the power; or

(e) a warrant under section 38 authorises the entry or exercise of the power.

Entry and search—evidence of offences

36.(1) Subject to sub-section (3), if an inspector has reasonable grounds for suspecting that there is in a place a particular thing ("the evidence") that may afford evidence of the commission of an offence against this Code, the inspector may—

(a) enter the place; and

(b) exercise the powers set out in section 37.

(2) If an inspector enters the place and finds the evidence, the following provisions have effect—

(a) the inspector may seize the evidence;

(b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Code in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence

and of any appeal in relation to the proceeding;

(c) if the evidence is a document, while the inspector has possession of the document, the inspector may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.

(3) An inspector must not enter the place or exercise a power under sub-section (1) unless—

(a) the occupier of the place consents to the entry or exercise of the power; or

(b) a warrant under section 39 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, while searching the place under sub-section (1) under a warrant under section 39—

(a) an inspector finds a thing that the inspector believes, on reasonable grounds, to be—

(i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in sub-section (1); or

(ii) a thing that will afford evidence of the commission of another offence against this Code; and

(b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent—

(i) its concealment, loss or destruction; or

(ii) its use in committing, continuing or repeating the offence mentioned in sub-section (1) or another offence, as the case may be—

sub-section (2) applies to the thing as if it were the evidence.

(5) An inspector who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

(6) The notice must be given to—

(a) if anything is seized, the person from whom the thing was seized; or

(b) if damage is caused to anything, the person who appears to the inspector to be the owner.

General powers of inspector in relation to places

37.(1) The powers an inspector may exercise under section 35(1)(b) or 36(1)(b) in relation to a place are as follows—

(a) to search any part of the place;

(b) to inspect, examine or photograph anything in the place;

(c) to take extracts from, and make copies of, any documents in the place;

(d) to take into the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place;

(e) to require the occupier or any person in the place to give to the inspector reasonable assistance in relation to the exercise of an inspector's powers mentioned in paragraphs (a) to (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement under sub-section (1)(e).

Maximum penalty: $5000.

(3) It is not a reasonable excuse for a person to fail to comply with a requirement under sub-section (1)(e) on the ground of the privilege against self-incrimination.

(4) If, under a requirement under sub-section (1)(e), a person is required to answer a question or produce a document, the contents of the answer, or the fact of production of the document, is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer or document).

(5) For the purposes of the application of sub-section (4) to the production of a document, the contents of the document are to be disregarded.

Monitoring warrants

38.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to sub-section (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Code are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

(a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—

(i) to enter the place; and

(ii) to exercise the powers set out in section 37; and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.

Offence related warrants

39.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to sub-section (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the place a particular thing ("the evidence") that may afford evidence of the commission of an offence against this Code.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

(a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—

(i) to enter the place; and

(ii) to exercise the powers set out in section 37; and

(iii) to seize the evidence; and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purposes for which the warrant is issued.

Offence related warrant may be granted by telephone

40.(1) If, because of urgent circumstances, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 39.

(2) Before applying for the warrant, the inspector must prepare information of the kind mentioned in section 39(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, the inspector may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

(a) after having considered the terms of the information; and

(b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought—

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 39, complete and sign such a warrant as the Magistrate would issue under that section if the application had been made under that section.

(5) If the Magistrate completes and signs the warrant—

(a) the Magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date on which and the time at which the warrant was signed; and

(iii) record on the warrant the reasons for granting the warrant; and

(b) the inspector must—

(i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and

(ii) write on the form of warrant the name of the Magistrate and the date on which and the time at which the Magistrate signed the warrant.

(6) The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the Magistrate—

(a) the form of warrant completed by the inspector; and

(b) the information mentioned in sub-section (2), which must have been duly sworn.

(7) When the Magistrate receives the documents mentioned in sub-section (6), the Magistrate must—

(a) attach them to the warrant that the Magistrate completed and signed; and

(b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 39 (Offence related warrants).

(8) A form of warrant duly completed by the inspector under sub-section (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

(a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and

(b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence—

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

Obstruction of inspectors

41. A person must not, without reasonable excuse, assault, obstruct, hinder or resist an inspector in the exercise of a power under this Code.

Maximum penalty: $50 000 or imprisonment for 7 years, or both.

False or misleading statements

42.(1) In this section—

"relevant person" means a person exercising powers under this Code, and includes an inspector.

(2) A person must not—

(a) make a statement to the SSA or a relevant person that the person knows is false or misleading in a material particular; or

(b) omit from a statement made to the SSA or a relevant person anything without which the statement is, to the person's knowledge, misleading in a material particular; or

(c) give to the SSA or a relevant person a document containing information that the person knows is false, misleading or incomplete in a material particular without, at the same time—

(i) indicating that the document is false, misleading or incomplete and the respect in which it is false, misleading or incomplete; and

(ii) giving correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Subdivision 3—Special meeting and inquiry

Special meeting and inquiry

43.(1) The SSA, on the written application of a majority of the directors, or not less than 10% of the members of a society or not less than 10% of the members of a benefit fund of a society (as the case requires) or on its own initiative—

(a) may call a special meeting of the society or of the members of the benefit fund; or

(b) may hold an inquiry into affairs (including the working and financial conditions) of the society or the benefit fund.

(2) The SSA, on its own initiative, may hold an inquiry into affairs (including the working and financial conditions) of—

(a) a body corporate related to a society; or

(b) a services corporation.

(3) An application under sub-section (1) must be supported by such evidence as the SSA directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(4) Notice of the application must be given to the society if the SSA directs.

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

(a) if the meeting is called or inquiry is held on an application under sub-section (1), by the applicants; or

(b) in any other case, by such persons and in such way as the SSA directs.

(6) The SSA may—

(a) direct the time and place the meeting or inquiry is to be held; and

(b) direct what matters are to be discussed or determined; and

(c) despite the rules of the society, give notice to members of the holding of the meeting or inquiry as it considers appropriate.

(7) The SSA may, by written notice, direct the directors and such other persons as it requires to attend the meeting or inquiry.

(8) A person to whom a direction is given under sub-section (7) must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

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

(10) The SSA, or any person nominated by it, may attend and address a meeting held under this section.

(11) All expenses of and incidental to the meeting or inquiry may be defrayed—

(a) if the meeting is called or inquiry is held under sub-section (1)—

(i) by the applicants, or any officer or member, or former officer or member of the society; or

(ii) by the society out of the management fund of the society or, with the prior written approval of the SSA, out of a benefit fund of the society—

in such proportions as may be agreed between the SSA and those persons; or

(b) if the inquiry is held under sub-section (2)—

(i) in the case of a related body corporate, out of the funds of the society to which the body corporate is related; or

(ii) in the case of a services corporation, out of the funds of the services corporation or, if the society has shares in the services corporation, out of the management fund of the society—

in such proportions as the SSA directs—

and may be recovered as a debt in a court having jurisdiction for the recovery of debts up to the amount concerned.

(12) In default of agreement under sub-section (11)(a), the expenses must be defrayed by such persons, and in such proportions, as the Court, on the application of the SSA, directs.

Subdivision 4—Special power of intervention

Intervention by SSA

44.(1) If the SSA is of the opinion that—

(a) a society has contravened the friendly societies legislation and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation; or

(b) the management fund of a society has an accumulated deficit; or

(c) the affairs of a society or a fund of a society are being managed or conducted in an improper or financially unsound way—

the SSA may, by written notice given to the society, place it under direction.

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

(3) While the society is under direction, the SSA may do all things that it considers necessary to ensure that the principal objects of the friendly societies scheme for friendly societies established by the friendly societies legislation are achieved in relation to the society.

(4) Without limiting sub-section (3), the SSA may—

(a) order an audit of the affairs of the society or a fund of the society by an auditor chosen by the SSA at the expense of the society; or

(b) order an actuarial investigation of the affairs of the society or a fund of the society by an actuary chosen by the SSA at the expense of the society; or

(c) direct the society to change any practices that in the SSA's opinion are undesirable or unsound; or

(d) direct the society to cease or limit the raising of funds or the exercise of other powers; or

(e) remove a director, or all the directors, of the society from office and appoint another director or other directors; or

(f) remove any auditor of the society from office and appoint another auditor; or

(g) remove the actuary of the society from office and appoint another actuary; or

(h) give any other directions as to the way in which the affairs of the society are to be conducted or not conducted.

(5) If the society—

(a) fails, without reasonable excuse, to comply with a direction given or requirement made under this section to the extent that the society is capable of doing so; or

(b) without reasonable excuse, obstructs, hinders or resists the exercise of the SSA's powers under this section—

the society and any officer of the society who is in default each commit an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(6) A director, auditor or actuary appointed under this section holds office for such term as the SSA directs.

Subdivision 5—Power to suspend operations of society

Power to suspend operations

45.(1) If the SSA considers that it is necessary to do so—

(a) in the interests of members, or persons who may become members, of a society; or

(b) because a society has failed to comply with a standard—

the SSA may, by written notice given to the society, direct the society not to do any of the following—

(c) borrow any amount;

(d) accept any new member;

(e) without the approval of the SSA, accept any contribution or pay to a member any benefit or otherwise dispose of or deal with the assets of the society or a fund of the society;

(f) accept any payment on account of share capital except calls that fell due before the notice was given;

(g) repay any amount paid on shares;

(h) repay any money on loan;

(i) pay or transfer an amount to any person, or create an obligation to do so.

(2) A notice under sub-section (1) continues in force until it expires, or is withdrawn by the SSA.

(3) The SSA may, by a further written notice given to the society—

(a) extend the period for which a notice under sub-section (1) is to have force; or

(b) amend the terms of the notice; or

(c) withdraw the notice.

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

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(5) Sub-section (4) does not apply if the failure to comply happens with the written permission of the SSA.

Subdivision 6—Administrators

Appointment of administrator

46.(1) The SSA may, by written notice, appoint an administrator to conduct the affairs of a society and may, by written notice, revoke the appointment.

(2) A notice of appointment must specify—

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

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the SSA.

(4) The SSA must not appoint an administrator unless—

(a) the SSA is of the opinion that—
  (i) the society has contravened the friendly societies legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or
  (ii) the management fund of the society has an accumulated deficit; or
  (iii) the affairs of the society or a fund of the society are being managed or conducted in an improper or financially unsound way; or
(b) after making such inquiries in relation to the society as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members or creditors that the society's affairs be conducted by an administrator; or
(c) the SSA has certified that any of the events mentioned in section 402(1)(a), (b), (c) or (g) (Winding up on certificate of SSA) has happened.

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

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

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

(7) A director of a society must not be appointed or elected while the administrator is in office except in the circumstances mentioned in sub-section (11).

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

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

(10) On providing the report and accounting fully in relation to the administration of the society to the satisfaction of the SSA, the administrator is released from any further duty to account in relation to the administration of the society other than on account of fraud, dishonesty, negligence or wilful failure to comply with the friendly societies legislation.

(11) Before revoking an administrator's appointment, the SSA must—

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

(12) Directors elected or appointed under sub-section (11)—

(a) take office on the revocation of the administrator's appointment; and
(b) in the case of directors appointed under sub-section (11)(d), hold office, subject to section 47, until the society's next annual general meeting.

(13) The expenses of an administrator in conducting a society's affairs are payable—

(a) from the management fund of the society; or
(b) from a benefit fund of the society in accordance with the prior written approval of the SSA; or
(c) partly from the management fund and partly from a benefit fund in accordance with the prior written approval of the SSA.

(14) The expenses of conducting a society's affairs include—

(a) if the administrator is not an employee of the SSA, remuneration of the administrator at a rate approved by the SSA; or
(b) if the administrator is an employee of the SSA, the amount that the SSA certifies should be paid to it as repayment of the administrator's remuneration.

(15) An amount certified under sub-section (14)(b) is a debt due to the SSA and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(16) An administrator has, in relation to the expenses specified in sub-section (13), the same priority on the winding-up of a society as the liquidator of the society has.

(17) If a society incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with the friendly societies legislation or the society's rules by an administrator, the administrator is personally liable for the loss.

(18) An administrator is not liable for any loss that is not a loss to which sub-section (17) applies but must account for the loss in a report given under this section.

Additional powers of SSA

47.(1) If the SSA appoints directors of a society under section 46(11)(d), the SSA may, by written notice given to the society, specify—

(a) a time during which this section is to apply in relation to the society; and
(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.

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

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

(3) The SSA may, by written notice given to the society, extend the time for which this section is to apply in relation to a society.

(4) A rule specified by the SSA under this section as a rule of the society—

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

Stay of proceedings

48.(1) If the SSA appoints an administrator to conduct a society's affairs, a person must not begin or continue any proceeding in a court against the society until the administrator's appointment is revoked except with the leave of the Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.

(2) A person intending to apply for leave of the Court under sub-section (1) must give to the SSA not less than 10 days notice of intention to apply.

(3) On the hearing of an application under sub-section (1), the SSA may be represented and may oppose the granting of the application.

Administrator to report to SSA

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

Subdivision 7—Levies

Supervision Fund

50. The SSA must pay into the Supervision Fund established under section 94 of the Financial Institutions Code all amounts received as supervision levy under this Division.

Supervision levy

51.(1) The SSA may determine that an amount is to be paid to it by societies as a supervision levy.

(2) The amount of the levy may be fixed by the SSA as—
(a) a specified amount; or
(b) a specified percentage of an amount to be determined, on a specified day, by reference to specified factors relating to societies (including, for example, factors such as paid—up capital, reserves, obligations and debts and total assets including assets of each fund of the society); or
(c) both a specified amount and such a specified percentage.

(3) If the levy is fixed, wholly or partly, as mentioned in sub-section (2)(b), the SSA may include in the determination directions as to the way in which the levy is to be determined.

(4) The SSA may—
(a) fix the amount of the levy differently for different societies; and
(b) determine that the levy is not payable by specified societies.

(5) The SSA may, in the determination, require the levy to be paid in one amount by a specified time or permit the levy to be paid by specified instalments.

(6) If the SSA permits the levy to be paid by instalments, it may, in the determination, allow a discount for payment in one amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

(7) The SSA may, in the determination, require the payment of amounts, by way of late payment charge, interest or both, in relation to amounts of levy that are not paid as required by the determination.

(8) The SSA may include in the determination directions as to the way in which amounts of late payment charge and interest are to be determined.

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

(10) The SSA may, on the application of a society, vary—
(a) an amount of levy payable by the society; or
(b) the time within which an amount of levy is payable by the society.

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

(12) In sub-sections (9), (10) and (11)—
"levy" includes late payment charge and interest in relation to levy.

Consultation

52. In determining the amount to be paid as supervision levy under section 51, the SSA may, where it is appropriate and practicable to do so, consult with industry bodies and societies.

Failure to make payment an offence

53. If a society defaults in making any payment required to be made under section 51, the society and any officer of the society who is in default each commit an offence.

Maximum penalty: $25 000.

Subdivision 8—Control of Advertising

Restriction on initial advertisements

54.(1) A person who does not have the written permission of the SSA to do so, must not issue, or cause to be issued, an advertisement relating to—
(a) a proposed society or proposed benefit fund of a society or proposed society; or
(b) a body corporate that proposes to become a foreign society.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(2) The permission granted by the SSA under sub-section (1) applies for the purposes of this section only and must not be construed as permission in respect of any other matter or thing for which permission under this Code is required.

Power to control advertising

55.(1) The SSA may, by written notice given to a society or foreign society, direct it—
(a) not to issue an advertisement; or
(b) not to issue an advertisement of a specified kind; or
(c) not to issue an advertisement that is substantially in the same form as an advertisement that has been issued before; or
(d) to include in an advertisement of a specified kind, or in an invitation to invest in the society, information relating to the society or foreign society that is required by the SSA to be included.

(2) Directions under sub-section (1) may be varied or revoked by further written notice given to the society, or foreign society, by the SSA.

(3) A society or foreign society that fails to comply with a direction under this section commits an offence.

Maximum penalty: $75 000.

PART 3—SOCIETIES

Division 1—Objects

Primary objects

56. For the purposes of this Code, primary objects, in relation to a society, are such of the following as are specified in the rules of the society as objects of the society—

(a) to provide health and welfare benefits, services and facilities for members or their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical, physiotherapy and speech therapy benefits, services and facilities;

(b) to provide benefits, services and facilities for the relief and maintenance of members or their dependants in the case of birth, death, sickness, disability, accident, retirement, old age and unemployment;

(c) to provide benefits, services and facilities for the education of members or their dependants;

(d) to provide financial and investment benefits, services and facilities for members or their dependants including, but not limited to, benefits, services and facilities relating to annuities, life insurance and superannuation;

(e) to sell or supply medical requisites and therapeutic goods and dispense or sell medicines to members of the public.

Objects of society must include primary objects

57. The objects of a society must include one or more of the objects referred to in section 56.

Dominant activities

58. The dominant activities of a society must be within the scope of the primary objects of the society.

Division 2—Formation and Registration

Formation of societies

59.(1) A body proposed to be a society may be formed by any 25 or more adults.

(2) A proposed society may be formed only if there has been a meeting for the purpose of forming the society at which there were present 25 or more adults.

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

(a) a written statement showing—

(i) the primary objects and other objects of the society; and

(ii) the reasons for believing that an application for registration of the society should be granted; and

(iii) the reasons for believing that, if registered, the society will be able to carry out its objects successfully; and

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

(4) If, at the formation meeting or any subsequent or adjourned meeting, 25 or more adults, after considering the statement and the rules, approve the rules (with or without amendment), and sign an application for membership and shares (if any), they may proceed to elect the first directors of the society under the rules as so approved.

(5) An application for shares in a proposed society, made before the registration of the society, may not be withdrawn, and a person who makes such an application is, on the registration of the society, liable to pay the society—

(a) the value of the shares for which the person applied; or

(b) the value of the minimum number of shares for which a member is entitled to subscribe—

whichever is greater.

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

(7) A person must not, before a society is registered—

(a) issue an invitation to acquire an interest in the proposed society or to contribute to a benefit fund of the proposed society; or

(b) take an amount in consideration of the allotment of a share, or the acquisition of an interest in, the proposed society or take a contribution to a benefit fund of the proposed society.

(8) A person who contravenes sub-section (7) commits an offence and is liable on conviction to a maximum penalty of $100 000 or imprisonment for 15 years, or both.

Registration

60.(1) A proposed society formed under this Part may apply to the SSA, in accordance with the regulations, to be registered under this Code as a society.

(2) An application for registration must—

(a) be made within 2 months after the meeting at which the first directors of the society were elected; and

(b) be accompanied by—

(i) a statutory declaration by the person presiding at that meeting and a person elected as a director at that meeting stating that the requirements of section 59 have been complied with; and

(ii) a copy of the statement presented to the meeting, signed by the person presiding and a director; and

(iii) 2 copies of the proposed rules of the society, certified by the person presiding and a director to be the rules approved at the meeting; and

(iv) a list containing the full name, date and place of birth, residential address and business occupation of each director; and

(v) a list containing the full name, address and occupation of each of 25 or more adults who attended the meeting and applied for membership; and

(vi) written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society; and

(vii) the prescribed fee; and

(c) be accompanied by such evidence as the SSA requires—

(i) that the society is eligible for registration; and

(ii) that the society, if registered, will be able to comply with the friendly societies legislation and all applicable standards; and

(iii) that the dominant activities of the society, if registered, will be within the scope of at least one of the primary objects specified in section 56;

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

(v) that the society, if registered, will operate at least one benefit fund.

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

(4) If the SSA is satisfied that the society is eligible for registration, the SSA must register the society and its proposed rules.

(5) A society is eligible for registration only if—

(a) the society's application for registration complies with this Code; and

(b) the proposed rules of the society comply with this Code and the standards; and

(c) there are reasonable grounds for believing that the society will, within a reasonable time after registration, if registered—
  (i) be able to comply with the friendly societies legislation and all applicable standards; and
  (ii) have, as its dominant activities activities that are within the scope of the primary objects of the society; and
  (iii) be able to carry out its objects successfully; and
  (iv) unless exempted by the SSA, operate at least one benefit fund; and
(d) there is no good reason why the society and its rules should not be registered.

(6) The SSA may, by written notice given to the society, exempt a society from complying with the requirement to operate at least one benefit fund.

Certificate of incorporation

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

(2) A certificate of incorporation issued to a society is conclusive evidence that all requirements of this Code in relation to registration and matters precedent or incidental to registration have been complied with.

Effect of incorporation

62. On the issue of a certificate of incorporation to a society, the society is a body corporate with perpetual succession and—

(a) has the legal capacity of a natural person; and
(b) may acquire, hold and dispose of real and personal property; and
(c) has a common seal; and
(d) may sue and be sued in its corporate name.

Powers of societies

63.(1) Without limiting section 62, but subject to the friendly societies legislation and the society's rules, a society may—

(a) acquire shares in an association by purchase or otherwise;
(b) hold a subsidiary but only if approved by the SSA;
(c) obtain registration as a foreign society under the friendly societies legislation of another participating State;
(d) carry on a pharmacy practice and employ a pharmacist who is registered under the pharmacy law of this State;
(e) do anything else that it is authorised to do by the friendly societies legislation or the society's rules.

(2) The powers of a subsidiary formed or acquired by a society are not limited by the society's objects or limitations on the society's powers.

(3) Except as permitted by the standards, a society must not carry on business outside Australia.

(4) In this section—

"carry on business" means—

(a) establish or use an office for receiving amounts in consideration of the acquisition of an interest in a society or contributions to a benefit fund of a society; or
(b) advertise in relation to raising share capital or invite contributions to a benefit fund of a society—

but does not include—

(c) maintain an account at a bank, building society or credit union; or
(d) create evidence of a debt or create a charge on property; or
(e) secure or collect any debts or enforce rights in respect of such debts; or
(f) conduct an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
(g) invest funds or hold property; or
(h) continue to provide benefits to, and accept contributions from, a member who, at the time of applying to contribute to a benefit fund, was resident in Australia and has subsequently moved to a place outside Australia; or
(i) continue to receive amounts in consideration of an interest in a society from a member who, at the time of acquiring the interest, was resident in Australia and has subsequently moved to a place outside Australia.

Prohibition on issuing debenture

64. A society must not issue debentures.

Restriction on reinsurance arrangements

65. A society must not enter into a reinsurance arrangement unless the society's actuary has given the society written advice as to the likely consequences of the proposed arrangement.

Restriction on acting as trustee

66. A society must not act as a trustee or representative for the purpose of an approved deed in relation to the issue of prescribed interests under Part 7.12 of the Corporations Law.

Control of certain financial arrangements

67. Except as permitted by the standards, a society must not enter into an arrangement—

(a) establishing rights and obligations to receive or deliver property the value of which, or to receive or make a payment in an amount which, or the value of which—
  (i) depends on, or is derived from, the value or price at a particular future time or during a particular future period of particular property, rights or liabilities; or
  (ii) depends on, or is derived by
  reference to, a particular rate, index or other factor at a particular future time or during a particular future period; or
(b) specified in the standards to be a prohibited financial arrangement for the purposes of this section.

Maximum penalty: $75 000.

Control of foreign currency transactions

68. Except as permitted by the standards, a society must not—

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

Maximum penalty: $75 000.

Division 3—Rules

Subdivision 1—General

Rules

69.(1) The rules of a society must set out—

(a) the primary objects of the society; and
(b) any other objects of the society.

(2) The rules of a society must provide for the matters specified in the standards.

(3) Subject to sub-section (4), the rules of a society may also provide for any matter that is necessary, expedient or desirable for the society's objects.

(4) If there is any inconsistency between a rule of a society and the friendly societies legislation or a standard, the friendly societies legislation or standard prevails and the rule is invalid to the extent of the inconsistency.

Copies of rules

70. A society must give a copy of its rules, or part of its rules, to a member or proposed member who requests it and has paid the fee (if any) payable under the society's rules.

Maximum penalty: $5000.

Society and members to be bound by rules

71. The rules of a society have effect as a contract between its members, and between each member and the society.

Subdivision 2—Amendment of rules

Amendment of rules by special resolution

72. Subject to sections 73 and 75, the rules of a society may be amended only if the amendment has been approved by special resolution of the members under section 307.

Amendment of rules by board of directors

73.(1) A society's rules may be amended by a resolution of its board—

(a) if the amendment is authorised or required by or under any Act or law or the standards; or

(b) if the SSA is satisfied that approval of the amendment by the members of the society is not necessary and amendment by a resolution of the board is appropriate; or

(c) to correct a patent error.

(2) The society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice setting out the text or a summary of an amendment of the society's rules under this section.

Maximum penalty: $5000.

(3) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally—

(a) in the area of the State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

(4) The SSA may require a society that has amended its rules under this section to obtain approval of the amendment by the members of the society.

Registration of amendment of rules

74.(1) If the SSA is satisfied—

(a) that an amendment of the rules of a society would not cause the society's dominant activities to cease to be within its primary objects; and

(b) that the rules, as proposed to be amended, would comply with the friendly societies legislation; and

(c) that there is no good reason why the amendment should not be registered—

the SSA must register the amendment.

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

(3) The rules of the society must be read subject to any registered amendment.

Power of SSA to require modification of rules

75.(1) If, in the SSA's opinion, the rules of a society should be amended—

(a) to comply with the friendly societies legislation; or

(b) to give effect to a standard—

the SSA may, by written notice given to the society, require it, within a reasonable period specified in the notice, to amend its rules in a way specified in the notice or otherwise in a way approved by the SSA.

(2) If the society fails to amend its rules as required by the notice, the SSA may amend the society's rules by notation on the registered copy of the rules.

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

(a) an amendment of the society's rules made under this section; and

(b) the day on which the amendment takes effect.

(4) The society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice setting out the text of each amendment of the rules of the society taking effect under this section.

Maximum penalty: $5000.

(5) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally—

(a) in the area of the State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

Subdivision 3—Societies conducting health benefit funds

Definitions

76. In this Subdivision—

"Commonwealth Act" means the National Health Act 1953 of the Commonwealth;

"registered society" means a society that is registered under Part VI of the Commonwealth Act.

Health benefit fund rules

77.(1) The rules of a registered society include the terms, conditions, directions and Council's rules (within the meaning of the Commonwealth Act) that apply to the society as a registered organisation under Part VI of the Commonwealth Act.

(2) Except as provided in section 78, this Code does not apply to the rules referred to in sub-section (1).

Registered society to give notice of rule changes

78. If an amendment of the rules of a registered society is made under this Code—

(a) where, under section 78 of the Commonwealth Act, the society receives acknowledgement of its notification of the amendment, the society must, within 7 days after that receipt give written notice to the SSA of the date on which the amendment takes effect;

(b) where, under section 78 of the Commonwealth Act, the Commonwealth Minister declares that the amendment is not to be taken to have come into operation, the society must, within 7 days after the declaration is made, give written notice of the declaration to the SSA.

Division 4—Standards

Societies to comply with standards

79. A society must comply with all applicable standards.

Maximum penalty: $25 000.

Division 5—Membership

Members

80.(1) A person is a member of a society if the person—

(a) signs the application for membership on the formation of the society and has not ceased to be a member; or

(b) is entitled to a benefit from a benefit fund of the society; or

(c) holds a share in the society; or

(d) is admitted to membership under the society's rules and has not ceased to be a member.

(2) The members of a merged society are the persons who, on the day of the merger, are members of a society that is a party to the merger, and any other persons who

are admitted to membership under the merged society's rules.

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

(4) The members of a society to which another society has transferred part of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society and are specified, for the purposes of this sub-section, in an agreement between the societies.

(5) A person may exercise the rights of membership of a society only if the person has complied with any requirements for membership under the society's rules, including, for example—

(a) the payment of an amount;

(b) the acquisition of shares or interests.

Members who are minors

81.(1) Subject to a society's rules, a minor may be a member of the society or a benefit fund of the society.

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

(3) A person who has not reached 16 may, with the written consent of a parent or a person who stands in the place of a parent—

(a) apply for membership of a benefit fund of a society; or

(b) take an assignment of such benefits.

(4) A person who has reached 16 but has not reached 18 has the same capacity to exercise rights or powers in relation to benefits to which he or she is entitled as a person who has reached 18.

Joint members

82.(1) Two or more persons may be joint members of a society or a benefit fund of a society if the society's rules so provide.

(2) If a society or a benefit fund of a society has joint members, the following provisions apply—

(a) in the case of a society, the register of members of the society must indicate that a person is a joint member of the society;

(b) in the case of a benefit fund of a society, the register of members of the benefit fund must indicate that a person is a joint member of the benefit fund;

(c) the joint members are entitled to choose the order in which they are named in a register of members, but failing any such choice the society may enter the names in the order it considers appropriate;

(d) the joint member who is named first in a register of members is the primary joint member;

(e) subject to the society's rules, but without affecting the right of a member to obtain a copy of the balance sheet from the society on demand, a notice or other document may be given or sent only to the primary joint member;

(f) for the purpose of determining—

(i) who is qualified to vote on a resolution at a meeting of the society or of a benefit fund of the society; and

(ii) the number or proportion of members required to give effect to any provision of the friendly societies legislation or the society's rules—

membership is taken to be solely that of the primary joint member.

Corporate membership

83.(1) Subject to a society's rules, a body corporate may be a member of the society or a benefit fund of the society.

(2) A body corporate that is a member of a society or a benefit fund of a society may, by written notice given to the society, appoint an individual to represent it—

(a) in the case of a body corporate that is a member of a society, at meetings of members of the society; or

(b) in the case of a body corporate that is a member of a benefit fund of a society, at meetings of the benefit fund.

(3) A person appointed under sub-section (2)—

(a) is entitled—

(i) to receive notice of all meetings that the body corporate is entitled to receive; and

(ii) to exercise on behalf of the body corporate the same voting rights as the body corporate could, if it were a natural person, exercise as a member of the society; and

(b) is eligible to be elected as a director of the society if—

(i) the body corporate holds the qualifications required for holding office as a director (other than qualifications about age and being an individual); and

(ii) a person has not been appointed as liquidator of the body corporate.

Cessation of membership

84. A person ceases to be a member of a society or a benefit fund of a society as provided by the society's rules.

Expulsion of member

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

Limitation of liability of members

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

Division 6—Name and Office

Name

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

(2) The SSA may register a proposed society's rules, or an amendment of rules affecting a society's name, only if AFIC has reserved the name for the proposed society or society under Part 6A of the AFIC Code.

(3) If the SSA registers an amendment of the rules of a society changing the name of the society, the SSA may, on application by the society accompanied by the prescribed fee, amend its certificate of incorporation or issue a new certificate.

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

Maximum penalty: $5000.

(8) A society must not use a name other than—

(a) its registered name; or

(b) a name approved for its use under Part 6A of the AFIC Code.

(9) A society does not contravene sub-section (8) by using a name in a way mentioned in section 88.

(11) A society that contravenes sub-section (8) commits an offence and is liable on conviction to a maximum penalty of $75 000.

Abbreviations of society's name

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

(a) the abbreviation "Ltd." for the word "Limited"; or

(b) the abbreviation "Aust." for the word "Australian"; or

(c) the abbreviation "No." for the word "Number"; or

(d) the symbol "&" for the word "and"; or

(e) any of those words instead of the corresponding abbreviation or symbol.

(2) In this section—

"name" of a society means—

(a) its registered name; or

(b) a name approved for its use under Part 6A of the AFIC Code.

Change of name does not affect identity

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

(a) affect the identity of the society; or

(b) affect a right or obligation of the society or of a member or other person; or

(c) render defective legal proceedings by or against the society.

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

Use of "friendly society"

90.(1) Subject to this section—

(a) a person or body, other than a society, foreign society or services corporation, must not carry on business, under a name or title of which the words "friendly society", or any other words, abbreviations or symbols with a similar meaning, form part; and

(b) a person or body, other than a society or foreign society, must not hold out that its business is that of a society.

(2) A person or body may apply to the SSA for exemption from sub-section (1).

(3) The SSA may, by written notice given to the person or body, grant an exemption for such time and on such conditions as the SSA determines.

(4) The SSA may, at any time—

(a) revoke an exemption; or

(b) vary or revoke a condition of an exemption.

(5) A person who contravenes sub-section (1) or a condition of an exemption under sub-section (3), and every director or other person having the control and management of an incorporated or unincorporated body contravening the sub-section or condition, commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(6) This section does not apply to an unregistered society within the meaning of section 91.

Unregistered society not to carry on business

91.(1) An unregistered society must not carry on business in this State.

(2) An unregistered society may apply to the SSA for an exemption from sub-section (1).

(3) The SSA may, by written notice given to the unregistered society, grant an exemption for such time and on such conditions as the SSA determines.

(4) The SSA may, at any time—

(a) revoke an exemption; or

(b) vary or revoke a condition of an exemption.

(5) An unregistered society that contravenes sub-section (1) or a condition of an exemption under sub-section (3), and every other person having the control and management of the society contravening the sub-section, commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(6) In this section, "unregistered society" means a body registered as a friendly society in a participating State but not registered as a foreign society in this State.

Publication of name

92.(1) Except as otherwise provided in this section, a society must set out its registered name in legible letters on every public document (within the meaning of sub-section (7)) of the society.

(2) A society must ensure that its registered name or a name approved in relation to the society under Part 6A of the AFIC Code is used on any advertisement published, or authorised to be published, by the society.

(3) A society must ensure that its registered name and the words "Registered Office" are displayed in a conspicuous place and in legible letters on the outside of its registered office.

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

(5) A society that contravenes this section commits an offence and is liable on conviction to a penalty of $25 000.

(6) Nothing in this section prohibits a society from using, in addition to its registered name, a name approved in relation to the society under Part 6A of the AFIC Code.

(7) For the purpose of sub-section (1), "public document" means—

(a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the society that—

(i) when signed, issued or published, is intended to be lodged or is required by or under this Code to be lodged; or

(ii) is signed, issued or published under or for the purposes of this Code or any other law of the Commonwealth or of a State; or

(b) an instrument of, or purporting to be signed or issued by or on behalf of, the society that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or

(c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods or services, or official notice of, or purporting to be signed or issued by or on behalf of, the society.

Common Seal

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

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

Maximum penalty: $25 000.

Society may have duplicate common seal

94. A society may, if authorised by its rules, have a duplicate common seal, which must be a facsimile of the common seal of the society with the addition on its face of the words "Share Seal" or "Document Seal" and a document of title referring to or relating to shares of the society sealed with that duplicate seal is taken to be sealed with the common seal of the society.

Registered office

95.(1) A society must have a registered office in this State.

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

(3) A society must give written notice of any proposed change of address to the SSA.

Maximum penalty: $5000.

(4) At the end of the day of registration by the SSA of the new address or at the end of such later day as the society specifies in the notice, the new address becomes the registered office of the society.

PART 4A—BENEFIT FUNDS

Division 1—Provision of Benefits and Establishment of Benefit Funds

Provision of benefits

96.(1) A society must not pay, or provide for the payment of, amounts to which a member of the society or any other person may be, or become, entitled because of contributions, or payments made to the society (whether by that member or person or by another person) unless the society—

(a) maintains a benefit fund for the receipt of such contributions and payments; and

(b) pays those amounts as benefits from the benefit fund.

(2) Sub-section (1) does not apply to amounts payable by a society—

(a) in respect of shares in the society; or

(b) as trustee for a superannuation entity within the meaning of the Superannuation Industry (Supervision) Act 1993 (Commonwealth).

Establishment of benefit fund

97.(1) A society may, under its rules, establish a benefit fund in accordance with this Code and the standards.

(2) A benefit fund of the society is established when the rules of the society providing for the benefit fund are registered by the SSA.

Approval to establish benefit fund

98.(1) The SSA must not register rules providing for a benefit fund of a society unless the SSA has approved the establishment of the benefit fund.

(2) A society that proposes to establish a benefit fund must apply in writing to the SSA for approval to establish the benefit fund.

(3) An application under sub-section (2) must be accompanied by a copy of the rules the society proposes to make in relation to the proposed benefit fund.

(4) If the SSA receives an application under this section and is satisfied that—

(a) the proposed rules of the society are in accordance with the standards applicable to the proposed benefit fund; and

(b) the establishment of the proposed benefit fund is in accordance with the standards; and

(c) there is no good reason why the proposed rules should not be registered—

the SSA must, in writing given to the society, approve the application.

Division 2—Management of Benefit Funds

Assets of benefit funds

99.(1) A society must keep the assets of each benefit fund distinct and separate from the assets of any other benefit fund and from any other assets of the society, except as otherwise provided or permitted under this Code.

(2) Except as provided in sub-section (3), a society must maintain a separate account at a bank, building society or credit union for each benefit fund.

(3) A society may maintain a single account at a bank, building society or credit union for 2 or more benefit funds if permitted to do so by this Code or the standards.

(4) Nothing in this Code constitutes a society or a director of a society a trustee of the assets of a benefit fund of the society.

Payments to benefit funds

100. A society must credit to each benefit fund, in accordance with this Division—

(a) all contributions received by or on behalf of the society in respect of the benefit fund; and

(b) all income from investment of assets of the benefit fund and the proceeds of disposal of any such investment; and

(c) any other amounts received by or on behalf of the society in respect of the benefit fund.

Application of benefit fund assets

101.(1) A society must not, directly or indirectly, apply or deal with assets of a benefit fund otherwise than in accordance with this Code.

(2) The assets of a benefit fund may only be applied—

(a) for the purposes of paying any benefit payable to a person entitled to a benefit from the benefit fund; or

(b) as otherwise permitted by this Code or the society's rules.

Mortgaging assets of benefit fund

102.(1) A society must not mortgage or otherwise charge or encumber an asset of a benefit fund.

(2) If a society's rules and the standards so permit, the society may, despite sub-section (1), mortgage or otherwise charge or encumber an asset of a benefit fund for the advantage of the benefit fund in accordance with those rules and standards.

Investment of benefit funds

103.(1) A society must not invest assets of a benefit fund otherwise than in accordance with this Code, the society's rules and the standards.

(2) If the rules of the society and the standards so provide, a society may, in accordance with this Code, the rules and the standards, invest assets of 2 or more of its benefit funds in a combined investment.

(3) A society, in investing assets of a benefit fund, must exercise the care, diligence and skill that a prudent person, whose profession, business or employment is or includes investing assets on behalf of other persons, would exercise in managing the affairs of other persons.

Payment of money into account

104. A society must, as soon as practicable after it receives any money for a benefit fund, pay the money—

(a) into an account maintained for the benefit fund under section 99; or

(b) into a funds inward clearing account established under section 105.

Funds inward clearing account

105.(1) A society may open at a bank, building society or credit union an account to be known as a funds inward clearing account.

(2) If, under section 104, money received for a benefit fund is paid into the funds inward clearing account kept by a society, the society must ensure that the money is paid out of that account and into an account maintained under section 99 for the benefit fund as soon as practicable.

(3) If money of a benefit fund is paid into a funds inward clearing account—

(a) the money is money of that benefit fund while it is held in that account; and

(b) interest earned on the money while held in that account, less account fees and taxes,

belongs to the benefit fund in like proportion to the entitlement of the benefit fund to the money in that account.

Funds outward clearing account

106.(1) A society may open at a bank, building society or credit union an account to be known as a funds outward clearing account.

(2) If a society withdraws an amount from an account maintained under section 99 for a benefit fund and does not pay the amount forthwith to the person entitled to that amount or apply the amount in accordance with section 101(2), the society must—

(a) pay the amount into the funds outward clearing account forthwith; and

(b) pay the amount from the funds outward clearing account to the person as soon as practicable.

(3) If an amount in a 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, at the expiration of that period, be paid back to the account from which it was withdrawn.

(4) If money of a benefit fund is paid into a funds outward clearing account—

(a) the money is money of the benefit fund while it is held in that account; and

(b) interest earned on the money while held in that account, less account fees and taxes, belongs to the benefit fund in like proportion to the entitlement of the benefit fund to the money in that account.

Transfer of an asset between funds

107.(1) A society must not, except in accordance with sub-section (2), transfer an asset—

(a) from one benefit fund of the society to another benefit fund of the society; or

(b) from a benefit fund of the society to the management fund of the society.

(2) A society may transfer an asset from a benefit fund (the "transferor fund") to another benefit fund or the management fund (the "transferee fund") if—

(a) the society transfers from the transferee fund to the transferor fund an amount equal to the fair value of the asset determined in accordance with section 109; and

(b) in the case of a transfer referred to in sub-section(1)(a), the transfer is fair and reasonable in all the circumstances for the members of the transferor fund and the transferee fund;

(c) in the case of a transfer referred to in sub-section (1)(b), the transfer is fair and reasonable in all the circumstances for the members of the society.

(3) This section does not apply to—

(a) a transfer of assets in accordance with a restructure of one or more benefit funds under Division 3; or

(b) the distribution of assets in accordance with section 119 on termination of a benefit fund; or

(c) anything that a liquidator is required to do by or under this Code or any other law of this or any other State or of the Commonwealth; or

(d) any application of assets of a benefit fund permitted by this Code or the standards.

Distribution of surplus in benefit fund

108.(1) If the actuary of a society advises the society that there is a surplus in a benefit fund, the society, subject to this Code, the rules of the society and the standards—

(a) if the rules of the society so provide, may pay, apply or allocate all or part of the surplus to the members of the benefit fund; or

(b) if the rules of the society so provide, may transfer all or part of the surplus to another benefit fund of the society; or

(c) if the rules of the society so provide, may transfer all or part of the surplus to the management fund of the society.

(2) For the purposes of sub-section (1), if any part of a surplus in a benefit fund comprises an asset other than money, the value of the asset is the fair value of the asset determined in accordance with section 109.

Fair value of assets

109. For the purpose of sections 107 and 108, the fair value of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.

Division 3—Restructure of Benefit Funds

Definitions

110. In this Division—

"existing fund" means a benefit fund existing before a restructure under this Division takes effect, other than a benefit fund of a society that has commenced to be wound up under Part 9;

"new fund" means a benefit fund that is or is to be established under Division 1 for the purposes of a restructure under this Division.

Approval of restructure of benefit funds

111.(1) A society may restructure one or more of its benefit funds in accordance with this Division by doing any of the following—

(a) transferring the whole or part of one or more existing funds to another existing fund; or

(b) transferring the whole or part of one or more existing funds to a new fund.

(2) A society that proposes to restructure one or more of its existing funds must lodge with the SSA for approval a restructure statement in accordance with sub-section (3).

(3) Except so far as the SSA otherwise determines in relation to a society, a restructure statement must specify—

(a) the name of each existing fund that is to be involved in the restructure, any proposed change in the name of any such existing fund and the proposed name of any new fund;

(b) the date on which it is proposed that the restructure will take effect;

(c) the reasons for the proposed restructure;

(d) the effect of the proposed restructure on the interests of the members of each existing fund that is to be involved in the restructure;

(e) the assets and undertakings of, and liabilities referable to, each existing fund that is to be involved in the restructure that will become assets and undertakings of and liabilities referable to another such existing fund or a new fund;

(f) the category or categories of members of each existing fund that, under the restructure, will become members of another existing fund or of a new fund;

(g) any interest that any officer of the society has in the proposed restructure;

(h) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society in relation to the proposed restructure;

(i) if applicable, an estimate of the rate of any bonuses payable from each existing fund up to the date on which it is proposed that the restructure will take effect;

(j) in the case of a transfer of part of an existing fund, details of any reserves that the society proposes to retain in the existing fund in accordance with the recommendations of the society's actuary;

(k) the financial position of each existing fund that is to be involved in the restructure as at a date that is not more than 6 months before the date of the restructure statement;

(l) such other information as the SSA requires.

(4) Except in so far as the SSA otherwise determines in relation to a society, the restructure statement must be accompanied by—

(a) a certificate signed by the society's actuary certifying that, having regard to all matters relevant to the proposed restructure, the actuary considers that the restructure would be in the interests of the members of each existing fund that is to be involved in the restructure;

(b) a copy of the proposed amendment of the society's rules to recognise the restructure;

(c) a copy of the notice proposed to be issued by the society to notify members of each such existing fund of the restructure.

(5) A restructure statement must be signed by the directors of the society and must include a certificate that, having regard to all matters relevant to the proposed restructure, the directors consider that the restructure would be in the interests of the members of each existing fund that is to be involved in the restructure.

(6) The SSA may approve a restructure statement if the SSA is satisfied that—

(a) the society has complied with the requirements of this section;

(b) there is no good reason why the restructure should not be approved.

(7) If the SSA approves the restructure statement, the proposed restructure in accordance with the statement must be approved, in relation to each existing fund that is involved in the restructure, by—

(a) a special resolution of the members of the existing fund; or

(b) if the SSA so determines, a resolution of the society's board.

(8) A society, at least 21 days before a meeting of members of an existing fund to approve a special resolution under sub-section (7)(a), must give personally or by post to each member of the fund a copy of the restructure statement approved by the SSA, or a summary of that statement approved by the SSA, together with a notice of the meeting and the proposed special resolution.

Rules

112. If a proposed restructure is approved in accordance with section 111(7), the society's board must, by a resolution, amend the society's rules to the extent necessary to recognise the restructure of an existing fund in accordance with this Division.

Lodgement of information with SSA

113.(1) A society must lodge with the SSA within one month after a proposed restructure is approved in accordance with section 111(7)—

(a) a copy of the resolutions made under sections 111(7) and 112; and

(b) an application to register the amendment of the society's rules to establish a new fund (if any) and to recognise the restructure of each existing fund involved in the restructure.

(2) A society must lodge with the SSA within 3 months, or such other period as the SSA determines, after a restructure takes effect—

(a) audited accounts, or accounts in a form approved by the SSA, for each existing fund involved in the restructure up to the date that the restructure takes effect; and

(b) such other information as the SSA may require.

(3) The accounts in sub-section (2) must include, if applicable—

(a) details of any bonuses paid by the society from the fund and of any reserves retained by the society in the fund during the period to which the accounts relate; and

(b) a statement of the manner in which the units of the fund were converted to units of another existing fund or of a new fund.

When a restructure takes effect

114. A restructure takes effect on the day on which the SSA registers the amendment of the rules on an application under section 113(1).

Effect of restructure

115.(1) This section applies on a restructure under this Division taking effect.

(2) If the whole or part of an existing fund is transferred to another existing fund or to a new fund under this Division—

(a) a member of the existing fund who is in a category specified in the restructure statement approved by the SSA under this Division becomes a member of the other existing fund or of the new fund; and

(b) the assets and undertakings of and liabilities referable to the existing fund become, to the extent specified in the restructure statement approved by the SSA under this Division, assets and undertakings of and liabilities referable to the other existing fund or the new fund.

Notification of members

116.(1) A society must, within one month after a restructure taking effect, give written notice of the restructure to each member of a benefit fund affected by the restructure.

(2) Except so far as the SSA otherwise determines in relation to a society, a notice under sub-section (1) must include—

(a) the name of each existing fund affected by the restructure, any change in the name of any such existing fund and the name of any new fund;

(b) a statement, in relation to each such existing fund, whether the restructure affects the whole or part of the fund;

(c) the reasons for the restructure;

(d) details of the restructure;

(e) a summary of how the restructure affects the interests of members of each such existing fund;

(f) details of the amendment of the rules to establish a new fund (if any) and recognise the restructure of an existing fund.

(3) The SSA may grant an exemption from any of the requirements of this section, subject to any conditions it considers appropriate.

Division 4—Termination of Benefit Funds

Application of Division

117. A society, other than a society that has commenced to be wound-up under Part 9, may terminate a benefit fund in accordance with this Division.

Approval of termination proposal

118.(1) A society that proposes to terminate a benefit fund in accordance with this Division must lodge with the SSA for approval a termination statement in accordance with this section.

(2) Except so far as the SSA otherwise determines in relation to a society, a termination statement must specify—

(a) the name of the benefit fund proposed to be terminated;

(b) the date on which it is proposed that the termination will take effect;

(c) the reasons for the proposed termination;

(d) the manner in which the society proposes to distribute the assets of the benefit fund;

(e) the effect of the proposed termination on the interests of the members of the benefit fund;

(f) any interest that any officer of the society has in the proposed termination;

(g) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society in relation to the proposed termination;

(h) the financial position of the benefit fund as at a date that is not more than 6 months before the date of the termination statement;

(i) such other information as the SSA may require.

(3) Except in so far as the SSA otherwise determines in relation to a society, a termination statement must be accompanied by—

(a) a certificate signed by the society's actuary certifying that, having regard to all matters relevant to the proposed termination of the benefit fund, the actuary considers that the termination would be in the interests of the members of the fund;

(b) a copy of the proposed amendment of the society's rules to recognise the termination of the benefit fund;

(c) a copy of the notice proposed to be issued by the society to notify members of the benefit fund of the termination of the benefit fund.

(4) A termination statement must be signed by the directors of the society and must include a certificate that, having regard to all matters relevant to the proposed termination, the directors consider that the termination would be in the interests of the members of the benefit fund.

(5) The SSA may approve a termination statement if the SSA is satisfied that—

(a) the society has complied with the requirements of this section;

(b) there is no good reason why the termination should not be approved.

(6) If the SSA approves the termination statement, the proposed termination in accordance with the statement must be approved by—

(a) a special resolution of the members of the benefit fund; or

(b) if the SSA so determines, a resolution of the society's board.

(7) A society, at least 21 days before a meeting of members of a benefit fund to approve a special resolution under sub-section (6)(a), must give personally or by post to each member of the fund a copy of the termination statement approved by the SSA, or a summary of that statement approved by the SSA, together with a notice of the meeting and the proposed special resolution.

(8) If the proposed termination is approved in accordance with sub-section (6)—

(a) the society must cease to accept new members and any contributions from existing members in respect of the benefit fund; and

(b) the society must distribute the assets of the benefit fund in accordance with section 119.

Distribution of assets of benefit fund

119.(1) If the termination of a benefit fund is approved under section 118(6), the assets of the benefit fund must be distributed in accordance with this section within 12 months after that approval.

(2) The assets of a benefit fund must first be applied in accordance with section 101(2).

(3) If any assets remain after the application of sub-section (2), the assets must be applied as follows—

(a) first—

(i) where the rules of the society provide for the application of assets on the termination of the benefit fund, in accordance with the rules;

(ii) where the rules of the society do not provide for the application of assets on the termination of the benefit fund, in satisfaction of any entitlements of members of the fund as determined by the society's actuary;

(b) secondly, if any assets remain after the application of paragraph (a), by way of transfer to the management fund of the society.

(4) For the purpose of making a fair and reasonable determination of the entitlements to be paid under sub-section (3)(a)(ii), a society's actuary must take into account all the circumstances of the benefit fund, including—

(a) the rules and standards applicable to the benefit fund; and

(b) the history, performance and financial position of the benefit fund during its existence, whether before or after the coming into operation of this Code.

Notification of members

120.(1) A society must, not later than the date of distribution of the assets of a benefit fund under section 119, give written notice of the termination of the benefit fund to each member of the fund.

(2) Except so far as the SSA otherwise determines in relation to a society, a notice under sub-section (1) must include—

(a) the name of the benefit fund that is being terminated;

(b) the reasons for the termination of the benefit fund;

(c) details of the termination of the benefit fund;

(d) a summary of how the termination affects the interests of members of the fund;

(e) details of the proposed amendment of the rules to recognise the termination of the benefit fund.

(3) The SSA may grant an exemption from any of the requirements under this section, subject to any conditions it considers appropriate.

Rules

121. After a society has distributed the assets of a benefit fund in accordance with section 119, the society's board

must, by a resolution, amend the society's rules to the extent necessary to recognise the termination of the benefit fund in accordance with this Division.

Lodgement of information with SSA

122.(1) A society must lodge with the SSA within one month after the assets of the benefit fund have been distributed in accordance with section 119—

(a) a copy of the resolutions made under sections 118(6) and 121; and

(b) an application to register the amendment of the society's rules to recognise the termination.

(2) A society must lodge with the SSA within 3 months, or such other period as the SSA determines, after the termination takes effect—

(a) audited accounts or accounts in a form approved by the SSA for the terminated benefit fund up to the date on which the termination takes effect;

(b) such other information as the SSA may require.

(3) The accounts in sub-section (2) must include, if applicable—

(a) a statement of the distribution of the assets of the benefit fund;

(b) details of any bonuses paid by the society from the benefit fund during the period to which the accounts relate.

When termination takes effect

123. A termination of a benefit fund takes effect on the day on which the SSA registers the amendment of the rules on an application under section 122.

Division 5—Assignment of Benefits

Assignment of benefits

124.(1) An assignment of an entitlement to benefits in a benefit fund of a society may only be made in accordance with this section.

(2) An assignment must be made by memorandum of assignment in the form prescribed by the society's rules and signed by the assignor and the assignee.

(3) An assignment is not valid until it is registered in accordance with this section by the society.

(4) The assignor must serve on the society 2 signed copies of the memorandum of assignment and must pay any fee prescribed by the society's rules.

(5) The society must register the memorandum, and an officer of the society who is authorised to do so must insert the date of registration in both copies of the memorandum, sign them, and send one copy to the assignee.

(6) A copy of the memorandum that is signed and dated in accordance with this section is—

(a) conclusive evidence of the registration of the assignment and of the date of registration; and

(b) as between the society and any person claiming an entitlement to benefits, conclusive evidence that the assignee was at the time of registration absolutely entitled to the benefits, free from all interests (except any lien or charge that the society has in respect of the benefits), and was legally entitled to receive those benefits and give a discharge in respect of them.

(7) Except as provided in sub-section (8), the assignee under a registered memorandum—

(a) has all the powers of the assignor in respect of the benefits; and

(b) is subject to all the liabilities of the assignor in respect of the benefits; and

(c) may sue in relation to the benefits in the assignee's own name.

(8) The assignee is not, by the operation of this section, admitted as a member of the society, and the assignor is not deprived of membership, unless the rules of the society so provide.

(9) The receipt of the assignee is a discharge to the society for all money paid by the society in respect of the benefits.

(10) A discharge, surrender of or security over the benefits that is given to the society by the assignee is valid in spite of the existence of any interest of any other person.

(11) The society taking a discharge, surrender or security—

(a) need not inquire into the circumstances of the assignment or the consideration of it; and

(b) is not affected by express, implied or constructive notice of the existence of any interest of any other person in the benefits.

Payment to nominee of deceased member

125.(1) A member of a society who is at least 16 years old may nominate a person to whom any benefits from a benefit fund of the society payable on the death of the member are to be paid.

(2) A member of a society may not nominate an officer of that society unless the officer is a dependant of the member.

(3) A nomination has no effect unless it is—

(a) in writing and signed by the member; and

(b) served on the society.

(4) A nomination may be revoked or varied in the same way that it is made and is revoked on the death of the nominee.

(5) The society, on receiving evidence of the death of the member, must pay to the nominee any benefits that are payable on that death.

PART 4B—OFFERING AND MARKETING OF BENEFITS

Division 1—Application and Interpretation

Definitions

126. In this Part—

"application period", in relation to a disclosure document issued by a society relating to the provision of benefits, means—

(a) if, under the terms of the disclosure document, applications for contributions to a benefit fund must be made before a particular time (which may, for example, be a specified time or a time to be determined by the society, but which must not be more than 12 months after the issue of the disclosure document or such longer period as the SSA allows), the period starting when the disclosure document is issued and ending at that time; or

(b) in any other case, the period of 12 months starting when the disclosure document is issued;

"exempt person" means a person who is an exempt dealer or an exempt investment adviser under section 68 of the Corporations Law, and any person who is acting as a representative of the exempt dealer or exempt investment adviser in connection with the business of dealing in benefits or the benefits advisory business;

"licensed adviser" means a person who holds an investment advisers licence granted under Part 7.3 of the Corporations Law;

"licensed dealer" means a person who holds a dealers licence granted under Part 7.3 of the Corporations Law;

"proper authority"—

(a) of a licensed dealer is a proper authority granted under Division 3 of Part 7.3 of the Corporations Law;

(b) of a licensed adviser is a proper authority granted under Division 3 of Part 7.3 of the Corporations Law;

(c) of a society is a proper authority granted by the society under Subdivision 3 of Division 4 of this Part.

Benefits advisory business

127. A reference in this Part to a benefits advisory business, in relation to a person, is a reference to—

(a) a business of advising other persons about benefits; or

(b) a business in the course of which the person publishes reports relating to benefits.

Application of this Part

128. This Part applies to benefits from a benefit fund, other than—

(a) a benefit fund that is a health benefits fund under the National Health Act 1953 of the Commonwealth; or

(b) a benefit fund that is a superannuation entity within the meaning of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.

Actuarial advice

129. A society must not provide benefits of a kind specified in the standards as requiring actuarial advice unless the society's actuary has given the society written advice about—

(a) the proposed terms and conditions on which benefits of that kind are to be provided; and

(b) in the case of benefits with a surrender value, the proposed basis on which the surrender value is to be determined; and

(c) if the benefits are to be calculated by reference to units, the proposed means by which the unit values are to be determined; and

(d) any other matters about which the standards require a society to obtain actuarial advice before providing benefits of that kind.

Representatives

130.(1) Subject to sub-section (2), a person is a representative of another person if the first-mentioned person—

(a) is employed by; or

(b) acts for or by arrangement with—

the other person in connection with a business of dealing in benefits or a benefits advisory business carried on by the other person.

(2) Except for the purposes of section 184(b), a person who holds a proper authority from another person is a representative of the other person.

(3) Subject to sub-section (4), a person does an act, or engages in conduct, as a representative of another person if the first-mentioned person does the act or engages in the conduct—

(a) in connection with a business of dealing in benefits or a benefits advisory business carried on by the other person; and

(b) while the first-mentioned person is a representative of the other person; and

(c) employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

(d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

(4) Except for the purposes of Subdivision 4 of Division 4, a person who holds himself or herself out to be a representative of another person does an act as a representative of the other person.

Involvement in contraventions

131. Subject to section 163, a person is involved in a contravention if the person—

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

Conduct

132.(1) A reference in this Part to engaging in conduct is a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement.

(2) A reference in this Part to conduct, when that expression is used as a noun otherwise than as mentioned in sub-section (1), is a reference to the doing of, or the refusing to do, any act, including the making of, or the giving effect to a provision of, an agreement.

(3) Where, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, servant or agent of the body, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a body corporate—

(a) by a director, servant or agent of the body within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent—

is deemed to have been engaged in also by the body corporate.

(5) Where, in a proceeding under this Part in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

(6) Conduct engaged in on behalf of a person other than a body corporate—

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent—

is deemed to have been engaged in also by the first-mentioned person.

(7) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

References to doing acts

133. In this Part, unless the contrary intention appears, a reference to doing any act or thing includes a reference to causing, permitting or authorising the act or thing to be done.

Misleading representation

134.(1) When a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation is to be taken to be misleading.

(2) For the purposes of the application of sub-section (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person is, unless the person adduces evidence to the contrary, deemed not to have had reasonable grounds for making the representation.

(3) Sub-section (1) is deemed not to limit by implication the meaning of a reference to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

Division 2—Disclosure Documents and Application Forms

Disclosure document to be lodged

135.(1) A person must not issue, or cause to be issued, an invitation to contribute, or accept a contribution, to a benefit fund of a society unless a disclosure document relating to that benefit fund and that complies with this Division has been lodged with the SSA within the last preceding 12 months.

(2) A person must not issue, or cause to be issued, an invitation to contribute, or accept a contribution, to a benefit fund of a foreign society unless a disclosure document relating to that benefit fund and that complies with the corresponding Division to this Division in the friendly societies legislation of the participating State in which the foreign society is incorporated has been lodged, within the last preceding 12 months, with the SSA of that participating State.

Penalty applying to this section: $20 000 or imprisonment for 5 years or both.

Application form

136. A person must not issue a form of application for benefits or for making contributions to a benefit fund of a society unless—

(a) the form is attached to a disclosure document; and

(b) a copy of the form and disclosure document have been lodged with the SSA.

Maximum Penalty: $20 000 or imprisonment for 5 years or both.

Form of disclosure document and date of issue

137.(1) A disclosure document—

(a) must be printed in type of a size not less than the type known as 8 point unless the standards otherwise provide;

(b) must be dated;

(c) must be signed by each director of the society and by each person named in the document as a proposed director of the society or by a person authorised in writing by the director or proposed director to sign on his or her behalf;

(d) must contain a statement that an arrangement for the provision of a benefit to which the document relates will not be entered into later than 12 months after the date of issue of the document;

(e) must contain any other information required by the standards to be included in the document;

(f) must comply with any requirements of the standards applicable to disclosure documents.

(2) The date of issue of a disclosure document is the date inserted in it under sub-section (1)(b), unless the contrary is proved.

(3) Each copy of a disclosure document—

(a) must state that the document has been lodged with the SSA of the State in which the society, or foreign society, is registered as a society;

(b) must specify the date of lodgment;

(c) must state that the SSA with which it is lodged takes no responsibility as to the contents of the document.

Disclosure of interests

138. A disclosure document must specify the nature and extent of any interest that a director or proposed director of a society or an expert has in respect of—

(a) the assets of the benefit fund to which the document relates;

(b) benefits of the kind to which the document relates and in respect of which an entitlement, other than an entitlement available on the same terms and conditions to other members of the benefit fund, is available.

Liability in respect of disclosure document and interests

139. (1) If a requirement of section 137 or 138 is contravened, a director or other person responsible for, or involved in the preparation of, the disclosure document does not incur any liability by reason of the contravention if it is proved that—

(a) as regards any matter omitted, the person had no knowledge of the matter; or

(b) the contravention arose from an honest mistake on the part of the person concerning the facts; or

(c) the contravention was—

(i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial; or

(ii) otherwise such as, in the opinion of the court, having regard to all the circumstances of the case, ought reasonably to be excused.

(2) If there is a failure to include in a disclosure document a statement with respect to matters referred to in section 138, a director or other person does not have any liability in respect of the failure unless it is proved that the director or other person had knowledge of the matters not included.

(3) Nothing in this section limits or diminishes any liability that a person might incur under any rule of law or any enactment or under this Code apart from this section.

Content of disclosure document

140.(1) A disclosure document must contain such information as persons and their professional advisers would reasonably require, and reasonably expect to find in the document, for the purpose of making an informed assessment of benefits of the kind to which the document relates including—

(a) the assets and liabilities, financial position, profits and losses, and prospects of, or referable to, the benefit fund from which the benefits would derive;

(b) the rights attaching to the benefits to which the disclosure document relates.

(2) In determining what information is required to be included in a disclosure document, regard must be had to—

(a) the nature of the benefits and the society;

(b) the kinds of persons likely to consider applying to contribute to the benefit fund from which the benefits would derive;

(c) the fact that certain matters may reasonably be expected to be known to professional advisers of any kind whom those persons may reasonably be expected to consult;

(d) whether the persons to whom the invitation is to be issued are members of the society and, if they are, the extent to which relevant information has previously been given to them by the society;

(e) any information known to the persons to whom the invitation is to be issued or their professional advisers under any Act of the Commonwealth or a State.

Conditions requiring waiver of requirements void

141. A condition is void if it—

(a) requires or binds a person applying to contribute to a benefit fund has been issued to waive compliance with any requirement of section 137, 138, 139 or 140; or

(b) purports to affect that person with notice of any contract, document or matter not specifically referred to in the disclosure document.

Obligation to notify society of false etc statements

142.(1) If a disclosure document has been lodged and a person (other than the society) who—

(a) is referred to in section 163(2); or

(b) authorised or caused the issue of the disclosure document—

becomes aware of a relevant matter during the application period in relation to the disclosure document, the person must, as soon as practicable after becoming so aware, give the society written notice of the matter.

Maximum penalty: $5000 or imprisonment for 12 months, or both.

(2) In sub-section (1), "relevant matter" in relation to a disclosure document means—

(a) a material statement in the disclosure document that is false or misleading; or

(b) a material omission from the disclosure document; or

(c) a significant change affecting a matter included in the disclosure document; or

(d) a significant new matter about which information would have been required by this Division to be included in the disclosure document if the matter had arisen when the disclosure document was prepared.

Correction of false or misleading statements etc by a supplementary or replacement disclosure document

143.(1) This section applies if a disclosure document has been lodged and the society becomes aware, during the application period in relation to the disclosure document, that the disclosure document is deficient because—

(a) it contains a material statement that is false or misleading; or

(b) there is a material omission from the disclosure document.

(2) As soon as practicable after becoming so aware, the society must lodge a supplementary disclosure document or a replacement disclosure document that corrects the deficiency and that complies with whichever of sections 145 and 146 applies.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

Changes or new matters requiring the issue of a supplementary or replacement disclosure document

144.(1) This section applies if a disclosure document has been lodged and the society becomes aware, during the application period in relation to the disclosure document, that—

(a) there has been a significant change affecting a matter included in the disclosure document; or

(b) a significant new matter has arisen the inclusion in the disclosure document of information about which would have been required by this Division if the matter had arisen when the disclosure document was prepared.

(2) As soon as practicable after becoming so aware, the society must lodge a supplementary or a replacement disclosure document that contains particulars of the change or new matter and that complies with whichever of sections 145 and 146 applies.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

General provisions about supplementary disclosure documents

145.(1) A supplementary disclosure document is a document the purpose of which is to do either or both of the following in relation to a disclosure document (the "original disclosure document")—

(a) correct a deficiency in the disclosure document;

(b) provide particulars about something that has occurred since the disclosure document was prepared.

(2) On each page of a supplementary disclosure document there must be a clear statement in bold type that states that the document is a supplementary disclosure document that is to be read in conjunction with—

(a) the original disclosure document; and

(b) if other supplementary disclosure documents have already been issued in relation to the original disclosure document, those supplementary disclosure documents.

(3) The statement must clearly identify—

(a) the original disclosure document; and

(b) if sub-section (2)(b) applies, the supplementary disclosure documents to which that sub-section refers.

(4) Unless the context otherwise requires, a reference to a disclosure document in any of the provisions referred to in the following provisions includes a reference to a supplementary disclosure document—

(a) sections 159, 160 and 161;

(b) sections 163 to 176;

(c) sections 137(1)(a), (b) and (c), (2) and (3) and 139;

(d) sections 142, 150, 155, 156 and 157.

(5) In this section—

"deficiency", in relation to a disclosure document, includes, but is not limited to—

(a) a material statement in the disclosure document that is false or misleading; or

(b) a material omission from the disclosure document.

General provisions about replacement disclosure documents

146.(1) A replacement disclosure document is a document the purpose of which is to replace a disclosure document (the "original disclosure document") and which may also do either or both of the following—

(a) correct a deficiency in the original disclosure document;

(b) provide particulars about something that has occurred since the original disclosure document was prepared.

(2) On each page of a replacement disclosure document there must be a clear statement in bold type that identifies the original disclosure document and states that the document is a replacement disclosure document that replaces the original disclosure document.

(3) Subject to sub-section (2), a replacement disclosure document must have the same wording as the original disclosure document, except to the extent that it—

(a) corrects a deficiency in the original disclosure document; or

(b) provides particulars about something that has occurred since the original disclosure document was issued.

(4) In this section—

"deficiency" in relation to a disclosure document, includes, but is not limited to—

(a) a material statement in the disclosure document that is false or misleading; or

(b) a material omission from the disclosure document.

Consequences of lodging a supplementary disclosure document

147.(1) This section applies if a supplementary disclosure document has been lodged.

(2) Subject to sub-section (4), for the purposes of this Code, the information in the supplementary disclosure document is taken, except in relation to things that happened before it was lodged, to be included in the original disclosure document.

(3) Every copy of the original disclosure document issued after lodgment of the supplementary disclosure document must be attached to, or accompanied by, a copy of the supplementary disclosure document.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

(4) If sub-section (3) is contravened in relation to a copy of the original disclosure document, sub-section (2) does not apply for the purposes of an action under section 162 in relation to that copy.

(5) In this section—

"original disclosure document" means the disclosure document identified in the supplementary disclosure document as required by section 145(3)(a).

Consequences of lodging a replacement disclosure document

148.(1) This section applies if a replacement disclosure document has been lodged.

(2) A copy of the original disclosure document must not be issued after lodgment of the replacement disclosure document.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

(3) The replacement disclosure document is a disclosure document in its own right for the purposes of this Code, but it is taken to have been issued when the original disclosure document was issued.

(4) The parts of the replacement disclosure document that are the same as the original disclosure document are taken to comply with the requirements of this Division, but only to the extent to which those parts of the original disclosure document in fact complied with those requirements.

(5) In this section—

"original disclosure document" means the disclosure document identified in the replacement disclosure document as required by section 146(2).

Application made on out of date application form

149.(1) For the purposes of this section, an application form is current unless—

(a) since the form was issued, a supplementary disclosure document or a replacement disclosure document that relates to the disclosure document to which the form relates has been issued; or

(b) because of section 151(2), the form is no longer current for the purposes of section 151.

(2) This section applies if—

(a) a person applies to contribute to a benefit fund of a society pursuant to a disclosure document (the "original disclosure document") during the application period in relation to the disclosure document; and

(b) the application form used to make the application is not current when it is received by the society.

(3) As soon as practicable after receiving the application, the society must give the person a written notice—

(a) that advises the person that the application form used was not current; and

(b) that states which of options 1 and 2 specified in sub-sections (4) and (5) the society is going to follow, and explains that option; and

(c) that is accompanied by—

(i) if a replacement disclosure document has been issued, a copy of the most recently issued replacement disclosure document, a copy of each issued supplementary disclosure document (if any) that relates to it, and a current application form that relates to it; or

(ii) if sub-paragraph (i) does not apply, a copy of each supplementary disclosure document (if any) that relates to the original disclosure document and that was issued after the application form was issued, and a current application form that relates to the original disclosure document.

(4) Option 1 requires the society—

(a) to treat the application as having been withdrawn; and

(b) at the same time as it gives the person the notice, or as soon as practicable afterwards, to pay to the person, in accordance with the requirements (if any) of the standards—

(i) any money the person has paid to the society on account of the provision of the benefits; and

(ii) any interest that has accrued in respect of that money.

(5) Option 2 requires the society—

(a) at the same time as it gives the person the notice, or as soon as practicable afterwards, to provide the benefits to the person pursuant to the application and pay any money received into the relevant benefit fund; and

(b) if, since the application form used to make the application was issued, a material adverse change (as defined in sub-section (6)) has occurred in relation to the provision of benefits, to give the person a reasonable opportunity to surrender the benefits and obtain a payment as mentioned in paragraph (c); and

(c) if paragraph (b) applies and the person takes advantage of that opportunity and surrenders the benefits, to pay to the person, in

accordance with the requirements (if any) of the standards—

(i) any money the person has paid to the society on account of the provision of the benefits; and

(ii) any interest that has accrued in respect of that money.

(6) For the purposes of sub-section (5), a material adverse change occurs in relation to the provision of benefits if a change occurs, or a new matter arises, that is likely to have a material adverse effect on the ability of the society to meet the obligations to provide the benefits.

(7) The society must act in accordance with the option specified in the notice.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

(8) In this section—

"application form" means a form of application to contribute to a benefit fund;

"disclosure document to which the form relates", in relation to an application form that has been issued, means the disclosure document to which the form is or was attached.

Inclusion of documents in disclosure documents by reference

150.(1) For the purposes of this Code, other than sections 137, 138 and 139, a disclosure document is taken to include a document, or part of a document, as the case requires, if the disclosure document—

(a) refers to a document lodged under this Code or a corresponding previous law, being a document in existence at or before the lodgment of the disclosure document; and

(b) includes a summary of the document or of a part of it; and

(c) includes a statement to the effect that the society will provide a copy of the document, or of the part, as the case requires, free of charge, to a person who asks for it during the application period in relation to the disclosure document.

(2) The society must comply with a statement included in the disclosure document in accordance with sub-section (1)(c).

Disclosure document referring to information set out in current application form

151.(1) This section applies if—

(a) a disclosure document has been lodged; and

(b) the disclosure document states that specified information (the "incorporated information") is to be set out in an application form; and

(c) a copy of such a form (the "relevant form") has also been lodged.

(2) For the purposes of this section, the relevant form is current from the time when the copy was lodged until the next time (if any) when a copy of a form of the kind referred to in sub-section (1)(b) is lodged.

(3) Subject to sub-section (5), for the purposes of this Code, the incorporated information, as set out in the relevant form, is taken to be included in the disclosure document while the relevant form is current.

(4) Each copy of the disclosure document that is issued while the relevant form is current must have attached to it the relevant form or a copy of it.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

(5) If sub-section (4) is contravened in relation to a copy of the disclosure document, sub-section (3) does not apply for the purposes of an action under section 162 in relation to that copy.

(6) Unless the context otherwise requires, a reference to a disclosure document in any of the provisions referred to in the following provisions includes a reference to the relevant form while it is or was current—

(a) sections 159, 160 and 161;

(b) sections 163 to 170;

(c) sections 137(1)(a) and (b) and (2) and 139(1);

(d) sections 142, 150, 155, 156 and 157.

(7) The relevant form, or a copy of it, must not be issued when the relevant form is no longer current.

Maximum penalty applying to sub-section (7): $20 000 or imprisonment for 5 years, or both.

Certain notices etc not to be published

152.(1) In this section—

"notice" does not include a disclosure document that has been lodged or a report, statement or notice the publication of which is permitted under section 153.

(2) Nothing in this Part prohibits the publishing of a notice that—

(a) is published by the person who issued the disclosure document concerned, or by a licensed adviser or licensed dealer or an exempt person within the meaning of section 126; and

(b) states that a disclosure document has been lodged; and

(c) specifies the date of the disclosure document; and

(d) states where a copy of the disclosure document can be obtained; and

(e) states that benefits to which the disclosure document relates will be provided only on receipt of a form of application referred to in and attached to a copy of the disclosure document.

(3) Except as provided by sub-section (2), a person must not publish a notice that—

(a) invites any person to apply to contribute to a benefit fund;

(b) refers or calls attention, whether directly or indirectly—

(i) to a disclosure document relating to a benefit fund; or

(ii) to an invitation or proposed invitation to apply to contribute to a benefit fund; or

(iii) to another notice that refers or calls attention to a disclosure document relating to a benefit fund or an invitation or proposed invitation to apply to contribute to a benefit fund, not being a notice referred to in sub-section (2).

Maximum penalty applying to sub-section (3): $2500 or imprisonment for 6 months, or both.

Certain reports referring to disclosure documents not to be published

153.(1) In this section, unless the contrary intention appears—

"report" includes a statement or notice, whether or not in writing, but does not include a notice the publication of which is permitted under section 152.

(2) Nothing in this Part prohibits the publishing of—

(a) a report by a society or any of its officers or agents that—

(i) is required by law; or

(ii) is permitted by the SSA; or

(b) a report that is a news report (whether or not with other comment), or is genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising relating to—

(i) a disclosure document that has been lodged or information contained in such a disclosure document; or

(ii) a report referred to in paragraph (a)—

if none of the following—

(iii) that person;

(iv) an agent or employee of that person;

(v) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; or

(vi) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published—

receives or is entitled to receive any consideration or other advantage from a person who has an interest in the success of the invitation to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment; or

(c) a report where the report is not published—

(i) by or on behalf of a society to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the society or its directors; or

(ii) by or on behalf of a person who has an interest in the success of the invitation to which the report relates

and the person publishing the report does not receive and is not entitled to receive any consideration or other advantage from the society or any of its directors, or from a person mentioned in sub-paragraph (ii), as an inducement to publish, or as the result of the publication of, the report.

(3) Except as provided by sub-section (2), a person who is aware that a disclosure document-—

(a) is in the course of preparation by or on behalf of a society; or

(b) has been issued by or on behalf of a society—

must not publish a report that is reasonably likely to induce persons to apply to contribute to a benefit fund of the kind to which the disclosure document relates.

Maximum penalty applying to sub-section (3):

$2500 or imprisonment for 6 months, or both.

Evidentiary provisions etc.

154.(1) In this section—

"notice" means a notice within the meaning of section 152;

"report" means a report within the meaning of section 153.

(2) A person who publishes a notice or report relating to a society after receiving a certificate that—

(a) specifies the names of 2 directors of the society and is signed by those directors; and

(b) is to the effect that, because of sections 152(2) or 153(2), sections 152(3) or 153(3), as the case requires, do not apply to the notice or report—

does not contravene sub-section 152(3) or 153(3), as the case requires.

(3) Where a notice or report to which a certificate under sub-section (2) relates is published, each director who signed that certificate, for the purposes of sections 152 and 153, is deemed to have published the notice or report.

(4) A person who publishes a notice or report to which a certificate under sub-section (2) relates must, if the SSA requires the person to do so, deliver the certificate to the SSA as soon as practicable.

Maximum penalty: $1000 or imprisonment for 3 months, or both.

(5) In proceedings for a contravention of section 152 or 153 a certificate relating to a notice or report that purports to be a certificate under this section is evidence, unless evidence to the contrary is adduced, that—

(a) when the certificate was issued, the persons named in the certificate as directors of the society were the directors; and

(b) the signatures in the certificate purporting to be the signatures of the directors are those signatures; and

(c) the publication of the notice was authorised by those directors.

(6) Nothing in section 152 or 153 or this section limits or diminishes the liability that a person may incur, otherwise than under section 152 or 153 or this section, under any rule of law or under any other enactment.

Documents to be kept

155. A society that has lodged, or caused to be lodged, a disclosure document with the SSA must cause—

(a) a true copy, verified by a statement in writing, of any consent required by section 156 to the issue of the disclosure document; and

(b) a true copy, verified by a statement in writing, of every material contract referred to in the disclosure document or, in the case of such a contract that is not reduced to writing, a memorandum, verified by a statement in writing, giving full particulars of the contract—

to be deposited, within 7 days after lodgment of the disclosure document, at the registered office of the society and must keep each such copy for a period of at least 12 months after the lodgment of the disclosure document for inspection by any person without charge.

Expert's consent to issue of disclosure document containing statement by the expert

156. A person must not issue a disclosure document that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless—

(a) the expert has given, and has not, before lodgment of the disclosure document, withdrawn, the expert's written consent to the issue of the disclosure document with the statement included in the form and context in which it is included; and

(b) there appears in the disclosure document a statement that the expert has given, and has not withdrawn, the expert's consent.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Direction not to accept contributions

157.(1) Where it appears to the SSA with which a disclosure document is lodged that any of the circumstances referred to in sub-section (2) exist in respect of the disclosure document, the SSA may, by order in writing served on the person by whom the disclosure document was lodged, direct the society not to—

(a) issue an invitation to contribute to the benefit fund to which the disclosure document relates;

(b) accept a contribution to that benefit fund.

(2) The circumstances are—

(a) the disclosure document contravenes in a substantial respect any of the requirements of this Division;

(b) the disclosure document contains a statement, promise, estimate or forecast that is false, misleading or deceptive;

(c) the disclosure document contains a material misrepresentation.

(3) Subject to this section, the SSA must not make an order under sub-section (1) unless the SSA has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the SSA on the question whether such an order should be made.

(4) If the SSA considers that any delay in making an order under sub-section (1) pending the holding of a hearing would be prejudicial to the public interest, the SSA may make an interim order or interim orders under that sub-section without holding a hearing.

(5) Subject to sub-section (6), an interim order, unless sooner revoked, has effect until the end of 21 days after the day on which it is made.

(6) At any time during the hearing, the SSA may make an interim order under sub-section (1) that is expressed to have effect until the SSA makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.

(7) While an order is in force under this section—

(a) this Division applies as if the disclosure document had not been lodged; and

(b) a person is not entitled to lodge a further disclosure document in relation to the relevant benefit fund, other than a supplementary disclosure document or a replacement disclosure document.

(8) If, while an order is in force under this section, the SSA becomes satisfied that, whether because of the lodgment of a supplementary disclosure document or replacement disclosure document or otherwise, the circumstances that resulted in the making of the order no longer exist, the SSA may, by further order in writing, revoke the first-mentioned order.

Exemptions and modifications

158.(1) The SSA with which a disclosure document is lodged or, but for this section, would have been lodged, may, subject to and in accordance with the standards, by writing, exempt a particular person or persons or a particular class of persons, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of—

(a) this Division;

(2) Without limiting the generality of sub-section (1), an exemption under that sub-section may relate to particular benefits or to a particular class of benefits.

(3) A person must not contravene a condition to which an exemption under sub-section (1) is subject.

(4) Where a person has contravened a condition to which an exemption under sub-section (1) is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, subject to and in accordance with the standards, by writing, declare that this Division has effect in its application to a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the declaration as if a specific provision or provisions of this Division were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, this Division has effect accordingly.

(6) Without limiting the generality of sub-section (5), a declaration under that sub-section may relate to particular benefits or a particular class of benefits.

(7) The SSA must cause to be published in the Gazette a statement to the effect that an exemption has been granted or a declaration made under this section in relation to a particular class of persons or a particular class of benefit funds.

Division 3—Prohibited Conduct and Civil Liability

Statement in a disclosure document

159. For the purposes of this Division, a statement is taken to be in a disclosure document if it is—

(a) contained in a report or memorandum that appears on the face of the disclosure document; or

(b) contained in a report or memorandum that is issued with the disclosure document with the consent or knowledge of a person who authorised or caused the issue of the disclosure document; or

(c) incorporated by reference in the disclosure document, whether the reference occurs in the disclosure document or in any other document.

Misleading or deceptive conduct

160.(1) A person must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive, being conduct in or in connection with—

(a) any dealing in benefits; or

(b) without limiting the generality of paragraph (a), any disclosure document issued, or notice published, in relation to benefits.

(2) A person who contravenes this section is not guilty of an offence.

(3) Nothing in this Division or Division 2 is to be taken as limiting by implication the generality of sub-section (2).

Mis-statements and omissions in disclosure documents

161.(1) A person must not authorise or cause the issue of a disclosure document in relation to benefits if—

(a) the disclosure document has been, or is required to be, lodged under Division 2; and

(b) either—

(i) a material statement in the disclosure document is false or misleading; or

(ii) there is a material omission from the disclosure document.

Maximum penalty: $20 000 or imprisonment for 5 years, or both.

(2) It is a defence to a prosecution for a contravention of sub-section (1) if it is proved—

(a) that the defendant, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the disclosure document believe, that the statement was true and not misleading or the omission was not material; or

(b) where there was an omission from the disclosure document, that the omission was inadvertent.

(3) A person does not contravene this section merely because the person gave a consent required by this Part to the inclusion in the disclosure document of a statement purporting to be made by the person as an expert.

Civil liability for contravention of this Division or Division 2

162.(1) Subject to the following sections of this Division, a person who suffers loss or damage by conduct of another person that was engaged in in contravention of a provision of this Division or Division 2 may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

(2) An action under sub-section (1) may be begun at any time within 6 years after the day on which the cause of action arose.

(3) This Division does not affect any liability that a person has under any other law.

(4) In a proceeding under this Division in relation to a contravention of this Division or Division 2 committed by the publication of an advertisement, it is a defence if it is proved that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Division or Division 2.

Civil liability for false or misleading statement in, or omission from, a disclosure document

163.(1) This section applies for the purposes of an action under section 162 in respect of conduct being the issue of a disclosure document in relation to benefits—

- (a) in which there is a material statement that is false or misleading; or
- (b) from which there is a material omission.

(2) The reference in section 162(1) to any person involved in the contravention includes a reference to all or any of the following persons—

- (a) the society;
- (b) a person who was a director of the society at the time of the issue of the disclosure document;
- (c) a person who authorised or caused himself or herself to be named, and is named, in the disclosure document as a director of the society or as having agreed to become a director of the society either immediately or after an interval of time;
- (d) if the disclosure document includes a statement that purports to be, or to be based on, a statement made by an expert and the expert gave consent under section 156 to the issue of the disclosure document, that expert;
- (e) a person named, with the consent of the person, in the disclosure document as an auditor, actuary, banker or solicitor of the society or for or in relation to benefits or proposed benefits;
- (f) a person named, with the consent of the person, in the disclosure document as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (d) or (e) for the society or for or in relation to benefits or proposed benefits.

No liability to person with knowledge of relevant matter

164.A person referred to in section 163(2), or a person who authorised or caused the issue of the disclosure document, is not liable in an action under section 162 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the disclosure document if it is proved that, when the last-mentioned person applied for benefits to which the disclosure document relates, that person knew that the statement was false or misleading or was aware of the omitted matter.

Non-consenting directors not liable

165.(1) A person referred to in section 163(2)(b) or (c) is not, in the circumstances set out in this section, liable in an action under section 162 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the disclosure document.

(2) If the person is a person referred to in section 163(2)(c), the person is not liable if it is proved that, having consented to become a director of the society, the person withdrew the consent before the issue of the disclosure document, and that it was issued without the person's authority or consent.

(3) The person is not liable if it is proved that the disclosure document was issued without the person's knowledge or consent and—

- (a) as soon as practicable after the person became aware of the issue of the disclosure document, the person gave reasonable public notice that it was issued without the person's knowledge; or
- (b) as soon as practicable after the disclosure document was issued, the person gave reasonable public notice that the disclosure document was issued without the person's consent—

as the case requires.

(4) The person is not liable if it is proved that, after the issue of the disclosure document and before receiving any contributions in relation to benefits under the disclosure document, the person, on becoming aware of any false or misleading statement in, or omission from, the disclosure document, withdrew the person's consent to the issue of the disclosure document and gave reasonable public notice of the withdrawal and of the reason for the withdrawal.

Directors not liable where they have reasonable grounds for believing disclosure document to be correct

166.(1) A person referred to in section 163(2)(b) or (c) is not, in the circumstances set out in this section, liable in an action under section 162 to a person who suffered loss or damage as a result of—

- (a) a false or misleading statement (in this section called the "defective statement") in the disclosure document; or
- (b) an omission from a statement (in this section also called the "defective statement") in the disclosure document.

(2) If the defective statement—

- (a) purports to be, or to be based on, a statement made by an expert; or
- (b) is contained in what purports to be a copy of, or extract from, a report or valuation of an expert—

the person is not liable if it is proved that—

- (c) the defective statement fairly represented the statement referred to in paragraph(a), or the purported copy or extract was a correct and fair copy of, or extract from, the report or valuation, as the case requires; and
- (d) the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the provision of the benefits, that the person who made the statement referred to in paragraph (a), or who made the report or valuation, as the case requires—
  - (i) was competent to make it; and
  - (ii) had given the consent required by section 156 to the issue of the disclosure document; and
  - (iii) had not withdrawn that consent.

(3) If the defective statement—

- (a) purports to be a statement made by an official person; or
- (b) is contained in what purports to be a copy of, or extract from, a public official document—

the person is not liable if it is proved that the defective statement fairly represented the statement referred to in paragraph (a), or that the purported copy or extract was a correct and fair copy of, or extract from, the document, as the case requires.

(4) If none of sub-sections (2)(a) and (b) and (3)(a) and (b) applies in relation to the defective statement, the person is not liable if it is proved that he or she, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the issue of the benefits—

(a) if sub-section (1)(a) applies, that the defective statement was true and not misleading; or

(b) if sub-section (1)(b) applies, that there were no material omissions from the defective statement.

Liability of experts, auditors etc.

167.(1) A person referred to in section 163(2)(d), (e) or (f) is liable in an action under section 162 only in respect of—

(a) a false or misleading statement in the disclosure document purporting to be made by the person as a person referred to in section 163(2)(d), (e) or (f), or to be based on a statement made by the person as a person referred to in section 163(2)(d), (e) or (f); or

(b) in the case of a person referred to in section 163(2)(d), an omission of any material matter from a statement in the disclosure document purporting to be made by the person as a person referred to in section 163(2)(d) or to be based on a statement made by the person as such a person; or

(c) in the case of a person referred to in section 163(2)(e) or (f), an omission from the disclosure document of any material matter for which the person is responsible in the person's capacity or purported capacity as a person referred to in section 163(2)(e) or (f).

(2) A person referred to in section 163(2)(d) is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved—

(a) that, having given consent under section 156 to the issue of the disclosure document, the person withdrew it in writing before the disclosure document was lodged;

(b) that, after the disclosure document was lodged and before the provision of any benefits under the disclosure document, the person, on becoming aware of the false or misleading statement, or of the omission, as the case requires, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable ground to believe, and did until the time of the provision of any benefits believe, that—

(i) if the action is in respect of false or misleading statement, the statement was true and not misleading; or

(ii) if the action is in respect of an omission from a statement, there were no material omissions from the statement.

(3) A person referred to in section 163(2)(e) or (f) is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved—

(a) that, after the disclosure document was lodged and before the provision of any benefits under the disclosure document the person, on becoming aware of the false or misleading statement or of the omission, as the case requires, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(b) in the case of a statement, that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the provision of any benefits believe, that the statement was true and not misleading; or

(c) in the case of an omission, that the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the provision of any benefits believe, that there were no omissions from the disclosure document of material matters for which the person was responsible in the person's capacity as a person referred to in section 163(2)(e) or (f) as the case requires, and that the person was competent to act in that capacity.

Liability of persons named in disclosure document

168.(1) A person referred to in section 163(2)(e) or (f) who is named in part only of the disclosure document is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved that—

(a) the statement was not included in, or the matter was not omitted from, that part of the disclosure document; or

(b) in the case of a statement, the statement was not included in, or substantially in, the form and context that the person had agreed to.

(2) For the purposes of sub-section (1), a person referred to in section 163(2)(e) or (f) shall not be taken to be named in part only of the disclosure document unless the disclosure document includes an express statement that the person was involved only in the preparation of that part.

(3) A person who has authorised or caused the issue of part only of a disclosure document is not liable in an action under section 162 in respect of a false or misleading statement in, or an omission from, the disclosure document if it is proved that—

(a) the statement was not included in, or the matter was not omitted from, that part of the disclosure document; or

(b) in the case of a statement, the statement was not included in, or substantially in, the form and context that the person had agreed to.

(4) For the purposes of sub-section (3), a person is not taken to have authorised or caused the issue of part only of a disclosure document unless the disclosure document includes an express statement that the person authorised or caused the issue of that part only.

No liability for mistake etc if reasonable precautions taken

169.(1) The society or a person who authorised or caused the issue of the disclosure document is not liable in an action under section 162 if it is proved that the false or misleading statement or the omission—

(a) was due to a reasonable mistake; or

(b) was due to reasonable reliance on information supplied by another person; or

(c) was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control—

and, in a case to which paragraph (c) applies, that the defendant took reasonable precautions and exercised due diligence to ensure that all statements to be included in the disclosure document were true and not misleading and that there were no material omissions from the disclosure document.

(2) In sub-section (1)(b) and (c)—

"another person" does not include a person who, when the disclosure document was issued, was—

(a) a servant or agent of the defendant; or

(b) if the defendant was the society or another body corporate, a director, servant or agent of the defendant.

Indemnity

170.Where—

(a) a disclosure document in relation to benefits contains the name of a person as a director of the society, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn the consent before the issue of the disclosure document, and has not authorised or consented to the issue of the disclosure document; or

(b) the consent of a person is required under section 156 to the issue of the disclosure document and the person either has not given that consent or has withdrawn it before the issue of the disclosure document—

the directors of the society, except any without whose knowledge or consent the disclosure document was issued, and any other person who authorised or caused the issue of the disclosure document are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which the person may be made liable—

(c) because of the person's name being so contained in the disclosure document;

(d) because of the inclusion in the disclosure document of a statement purporting to be made by the person as an expert; or

(e) in defending any action or other legal proceeding brought against the person because of the person's name being so contained in the disclosure document or the inclusion in the disclosure document of such a statement.

Division 4—Regulation of Industry Participants

Subdivision 1—Conduct in relation to benefits

Dealing

171.(1) A person must not carry on a business of dealing in benefits, or hold out that the person carries on such a business, unless the person is—

(a) a society; or

(b) a licensed dealer; or

(c) an exempt person.

(2) For the purpose of determining—

(a) whether a person carries on, or holds himself, herself or itself out as carrying on, a business of dealing in benefits; and

(b) whether or not a person deals in benefits—

an act done on behalf of, or as a representative of, a society, a licensed dealer or an exempt person is to be disregarded.

Advising

172.(1) A person must not carry on a benefits advisory business, or hold out that the person carries on such a business, unless the person is—

(a) a society; or

(b) a licensed dealer; or

(c) a licensed adviser; or

(d) an exempt person.

(2) The following sub-sections apply for the purposes of determining—

(a) whether a person carries on a benefits advisory business; and

(b) whether a person holds himself, herself, or itself out to be carrying on such a business.

(3) If the person is a body corporate authorised by a law of a State to take in its own name a grant of probate of the will, or a grant of letters of administration of the estate, of a dead person, an act done by the first-mentioned person is to be disregarded.

(4) If the person is a solicitor, an accountant or actuary in public practice as such, an act that the person does is to be disregarded if it is merely incidental to the practice of his or her profession.

(5) The fact that the person advises other persons about benefits or publishes reports relating to benefits, in some or all of the following circumstances is to be disregarded—

(a) in a newspaper or periodical—

(i) of which the person is the proprietor or publisher; and

(ii) that is generally available to the public otherwise than only on subscription;

(b) in the course of, or by means of, transmissions that—

(i) the person makes by means of an information service; or

(ii) are made by means of an information service that the person owns, operates or makes available—

and are generally available to the public;

(c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways—

(i) by supplying copies of them to the public; or

(ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case requires.

(6) Sub-section (5) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, as the case requires, whose sole or principal purpose is to advise other persons about benefits or to publish reports relating to benefits.

(7) The fact that the person holds himself, herself or itself out as advising other persons, or publishing reports relating to benefits, as mentioned in sub-section (5), is to be disregarded.

(8) An act that the person does as a representative of a society, a licensed dealer, a licensed adviser or an exempt person is to be disregarded.

Subdivision 2—Agreements with unlicensed persons

Certain persons not clients

173. A reference in this Subdivision to a client does not include a reference to a person who is—

(a) a licensed dealer; or

(b) a licensed adviser; or

(c) one of 2 or more persons who together constitute a licensed dealer or a licensed adviser.

Agreements with unlicensed persons

174.(1) Sections 175 to 183 apply where, during a period when a person (in this Subdivision called the "non-licensee") is unlicensed, the non-licensee and a client of the non-licensee enter into an agreement that—

(a) constitutes, or relates to, a dealing or proposed dealing in benefits; or

(b) relates to advising the client about benefits, or giving the client reports relating to benefits.

(2) Sections 175 to 183 apply to an agreement mentioned in sub-section (1) whether or not anyone else is a party to the agreement.

(3) A person is unlicensed during a period when the person—

(a) in contravention of section 171, carries on, or holds out that the person carries on, a business of dealing in benefits; or

(b) in contravention of section 172, carries on a benefits advisory business or holds out that the person carries on such a business.

Client may give notice of rescission

175. (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

(3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that the non-licensee was unlicensed.

(5) If, at a time when a securities licence (as defined in sub-section (8)) held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of sub-section (4) to have informed the client at that time that the non-licensee was unlicensed.

(6) Nothing in sub-sections (2), (3) and (4) limits the generality of any of the others.

(7) Subject to this section, the client may give a notice under this section whether or not—

(a) the notice will result under section 176 in rescission of the agreement; or

(b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 178.

(8) In this section—

"securities licence" means an investment advisers licence granted under Part 7.3 of the Corporations Law or a dealers licence granted under that Part.

Effect of notice under section 175

176.A notice given under section 175 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Client may apply to Court for partial rescission

177.(1) If the client gives a notice under section 175 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 176, the client may, within a reasonable period after giving the notice, apply to the Court for an order under sub-section (4) of this section.

(2) The Court may extend the period for making an application under sub-section (1).

(3) If an application is made under sub-section (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 176 and the application were for orders under section 178.

(4) On an application under sub-section (1), the Court may make an order—

(a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and

(b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

(5) If the Court makes an order under sub-section (4), the agreement is to be taken for the purposes of section 178 to have been rescinded under section 176.

(6) An order under sub-section (4) does not affect the application of section 180 or 182 in relation to the agreement as originally made or as varied by the order.

Court may make consequential orders

178.(1) Subject to sub-section (2), on rescission of the agreement under section 176, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

(2) The Court is not empowered to make a particular order under sub-section (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Agreement unenforceable against client

179.(1) This section—

(a) applies while both of the following are the case—

(i) the client is entitled to give a notice under section 175;

(ii) a notice so given will result under section 176 in rescission of the agreement; and

(b) applies after the agreement is rescinded under section 176—

but does not otherwise apply.

(2) The non-licensee is not entitled, as against the client—

(a) to enforce the agreement, whether directly or indirectly; or

(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

Non-licensee not entitled to recover commission

180.(1) Without limiting the generality of section 179, this section—

(a) applies while the client is entitled to give a notice under section 175; and

(b) applies after the client so gives a notice, even if the notice does not result under section 176 in rescission of the agreement—

but does not otherwise apply.

(2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a quantum meruit) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

Onus of establishing non-application of section 179 or 180

181.For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in section 179(2) or 180(2), it must be presumed, unless the contrary is proved, that section 179 or 180, as the case requires, applies, or applied at that time, as the case requires.

Client may recover commission paid to non-licensee

182.(1) Without limiting the generality of section 178, if the client gives a notice under section 175, the client may, even if the notice does not result under section 176 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

(2) The SSA may, if it considers that it is in the public interest to do so, bring an action under sub-section (1) in the name of, and for the benefit of, the client.

Remedies under this Subdivision

183.The client's rights under this Subdivision are additional to, and do not prejudice, any right or remedy of the client.

Subdivision 3-Representatives

Proper authority from society

184. A reference, in relation to a person (in this section called the "representative") to a proper authority from a society registered under this Code or the Code of a participating State (in this section called the "principal") is a reference to a document in the prescribed form or a copy of the society's certificate of incorporation on which are endorsed—

(a) a statement—

(i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and

(ii) signed by the principal; and

(b) in relation to each person (if any), other than the principal, of whom the representative is a representative, a statement that—

(i) sets out the name of the person; and

(ii) states that the representative is employed by, or acts for or by arrangement with, that person; and

(iii) states that the person consents to the representative being employed by, or acting for or by arrangement with, the principal; and

(iv) is signed by the person.

Representatives of dealers

185.A person must not, in relation to benefits, do an act as a representative of a licensed dealer unless the person holds a proper authority from the dealer.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Representatives of investment advisers

186.A person must not, in relation to benefits, do an act as a representative of a licensed adviser unless the person holds a proper authority from the licensed adviser.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Representatives of societies

187.A person must not, in relation to benefits, do an act as a representative of a society unless the person holds a proper authority from the society.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Body corporate not to act as representative

188.A body corporate must not do an act as a representative of a dealer, an investment adviser or a society.

Maximum penalty: $5000 or imprisonment for 12 months, or both.

Defence

189.(1) A person does not contravene section 171, 172, 185, 186 or 187 by an act done by that person as a representative of another person if—

(a) but for the other person ceasing to be a society or for the revocation or suspension of a securities licence held by the other person, the act would not have been such a contravention;

(b) when he or she did the act, the first-mentioned person—

(i) believed in good faith that the other person was a society or held the securities licence, as the case requires; and

(ii) was unaware of the cessation, revocation or suspension.

(2) A person does not contravene section 171, 172, 185, 186 or 187 by an act done by that person as a representative of another person if the person holds what he or she believes in good faith to be a proper authority from that other person, and in all the circumstances it was reasonable for the first-mentioned person to so believe.

(3) In this section—

"securities licence" means an investment advisers licence granted under Part 7.3 of the Corporations Law or a dealers licence granted under that Part.

Banned person not to act as representative

190. A person must not do an act as a representative of a society, a licensed dealer or a licensed adviser if the person is the subject of a banning order made by the Australian Securities Commission under section 829 of the Corporations Law.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Society to keep register of holders of proper authorities

191.(1) A society must establish a register of the persons who hold proper authorities from the society and must keep it in accordance with this section.

(2) The register must be in writing or in such other form as the SSA approves.

(3) The register must contain, in relation to each person (if any) who holds a proper authority from the society—

(a) a copy of the proper authority;

(b) the person's name;

(c) the person's current residential address;

(d) unless the person's current business address is the same as the society's, the person's current business address; and

(e) any other prescribed information.

(4) A copy of a proper authority of a person from the society that sub-section (3) provides for the register to contain must be included in the register within 2 business days after the person begins to hold that proper authority.

(5) Information that sub-section (3) provides for the register to contain in relation to a person must be entered in the register within 2 business days after—

(a) the person begins to hold a proper authority from the society; or

(b) the society receives the information—

whichever happens later.

(6) Within 2 business days after a person ceases to hold a proper authority from the society, the society must—

(a) in any case—

(i) include, in a part of the register separate from the part in which copies of proper authorities are included under sub-section (4); and

(ii) remove from the last-mentioned part—

the copy of the proper authority that was included in the last-mentioned part; and

(b) unless, at the end of those 2 business days, the person again holds a proper authority from the society—

(i) enter, in a part of the register separate from the part in which information is entered under sub-section (5); and

(ii) remove from the last-mentioned part—

the information that has been entered in the last-mentioned part in relation to the person.

(7) Information that has been entered under sub-section (6)(b) in a separate part of the register is deemed for the purposes of sub-sections (3) and (5) not to be contained or entered in the register.

(8) Where a society that sub-section (1) requires to establish a register already keeps one under this section or a corresponding previous law, the society need not establish a new register but must keep the existing one in accordance with this section.

Society to notify SSA of location and contents of register

192.(1) In this section—

"register", in relation to a society, means a register that the society keeps for the purposes of section 191.

(2) Within 14 days after establishing a register, the society must lodge with the SSA written notice of where the register is kept.

(3) As soon as practicable after changing the place where a register is kept, the society must lodge with the SSA written notice of the new place where the register is kept.

(4) Within 2 business days after the day on which a person begins to hold a particular proper authority from a society, the society must, whether or not the person has previously held a proper authority from the society, lodge with the SSA—

(a) a copy of the first-mentioned proper authority; and

(b) a written notice stating that the person began to hold that proper authority on that day.

(5) The society must lodge with the SSA a written notice, within the period provided by sub-section (6)—

(a) setting out the information that the register is required to contain by section 191(3)(b), (c), (d) or (e); and

(b) stating that the information has been, or is to be, entered in the register.

(6) A notice under sub-section (5) must be lodged with the SSA within the period within which sub-section 191(5) requires the information to be entered in the register.

(7) Within 2 business days after a person ceases to hold a proper authority from a society, the society must, unless at the end of those 2 business days the person again holds a proper authority from the society, lodge with the SSA a written notice stating that the person has ceased to hold such a proper authority.

Inspection and copying of register

193.(1) In this section—

"register" in relation to a society, means a register that the society keeps for the purposes of section 191.

(2) A society must ensure that a register is open for inspection without charge.

(3) Where a person requests a society in writing to give to the person a copy of the whole, or of a specified part, of a register, the society must comply with the request within 2 business days after—

(a) if the society's rules require the person to pay for the copy, an amount (if any) prescribed by the society's rules, receiving the amount from the person; or

(b) in any other case, receiving the request.

SSA may require production of authority

194.(1) Where the SSA has reason to believe that a person—

(a) holds a proper authority from a society; or

(b) has done an act as a representative of another person—

then, whether or not the SSA knows who the society or other person is, it may require the first-mentioned person to produce any proper authority or purported proper authority from the society that the first-mentioned person holds.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

SSA may give society information about representative

195.(1) Where the SSA believes on reasonable grounds that—

(a) a person (in this section called the "holder") holds, or will hold, a proper authority from a society;

(b) having regard to that fact, the SSA should give to the society particular information that the SSA has about the person; and

(c) the information is true—

the SSA may give the information to the society.

(2) Where the SSA gives information under sub-section (1), the SSA or an officer of the SSA may, for a purpose connected with—

(a) the SSA making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or

(b) the SSA taking action pursuant to such a decision—

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

(3) A person to whom information has been given, in accordance with sub-section (2) or this sub-section, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

(4) Subject to sub-sections (2) and (3), a person must not give to another person, make use of, or make a record of, information given by the SSA under sub-section (1).

Maximum penalty: $5000 or imprisonment for 12 months, or both.

(5) A person has qualified privilege in respect of an act done by the person as permitted by sub-section (2) or (3).

(6) A person to whom information is given in accordance with this section must not—

(a) give any of the information to a court; or

(b) produce in a court a document that sets out some or all of the information—

except—

(c) for a purpose connected with—

(i) the society making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information; or

(ii) the society taking action pursuant to such a decision; or

(iii) proving in a proceeding in that court that particular action taken by the society in relation to the holder was so taken pursuant to such a decision—

or for 2 or more such purposes, and for no other purpose; or

(d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section; or

(e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or

(f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

(7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person—

(a) taking action by way of making, terminating or varying the terms and conditions of a relevant agreement; or

(b) otherwise taking action in relation to a relevant agreement—

in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a business of dealing in benefits or a benefits advisory business carried on by the first-mentioned person.

Holder of authority may be required to return it

196.(1) Where a person holds a proper authority from a society but is neither employed by, nor authorised to act for or by arrangement with, the society, the society may, by writing given to the person, require the person to give the proper authority to the society within a specified period of not less than 2 business days.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with sub-section (1).

Subdivision 3A—Exemptions and modifications relating to representatives

Exemptions and modifications under Subdivision 3

196A.(1) The SSA may, subject to and in accordance with the standards, by writing, exempt a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the exemption, and either unconditionally or subject to conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of Subdivision 3.

(2) Without limiting the generality of sub-section (1), an exemption under that sub-section may relate to particular benefits or to a particular class of benefits.

(3) A person must not contravene a condition to which an exemption under sub-section (1) is subject.

(4) Where a person has contravened a condition to which an exemption under sub-section (1) is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, subject to and in accordance with the standards, by writing, declare that Subdivision 3 has effect in its application to a particular person or persons, or a particular class of persons, either generally or as otherwise provided in the declaration as if a specific provision or provisions of that Subdivision were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Subdivision has effect accordingly.

(6) Without limiting the generality of sub-section (5), a declaration under that sub-section may relate to particular benefits or to a particular class of benefits.

(7) The SSA must cause to be published in the Gazette a statement to the effect that an exemption has been granted or a declaration made under this Subdivision in relation to a particular class of persons or a particular class of benefit funds.

Subdivision 4—Liability of principals for representatives' conduct

Conduct engaged in as a representative

197.Where a person engages in conduct in relation to benefits as a representative of another person (in this section called the "principal"), then, as between the principal and a third person (other than the SSA), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

Liability where identity of principal unknown

198.(1) This section applies for the purposes of a proceeding in a court where—

(a) whether within or outside this State, a person (in this section called the "representative") engages in particular conduct in relation to benefits while the person is a representative of 2 or more persons (in this section called the "indemnifying principals"); and

(b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the "unknown principal") but it is not proved for those purposes who the unknown principal is.

(2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

(3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those 2 or more is liable in respect of that conduct as if he, she or it were the unknown principal.

Liability of principals where act done in reliance on representative's conduct

199.(1) This section applies where—

(a) at a time when a person (in this section called the "representative") is a representative of only one person (in this section called the "indemnifying principal") or of 2 or more persons (in this section called the "indemnifying principals"), the representative, whether within or outside this State—

(i) engages in particular conduct in relation to benefits;

(ii) proposes, or represents that the representative proposes, to engage in particular conduct in relation to benefits;

(b) another person (in this section called the "client") does, or omits to do, a particular act, whether within or outside this State, because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case requires, that conduct—

(i) on behalf of some person (in this section called the "assumed principal") whether or not identified, or identifiable, at that time by the client; and

(ii) in connection with a business dealing in benefits or a benefits advisory business carried on by the assumed principal; and

(c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case requires, that act because of that belief—

whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.

(2) If—

(a) sub-section (1)(a)(i) applies; or

(b) sub-section (1)(a)(ii) applies and the representative engages in that conduct—

then, for the purposes of a proceeding in a court—

(c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or

(d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable—

as the case requires, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

(3) Without limiting the generality of sub-section (2), the indemnifying principal, or each of the indemnifying principals, as the case requires, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case requires, the act referred to in sub-section (1)(b).

(4) Sub-section (3) does not apply unless—

(a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this State; or

(b) the act referred to sub-section (1)(b) was done, or would have been done, as the case requires, in this State; or

(c) some or all of the loss or damage was suffered in this State.

(5) If—

(a) there are 2 or more indemnifying principals;

(b) 2 or more of them are parties (in this sub-section called the "indemnifying parties") to a proceeding in a court;

(c) it is proved for the purposes of the proceeding—

(i) that the representative engaged in that conduct as a representative of some person; and

(ii) who that person is; and

(d) that person is among the indemnifying parties—

sub-sections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

Presumptions about certain matters

200.(1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this sub-section called the "representative") engaged in particular conduct in relation to benefits, whether within or outside this State, while the person was a representative of—

(a) only one person (in this sub-section called the "indemnifying principal"); or

(b) 2 or more persons (in this sub-section called the "indemnifying principals")—

then, unless the contrary is proved for the purposes of the proceeding, it must be presumed for those purposes that the representative engaged in the conduct as a representative of—

(c) the indemnifying principal; or

(d) as a representative of some person among the indemnifying principals—

as the case requires.

(2) Where, for the purposes of establishing in a proceeding in a court that section 199 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it must be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case requires, that act because of that belief.

No contracting out of liability for representative's conduct

201.(1) For the purposes of this section, a liability of a person—

(a) in respect of conduct in relation to benefits engaged in by another person as a representative of the first-mentioned person; or

(b) arising under section 199 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct in relation to benefits—

is a liability of the first-mentioned person in respect of the other person.

(2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

(3) Sub-section (2) does not apply in relation to an agreement in so far as it—

(a) is a contract of insurance;

(b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or

(c) provides for a licensed adviser, licensed dealer or society from whom a person holds a proper authority to indemnify another such adviser, dealer or society in respect of a liability of the other authorised person in respect of the person.

(4) A person must not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of sub-section (2).

Effect of Subdivision

202.(1) Where 2 or more persons are liable under this Subdivision in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

(2) Nothing in section 197, 198 or 199—

(a) affects a liability arising otherwise than by virtue of this Subdivision; or

(b) notwithstanding paragraph (a) of this sub-section, entitles a person to be compensated twice in respect of the same loss or damage; or

(c) makes a person guilty of an offence.

Subdivision 5—Excluding persons from dealing with benefits

Power to make banning order

203.Subject to section 210, the SSA may make a banning order against a person—

(a) if the person is a natural person and the person—

(i) becomes an insolvent under administration; or

(ii) is convicted of serious fraud within the meaning of section 9 of the Corporations Law; or

(iii) becomes incapable, through mental or physical incapacity, of managing his or her affairs;

(b) if the person is a body corporate and the person—

(i) ceases to carry on business; or

(ii) becomes an externally administered body corporate;

(c) if the person contravenes a provision of Chapter 6 or Chapter 7 of the Corporations Law or of this Part;

(d) if the SSA has reason to believe that the person (in the case of a natural person) or an officer of the person (in the case of a body

corporate) is not of good fame and character; or

(e) if the SSA has reason to believe that the person has not, or will not, perform efficiently, honestly and fairly the duties of a licensed dealer, a licensed adviser or the holder of a proper authority from a licensed dealer, a licensed adviser or a society, as the case requires, in relation to the conduct of a business of dealing in benefits or a benefits advisory business.

Nature of banning order

204.(1) Where this Subdivision empowers the SSA to make a banning order against a person, the SSA may, by written order, prohibit the person, permanently or for a specified period, from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business.

(2) The SSA must not vary or revoke a banning order except under section 205, 206 or 207.

Exceptions to banning order

205.(1) An order made against a person under section 204(1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

(2) Subject to section 210 the SSA may, at any time, by written order, vary a banning order against a person—

(a) by adding a provision that permits the person as mentioned in sub-section (1);

(b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;

(c) by omitting such a provision and substituting another such provision; or

(d) by omitting such a provision.

Variation or revocation of banning order on application

206.(1) Subject to section 207 and 210, this section has effect where a person applies to the SSA to vary or revoke a banning order relating to the person.

(2) If—

(a) the person is not an insolvent under administration or an externally administered body corporate; and

(b) the SSA has no reason to believe that the person, or an officer of the person, is not of good fame and character; and

(c) the SSA has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of a licensed dealer, a licensed adviser or the holder of a proper authority from a licensed dealer, a licensed adviser or a society, as the case requires—

the SSA must by written order—

(d) if paragraph (c) applies, vary the banning order so that it no longer prohibits the person from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business;

(e) in any other case, revoke the banning order.

(3) Otherwise, the SSA must refuse the application.

(4) In determining whether or not it has reason to believe as mentioned in sub-section (2)(b) or (c), the SSA must have regard to any conviction of any relevant person, during the 10 years ending on the day of the application, of serious fraud within the meaning of section 9 of the Corporations Law.

(5) Nothing in sub-section (4) limits the matters to which the SSA may have regard—

(a) in deciding the application; or

(b) in connection with performing or exercising any other function or power under this Part.

Revocation of banning order in certain cases

207. Where—

(a) section 206 requires the SSA to vary a banning order so that it no longer has a particular operation; and

(b) the order has no other operation—

the SSA must, by written order, instead revoke the banning order.

Effect and publication of orders under this Subdivision

208.(1) An order by the SSA under this Subdivision takes effect when served on the person to whom the order relates.

(2) As soon as practicable on or after the day on which an order by the SSA under this Subdivision takes effect, the SSA must publish in the Gazette a notice that sets out a copy of—

(a) if the order is made under section 204 or revokes a banning order, the first-mentioned order; or

(b) if the order varies a banning order, the banning order as in force immediately after the first-mentioned order takes effect—

and states that the first-mentioned order, or the banning order as so in force, as the case requires, took effect on that day.

(3) Where—

(a) but for this sub-section, sub-section (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;

(b) the banning order as so in force includes a provision that permits a person as mentioned in section 205(1); and

(c) in the SSA's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision—

the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

Contravention of banning order

209.A person must not contravene a banning order relating to the person.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

Opportunity for hearing

210.(1) The SSA must not—

(a) make, otherwise than by virtue of section 203(a), (b) or (c), an order under section 204 against a person;

(b) make under section 205(2) an order varying a banning order against a person; or

(c) refuse an application by a person under section 206—

unless the SSA complies with sub-section (2) of this section.

(2) The SSA must give the person an opportunity—

(a) to appear at a hearing before the SSA that takes place in private; and

(b) to make submissions and give evidence to the SSA in relation to the matter.

Disqualification by the Court

211.(1) Where the SSA makes under section 204 against a person an order that is to operate otherwise than only for a specified period, the SSA may apply to the Court for an order or orders under this section in relation to the person.

(2) On an application under sub-section (1), the Court may make one or more of the following—

(a) an order prohibiting the person, permanently or for a specified period, from doing an act in connection with the conduct of a business of dealing in benefits or a benefits advisory business;

(b) such other order as it thinks fit—

or may refuse the application.

(3) The Court may revoke or vary an order in force under sub-section (2).

Subdivision 6—Recommendations about benefits

Definition of adviser

212. In this Subdivision—

"adviser"means—

(a) a licensed dealer;

(b) a licensed adviser;

(c) a person holding a proper authority from a licensed dealer, a licensed adviser or a society.

Recommendation made by partner or officer

213.For the purposes of this Subdivision (other than section 216)—

(a) a recommendation made by a partner is deemed to have been made by each partner in the partnership; and

(b) a recommendation made by a director, executive officer or secretary of a body corporate is deemed to have also been made by the body corporate.

Client to be told if adviser's interests may influence recommendation

214.(1) This section applies where an adviser makes a recommendation with respect to benefits, whether express or implied, to a person (in this section called the "client") who may reasonably be expected to rely on it.

(2) The adviser must—

(a) if the recommendation is made orally, when making the recommendation, disclose to the client orally; or

(b) if the recommendation is made in writing, set out in that writing, in such a way as to be no less legible than the other material in that writing—

particulars of—

(c) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the adviser or an associate of the adviser (other than a society) has received, or will or may receive, in connection with the making of the recommendation or an application by the client for benefits or a contribution by the client to a benefit fund, as a result of the recommendation; and

(d) any other pecuniary or other interest, whether direct or indirect, of the adviser or an associate of the adviser, (other than a society) that may reasonably be expected to be capable of influencing the adviser in making the recommendation.

Maximum penalty: $2500 or imprisonment for 6 months, or both.

(3) Sub-section (2) does not apply in relation to a commission or fee that the adviser has received, or will or may receive, from the client.

(4) If, by making the recommendation, the adviser does an act as a representative of another person (other than a society), then—

(a) without limiting the generality of section 4(2), the other person is an associate for the purposes of sub-section (2) of this section; and

(b) sub-section (2) does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.

(5) For the purposes of section 4(2), the making of recommendations with respect to benefits, whether express or implied, is the matter to which a reference to an associate in sub-section (2) of this section relates.

(6) Despite section 4(2) and sub-section (5) of this section, a person (in this sub-section called the "alleged associate") is not an associate for the purposes of sub-section (2) of this section merely because of being—

(a) a partner of the adviser otherwise than because of carrying on a business of dealing in benefits in partnership with the adviser; or

(b) a director of a body corporate of which the adviser is also a director, whether or not the body carries on a business of dealing in benefits—

unless the adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making recommendations, whether express or implied, with respect to benefits.

Defences to alleged breach of section 214(2)

215.(1) Where—

(a) a person—

(i) when making a recommendation orally, fails to disclose; or

(ii) when making a recommendation in writing, fails to set out in that writing—

as required by section 214(2), particulars of a matter; and

(b) it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation—

the failure is not a contravention of section 214(2).

(2) Where—

(a) an adviser—

(i) when making a recommendation orally, fails to disclose; or

(ii) when making a recommendation in writing, fails to set out in that writing—

as required by section 214(2), particulars of a matter;

(b) in the case of a person holding a proper authority from a licensed dealer, a licensed adviser or a society, by making the recommendation, the representative does an act as a representative of the licensed dealer, licensed adviser or a society;

(c) it is proved that the licensed dealer, licensed adviser or society, had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that—

(i) the natural person who made the decision knew nothing about that matter before the end of that period; and

(ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about that matter; and

(d) it is also proved that—

(i) the person in fact knew nothing about that matter before the end of that period; and

(ii) no such advice was so given—

the failure is not a contravention of section 214(2).

(3) Neither of sub-sections (1) and (2) limits the generality of the other.Adviser must have reasonable basis for recommendation

216.(1) An adviser who—

(a) makes a recommendation, whether express or implied, with respect to benefits to a person who may reasonably be expected to rely on it; and

(b) does not have a reasonable basis for making the recommendation to the person—

contravenes this section.

(2) For the purposes of sub-section (1), an adviser does not have a reasonable basis for making a recommendation to a person unless—

(a) in order to ascertain that the recommendation is appropriate having regard to the information the adviser has about the person's investment objectives, financial situation and particular needs, the adviser has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes sub-section (1) is not guilty of an offence.

Adviser who breaches this Subdivision liable to compensate client

217.(1) This section applies where—

(a) an adviser contravenes section 214 or 216 in relation to a recommendation (whether express or implied) with respect to benefits to a person (in this section called the "client");

(b) the client, in reliance on the recommendation, does, or omits to do, a particular act;

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case requires, that act in reliance on the recommendation; and

(d) the client suffers loss or damage as a result of that act or omission.

(2) Subject to sub-sections (3) and (4), the adviser is liable to pay damages to the client in respect of that loss or damage.

(3) In the case of a contravention of section 214, the adviser is not so liable if it is proved that a reasonable person in the client's circumstances could be expected to have done, or omitted to do, as the case requires, that act in reliance on the recommendation even if the adviser had complied with that section in relation to the recommendation.

(4) In the case of a contravention of section 216, the adviser is not so liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the adviser had about the client's investment objectives, financial situation and particular needs.

Qualified privilege for adviser when complying with this Subdivision

218. An adviser who—

(a) makes a recommendation in relation to benefits to a person who may reasonably be expected to rely on it; and

(b) in so making the recommendation, contravenes neither of sections 214(2) and 216(1)—

has qualified privilege in respect of a statement the adviser makes to the person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.

PART 5—SHARES AND CHARGES

Division 1—Shares Generally

Share capital

219. A society may issue permanent shares or redeemable preference shares in accordance with this Part.

Classes of shares, rights etc.

220.(1) The rules of a society may provide for the division of the society's share capital into classes of shares.

(2) All shares in a class of shares must have the same nominal value.

(3) The rights attaching and terms and conditions of issue applying to a class of shares are as provided in the society's rules or determined by the board under the rules, but no such rules may be registered unless the provisions in relation to those rights, terms and conditions comply with the requirements of this Code and are, in the SSA's opinion, otherwise appropriate.

Determination of share capital

221. The amount of the share capital of a society is the aggregate of the nominal values of the shares that have been issued by the society.

Liability of shareholders

222. The liability of a shareholder in a society in relation to a share is limited to the amount (if any) unpaid in relation to the share.

Board to approve sale or transfer unless rules provide otherwise

223. Unless a society's rules otherwise provide, a share in the society may be transferred only with the consent of the society.

Restriction on application of capital

224.(1) Except as provided by section 225, a society must not apply any of its shares or capital money either directly or indirectly in—

(a) making a payment to a person in consideration of the person's subscribing or agreeing to subscribe (whether absolutely or conditionally); or

(b) procuring or agreeing to procure subscriptions (whether absolute or conditional)—

for any permanent shares in the society (whether the shares are or the money is so applied by being added to the purchase price of property acquired by the society or to the contract price of work to be executed for the society or the money is paid out of the nominal purchase price or contract price or otherwise).

(2) If a society contravenes sub-section (1), any officer of the society who is in default commits an offence.

Maximum penalty: $25 000.

(3) If—

(a) a person is convicted of an offence against sub-section (2) in relation to a society; and

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

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

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

(5) If a contravention of sub-section (1) takes place and—

(a) a person (other than the society concerned) who was, at the time of the contravention, aware of the matters constituting the contravention, made a profit because of the

contravention, the society may (whether or not the person or another person has been convicted of an offence against sub-section (2) in relation to the contravention) recover the profit from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned; and

(b) the society concerned has suffered loss or damage because of the contravention, the society may recover the loss or damage from a person who is in default (whether or not the person or another person has been convicted of an offence against sub-section (2) in relation to the contravention) as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned.

Power to make certain payments

225.(1) Subject to sub-section (2), a society may make a payment by way of brokerage or commission to a person in consideration of—

(a) the person's subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the society; or

(b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the society—

only if—

(c) the payment is not prohibited by the society's rules; and

(d) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in a prospectus issued in relation to the shares or, if there is no such prospectus, in a statement lodged with the SSA before the society becomes liable to make the payment; and

(e) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in the prospectus or statement.

(2) The total amount of payments by a society by way of brokerage or commission for shares must not be more than the lesser of the following amounts—

(a) 10% of the total amount payable on allotment of the shares;

(b) if the society's rules specify an amount, or a rate for calculating an amount, for the purpose, the amount specified or calculated in accordance with the specified rate.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a society may apply any part of the money or shares in making a payment that would, if it were made directly by the society, be lawful under this section.

Validation of shares improperly issued

226.(1) If a society has purported to issue shares and—

(a) the creation or issue of the shares is invalid under this Code or the society's rules or for any other reason; or

(b) the terms of the purported issue are inconsistent with or are not authorised by this Code or the rules—

the Court may, on application made by the society, a holder or mortgagee of any of the shares, or a creditor of the society, and, on being satisfied that in all the circumstances it is just and equitable to do so, make an order under this section.

(2) An order under this section may—

(a) validate the purported issue of the shares; or

(b) confirm the terms of the purported issue of the shares; or

(c) do both those things.

(3) On an office copy of an order made under this section being lodged with the SSA, the shares to which the order relates are taken to have been validly issued on the terms of the issue of the shares.

Division 2—Permanent Shares

Issue of permanent shares

227.(1) Permanent shares in a society may be issued as fully paid-up shares or shares to be paid for by periodical or other subscription or at call.

(2) If the rules of a society provide for the issue of permanent shares of different classes, the rules must provide that each class of permanent shares ranks equally with the other classes of permanent shares in relation to the return of capital and any distribution of surplus assets and profits in the winding-up of the society.

Issue of preference shares

228.(1) Without limiting section 220, a society may issue preference shares as a class of permanent shares.

(2) The SSA may, by Gazette notice, declare that specified preference shares issued by a society are a class of permanent shares.

(3) A declaration has effect for the purposes of the application of this Code to the shares to which the declaration relates.

Rights of holders of preference shares to be set out in rules

229. A society must not allot a preference share, or convert an issued share into a preference share, unless its rules set out the rights of the holder of the share in relation to—

(a) repayment of capital; and

(b) participation in surplus assets and profits; and

(c) cumulative or non-cumulative dividends; and

(d) voting; and

(e) priority of payment of capital and dividend—

in relation to other shares or other classes of preference shares.

Cancellation of permanent shares

230.(1) Subject to section 237, issued or unissued permanent shares in a society may not be cancelled by the society except—

(a) under its rules and with the approval of the SSA; or

(b) under a provision of this Code other than this section.

(2) If the SSA gives approval to the cancellation of permanent shares in a society, the SSA may attach conditions to the approval and may, on non-compliance with a condition of the approval, revoke the approval.

(3) Without limiting sub-section (2), the SSA may impose conditions on the cancellation of permanent shares in a society to the effect of the permitted buy-back procedures set out in Division 4B of Part 2.4 of the Corporations Law as if—

(a) a reference in that Division to a company were a reference to the society; and

(b) a permitted buy-back in accordance with that Division were the procedure leading to cancellation of the permanent shares under sub-section (1).

(4) Subject to sub-section (5), a society must not cancel a permanent share if the result of taking such action would be that the society fails to satisfy, or is in breach of, a standard.

(5) Despite any other provision of this Code, a society must cancel any permanent share that is forfeited to the

society under this Code or its rules and is not required by this Code to be sold.

Dividends in relation to permanent shares

231.(1) In this section—

"dividend" includes a payment by way of bonus share issue.

(2) A society may, if authorised by its rules and the board so determines, in relation to a particular class of permanent shares, distribute profits by way of dividends or bonus shares (whether fully or partly paid-up) to the holders of the permanent shares.

(3) Dividends or bonus share issues in relation to permanent shares may vary in value proportionately according to the extent to which each permanent share in relation to which the payment or issue is made is paid up.

(4) A society commits an offence if dividends are paid otherwise than—

(a) out of profits of the management fund of the society; or

(b) out of a share premium account maintained by the society under this Division.

Maximum penalty: $75 000

(5) If dividends are paid in contravention of sub-section (4), the creditors of the society are entitled to recover from any officer of the society who knowingly caused or permitted the payment to be made the amount of the debts owed by the society to those creditors respectively to the extent that the dividends so paid have exceeded profits.

(6) If the whole amount is recovered from one officer, that officer may recover contribution from any other officer similarly liable.

(7) A liability imposed on an officer under this section is extinguished on the person's death.

Requirements for issue of permanent shares

232.(1) A society must not issue permanent shares unless expressly authorised by its rules.

(2) If a society proposes to adopt rules that authorise the issue of permanent shares, the society must first submit the rules to the SSA for approval under this section.

(3) The SSA may approve rules for the issue by a society of permanent shares if the SSA is satisfied that—

(a) the rules make appropriate provision for the reasonable apportionment of reserves and profits of the society among different classes of members or shareholders; and

(b) there would be, on winding-up of the society, a reasonable apportionment of reserves and profits among different classes of members or shareholders.

(4) A society, in issuing permanent shares in accordance with its rules, must comply with this Code and the standards.

Allotment of permanent shares otherwise than for cash

233.(1) For the purposes of this section, the issue of permanent shares under a dividend reinvestment plan, or the issue of bonus shares paid for out of the share premium account under section 240, is not an issue of permanent shares otherwise than in consideration of payment in cash.

(2) A society must not allot permanent shares as fully or partly paid-up otherwise than in consideration of payment in cash unless the society has obtained a report from an expert, signed by the expert and stating-—

(a) what, in the expert's opinion, is the money value, at the time of the signing of the report, of the consideration given in relation to the shares; and

(b) whether or not, in the expert's opinion, the consideration is fair and reasonable as at that time and the reasons for the opinion; and

(c) particulars of any relationship that the expert has with the society or an associate of the society; and

(d) particulars of any pecuniary or other interest that the expert has that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased report; and

(e) particulars of any fee or pecuniary or other benefit, whether direct or indirect, that the expert has received, or will or may receive, for or in connection with the making of the report.

(3) A copy of a report under sub-section (2) must be lodged with the SSA by the society not less than 7 days before the shares are allotted.

(4) The society must, if it has obtained the opinions of more than one expert for the purposes of this section, attach to any report that is dealt with under sub-section (3) a statement setting out, in relation to each of the experts (other than the one who signed the report)—

(a) the name of the expert; and

(b) particulars of the opinion (if any) expressed by the expert on the matters on which an expert's opinion is required for the purposes of this section.

(5) A society that contravenes this section commits an offence and is liable on conviction to a maximum penalty of $25 000.

Power to exempt in relation to non-cash consideration

234.(1) The SSA may, by written notice, exempt a society, conditionally or unconditionally, from a requirement of section 233.

(2) The SSA may, on non-compliance with a condition of an exemption under this section, by written notice, revoke the exemption.

Differences in calls, reserve liability etc

235.(1) A society may, if authorised by its rules—

(a) make arrangements on the issue of permanent shares for varying the amounts and times of payment of calls as among shareholders; and

(b) accept from a shareholder the whole or a part of the amount remaining unpaid on any permanent shares although no part of that amount has been called-up.

(2) A society may, by special resolution, determine that any proportion of its permanent share capital that has not been already called-up is not capable of being called-up except in the event and for the purposes of the society being wound-up, but the resolution does not prejudice any rights acquired by a person before the passing of the resolution.

Calls and effect of non-compliance with calls on permanent shares

236.(1) Calls on permanent shares in a society must be so made that they are payable not less than 14 days from the day on which the call is made, and no subsequent call may be made within 7 days from the day on which the call was made immediately before it is payable.

(2) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment must, not less than 7 days before the day, be sent by post to the holder of shares on which the call is made.

(3) If a call on a share is not paid on or before the day for its payment, the shareholder is not entitled—

(a) to any dividend declared on the share after the day for payment and before the day the call is paid; or

(b) while the call remains unpaid, to a vote for the share in any meeting of members of the society.

(4) If a call on a share is unpaid at the end of 14 days after the day for its payment, the share may be forfeited by resolution of the board.

Sale of permanent shares forfeited for non-payment of call

237.(1) Permanent shares forfeited to a society for non-payment of a call must be offered for sale not more than 6 weeks after their forfeiture—

(a) by auction; or

(b) on a stock market lawfully operated by a stock exchange (within the meaning of paragraph (c) of the definition of "stock exchange" in section 9 of the Corporations Law).

(2) The rules of a society must provide for—

(a) the procedure to be followed in the conduct of the auction; and

(b) the application of the proceeds of sale of the forfeited shares.

Prohibition of allotment unless minimum subscription received

238.(1) A society must not make an allotment of permanent shares in the society that have been offered for subscription or in relation to which an invitation to subscribe has been issued unless—

(a) the minimum subscription (if any) has been subscribed; and

(b) the sum payable on application for the subscribed shares has been received by the society.

(2) For the purposes of sub-section (1), if a society has received a cheque or payment order for the sum payable on application for an allotment of shares in the society, the sum is not taken to have been received by the society until the cheque is paid by the bank on which it is drawn or payment is made in accordance with the order.

(3) In ascertaining for the purposes of sub-section (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, an amount equal to the sum of—

(a) the nominal value of each share; and

(b) if the share is, or is to be, issued at a premium, the amount of the premium payable on each share—

less any amount payable otherwise than in cash is taken to have been subscribed in relation to each share for the allotment of which an application has been made.

(4) If the conditions mentioned in sub-section (1) have not been satisfied within 4 months after the issue of the prospectus, the society must repay, under this section, all money received from applicants for shares.

(5) If a society is liable, under sub-section (4), to repay money received from applicants for shares—

(a) the money must be repaid without interest within 7 days after the society becomes liable; and

(b) if the money is not repaid within the period—

(i) the directors of the society are, subject to sub-section (6), jointly and severally liable to repay the money with interest at the prescribed rate calculated from the end of the period; and

(ii) each director of the society commits an offence for which the director is liable on conviction to a maximum penalty of $5000.

(6) A director of a society is not liable under sub-section (5)(b)(i), and does not commit an offence against sub-section (5)(b)(ii), if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on the director's part.

(7) An allotment made by a society to an applicant in contravention of this section is voidable at the option of the applicant and is voidable even if the society is being wound-up.

(8) An option mentioned in sub-section (7) is exercisable by written notice served on the society within one month after the date of the allotment.

(9) A director of a society who knowingly contravenes, or permits or authorises the contravention of, any of the provisions of this section (other than sub-section (5)) commits an offence and is liable, in addition to the penalty for the offence, to compensate the society and any person to whom an allotment has been made in contravention of this section respectively for any loss, damages or expenses that the society or the person has sustained or incurred because of the allotment.

Maximum penalty: $5000.

(10) A proceeding for the recovery of compensation under sub-section (9) must be started within 2 years after the date of the allotment.

(11) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section, or purporting to do so, is void.

Return as to allotments

239.(1) If a society makes an allotment of its permanent shares, the society must, within one month after the allotment is made, lodge with the SSA a return, in accordance with the regulations, stating—

(a) the number and nominal values of the shares comprised in the allotment; and

(b) the amount (if any) paid or due and payable on the allotment of each share; and

(c) if the capital of the society is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and

(d) subject to sub-section (3), the full name, or the surname and at least one given name and initials, and the address of each of the allottees and the number and class of shares allotted to the person.

(2) A society that—

(a) has more than 500 members; and

(b) keeps its register of holders of permanent shares at a place within 25 kilometres of an office of the SSA; and

(c) provides at that office reasonable accommodation and facilities for persons to inspect and take copies of its register of holders of permanent shares—

is not required to comply with the provisions of this Part and of the regulations made for the purposes of this Part in so far as they relate to the inclusion in the annual return of a list of members and particulars of shares.

(3) The particulars mentioned in sub-section (1)(d) need not be included in a return in relation to shares that have been allotted in consideration of the payment of money.

(4) If shares in a society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made under a written contract, the society must lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of any such contract.

(5) If a certified copy of a contract is lodged under sub-section (4), the original contract duly stamped must be produced at the same time to the SSA.

(6) If shares in a society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made—

(a) under a contract not reduced to writing; or

(b) under the society's rules; or
(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or
(d) under the application of money held by the society in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled—

the society must lodge with the return a statement containing such particulars as are prescribed.

(7) For the purposes of this section, any shares in a society applied for prior to the registration of the society are taken to have been allotted on the date of registration of the society.

Issue of permanent shares at premium

240.(1) If a society issues permanent shares for which a premium is received by the society (whether in money or in the form of other valuable consideration) the aggregate amount or value of the premiums on the permanent shares must be transferred to an account called the "share premium account", and the provisions of this Part relating to the reduction of the share capital of a society apply, subject to this section, as if the share premium account were paid-up share capital of the society.

(2) The share premium account may be applied—

(a) in paying-up shares to be issued to members of the society as fully paid bonus shares; or
(b) in paying-up, in whole or in part, the balance unpaid on shares previously issued to members of the society; or
(c) in the payment or dividends, if those dividends are satisfied by the issue of shares to members of the society; or
(d) in writing-off the preliminary expenses of the society; or
(e) in writing-off the expenses of, or the payment made in relation to, any issue of shares in the society; or
(f) in providing for the premium payable on redemption of redeemable preference shares.

Special resolution for reduction of permanent share capital

241.(1) Subject to confirmation by the Court, a society may, if authorised by its rules, by special resolution reduce its permanent share capital in any way and, in particular, may do all or any of the following—

(a) extinguish or reduce the liability on any of its permanent shares in relation to share capital not paid-up;
(b) cancel any paid-up share capital that is lost or is not represented by available assets;
(c) pay off any paid-up share capital that is in excess of the society's needs.

(2) If the proposed reduction of permanent share capital involves either diminution of liability in relation to unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

(a) every creditor of the society who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of starting the winding-up of the society, would be admissible in evidence against the society, is entitled to object to the reduction; and
(b) the Court, unless satisfied on affidavit that there are no such creditors, must settle a list of the names of creditors entitled to object and, for that purpose, must ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and
(c) if a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not been determined, does not consent to the reduction, the Court may dispense with the consent of the creditor on the society securing payment of the creditor's debt or claim by appropriating as the Court directs—
    (i) if the society admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or
    (ii) if the society does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after inquiry and adjudication of the kind required where a society is wound-up by the Court.

(3) The Court may, having regard to any special circumstances of a case, direct that all or any of the provisions of sub-section (2) do not apply in relation to creditors included in a particular class of creditors.

(4) The Court may, if satisfied that in relation to each creditor who under sub-section (2) is entitled to object—

(a) the creditor's consent to the reduction has been obtained; or
(b) the creditor's debt has been discharged or secured; or
(c) the creditor's claim has been determined or has been secured—

make an order confirming the reduction on such terms and conditions as it considers appropriate.

(5) A society must not act on a resolution for the reduction of permanent share capital before application is made to the SSA for registration of the resolution and an office copy of the order of the Court is lodged with the SSA, but a resolution may specify an earlier date (not earlier than the date of the resolution) as the date from which the reduction of capital is to have effect.

(6) A certificate of the SSA stating that the resolution and an office copy of the order made under sub-section (4) have been registered by the SSA is conclusive evidence that all the requirements of this Code relating to the reduction of permanent share capital have been complied with in relation to the society.

(7) A shareholder or former shareholder in a society is not liable, in relation to any share in the society, to any call or contribution of more than the difference (if any) between the amount of the share as fixed by an order made under sub-section (4) and the amount paid, or the reduced amount (if any) that is taken to have been paid, on the share.

(8) Despite any other provision of this Code, if the name of a creditor who is entitled under sub-section (2) to object to a reduction is, because of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, not entered on the list of creditors and, after the reduction, the society is unable, within the meaning of the provisions relating to winding-up by the Court, to pay the amount of the creditor's debt or claim—

(a) every person who was a shareholder of the society at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of the debt or claim an amount not more than the amount that the person would have been liable to contribute if

the society had started to be wound-up on the day before that date; and

(b) if the society is wound-up, the Court, on the application of any such creditor and proof of the creditor's ignorance of the proceeding for reduction or of its nature and effect in relation to the creditor's claim, may settle accordingly a list of the names of persons liable to contribute because of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding-up—

but nothing in this sub-section affects the rights of the contributories among themselves.

(9) An officer of a society who—

(a) knowingly conceals the name of a creditor entitled to object to a reduction in the permanent share capital of the society; or

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor of the society—

commits an offence.

Maximum penalty: $5000.

(10) The granting, under the rules of a society, of a lease, licence or other right to occupy or use land or a building, or a part of land or a building, in favour of a shareholder of the society by force of the person's membership does not constitute a reduction of the permanent share capital of the society.

Society financing dealings in its permanent shares etc.

242.(1) Except as otherwise expressly provided by this Code, a society must not—

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—

(i) the acquisition by a person, whether before, or at the same time as, the giving of financial assistance, of permanent shares in the society; or

(ii) the proposed acquisition by a person of permanent shares in the society; or

(b) whether directly or indirectly, in any way, acquire permanent shares in the society; or

(c) whether directly or indirectly, in any way, lend money on the security of permanent shares in the society.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the providing of security, the releasing of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a society is taken to have given financial assistance for the purpose of an acquisition or proposed acquisition (the "relevant purpose") if—

(a) the society gave the financial assistance for purposes that included the relevant purpose; and

(b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

(4) For the purposes of this section, a society is taken to have given financial assistance in connection with an acquisition or proposed acquisition if, when the financial assistance was given to a person, the society was aware that the financial assistance would financially assist—

(a) the acquisition by a person of permanent shares in the society; or

(b) if permanent shares in the society had already been acquired, the payment by a person of any unpaid amount of the subscription payable for the permanent shares or any premium payable in relation to the permanent shares, or the payment of any calls on the permanent shares.

(5) If a society contravenes sub-section (1), any officer of the society who is in default commits an offence.

Maximum penalty: $5000.

(6) If—

(a) a person is convicted of an offence against sub-section (5); and

(b) the court by which the person is convicted is satisfied that the society or another person has suffered loss or damage because of the contravention that constituted the offence—

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

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

(8) The power of a court under section 476 (Power to grant relief) to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under sub-section (6) from the liability to have such an order made against the person.

(9) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition, whether by way of purchase, subscription or otherwise.

Exceptions

243.(1) Section 242(1) does not prohibit—

(a) the payment of a dividend by a society in good faith and in the ordinary course of commercial dealing; or

(b) a payment made by a society under a reduction of capital in accordance with this Part; or

(c) the discharge by a society of a liability of the society that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms; or

(d) an acquisition by a society of an interest (other than a legal interest) in fully paid permanent shares in the society if no consideration is provided by the society, or by any related body corporate, for the acquisition; or

(e) the purchase by a society of permanent shares in the society under an order of a court; or

(f) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a society of a lien on permanent shares in the society (other than fully paid permanent shares) for any amount payable to the society in relation to the permanent shares; or

(g) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a society with a subscriber for permanent shares in the society permitting the subscriber to make payments for the permanent shares (including payments in relation to any premium) by instalments.

(2) Sub-section (1) does not—

(a) imply that a particular act of a society would, but for that sub-section, be prohibited by section 242(1); or

(b) limit the operation of any rule of law permitting the giving of financial assistance by a society, the acquisition of permanent shares by a

society or the lending of money by a society on the security of permanent shares.

(3) Section 242(1) does not prohibit—

(a) the making of a loan, the giving of a guarantee or the providing of security by a society in the ordinary course of business if the loan that is made by the society, or in relation to which the guarantee or security is given or provided, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or

(b) the giving by a society of financial assistance to acquire fully paid permanent shares in the society, if—

(i) the assistance is given under a scheme approved—

(A) if the scheme is conducted only for employees of the society, by the society at a general meeting; or

(B) in any other case, by the SSA in accordance with a standard; and

(ii) the permanent shares are to be held by or for the benefit of a person taking part in the scheme.

(4) Section 242(1) does not prohibit the giving by a society of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of permanent shares in the society if—

(a) the society does so under a special resolution passed by the society; and

(b) the notice of the proposed special resolution given to members of the society sets out—

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

(ii) the effect that the giving of the financial assistance would have on the financial position of the society and any group for which the society is the holding society—

and is accompanied by a copy of a statement made under a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not fewer than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the society (including future liabilities and contingent liabilities), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the society or any class of those creditors or members; and

(c) not later than the day after the day when the notice mentioned in paragraph (b) is given to members of the society, there is lodged with the SSA, a copy of that notice and a copy of the statement that accompanied the notice; and

(d) within 21 days after the general meeting of the society at which the special resolution is passed a notice—

(i) setting out the terms of the special resolution; and

(ii) stating that any persons specified in sub-section (6) may, within the period specified in that sub-section, make an application to the Court opposing the giving of the financial assistance—

is published, in each State in which the society is carrying on business in a newspaper circulating generally in the State; and

(e) no application opposing the giving of the financial assistance is made within the period specified in sub-section (6) or, if such an application is made, the application is withdrawn or the Court approves the giving of the financial assistance.

(5) If, on application to the Court by a society, the Court is satisfied that sub-section (4) has been substantially complied with by the society in relation to proposed financial assistance of the kind mentioned in that sub-section, the Court may, by order, declare that the sub-section has been complied with in relation to the proposed financial assistance.

(6) If a special resolution is passed by a society, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice mentioned in sub-section (4)(d) by—

(a) a member or creditor of the society; or

(b) a member or creditor of a subsidiary of the society; or

(c) the SSA.

(7) On an application under sub-section (6), the Court—

(a) is to, in determining what orders to make in relation to the application, have regard to the rights and interests of the members of the society or of any class of them as well as to the rights and interests of the creditors of the society or of any class of them; and

(b) may not make an order approving the giving of the financial assistance unless the Court is satisfied that—

(i) the society has disclosed to the members of the society all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the society (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the society or of any class of those creditors or members; and

(c) may do all or any of the following—

(i) make an order for the purchase by the society of the interests of dissentient members of the society;

(ii) adjourn the proceeding in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the society or by a subsidiary of the society) of the interests of dissentient members;

(iii) give such ancillary or consequential directions and make such ancillary or consequential orders as it considers appropriate;

(iv) make an order disapproving the giving of the financial assistance or, subject to this section, an order approving the giving of the financial assistance.

(8) If the Court makes an order under this section in relation to a society, the society must, within 14 days after the making of the order, lodge with the SSA an office copy of the order.

(9) The passing of a special resolution by a society relating to financial assistance, and the approval by the Court of

the giving of the financial assistance, do not relieve a director of the society of any duty to the society under this Code or otherwise (whether or not of a fiduciary nature) in connection with the giving of the financial assistance.

(10) In this section, a reference to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

Consequences of society financing dealings in its permanent shares etc.

244.(1) Except as provided by this section—

(a) the validity of a contract or transaction is not affected by a contravention of section 242(1)(a); and

(b) the validity of a contract or transaction is not affected by a contravention of section 242(1)(b) unless the contract or transaction effects the acquisition that constitutes the contravention; and

(c) the validity of a contract or transaction is not affected by a contravention of section 242(1)(c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) If a society makes or performs a contract, or engages in a transaction, that would, but for sub-section (1), be invalid because—

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 242; or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section—

the first contract or transaction is, subject to this section, voidable at the option of the society by written notice given to each of the other parties to the contract or transaction.

(3) The Court may, on the application of a member, officer or creditor of a society, by order, authorise the person to give a notice under sub-section (2) in the name of the society.

(4) If—

(a) a society makes or performs a contract, or engages in a transaction; and

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 242 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section; and

(c) the Court is satisfied, on the application of the society or of another person, that the society or that other person has suffered, or is likely to suffer, loss or damage because of—

(i) the making or performance of the contract or the engaging in of the transaction; or

(ii) the making or performance of a related contract or the engaging in of a related transaction; or

(iii) the contract or transaction being void because of section 242 or having become void, or becoming void, under this section; or

(iv) a related contract or transaction being void because of section 242 or having become void, or becoming void, under this section—

the Court may make such orders as it considers just and equitable (including, for example, any of the orders mentioned in sub-section (5)) against a party to the contract or transaction or to the related contract or transaction, or against the society or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under sub-section (4) include—

(a) an order directing a person to refund money or return property to the society or another person; and

(b) an order directing a person to pay to the society or another person a specified amount not more than the amount of the loss or damage suffered by the society or other person; and

(c) an order directing a person to indemnify the society or another person against any loss or damage that the society or other person may suffer because of the contract or transaction or because of the contract or transaction being or having become void.

(6) If a certificate signed by at least 2 directors, or by a director and a secretary, of a society stating that the requirements of section 243(4) have been complied with in relation to the proposed giving by the society of financial assistance for the purpose of an acquisition or proposed acquisition by a person of permanent shares in the society is given to a person—

(a) the person to whom the certificate is given is not under any liability to have an order made against the person under sub-section (4) because of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate; and

(b) any such contract or transaction is not invalid, and is not voidable under sub-section (2), because the contract is made or performed, or the transaction is engaged in, in contravention of section 242 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of the section.

(7) Sub-section (6) does not apply in relation to a person to whom a certificate is given under that sub-section in relation to a contract or transaction if the Court, on application by the society concerned or another person who has suffered, or is likely to suffer, loss or damage because of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 243(4) had not been complied with in relation to the financial assistance to which the certificate related.

(8) For the purpose of sub-section (7), a person is, in the absence of evidence to the contrary, taken to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In a proceeding, a document purporting to be a certificate given under sub-section (6) is, in the absence of evidence to the contrary, taken to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under sub-section (6) is, in the absence of evidence to the

contrary, taken to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 243(4) have been complied with in relation to the proposed giving by a society of financial assistance and any of those requirements had not been complied with in relation to the proposed giving of that assistance at the time when the certificate was signed by that person, the person commits an offence.

Maximum penalty: $25 000.

(12) If a society makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 242(1)(a) or lends money as mentioned in section 242(1)(c), any contract or transaction made or engaged in because of, or by means of, or in relation to, the financial assistance or money is to be taken, for the purposes of this section, to be related to the first contract or transaction.

(13) The power of a court under section 476 (Power to grant relief) to relieve a person to whom that section applies from a liability mentioned in that section extends to relieving a person against whom an order may be made under sub-section (4) from the liability to have such an order made against the person.

(14) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, if there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of the person apart from this section, the provisions of this section or of the order made by the Court prevail.

Prohibition on subsidiary acquiring permanent shares of holding society

245.(1) A body corporate must not be a holder of permanent shares of a society that is its holding society, and any allotment or transfer of permanent shares in a society to its subsidiary is void.

(2) This section does not prevent a subsidiary from continuing to be a holder of permanent shares of its holding society if, at the time when it becomes a subsidiary of the holding society, it already holds permanent shares in the holding society, but the subsidiary must, within one year or such longer period as the Court may allow after becoming the subsidiary of its holding society, dispose of all of its shares in the holding society.

(3) Sub-sections (1) and (2) apply in relation to a nominee of a body corporate that is a subsidiary as if references in this section to that body corporate included references to a nominee for it.

(4) Sub-section (1) does not apply if—

- (a) the subsidiary is concerned as personal representative; or
- (b) the subsidiary is concerned as a trustee and—
  - (i) the holding society or a subsidiary of the holding society is not beneficially interested under the trust; or
  - (ii) the holding society or a subsidiary of the holding society is beneficially interested under the trust only by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, other than a transaction entered into with an associate of the holding society or a subsidiary of the holding society.

Options over permanent shares

246. An option granted by a society that enables a person to take up permanent shares in the society after the end of 5 years from the date on which the option was granted is void.

Division 3—Redeemable Preference Shares

Application of certain provisions of this Code to redeemable preference shares

247.(1) The following provisions apply to redeemable preference shares to which this Division relates with all necessary modifications and any prescribed modifications—

- (a) section 227(2) (Issue of permanent shares);
- (b) section 229 (Rights of holders of preference shares to be set out in rules);
- (c) section 231 (Dividends in relation to permanent shares);
- (d) section 232 (Rules to authorise permanent share issues);
- (e) section 238 (Prohibition of allotment unless minimum subscription received);
- (f) section 239 (Return as to allotments);
- (g) section 240 (Issue of permanent shares at premium);
- (h) section 242 (Society financing dealings in its permanent shares etc);
- (i) section 243 (Exceptions);
- (j) section 244 (Consequences of society financing dealings in its permanent shares etc.);
- (k) section 245 (Prohibition of subsidiary acquiring permanent shares of holding society);
- (l) section 246 (Options over permanent shares);
- (m) section 320 (Register of holders of permanent shares);
- (n) section 321 (Power of Court to rectify register of holders of permanent shares);
- (o) section 322 (Register of options).

(2) Without limiting sub-section (1), those provisions apply to redeemable preference shares as if those shares were permanent shares of the society that are preference shares.

Issue of redeemable preference shares

248.(1) Subject to this section, a society that has permanent share capital may, if authorised by its rules, issue redeemable preference shares.

(2) The society must not redeem the shares—

- (a) except on such terms, and in such way, as are provided by the society's rules; and
- (b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of permanent shares or redeemable preference shares made for the purposes of the redemption.

(3) The premium (if any) payable on redemption is to be provided for out of profits of the management fund of the society or out of the share premium account.

(4) If redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of permanent shares there must, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the "capital redemption reserve" the nominal amount of the shares redeemed, and section 241 applies as if the capital redemption reserve were paid-up permanent share capital of the society.

(5) If, under this section, a society has redeemed or is about to redeem preference shares, it may issue permanent shares or new redeemable preference shares up to the sum of the nominal values of the shares

redeemed or to be redeemed as if those preference shares had never been issued.

(6) The capital redemption reserve may be applied in paying up unissued permanent shares or redeemable preference shares of the society to be issued to members of the society as fully-paid bonus shares.

(7) If a society redeems any redeemable preference shares, it must, within 14 days after so doing, lodge with the SSA a notice in accordance with the regulations relating to the shares redeemed.

(8) Shares are taken to have been redeemed even if a cheque given in payment of the amount payable on redemption of the shares has not been presented for payment.

(9) If a society contravenes this section, the society commits an offence.

Maximum penalty: $5000

Division 4—Shareholding Restrictions

Subdivision 1—Interpretative provisions

Application of Division

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

Extraterritorial operation of Division

250.Without limiting the generality of section 17 (Extraterritorial operation of legislation)—

(a) the obligation to comply with this Division extends to all individuals, whether or not resident in this State or in Australia and whether or not Australian citizens, and to all bodies, whether or not incorporated or carrying on business in this State or in Australia; and

(b) this Division extends to acts done or omitted to be done outside this State, whether or not in Australia.

What constitutes an "entitlement" to shares

251.For the purposes of this Division, the shares in a society to which a person (including the society or any society) is entitled include—

(a) shares in which the person has a relevant interest; and

(b) except if the person is a nominee body corporate in relation to which a certificate by the SSA is in force under section 257(4), shares in which a person who is an associate of the person has a relevant interest.

What constitutes a "relevant interest" in shares

252.(1) For the purposes of this Division, a person has a "relevant interest" in a share in a society if—

(a) the person or an associate of the person has power to dispose of or to exercise control over the disposal of the share; or

(b) the person or an associate of the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(2) It is immaterial for the purposes of this section whether a power that a person has—

(a) is express or implied or formal or informal; or

(b) is exercisable alone or jointly with other persons; or

(c) cannot be related to a particular share; or

(d) is, or is capable of being, exercised, subject to restraint or restriction—

and any such power exercisable jointly with other persons is taken to be exercisable by any of the persons.

(3) A reference in this section to power or control includes a reference to power or control that—

(a) is direct or indirect; or

(b) is, or is capable of being, exercised because of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them (whether or not they are enforceable)—

and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Without limiting sub-sections (1) to (3), if a body corporate has, or is by force of this section taken to have, a power and—

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or

(b) a person has a controlling interest in the body corporate—

the person is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has or is taken to have.

(5) If a body corporate has, or is by force of this section (other than this sub-section) taken to have, a power, a person (the "relevant person") is, for the purposes of this section, taken to have the same power in relation to that share as the body corporate has, or is taken to have, if—

(a) the relevant person has; or

(b) a person associated with the relevant person has; or

(c) persons associated with the relevant person together have; or

(d) the relevant person and a person or persons associated with the relevant person together have—

the power to exercise, or to control the exercise of, the voting power attached to not less than 10% or such other proportion as may be prescribed, of the voting shares in the body corporate.

(6) If a person—

(a) has entered into an agreement in relation to an issued share; or

(b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or

(c) has an option in relation to an issued share—

and, on performance of the agreement, enforcement of the right or exercise of the option, the person would have a relevant interest in the share, the person is, for the purposes of this section, taken to have that relevant interest in the share.

(7) For the purposes of this section, if a body corporate is, under sub-section (6), taken to have a relevant interest in a share and—

(a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of, or the control of the exercise of, any right to vote conferred on the holder of the share, or in relation to the disposal of, or the exercise of control over the disposal of, that share; or

(b) a person has a controlling interest in the body corporate; or

(c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 10%, or such other proportion as may be prescribed, of the voting shares in the body corporate—

the person is taken to have a relevant interest in that share.

(8) A body corporate may be taken, for the purposes of this Division, to have a relevant interest in a share in the body corporate itself.

(9) A relevant interest in a share is not to be disregarded only because of—

(a) its remoteness; or

(b) the way in which it arose.

(10) A director of a society is not taken to have a relevant interest in a share in the society merely because the board is entitled to withhold consent to a transfer of the share.

(11) A regulation may provide that relevant interests in shares in societies are, in such circumstances and subject to such conditions (if any) as are specified in the regulation, to be disregarded for the purposes of this section.

Meaning of "associate"

253.(1) A reference in this Division to an associate of a person is a reference to—

(a) if the person is a body corporate—

(i) a director or secretary of the body corporate; or

(ii) a body corporate that is related to that person; or

(iii) a director or secretary of such a related body corporate; or

(b) if the matter to which the reference relates is shares in a body corporate (including, in a case where the first person is a body corporate, the first person), a person (the "relevant associate") that is the body corporate or another person with whom the first person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—

(i) because of which the relevant associate, or the first person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power in the body corporate; or

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or

(iii) under which the relevant associate may acquire from the first person, or the first person may acquire from the relevant associate, shares in the body corporate; or

(iv) under which the relevant associate, or the first person, may be required to dispose of shares in the body corporate in accordance with the directions of the first person or the relevant associate, as the case may be; or

(c) a person in concert with whom the first person is acting, or proposes to act, in relation to the matter to which the reference relates; or

(d) a person with whom the first person is, by force of the regulations, taken to be associated in relation to the matter to which the reference relates; or

(e) a person with whom the first person is, or proposes to become, associated whether formally or informally, in another way in relation to the matter to which the reference relates; or

(f) if the first person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, another thing, with a view to becoming associated with a person as mentioned in paragraphs (b) to (e), the last person.

(2) A person is not taken to be an associate of another person under sub-section (1)(b) to (f) merely because—

(a) one of the persons gives advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to the person's professional capacity or the person's business relationship with the other person; or

(b) without limiting paragraph (a), if the ordinary business of one of those persons includes dealing in securities, specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of the business.

(3) For the purposes of sub-section (1)(b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(4) The SSA may issue to a nominee body corporate a certificate declaring the nominee body corporate to be an approved nominee body corporate for the purposes of section 251 and may, at any time, by written notice given to the nominee body corporate, revoke the certificate.

(5) The SSA may issue to a person a certificate declaring that specified shares in which the person has a relevant interest are to be disregarded for the purposes of ascertaining the shares to which another person specified in the certificate is entitled and may, at any time, by written notice given to the first person, revoke the certificate.

Meaning of voting power or right to vote

254.For the purposes of this Division, a reference to voting power or a right to vote attached to a share in a body corporate is, if the body corporate is a society, to be read as a reference to the right to vote conferred on the holder of a share in the society.

Inadvertence or mistake

255.In determining, for the purposes of a provision of this Division, whether or not a person's contravention of such a provision was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or happening, a person's ignorance of, or a mistake on the person's part concerning, a matter of law is to be disregarded.

Subdivision 2—Maximum shareholdings

Maximum permissible shareholding

256.(1) For the purposes of this Subdivision, a person has more than the maximum permissible shareholding in a society if the person has an entitlement—

(a) if a society has issued one class of either permanent shares or redeemable preference shares, to permanent shares or redeemable preference shares in the society, as the case may be, of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares or redeemable preference shares issued by the society; or

(b) if a society has issued one class of permanent shares and one class of redeemable preference shares—

(i) to permanent shares in the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all permanent shares issued by the society; or

(ii) to redeemable preference shares in the society of more than 10%, or such other percentage as may be prescribed, of the

nominal value of all redeemable preference shares issued by the society; or

(c) if a society has issued more than one class of permanent shares or more than one class of redeemable preference shares, to shares in any class of shares of the society of more than 10%, or such other percentage as may be prescribed, of the nominal value of all shares of that class issued by the society.

(2) A percentage applicable under sub-section (1) may be varied in its application to a particular society by being decreased by the rules of the society.

Consequences of exceeding maximum permissible shareholding

257.(1) If a person has more than the maximum permissible shareholding in a society, the society must forfeit and sell the excess shares.

(2) Section 237 applies to the offering and sale of shares forfeited as if the shares had been forfeited for non-payment of a call.

(3) If a person has more than the maximum permissible shareholding in a society and a society is required to forfeit and sell the excess shares, the person is not entitled to a vote in any meeting of members of the society until the excess shares are forfeited and sold.

Exceptions

258.Section 257 does not apply to a person—

(a) who acquired the relevant interests concerned in accordance with an approval given under Part 7; or

(b) who has the relevant interests concerned because of a share issue and the relevant interests represent a proportion of the issued shares of the society concerned that is no more than the proportion which the person had before the share issue; or

(c) if the person had, before acquiring the excess shares, reported the proposal to acquire them to the SSA and obtained approval under section 262 and the total nominal value of the shares held by the person is not more than the limit approved under that section in relation to the person.

Subdivision 3—Substantial shareholdings

Substantial shareholding and substantial shareholders

259.(1) Part 6.7 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting sub-section (1), the provisions of Part 6.7 of the Corporations Law are to be applied as if—

(a) a reference to a company were a reference to a society; and

(b) a reference to the Commission were a reference to the SSA; and

(c) a reference to a shareholder were a reference to a member; and

(d) a reference to a voting share were a reference to a share; and

(e) the expressions "entitlement", "relevant interest" and "associate" had the meanings given in this Division rather than the meaning given in that Law.

(3) The purpose of sub-sections (1) and (2) is to apply Part 6.7 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 of the Corporations Law.

(4) However, the application of Part 6.7 of the Corporations Law under sub-sections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

Subdivision 4—Power to obtain information

Power to obtain information

260.(1) Part 6.8 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting sub-section (1), the provisions of Part 6.8 of the Corporations Law are to be applied as if—

(a) a reference to a company were a reference to a society; and

(b) a reference to the Commission were a reference to the SSA; and

(c) the expressions "entitlement", "relevant interest" and "associate" had the meanings given in this Division rather than the meaning given in that Law.

(3) The purpose of sub-sections (1) and (2) is to apply Part 6.8 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 of the Corporations Law.

(4) However, the application of Part 6.8 of the Corporations Law under sub-sections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.

Subdivision 5—Enforcement

Court orders-substantial shareholdings

261.(1) For the purposes of this Part, sections 741 to 744 of the Corporations Law apply to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting sub-section (1), those sections of the Corporations Law are to be applied as if—

(a) a reference to a company were a reference to a society; and

(b) a reference to the Commission were a reference to the SSA.

Power of SSA to exempt etc from Division

262.(1) The SSA may, subject to the standards, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with all or any of the provisions of this Division or any regulation made for the purpose of this Division.

(2) A person must not contravene a condition to which an exemption is subject.

Maximum penalty: $25 000.

(3) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(4) The SSA may, subject to the standards, by written notice, declare that a provision of this Division or a regulation made for the purposes of this Division, has effect in its application to a particular person or particular persons—

(a) in a particular case; or

(b) in relation to particular shares, or shares included in a particular class of shares—

as if the provision or regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the provision or regulation has effect accordingly.

(5) The SSA must cause a notification of the making of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

(6) A notification mentioned in sub-section (5) must name—

(a) the persons to whom the exemption or declaration relates; and

(b) the provisions to which the exemption or declaration relates; and

(c) if the exemption or declaration relates to a particular society or class of society, the society or class.

Division 5—Issue of shares

Issuing of shares at a discount prohibited

263. A society must not issue—

(a) permanent shares at a discount; or

(b) redeemable preference shares at a discount unless they are of a prescribed class.

Issuing of shares as partly paid up etc.

264.(1) A society must not issue redeemable preference shares as partly paid up.

(2) A society must not issue redeemable preference shares otherwise than in consideration of the payment of cash.

Power of SSA to exempt etc. from Division

265. (1) The SSA may, by written notice given to a person, exempt the person, subject to such conditions (if any) as are specified in the notice, from compliance with a regulation made for the purposes of this Division.

(2) An exemption may relate to any particular shares or to shares included in a class of shares.

(3) A person must not contravene a condition to which an exemption is subject.

Maximum penalty: $25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a regulation made for the purposes of or under this Division, has effect in its application to or in relation to a particular person or particular persons—

(a) in a particular case; or

(b) in relation to particular shares or shares included in a particular class of shares—

as if the regulation were omitted or modified or varied in a way specified in the notice and, if such a declaration is made, the regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

Division 6—Title to and Transfer of Shares

Restricted application of this Division

266.This Division does not apply to the extent that its application would be inconsistent with the application under its own force of Division 3 of Part 7.13 of the Corporations Law.

Document of title to be evidence of title

267.(1) A document of title issued by a society specifying any shares held by a member of a society is evidence of the member's title to the shares.

(2) A document of title must be under the common seal of the society and must state—

(a) the name of the society; and

(b) the class of the shares; and

(c) if appropriate, the nominal value of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of shares in a society.

Loss or destruction of documents

268.(1) Subject to sub-section (2), where a document of title to shares is lost or destroyed, the society must, on application by the owner of the shares issue a duplicate document of title to the owner—

(a) if the society requires the payment of an amount of not more than the prescribed amount, within 21 days after the payment is received by the society or within such longer period as the SSA approves; or

(b) in any other case, within 21 days after the application is made or within such longer period as the SSA approves.

(2) The application must be accompanied by—

(a) a written statement that the document of title has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and

(b) a written undertaking that if it is found or received by the owner it will be returned to the society.

(3) The directors of a society may, before accepting an application for the issue of a duplicate document of title, require the applicant to—

(a) cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the document of title has been lost or destroyed and that the owner intends, after the expiration of 14 days after the publication of the advertisement, to apply to the society for a duplicate document of title; or

(b) give a bond for an amount equal to at least the current market value of the shares indemnifying the society against loss following the production of the original document of title; or

(c) do both those things.

(4) If—

(a) a document of title to shares is cancelled under the SCH certificate cancellation provisions; and

(b) having regard to the provisions, the document of title should not have been cancelled—

this section applies to the document of title as though it were destroyed on its cancellation.

(5) For the purpose of sub-section (4)—

"SCH certificate cancellation provisions" has the meaning given by section 9 of the Corporations Law.

Instrument of transfer

269.(1) Despite anything in its rules or in a deed relating to permanent shares, a society must not register a transfer of permanent shares unless an instrument of transfer has been delivered to the society.

(2) The instrument of transfer must—

(a) be in writing in any usual or common form or in any other form that the directors of the society approve; and

(b) be executed by or on behalf of both the transferor and the transferee.

(3) Sub-section (1) does not prejudice the power of the society to register as the holder of shares a person to whom the right to those shares has devolved by will or by operation of law.

(4) A transfer of shares of a deceased holder made by the holder's personal representative is, although the personal representative is not registered as the holder of those shares, as valid as it would be if the personal representative had been so registered at the time of the execution of the instrument of transfer.

(5) If the personal representative of a deceased holder duly constituted as such under the law in force in another participating State—

(a) executes an instrument of transfer of shares of the deceased holder to the personal representative or to another person; and

(b) delivers the instrument to the society, together with a written statement to the effect that, to the best of the personal representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in this State and no application for such a grant will be made, being a statement made within 3 months immediately before the date of delivery of the statement to the society—

the society must register the transfer and pay to the personal representative any dividends or other money accrued in relation to the shares up to the time of the execution of the instrument, but this sub-section does not operate so as to require the society to do anything that it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of this State.

(6) A transfer or payment made under sub-section (5) and a receipt or acknowledgment of that payment is, for all purposes, as valid and effectual as it would be if the personal representative were the personal representative of the deceased holder duly constituted under the law of this State.

(7) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of shares in place of the deceased person is taken to be an instrument of transfer effecting a transfer of those shares to the personal representative.

(8) The production to a society of a document that is, under the law of this State or under the law in force in another participating State, sufficient evidence of a grant of probate of the will, or letters of administration of the estate, of a deceased person must be accepted by the society, despite anything in its rules or in a deed relating to its shares, as sufficient evidence of that grant.

Registration of transfer at request of transferor

270.(1) On the written request of the transferor of a permanent share issued by a society, the society must enter in the appropriate register the name of the transferee in the same way and subject to the same conditions as it would if the application for the entry were made by the transferee.

(2) On the written request of the transferor of a permanent share issued by a society, the society must, by written notice, require the person having the possession, custody or control of any documents evidencing title to the share or the instrument of transfer affecting any such share or both such documents and instrument to deliver the documents or instrument to the registered office of the society within a specified period (not less than 7 and not more than 28 days after the date of the notice) to have the documents cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under sub-section (2), the transferor may apply to the Court to issue a summons for the person to appear before the Court and show cause why the documents or instrument mentioned in the notice should not be delivered up or produced as required by the notice.

(4) On the appearance of a person so summoned, the Court may examine the person on oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person's absence and, in either case, the Court may order the person to deliver up the documents or instrument mentioned in the notice to the society on such terms or conditions as the Court considers appropriate, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

(5) Lists of documents called in under this section and not brought in must be displayed in a conspicuous place at the registered office of the society and must be advertised in the Gazette and in such newspapers and at such times as the society considers appropriate.

Notice of refusal to register transfer

271.If a society refuses to register a transfer of permanent shares issued by the society, it must, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

Remedy for refusal to register transfer or transmission

272.(1) If a society fails to register, or the board of a society fails to give its approval to, a transfer or transmission of permanent shares issued by the society, the transferee or transmittee may apply to the Court for an order under this section.

(2) If the Court is satisfied that the failure was without just cause, the Court may—

(a) order that the transfer or transmission be registered; or

(b) make such other order as it considers proper, including an order providing for the purchase of the shares by a specified member of the society or by the society.

Certification of transfers

273.(1) The certification by a society of an instrument of transfer of permanent shares issued by the society is taken to be a representation by the society to any person acting on the faith of the certification that there have been produced to the society such documents as on the face of them show title to those shares in the transferor named in the instrument of transfer but is not taken to be a representation that the transferor has any title to those shares.

(2) If a person acts on the faith of a false certification by a society made negligently, the society is under the same liability to the person as if the certification had been made fraudulently.

(3) If a certification is expressed to be limited to 42 days or any longer period from the date of certification, the society and its officers are not, in the absence of fraud, liable in relation to the registration of any transfer of permanent shares comprised in the certification after the end of that period or any extension of that period given by the society if the instrument of transfer has not, within that period, been lodged with the society for registration.

(4) For the purposes of this section—

(a) an instrument of transfer is taken to be certificated if it bears the words "document lodged" or words to similar effect; and

(b) the certification of an instrument of transfer is taken to be made by a society if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on behalf of the society; and

(ii) the certification is signed by a person authorised to certificate transfers on behalf of the society or by an officer of the society or of a corporation so authorised; and

(c) a certification that purports to be authenticated by a person's signature or initials (whether or not handwritten) is to be taken to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorised to use the signature or initials for the purpose of certificating transfers on behalf of the society.

Duties of society in relation to issue of certificates

274.(1) Within 2 months after the issue to a person of permanent shares of a society, the society must—

(a) complete and have ready for delivery to the person all the appropriate documents in connection with the shares unless the conditions of the issue otherwise provide; and

(b) unless otherwise instructed by the person, send or deliver the completed documents to the person or, if the person has instructed the society in writing to send them to a nominated person, to the nominated person.

(2) Within one month after a transfer of permanent shares is lodged with a society (other than a transfer that the society is for any reason entitled to refuse to register and does not register), the society must—

(a) complete and have ready for delivery to the transferee all the appropriate documents in connection with the transfer; and

(b) unless otherwise instructed by the transferee, send or deliver the completed documents to the transferee or, if the transferee has instructed the society in writing to send them to a nominated person, to the nominated person.

(3) If a society on which a notice has been served requiring the society to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to take delivery of the documents, make an order directing the society and any officer of the society to make good the default within a specified time.

(4) An order under sub-section (3) may provide that all costs of and incidental to the application are to be borne by the society or by any officer of the society in default in such proportions as the Court considers appropriate.

Exemption

275.(1) The power of the SSA to grant an exemption or make a declaration under this section may be exercised in relation to shares or a class of shares only if the SSA is satisfied that—

(a) if the exemption were granted or the declaration were made, the interests of the holders of the shares or of shares in the class would continue to have adequate protection; and

(b) the granting of the exemption or the making of the declaration would make transfer of the shares, or shares in the class, more efficient.

(2) The SSA may, by written notice, exempt particular shares, or a particular class of shares, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of—

(a) this Division; and

(b) a regulation made for the purposes of this Division.

(3) A person must not contravene a condition to which an exemption under sub-section (2) is subject.

Maximum penalty: $25 000.

(4) If a person has contravened a condition to which an exemption is subject, the Court may, on the application of the SSA, order the person to comply with the condition.

(5) The SSA may, by written notice, declare that a provision of this Division or a regulation made for the purposes of this Division has effect in its application to particular shares, or a particular class of shares, either generally or otherwise as provided in the declaration, as if the provision or regulation were omitted or modified or varied in a way specified in the declaration and, if such declaration is made, the provision or regulation has effect accordingly.

(6) The SSA must cause a copy of an exemption or declaration to be published in the Gazette, but failure of the SSA to do so does not affect the validity of the exemption or declaration.

Division 7—Registration of Charges

Registration of charges

276.(1) Subject to this Division, Part 3.5 of the Corporations Law applies to a society with all necessary modifications and any prescribed modifications.

(2) Without limiting sub-section (1), the provisions of Part 3.5 of the Corporations Law are to be applied as if—

(a) a reference to a company were a reference to a society; and

(b) a reference to the Commission were a reference to the SSA.

Directions by AFIC and SSA

277.(1) AFIC may, from time to time, issue directions to societies in relation to standards, principles, practices and procedures to be observed in or in connection with the creation and registration of charges and may, from time to time, amend, vary or cancel a direction so issued.

(2) The SSA may, from time to time, issue directions, not inconsistent with directions issued by AFIC under sub-section (1), in relation to the matters mentioned in that sub-section and may, from time to time, amend, vary or cancel a direction so issued by the SSA.

(3) A provision of a direction issued under this section may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors; or

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body; or

(d) do any combination of those things.

(4) A regulation may make provision with respect to the creation and registration of charges and, in particular, a regulation may be made with respect to the following—

(a) the issue of directions by AFIC or SSA under this section;

(b) the enforcement of directions issued under this section.

SSA approval of charges necessary in certain circumstances

278.(1) The prior approval of the SSA to the creation of a charge on the property of a society is required except in prescribed circumstances.

(2) The SSA may decline to register a charge that has been created without the prior approval of the SSA.

(3) In determining whether or not to approve or whether to register a charge, the SSA must have regard to the effects that the charge may have on compliance by the society with the standards.

PART 6—MANAGEMENT

Division 1—Interpretation

Definition

279.In this Division—

"employee", in relation to a society, includes a person, or an employee of a person, who provides the society with services under a management contract as defined in section 297.

When one entity controls another

280.(1) For the purposes of Divisions 6 (Accounts) and 7 (Audit), an entity controls another entity if the entity is a subsidiary of the first entity.

(2) Despite sub-section (1), a regulation may make provision for determining, for the purposes of those Divisions as they apply in relation to a society in relation to prescribed financial years, whether or not an entity controls another entity.

(3) Subject to sub-section (2), if because of a provision of an applicable accounting standard that—

(a) deals with the making out of consolidated accounts; and

(b) applies to a financial year—

an entity is taken for the purposes of the accounting standard to control another entity, the first entity is also taken to control the other entity for the purposes of those Divisions as they apply in relation to a society in relation to the financial year.

Division 2—Directors and Officers

Board of directors

281.(1) The business and operations of a society are to be managed and controlled by a board of directors.

(2) Subject to this section, the board may exercise all the powers of the society.

(3) The powers of the board are subject to any restrictions imposed by the friendly societies legislation, applicable standards and the society's rules.

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

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

Meetings of directors

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

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

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

(4) Subject to this section, a meeting of the board may be conducted in any way prescribed by the society's rules.

Minutes

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

Maximum penalty: $25 000.

Number of directors

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

Election of directors

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

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

(3) Despite sub-section (2), in relation to a director elected at an annual general meeting of a society, the society's rules may specify a term of office ending—

(a) immediately before the election of directors at the third annual general meeting of the society after the director's election; or

(b) at the end of that third annual general meeting.

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

(5) The directors must be elected—

(a) at the annual general meeting of the society; or

(b) by postal voting under the society's rules; or

(c) in such other way as is prescribed by the society's rules.

(6) If the directors are elected by postal voting, the society must cause the results of the election to be announced at the society's next annual general meeting.

(7) Nothing in this section prevents a person nominated as a director from being appointed as a director if the number of directors nominated is less than or equal to the number of places to be filled.

Employee directors

286.The members of a society may, under the society's rules, elect not more than 2 employees of the society nominated by the directors to be directors of the society.

Alternate directors

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

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

(3) Only a director who is an employee of the society may appoint an employee of the society to be his or her alternate director.

Chairperson

288.(1) A society's board must elect one of its members as chairperson.

(2) An employee of the society is not eligible to be the chairperson.

(3) The chairperson—

(a) must hold office; and

(b) must retire; and

(c) may be removed from office—

as prescribed by the society's rules.

Qualifications of directors

289.Subject to sections 286 and 287, a person is not eligible to be a director of a society if the person—

(a) is a minor; or

(b) is not—

(i) a member of the society; or

(ii) the representative, appointed under section 83 (Corporate membership), of a body corporate member of the society; or

(c) is a joint member other than the primary joint member under section 82; or

(d) is an employee of the society; or

(e) is an insolvent under administration within the meaning of section 9 of the Corporations Law.

(f) is prohibited from being a director of a body corporate by the Corporations Law for a reason other than the person's age; or

(g) has been convicted in the last 10 years—

(i) of an indictable offence in relation to the promotion, formation or management of a body corporate; or

(ii) of an offence involving fraud or dishonesty; or

(iii) of any prescribed offence.

Vacation of office

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

(a) dies; or

(b) becomes a person who, under section 289, is not eligible to be a director; or

(c) for a director who is the representative, appointed under section 83 (Corporate membership), of a body corporate member of the society and whose eligibility for election to the office was based on being that

representative, ceases to be eligible under section 83; or

(d) for a director elected under section 286, ceases to be an employee of the society; or

(e) is absent from 3 consecutive ordinary meetings of the board without its leave; or

(f) resigns by written notice of resignation given to the board; or

(g) is 3 months in arrears for an amount payable to the society and has failed to make arrangements for payment satisfactory to the society; or

(h) is removed from office by a resolution under section 291.

(2) If there is a casual vacancy in the office of a director, the board may appoint a person who is qualified under section 289 to fill the vacancy.

(2A) The term of office of a director appointed to fill a casual vacancy ends as provided by the society's rules either—

(a) immediately before the election of directors at the next annual general meeting of the society after the appointment; or

(b) at the end of that annual general meeting.

(3) A director may not be removed from office, and the office of a director does not become vacant, except as provided by the friendly societies legislation.

Removal of directors

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

(2) The resolution may be passed only if the society has given notice to members specifying the proposed resolution and the day and time of the meeting when it is proposed the resolution will be made (the "relevant meeting").

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

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

(a) the period of notice; and

(b) the way notice may be given to members; and

(c) any other relevant matter.

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

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

(a) the director asks the society to do so; and

(b) there is enough time for the copies to be received by the members at least 2 days before the relevant meeting.

(7) At the relevant meeting, the director—

(a) is entitled to be heard on the resolution to remove the director; and

(b) if the director has made written representations under sub-section(5) and a copy has not been sent to members under sub-section (6), may require that the representations be read out.

Declaration of interest

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

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

(2) Sub-section (1) does not apply to a contract to provide financial accommodation if the provision of the financial accommodation does not contravene section 295.

(3) In the case of a proposed contract, the declaration must be made—

(a) at the meeting of the board at which the question of entering into the contract is first considered; or

(b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.

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

(5) For the purposes of this section, a general written notice given to the board by a director to the effect that the director—

(a) is a member or an officer of a specified entity; and

(b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity—

is a sufficient declaration.

(6) A director of a society who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under sub-section (7), declare at a meeting of the society's board the fact and the nature, character and extent of the conflict.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

(7) A declaration required by sub-section (6) in relation to holding an office or having an interest must be made by a person—

(a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after—

(i) the person becomes a director; or

(ii) the relevant facts as to holding the office or having the interest come to the person's knowledge—

whichever is the later; or

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

(8) A declaration under this section must be recorded in the minutes of the meeting at which it was made and, unless the board otherwise determines, the director must not—

(a) be present during any deliberation of the board in relation to the matter; or

(b) take part in any decision of the board in relation to the matter.

(9) For the purposes of the making of a determination of the board under sub-section (8) in relation to a director who has made a declaration under this section, the director must not—

(a) be present during any deliberation of the board for the purpose of making the determination; or

(b) take part in the making by the board of the determination.

(10) Sub-section (9) does not apply to a director of a society who is interested in a contract or proposed contract with the society if—

(a) the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a wholly owned subsidiary of the society; and

(b) the director is a director of that subsidiary.

(11) Every declaration must be reported by the board—

(a) to the SSA immediately after the making of the declaration; and

(b) to the members at the next annual general meeting after the making of the declaration.

(12) A society must, within 3 months after the end of its financial year, lodge with the SSA a return specifying—

(a) all declarations made to the board during that financial year; and

(b) all declarations in force at the end of the financial year.

Maximum penalty: $50 000.

(13) This section is in addition to any rule of law or any provision in a society's rules restricting a director from having an interest in contracts with the society or from holding offices or having interests involving duties or interests in conflict with the director's duties or interests as a director.

General duty to make disclosure

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

(a) of such particulars relating to securities, rights, options and contracts or an interest in a benefit fund of the society as are necessary to enable the society to comply with section 317; and

(b) of particulars of any change relating to the particulars mentioned in paragraph (a), including the consideration (if any) received because of the event giving rise to the change.

(2) A notice under sub-section (1) must be given—

(a) if the notice is under sub-section (1)(a), within 14 days after the person—

(i) became a director; or

(ii) became aware that the person has acquired the securities, a relevant interest in the securities or the rights or options; or

(iii) entered into the contracts; or

(iv) acquired the interest in the benefit fund of the society—

whichever happens last; and

(b) if the notice is under sub-section (1)(b), within 14 days after the person becomes aware of the happening of the event giving rise to the change.

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

(4) A director or society who contravenes this section commits an offence and is liable on conviction to a maximum penalty of $25 000.

(5) In any proceeding under this section, a person is, in the absence of evidence to the contrary, to be taken to have been aware at a particular time of a fact or happening of which an employee or agent of the person, being an employee or agent having duties of acting in relation to his or her employer's or principal's interests in a security issued by the society concerned, was aware at that time.

Certain financial accommodation to officers prohibited

294.(1) An officer of a society who is not a director of the society must not obtain financial accommodation from the society other than—

(a) with the approval of a majority of the directors; or

(b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Maximum penalty: $50 000 or imprisonment for 7 years.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a society if it is obtained by—

(a) a proprietary company in which the officer is a shareholder or director; or

(b) a trust of which the officer is a trustee or beneficiary; or

(c) a trust of which a body corporate is a trustee if the officer is a director or other officer of the body corporate.

(3) A society must not give financial accommodation to an officer of the society if—

(a) by giving the financial accommodation, the officer would contravene this section; and

(b) the society knows or should reasonably know of the contravention.

Maximum penalty: $50 000.

Financial accommodation to directors and associates

295.(1) In this section—

"associate" of a director means—

(a) the director's spouse; or

(b) a person when acting in the capacity of trustee of a trust under which—

(i) the director or director's spouse has a beneficial interest; or

(ii) a body corporate mentioned in paragraph (c) has a beneficial interest; or

(c) a body corporate if—

(i) the director or director's spouse has a material interest in shares in the body corporate; and

(ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) For the purposes of this section, a person has a "material interest" in a share in a body corporate if—

(a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or

(b) the person has power to dispose of or to exercise control over the disposal of the share; or

(c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(3) A society must not provide financial accommodation to a director, or to a person the society knows or should reasonably know is an associate of a director, unless—

(a) the accommodation is—

(i) approved under sub-section (4); or

(ii) given under a scheme approved under sub-section (4); or

(iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the society would give if dealing with the

director or associate at arm's length in the same circumstances; and

(b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Maximum penalty: $50 000.

(4) For the purposes of sub-section (3)(a)(i) and (ii), financial accommodation or a scheme is approved if—

(a) it is approved by a resolution passed at a general meeting; and

(b) full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director who obtains financial accommodation given in contravention of sub-section (3) commits an offence.

Maximum penalty: $50 000 or imprisonment for 7 years, or both.

(6) If a director of a society or an associate of a director accepts in payment of a debt owed by a member of the society to the director or associate, any proceeds of financial accommodation provided to the member by the society as referred to in sub-section (3)(a)(iii), this section has effect as if the financial accommodation had been provided to the director or associate.

(7) In this section, a reference to—

(a) the provision of financial accommodation to a director or an associate of a director; or

(b) the obtaining of financial accommodation by a director or an associate of a director; or

(c) a debt owed to a director or an associate of a director—

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

Director's remuneration

296.A director of a society (other than a director who is an employee of the society) must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the society.

Management contracts

297.(1) In this section—

"management contract" means a contract or other arrangement under which—

(a) a person who is not an officer of the society agrees to perform the whole, or a substantial part, of the functions of the society; or

(b) a society agrees to perform the whole or a substantial part of its functions—

(i) in a particular way; or

(ii) in accordance with the directions of any person; or

(iii) subject to specified restrictions or conditions.

(2) A society must not enter into a management contract without the prior written approval of the SSA.

Maximum penalty: $75 000.

(3) The SSA may subject its approval under sub-section (2) to conditions.

(4) A management contract entered into in contravention of sub-section (2) is void.

(5) A management contract entered into before the commencement of this section becomes void 6 months after that commencement unless the SSA directs that it continue in operation.

Duties of directors and officers

298.(1) An officer of a society must at all times act honestly in the exercise of the powers and the discharge of the functions of his or her office.

(2) If an officer contravenes sub-section (1), the officer commits an offence for which the maximum penalty is—

(a) if because of the contravention—

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

(ii) a creditor of the society, or a creditor of any other person, is deceived or defrauded—

$100 000 or imprisonment for 15 years, or both; or

(b) if the contravention was committed—

(i) with the intention of deceiving or defrauding the society or its members, a creditor of the society or a creditor of any other person; or

(ii) for any other fraudulent purpose—

but paragraph (a) does not apply, $100 000 or imprisonment for 15 years, or both; or

(c) in any other case, $50 000 or imprisonment for 7 years, or both.

(3) An officer of a society must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the functions of his or her office and in the protection of the interests of members.

Maximum penalty: $25 000.

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

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

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

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(6) If—

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

(b) the court by which the person is convicted is satisfied that the society has suffered loss or damage as a result of the act or omission that constituted the offence—

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

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

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

(a) if that person or any other person has made a profit as a result of the contravention, an amount equal to that profit; and

(b) if the society has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

(9) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors, officers and employees of a society.

(10) Section 9 (Officer) applies in relation to sub-section (3), as if, in sub-section (1)(a) of the section, the words ", executive officer or employee" were omitted and the words "or executive officer" were substituted.

Prohibition on transfer of money

299.(1) Where—

(a) an investigation is being carried out under Part 10 in relation to an act or omission by a person, being an act or omission that constitutes or may constitute—

(i) a contravention of, or an offence against, this Code; or

(ii) an offence involving fraud or dishonesty or concerning the management of affairs of a society; or

(b) a prosecution has been instituted against a person for an offence against this Code; or

(c) a civil proceeding has been instituted against a person under this Code—

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an "aggrieved person") to whom the person mentioned in paragraph (a), (b) or (c), as the case may be, (in this section called the "relevant person"), is liable, or may be or become liable, to pay money, whether in relation to a debt, by way of damages or compensation or otherwise, or to account for securities or other property, the Court may, on application by the SSA or by an aggrieved person, make one or more of the following orders—

(d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting a person holding money, securities or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities or other property, is or are held;

(f) an order prohibiting the taking or sending out of Australia by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting the taking, sending or transfer by a person of securities or other property of the relevant person, or of an associate of the relevant person—

(i) from a place in this State to a place outside this State (including the transfer of securities from a register in this State to a register outside this State); or

(ii) from a place in Australia to a place outside Australia(including the transfer of securities from a register in Australia to a register outside Australia);

(h) an order appointing—

(i) if the relevant person is an individual, a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate, a receiver having such powers as the Court orders, of the property or of part of the property of that person;

(i) if the relevant person is an individual, an order requiring that person to deliver up to the Court his or her passport and any other documents the Court considers appropriate;

(j) if the relevant person is an individual, an order prohibiting that person from leaving Australia without the consent of the Court.

(2) A reference in sub-section (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example—

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(3) An order under sub-section (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(4) Where an application is made to the Court for an order under sub-section (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(5) On an application under sub-section (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under sub-section (3), to give an undertaking as to damages.

(6) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first mentioned order.

(7) An order under sub-section (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(8) This section has effect subject to the Bankruptcy Act 1966 of the Commonwealth.

(9) A person must not contravene an order by the Court under this section that is applicable to the person.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Unlawfully acting as director

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

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

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Division 3—Meetings of Members of a Society

Annual general meeting

301.(1) The first annual general meeting of a society must be held within 18 months after it is registered under this Code.

(2) The second and every subsequent annual general meeting of a society must be held within 5 months after the close of its financial year, or within any further time allowed by the SSA or prescribed.

(3) A society that fails to hold an annual general meeting as required by this section commits an offence.

Maximum penalty applying to sub-section (3): $5000.

Special general meeting

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

(2) The board of a society must immediately proceed to convene a special general meeting of the society if

required to do so by not less than the number of members prescribed for that purpose by the society's rules.

Quorum

303.(1) A general meeting of a society must not deal with an item of business unless a quorum is present.

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

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

Notice of meeting

304.(1) Subject to sub-section (2)—

(a) written notice of an annual general meeting must be given personally or by post to each member of the society at least 14 days before the date of the meeting; and

(b) written notice of a special general meeting must be given personally or by post to each member of the society at least 7 days before the date of the meeting.

(2) If the society's rules so provide, notice of an annual general meeting or special general meeting may be given to the members of the society by advertisement published in a newspaper circulating generally—

(a) in the area of this State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

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

(a) in the case of an annual general meeting, 14 days immediately before the date of the meeting; and

(b) in the case of a special general meeting, 7 days immediately before the date of the meeting.

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

(5) A society that fails to give notice of an annual general meeting, or a special general meeting, or to display notice of a general meeting in accordance with this section commits an offence and is liable on conviction to a maximum penalty of $5000.

Voting

305.(1) Subject to this section, a member of a society is entitled to exercise one vote on any question arising for determination by the society's members.

(2) A society's rules may provide that a member's entitlement to vote as a member may not be exercised unless the member satisfies one or more of the following—

(a) the member has an interest in a benefit fund of the society;

(b) the member has been a member of a benefit fund for not less than the minimum period prescribed by the society's rules;

(c) the member has, or had at a certain time, or has had for a certain period, a specified minimum interest in a benefit fund as prescribed by the society's rules;

(d) the member has made contributions to a benefit fund in accordance with the society's rules and complied with any terms and conditions for the provision of benefits from that fund;

(e) the member holds at a certain time, or has held for a certain period, a specified minimum amount of paid-up share capital.

(3) Subject to sub-section (2)(e) and section 236(3)(b), a member of a society who has permanent shares in the society has—

(a) one vote; or

(b) if the rules so provide, 2 or more votes determined by the number of permanent shares, or parcels of paid-up share capital held by the member (but in any case not more votes than the number of permanent shares held by the member)—

whichever is the greater.

(4) The SSA must not register rules referred to in sub-section (2) unless it approves—

(a) in the case of sub-sections(2)(b) and(2)(c), the minimum period or the minimum interest in a benefit fund(as the case requires); or

(b) in the case of sub-section (2)(d), the terms and conditions for provision of benefits; or

(c) in the case of sub-section 2(e), the minimum amount of paid-up share capital.

(5) A member of a society appointed to represent a corporate member of the society may vote both as a member and as such a representative.

Proxy votes

306.(1) The rules of a society may provide—

(a) that proxy voting is allowed at a meeting of the society;

(b) that a proxy may specify the way in which the member giving the proxy wishes the vote to be exercised;

(c) that a person who is not a member may be appointed as proxy for a member.

(2) A person appointed as a proxy—

(a) may not act as a proxy for more than 10 members who do not specify the way the vote is to be exercised;

(b) may act as a proxy for an unlimited number of members who specify the way the vote is to be exercised.

Special resolutions of societies

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

(a) in any case, vote, either personally or by proxy, at a meeting of the society at which a motion for the passing of the resolution is moved and vote on the resolution; or

(b) in the case of a merger of societies or transfer of engagements under Part 7, vote on the resolution by a postal ballot conducted in accordance with the regulations.

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

(3) Subject to sub-section (4), written notice of a proposed special resolution, containing the text or a summary of the resolution, must be given personally or by post to each member of the society who is entitled to vote on the resolution at least 21 days before the date of the meeting or close of the postal ballot.

(4) If the rules of the society so provide, notice of a proposed special resolution, containing the text or a summary of the resolution, may be given to the members of the society entitled to vote on the resolution by advertisement published in a newspaper circulating generally—

(a) in the area of this State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

(5) A purported special resolution of members of a society in relation to which notice has not been given in accordance with sub-section (3) or (4) is of no effect.

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

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

(8) A special resolution of members of a society is of no effect until registered.

(9) The SSA must register a special resolution of a society if satisfied that—

(a) the special resolution is not contrary to—

(i) the friendly societies legislation; or

(ii) the standards; and

(b) there is no good reason why the special resolution should not be registered.

(10) This section applies in relation only to those matters that are required by this Code or a society's rules to be passed or approved by a special resolution of members of a society.

Minutes

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

Maximum penalty: $25 000.

Division 4—Meetings of Members of a Benefit Fund

Application of Division

309. This Division applies to meetings of members of a benefit fund of a society for the purpose of—

(a) approving a restructure of a benefit fund under Division 3 of Part 4A;

(b) approving the termination of a benefit fund under Division 4 of Part 4A;

(c) a special meeting under section 43;

(d) a meeting of members of a benefit fund held pursuant to the society's rules.

Quorum

310.(1) A meeting of members of a benefit fund must not deal with an item of business unless a quorum is present.

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

Notice of meeting

311.(1) Subject to sub-section (2), written notice of a meeting of members of a benefit fund must be given personally or by post to each member of the benefit fund at least 7 days before the date of the meeting.

(2) If the society's rules so provide, notice of a meeting of members of a benefit fund may be given to the members of the benefit fund by advertisement published in a newspaper circulating generally—

(a) in the area of this State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

(3) Notice of a meeting of members of a benefit fund must be displayed in a conspicuous place at the registered office and each other office of the society over a period of at least 7 days immediately before the date of the meeting.

(4) The failure by a member of a benefit fund to receive notice of a meeting required to be given to the member by this Code does not invalidate the meeting.

(5) A society that fails to give notice of a meeting of members of a benefit fund, or to display notice of such a meeting, in accordance with this section commits an offence and is liable on conviction to a maximum penalty of $5000.

Voting

312.(1) Subject to this section, a member of a benefit fund is entitled to exercise one vote on any question arising for determination by the members of the benefit fund.

(2) A society's rules may provide that a member's entitlement to vote as a member of a benefit fund may not be exercised unless the member satisfies one or more of the following—

(a) the member has been a member of the benefit fund for not less than the minimum period prescribed by the society's rules;

(b) the member has, or had at a certain time, or has had for a certain period, a specified minimum interest in the benefit fund prescribed by the society's rules;

(c) the member has made contributions to the benefit fund in accordance with the society's rules and complied with any terms and conditions for the provision of benefits from that fund.

(3) The SSA must not register rules referred to in sub-section (2) unless it approves the minimum period or interest specified in the rules.

(4) A member of a benefit fund appointed to represent a corporate member of the benefit fund may vote both as a member and as such a representative.

Proxy votes

313.(1) The rules of a society may provide—

(a) that proxy voting is allowed at a meeting of the members of a benefit fund;

(b) that a proxy may specify the way in which the member of the benefit fund giving the proxy wishes the vote to be exercised;

(c) that a person who is not a member of the benefit fund may be appointed as proxy for a member.

(2) A person appointed as a proxy—

(a) may not act as a proxy for more than 10 members of a benefit fund who do not specify the way the vote is to be exercised;

(b) may act as a proxy for an unlimited number of members of a benefit fund who specify the way the vote is to be exercised.

Special resolutions of benefit funds

314.(1) For the purposes of this Code, a special resolution of members of a benefit fund is a resolution passed by a majority of not less than two-thirds of those members of the benefit fund who, being entitled to vote, vote, either personally or by proxy, at a meeting of members of the benefit fund at which a motion for the passing of the resolution is moved and vote on the resolution.

(2) Unless a poll is demanded, a declaration by the person presiding at a meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Subject to sub-section (4), written notice of a proposed special resolution, containing the text or a summary of the resolution, must be given personally or by post to each member of the benefit fund who is entitled to vote on the resolution at least 21 days before the date of the meeting.

(4) If the rules of the society so provide, notice of a proposed special resolution, containing the text or a summary of the resolution, may be given to members of the benefit fund entitled to vote on the resolution by advertisement published in a newspaper circulating generally—

(a) in the area of the State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

(5) A purported special resolution of members of a benefit fund in relation to which notice has not been given in accordance with sub-section (3) or (4) is of no effect.

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

(7) This section applies in relation only to those matters that are required by this Code or a society's rules to be passed or approved by a special resolution of members of a benefit fund.

Minutes

315. A society must cause full and accurate minutes to be kept of every meeting of members of its benefit funds.

Maximum penalty: $25 000.

Division 5—Registers and Inspection

Registers

316.(1) A society must keep such registers as are prescribed.

Maximum penalty: $25 000.

(2) Subject to this section, all registers required to be kept by a society(whether under this section or any other provision of this Code) must be kept at the registered office of the society and be kept in such way, and contain such particulars, as may be prescribed.

Maximum penalty: $5000.

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

(4) A society may, as authorised by its rules, make an entry in any of its registers or accounts to indicate that money received by it is held in trust, but is not to be regarded as being affected by notice of any trust in relation to the money whether or not any such entry is made.

Register of directors etc.

317.(1) In determining for the purposes of this section whether a person has a relevant interest in a security issued by a body corporate, section 252 (What constitutes a "relevant interest" in shares) applies as if a reference in that section to a share were a reference to a security.

(2) A society must keep a register of its directors and secretaries in accordance with sub-sections(3) and(4).

Maximum penalty: $25 000.

(3) The register must show in relation to each director of the society—

(a) the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any) of the director; and

(b) particulars of directorships held by the director in bodies corporate(other than related bodies corporate)—

(i) that are public companies or subsidiaries of public companies; or

(ii) that are other societies or foreign societies; or

(iii) that are financial institutions within the meaning of the Financial Institutions Code of a State; and

(c) securities issued by the society in which the director has a relevant interest, and the nature and extent of the interest; and

(d) securities issued by a body corporate that is related to the society, being securities in which the director has a relevant interest, and the nature and extent of that interest; and

(e) particulars of rights or options of the director, or of the director and another person, in relation to the acquisition or disposal of securities issued by the society or a body corporate that is related to the society; and

(f) particulars of contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of securities issued by the society or a body corporate that is related to the society;

(g) whether the director is entitled to an interest in a benefit fund of the society and, if so, the name of that benefit fund.

(4) The register must show in relation to each secretary the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any), of the secretary.

(5) A society need not show in its register in relation to a director particulars of securities issued by a body corporate that is related to the society and is a wholly owned subsidiary of the society.

(6) A society must, within 7 days after receiving notice from a director under section 293(1)(a), enter in its register, in relation to the director, the particulars specified in sub-section (3) of this section, including the number and description of securities, rights, options and contracts and any entitlement to an interest in a benefit fund of the society to which the notice relates and, in relation to securities, rights or options acquired or contracts entered into after he or she became a director—

(a) the price or other consideration for the transaction (if any) because of which an entry is required to be made in the register; and

(b) the date of—

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) if there was no transaction, the happening of the event because of which an entry is required to be made in the register.

Maximum penalty: $25 000.

(7) A society must, within 3 days after receiving a notice from a director under section 293(1)(b), enter in its register the particulars of the change specified in the notice.

Maximum penalty: $25 000.

(8) A society is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be on inquiry as to, the right of a person to or in relation to a security issued by the society or an interest in any benefit fund of the society.

(9) A society must lodge with the SSA—

(a) within one month after a person has become, or ceased to be, a director or a secretary of the society, a return in the prescribed form advising that fact and containing in relation to a new director or secretary the matters required by sub-section (3) or (4) to be shown in the register;

(b) within one month after receiving a notice from a director or secretary of a change in the matters required by sub-section (3) or (4) to be shown in the register, a return in the prescribed form advising the particulars of the change specified in the notice.

Maximum penalty: $500.

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

(a) by any member of the society, without fee; and

(b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

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

Maximum penalty: $5000.

(12) It is a defence to a prosecution for failing to comply with sub-section (3) or (6) in relation to particulars relating to a director if the defendant proves that the failure was due to the failure of a director to comply with section 293 in relation to those particulars.

(13) In this section, "security" does not include benefit in a benefit fund.

Register of members to be kept

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

(a) the names and addresses of the members; and

(b) the date of admission to membership of the society; and

(c) any other prescribed information.

Maximum penalty: $25 000.

(2) A society must, for each of its benefit funds, keep a register of members and enter in the register—

(a) the names and addresses of the members of the benefit fund; and

(b) the date of admission to membership of the benefit fund; and

(c) any other prescribed information.

Maximum penalty: $25 000.

Registers of members

319.(1) The register of members of a society is evidence of membership of the society.

(2) The register of members of a benefit fund is evidence of membership of the benefit fund.

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

(4) A society may refuse to allow a person, other than a member mentioned in sub-section (3), to have access to a register unless the person satisfies the society that the person requires access for the purpose of—

(a) calling a meeting of members of the society or a benefit fund; or

(b) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with sub-section (4), to have access to a register, the society may require the person to enter into a contract with the society under which the person undertakes—

(a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and

(b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) If a register includes the numbers of certificates or other documents evidencing the holdings of its members of shares (if any) allocated to them, nothing in sub-sections(3) to(5) requires—

(a) a person to be allowed to see the numbers when inspecting the register; or

(b) a copy of the register, or a part of it, sent to a person to contain those numbers.

Register of holders of permanent shares

320.(1) A society must keep a register of holders of permanent shares in the society and enter in that register—

(a) the names and addresses of those holders; and

(b) the date of every allotment of any permanent shares to holders and the number of permanent shares comprised in each allotment; and

(c) the date of entry of a transfer or transmission of any permanent shares to holders and the number of permanent shares comprised in each transfer or transmission; and

(d) any other prescribed information.

Maximum penalty: $25 000.

(2) The register of holders of permanent shares in a society is evidence of ownership of permanent shares in the society.

(3) A holder of permanent shares in a society is entitled to have access to that part of the register of holders of permanent shares in which particulars of his or her shareholding are entered.

(4) A society may refuse to allow a person, other than a holder of permanent shares mentioned in sub-section (3), to have access to the register of holders of permanent shares unless the person satisfies the society that the person requires access for the purpose of—

(a) calling a meeting of permanent shareholders; or

(b) making an offer to acquire permanent shares; or

(c) undertaking some other activity approved by the SSA.

(5) Before a society allows a person, who has satisfied the society in accordance with sub-section (4), to have access to the register of holders of permanent shares, the society may require the person to enter into a contract with the society under which the person undertakes—

(a) to restrict access to the information obtained by the person from the register to persons identified in the contract; and

(b) to restrict use of the information obtained by the person from the register to a specified purpose.

(6) Nothing in sub-sections(3) to(5) requires—

(a) a person to be allowed to see the numbers of the certificates that have been issued evidencing the holding of permanent shares; or

(b) a copy of the register, or part of it, sent to a person to contain those numbers.

Power of Court to rectify register of holders of permanent shares

321.(1) If—

(a) an entry is omitted from the register of holders of permanent shares; or

(b) an entry is made in the register without sufficient cause; or

(c) an entry wrongly exists in the register; or

(d) there is an error or defect in an entry in the register; or

(e) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having ceased to be a holder of permanent shares—

the person aggrieved, or any member or the society, may apply to the Court for rectification of the register and the Court may refuse the application or may order rectification of the register and payment by the society of any damages sustained by any party to the application.

(2) On an application under this section, the Court may decide—

(a) any question relating to the right of a person who is a party to the application to have his or

her name entered in or omitted from the register, whether the question arises between—

(i) a holder, or alleged holder, of permanent shares on the one hand and another holder, or alleged holder, of permanent shares on the other hand; or

(ii) a holder, or alleged holder, of permanent shares on the one hand and the society on the other hand; and

(b) generally any question necessary or expedient to be decided in relation to the rectification of the register.

(3) If a society is required by this Code to lodge a return containing a list of holders of permanent shares with the SSA, the Court, when making an order for rectification of the register, is by its order to direct a notice of the rectification to be so lodged.

Register of options

322.(1) A society must keep a register of options granted to persons to take up permanent shares in the society.

Maximum penalty: $25 000.

(2) A society must, within 14 days after the grant of an option to take up permanent shares in the society, enter in the register the following particulars—

(a) the name and address of the holder of the option;

(b) the date on which the option was granted;

(c) the number and description of the shares in relation to which the option was granted;

(d) the period during which, the time at which or the occurrence on the happening of which the option may be exercised;

(e) the consideration (if any) for the grant of the option;

(f) the consideration (if any) for the exercise of the option or the way in which that consideration is to be ascertained or determined;

(g) such other particulars as are prescribed.

Maximum penalty: $25 000.

(3) The register must be kept open for inspection—

(a) by any member of the society, without fee; and

(b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

Maximum penalty: $5000.

(4) A society must keep, at the place where the register is kept, a copy of every instrument by which an option to take up permanent shares in the society is granted and, for the purposes of sub-section (3) and section 323(4), those copies are taken to be part of the register.

Maximum penalty: $25 000.

(5) Failure by a society to comply with any of the provisions of this section in relation to an option does not affect any rights in relation to the option.

Inspection of rules and other documents

323.(1) A society must keep at its registered office available for inspection without fee by members of the society, persons eligible for membership of the society and its creditors—

(a) a copy of this Code and the regulations; and

(b) a copy of the AFIC Code and the regulations in force for the purposes of that Code; and

(c) a copy of the rules of the society; and

(d) a copy of the last accounts of the society, together with a copy of the report of the auditor on those accounts; and

(e) a copy of the last directors' report under section 336.

(2) A society must keep a copy of its rules available for inspection without fee by members of the society at each office of the society.

(3) A society must, on request by a member of the society, give the member particulars of his or her financial position with the society as a member or shareholder.

(4) Subject to the regulations and to sections 318 and 319, a member may request a society to give him or her a copy of a register or any part of a register kept by the society under this Code and, where such a request is made, the society must send the copy to the member—

(a) if the society requires payment of an amount prescribed by the rules, within 21 days after payment of the amount is received by the society or within such longer period as the SSA approves; or

(b) in any other case, within 21 days after the request is made or within such longer period as the SSA approves.

Maximum penalty: $5000.

Location of registers on computers

324.(1) This section applies despite anything in this Division to the contrary.

(2) This section applies if—

(a) a society records, otherwise than in writing, matters(the "stored matters") this Division requires to be contained in a register; and

(b) the record of stored matters is kept at a place(the "place of storage") other than the place(the "place of inspection") where the register is, apart from this section, required to be kept; and

(c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and

(d) the society has served the SSA with a notice stating that this section is to apply to—

(i) unless sub-paragraph(ii) applies, the register; or

(ii) if the stored matters are only some of the information that is required to be contained in the register, the register and matters that are of the same kind as the stored matters—

and specifying the situation of the place of storage and the place of inspection.

(3) The society is taken to have complied with the requirements of this Division about the location of the register, but only as far as the register is required to contain the stored matters.

(4) However, if—

(a) the situation of the place of storage or the place of inspection changes; and

(b) the society does not serve notice of the change within 14 days after the change—

this section, as it applies to the society because of the serving of the notice mentioned in sub-section (2)(d), ceases to apply at the end of the 14 days.

Form and evidentiary value of registers

325.(1) A register that is required by this Division to be kept or prepared may be kept or prepared—

(a) by making entries in a bound or loose-leaf book; or

(b) by recording or storing matters using a mechanical, electronic or other device; or

(c) in another way approved by the SSA.

(2) Sub-section (1) does not authorise a register to be kept or prepared by a mechanical, electronic or other device unless—

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or

(b) a reproduction of the matters is kept in written form approved by the SSA.

(3) A society must take all reasonable precautions, including the precautions (if any) prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any register or part of a register required by this Division to be kept or prepared by the society.

(4) If a society records or stores matters using a mechanical, electronic or other device, a duty imposed by this Division to make a register containing the matters available for inspection or to provide copies of the whole or a part of a register containing the matters is taken to be a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) A regulation may provide for how up-to-date the information contained in an instrument prepared for sub-section (4) must be.

(6) If—

(a) because of this Code, a register that this Division requires to be kept or prepared is evidence of a matter; and

(b) the register, or part of the register, is kept or prepared by recording or storing matters(including the matter) using a mechanical, electronic or other device—

a written reproduction of the matter as so recorded or stored is evidence of the matter.

(7) A writing purporting to reproduce a matter recorded or stored using a mechanical, electronic or other device is taken to be a reproduction of the matter unless the contrary is established.

Division 6—Accounts

Financial year

326.(1) The financial year of a society is the period from 1 July to the following 30 June.

(2) If a society is registered(otherwise than as a result of a merger) on a day falling between 1 January and 30 June in any year, its first financial year may, if the society so elects, extend to 30 June in the following year.

(3) Despite sub-section (1), but subject to sub-section (4), if at the commencement of this section the financial year of a society is a period other than that specified in sub-section (1), the society may retain that period as its financial year.

(4) If the SSA by written notice given to the society directs it to comply with sub-section (1), the society must do so within 2 years of receiving the notice.

Maximum penalty applying to sub-section (4): $5000.

Financial years of groups

327.(1) Subject to—

(a) this section; and

(b) where the entity is formed or incorporated outside Australia, any law in force in the entity's place of formation or incorporation—

a society's directors must do whatever is necessary to ensure that the financial year of each entity that the society controls coincides with the financial year of the society.

(2) Sub-section (1) must be complied with in relation to a particular entity within 12 months after—

(a) if the society controlled the entity at the commencement of this section, that commencement; or

(b) if the society is taken to control the entity by virtue of a regulation made for the purposes of this Code or an applicable accounting standard, the date of the regulation or accounting standard taking effect; or

(c) in any other case, the society began to control the entity.

Accounting records to be kept

328.(1) A society must—

(a) keep accounting records that correctly record and explain the transactions(including any transactions by the society as trustee) and the financial position of the society and each of its funds; and

(b) keep the accounting records in a way that will enable—

(i) true and fair accounts of the society and each of its funds to be prepared periodically; and

(ii) the accounts of the society and each of its funds to be conveniently and properly audited in accordance with this Part; and

(c) retain the accounting records for a period of 7 years after the completion of the transactions to which they relate; and

(d) keep accounting records in writing in the English language or in a form which enables the accounting records to be readily accessible and readily convertible into writing in the English language; and

(e) keep the accounting records at such a place or places as its directors think fit.

(2) If any of the accounting records of a society are kept at a place outside this State, the society must keep at a place within this State determined by the directors such information as would enable true and fair accounts, and any documents or reports required by this Part to be attached to the accounts, to be prepared.

Maximum penalty: $75 000.

Inspection of accounting records

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

Maximum penalty: $75 000.

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

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

Maximum penalty: $50 000 or imprisonment for 7 years, or both.

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

Profit and loss accounts and balance sheets

330. The directors of a society must, before the day on which notice of an annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 301 to be held, not less than 21 days before the end of the period, cause to be prepared—

(a) profit and loss accounts for the last financial year giving a true and fair view of the profit or loss of the society and each of its funds for that financial year; and

(b) balance sheets as at the end of the last financial year giving a true and fair view of the

state of affairs of the society and each of its funds as at the end of that financial year.

Group accounts

331. If at the end of a financial year of a society, the society is a holding society, the directors of the society must—

(a) before the day on which notice of the next annual general meeting of the society is given; or

(b) if an annual general meeting is not held within the period within which it is required by section 301 to be held, not less than 21 days before the end of that period—

cause to be prepared—

(c) a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the society and the entities it controlled from time to time during that financial year (even if the society did not control the same entities during all of that financial year); and

(d) a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs as at the year's end, of the economic entity constituted by the society and the entities that it controls at the year's end—

so far as such a true and fair view of the profit and loss and state of affairs concern members of the holding society.

Audit

332.(1) The directors of a society must take reasonable steps to ensure that the accounts and group accounts are audited as required by this Part before the day before which the accounts are required by this Division to have been prepared.

(2) The directors of a society must cause to be attached to, or endorsed on, the accounts or group accounts the auditor's report given to the directors under Division 7.

Directors to ascertain certain matters

333. Before the profit and loss accounts and balance sheets are prepared, the directors of a society must take reasonable steps—

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts; and

(b) to ascertain whether any current assets, other than current assets to which paragraph(a) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the society and, if so, to cause—

(i) those assets to be written down to an amount that they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(c) to ascertain whether any non-current asset is shown in documents of the society at an amount that, having regard to its value to the society as a going concern, exceeds the amount that it would have been reasonable for the society to spend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the amount of that asset.

Requirements applying to accounts and group accounts

334.(1) The directors of a society must ensure that the accounts and group accounts—

(a) comply with the prescribed requirements; and

(b) comply with applicable accounting standards.

(2) AFIC may, by Gazette notice, declare an accounting standard to be an applicable accounting standard in relation to the accounts and group accounts, subject to any modifications that are specified in the notice.

(3) AFIC may, by Gazette notice, vary or revoke a notice under sub-section (2).

(4) If accounts or group accounts prepared in accordance with sub-section (1) would not otherwise give a true and fair view of the matters required by this section to be dealt with in those accounts, the directors of the society must add such information and explanations as will give a true and fair view of those matters.

Directors' statement

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

(a) the profit and loss accounts are drawn up so as to give a true and fair view of the profit or loss of the society and each of its funds for the financial year; and

(b) the balance sheets are drawn up so as to give a true and fair view of the state of affairs of the society and each of its funds as at the end of the financial year; and

(c) as at the date of the statement, there are reasonable grounds to believe that the society will be able to pay its debts as and when they fall due.

(2) The directors of a society that is a holding society must cause to be attached to group accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of—

(a) the profit or loss of the society and the entities it controlled during all or part of the last financial year; and

(b) the state of affairs of the society and the entities it controlled as at the end of the last financial year—

so far as they concern members of the society.

(3) The directors of a society—

(a) must, in forming an opinion as to the matters mentioned in sub-section (1)(a) and(b) for the purposes of a statement under that sub-section, have regard to circumstances that have arisen and information that has become available, since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts; and

(b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind mentioned in paragraph

(a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

(4) The directors of a society that is a holding society—

(a) must, in forming an opinion as to the matters mentioned in sub-section (2)(a) and(b) for the purposes of a statement under that sub-section, have regard to circumstances that have arisen, or information that has become available, since—

(i) in the case of circumstances or information relating to the society, the end of the financial year of the society to which the group accounts relate; or

(ii) in the case of circumstances or information relating to an entity controlled by the society, the end of the financial year of the entity to which the group accounts relate—

being circumstances or information that would, if the group accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those group accounts; and

(b) must, if adjustments have not been made in those group accounts to reflect circumstances or information of a kind mentioned in paragraph(a), being circumstances or information relevant to an understanding of those group accounts, or of an amount or particular in those group accounts, include in the statement such information and explanations as will prevent those group accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

Directors' reports

336.(1) The directors of a society, other than a society to which sub-section (2) applies, must, before(but not more than 3 weeks before) the day before which the accounts for its last financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors—

(a) stating the names of the directors in office at the date of the report and specifying for each director—

(i) the qualifications, experience and special responsibilities (if any) of the director; and

(ii) the number, type and class of any securities or any entitlement to an interest in a benefit fund of the society for which the society is required to keep particulars, for the director, under section 317; and

(iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 2 since the commencement of this section or the date on which particulars were last given under this paragraph; and

(b) stating that—

(i) the society keeps a register under section 317 containing information about the directors, including details of each director's interests in securities issued by the society or in a benefit fund of the society(where applicable); and

(ii) the register is open for inspection by any member of the society, without fee, and by any other person, on payment of the amount (if any) prescribed by the society's rules; and

(c) stating—

(i) the principal activities of the society during its last financial year and any significant change in the nature of those activities that happened during that financial year; and

(ii) the net amount of the profit or loss of the society for that financial year after provision for income tax; and

(iii) the amount (if any) that the directors recommend should be paid by way of dividend and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (2); and

(d) containing a review of the operations of the society during that financial year and of the results of those operations; and

(e) giving particulars of any significant change in the state of affairs of the society that happened during that financial year; and

(f) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—

(i) the operations of the society; or

(ii) the results of those operations; or

(iii) the state of affairs of the society—

in financial years subsequent to that financial year; and

(g) referring to—

(i) likely developments in the operations of the society; and

(ii) the expected results of those operations—

in financial years subsequent to that financial year.

(2) The directors of a society that is a holding society in relation to a financial year must, before (but not more than 3 weeks before) the day before which the group accounts for that financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors—

(a) stating the names of the directors in office at the date of the report and specifying for each director—

(i) the qualifications, experience and special responsibilities (if any) of the director; and

(ii) the number, type and class of any securities or any entitlement to an interest in a benefit fund of the society for which the society is required to keep particulars, for the director, under section 317; and

(iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 2 since the

commencement of this section or the date on which particulars were last given under this paragraph; and

(b) stating that—

(i) the society keeps a register under section 317 containing information about the directors, including details of each director's interests in securities issued by the society or in a benefit fund of the society (where applicable); and

(ii) the register is open for inspection by any member of the society, without fee, and by any other person, on payment of the amount (if any) prescribed by the society's rules; and

(c) stating—

(i) the principal activities of the entities in the group during its last financial year and any significant change in the nature of those activities that happened during that period (even if the entities were not part of the group during all of the financial year); and

(ii) the net amount of the consolidated profit or loss of the entities in the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than an entity in the group; and

(iii) the amount (if any) that the directors of the society recommend should be paid by way of dividend and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (1); and

(d) containing a review of the operations of the group during that financial year and of the results of those operations; and

(e) giving particulars of any significant change in the state of affairs of the group that happened during that financial year; and

(f) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—

(i) the operations of the group; or

(ii) the results of those operations; or

(iii) the state of affairs of the group—

in financial years subsequent to that financial year; and

(g) referring to—

(i) likely developments in the operations of the group; and

(ii) the expected results of those operations—

in financial years subsequent to that financial year.

(3) If, in the opinion of the directors of a society, it would prejudice the interests of the society if any particular information required under sub-section (1)(g) or (2)(g) were to be included in a report—

(a) the information need not be so included; and

(b) the report must contain a statement that some, or all(as the case may require) of the information required under sub-section (1)(g) or (2)(g) has not been included in the report.

(4) If a society, or an entity controlled by a holding society, has at any time granted to a person an option to have issued to him or her shares in the society or entity, the directors must state in the report—

(a) in the case of an option granted by a holding society, or an entity controlled by a holding society, the name of the body granting the option; and

(b) in the case of an option granted during the financial year or since the end of the financial year—

(i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or of a class of shares of that society or entity, that the option was so granted; and

(ii) the number and classes of shares in relation to which the option was granted; and

(iii) the date of expiration of the option; and

(iv) the basis upon which the option is or was to be exercised; and

(v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other body corporate; and

(c) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option; and

(d) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other body corporate.

(5) If any of the particulars required by sub-section (4) have been stated in a previous report, they may be stated by reference to that report.

(6) The report must set out whether or not, during the financial year or since the end of the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that—

(a) the director; or

(b) a firm of which the director is a member; or

(c) an entity in which the director has a substantial financial interest;

has made (during that or any other financial year) with—

(d) the society; or

(e) an entity that the society controlled, or a body corporate that was related to the society, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).

(7) A report referred to in sub-section (6) must set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

(8) Sub-sections (6) and(7) do not apply to—

(a) a benefit included in the aggregate amount of emoluments received or due and receivable, by directors shown in accordance with the regulations in force for the purposes of section 334(1)(a); or

(b) the fixed salary of a full-time employee of—

(i) the society; or

(ii) an entity that the society controlled, or a body corporate that was related to the society, at a relevant time; or

(c) the provision of financial accommodation to a director that—

(i) does not contravene section 295; and

(ii) is shown in the society's accounts in accordance with applicable accounting standards.

(9) If there is attached to or included with a report of the directors laid before a society at its annual general meeting a statement, report or other document relating to the affairs of the society or any of the entities controlled by the society, not being a statement, report or document required by this Code to be laid before the society in general meeting, the statement, report or other document, for the purposes of section 464 (False or misleading information), is taken to be part of that first-mentioned report.

(10) To avoid doubt, if a society controlled a particular entity during part, but not all, of the financial year, the report need not relate to the entity's operations or state of affairs during a period during which the society did not control the entity or to the result of those operations.

Directors of holding society must obtain information from entities controlled by the society

337.(1) In this section—

"reporting officers", in relation to an entity, means—

(a) in the case of a body corporate, the body corporate's directors; or

(b) in any other case, the entity's officers.

(2) Subject to sub-section (5), the directors of a holding society must not cause the group accounts, or the statement under section 335 or the report under section 336 relating to them, to be prepared unless the directors have available to them sufficient information, in relation to each entity controlled by the society, to enable them to ensure—

(a) that the group accounts will give a true and fair view of—

(i) the profit or loss of the holding society and the entities it controlled during all or part of the last financial year; and

(ii) the state of affairs of the holding society and the entities it controlled as at the end of the last financial year—

so far as they concern members of the holding society; and

(b) that neither the statement nor the report will be false or misleading in a material particular.

(3) Without limiting sub-section (2), to ensure that the group accounts meet the requirements of the sub-section, the directors must take, in relation to each entity controlled by the society, the reasonable steps that they are required to take under section 333 in relation to the society.

(4) The reporting officers of an entity controlled by a holding society during all or part of, or at the end of, a particular financial year must, at the request of the directors of the holding society, give to the holding society all the information that is required by the directors of the holding society for the preparation of the group accounts, the statement and the report.

(5) If the directors of a holding society, after taking all steps that are reasonably available to them, are unable to obtain from the reporting officers of the entity controlled by the holding society the information required for the preparation of the group accounts, the statement and the report, within the period within which they are respectively required by this Division to be prepared—

(a) the directors of the holding society must cause the group accounts, statement and report to be prepared without incorporating or including the information relating to that entity, but—

(i) they must include in the group accounts, statement or report, as the case requires, a description of the nature of the information that has not been obtained, and must include such qualifications and explanations as are necessary to prevent the group accounts, statement or report from being misleading; and

(ii) they may qualify accordingly that part of the statement that is made under section 335(2)(a); and

(b) if the directors of the holding society have caused the group accounts, statement and report to be prepared in accordance with paragraph (a), they must, within one month after receiving any of that information from the reporting officers of the entity—

(i) lodge with the SSA a statement setting out or summarising the information and containing such qualifications and explanations by the directors of the group accounts, statement or report as are necessary having regard to the information received from the reporting officers of the entity; and

(ii) send a copy of that statement to each member of the society or, if the rules of the society so provide, make copies of the statement available to the members of the society at the registered office and each other office of the society.

Accounts and reports to be laid before annual general meeting

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

(a) a copy of the accounts made out in accordance with section 330 for the last financial year of the society; and

(b) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was not a holding society, a copy of the directors' report made out in accordance with section 336 in relation to that financial year; and

(c) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was a holding society, a copy of the group accounts made out in accordance with section 331 in relation to that financial year and a copy of the directors' report made out in accordance with section 336 in relation to that financial year; and

(d) a copy of any auditor's report required by section 332 to be attached to and endorsed upon the accounts or group accounts; and

(e) a copy of the statement by the directors required by section 335 to be attached to the accounts or group accounts.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by sub-section (1) must be made available to members of the society at the registered office and at each other office of the society from the day before which those documents are required under this Division to have been prepared until the holding of the annual general meeting.

Contravention of Division

339.(1) A director of a society who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division commits an offence.

Maximum penalty—

(a) if the offence is committed with intent to deceive or defraud creditors of the society or creditors of any other person or for a fraudulent purpose, $100 000 or imprisonment for 15 years, or both; or

(b) in any other case, $25 000.

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

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

(4) If, after the end of the period within which any accounts or any report of the directors of a society is or are required under this Division to be prepared, the SSA, by written notice to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with the requirements of this Division, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not prepared within that period.

Division 7—Audit

Qualifications of auditors

340.(1) In this section—

"officer of a society" includes a receiver who is not also a manager.

(2) For the purposes of sub-sections(4) and(5), a person is taken to be an officer of a society if—

(a) the person is an officer of an entity controlled by the society or a body corporate related to the society; or

(b) except if the SSA directs that this paragraph not apply in relation to the person, the person has, at any time during the last 12 months, been an officer or promoter of the society or of an entity that is controlled by the society.

(3) For the purposes of this section, a person is not taken to be an officer of a society by reason only of—

(a) being or having been the liquidator of the society or of an entity controlled by the society; or

(b) having been appointed as auditor of the society or of an entity controlled by the society or, for any purpose relating to taxation, a public officer of a body corporate; or

(c) being or having been authorised to accept, on behalf of the society or an entity controlled by the society, service of process or any notices required to be served on the society or entity.

(4) Subject to this section, a person must not—

(a) consent to be appointed as auditor of a society; or

(b) act as auditor of a society; or

(c) prepare a report required by the friendly societies legislation to be prepared by a registered company auditor or by an auditor of a society;

if—

(d) the person is not a registered company auditor; or

(e) the person is not ordinarily resident in this State; or

(f) the person is indebted in an amount exceeding $5000 to the society or a related body corporate; or

(g) the person—

(i) is an officer of the society; or

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

(iii) is a partner or employee of an employee of an officer of the society.

Maximum penalty: $25 000.

(5) Subject to this section, a firm must not—

(a) consent to be appointed as auditor of a society; or

(b) act as auditor of a society; or

(c) prepare a report required by the friendly societies legislation to be prepared by a registered company auditor or by an auditor of a society;

unless—

(d) at least one member of the firm is a registered company auditor who is ordinarily resident in this State; or

(e) if the business name under which the firm is carrying on business is not registered under the law of this State relating to business names, there has been lodged with the SSA a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and

(f) neither the firm nor the member of the firm responsible for conducting the audit, or signing the report, is indebted in an amount exceeding $5000 to the society or a related body corporate; and

(g) no member of the firm is—

(i) an officer of the society; or

(ii) a partner, employer or employee of an officer of the society; and

(iii) a partner or employee of an employee of an officer of the society; and

(h) no officer of the society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(6) The appointment of a firm as auditor of a society is taken to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, as at the date of the appointment.

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

(a) a person who was an auditor of the society by virtue of sub-section (6) and who has so retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor of the society as from the day of that retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 343 does not apply to that resignation; and

(b) a person who is a registered company auditor and who is so admitted to the firm is taken to

have been appointed as an auditor of the society as from the date of admission to the firm; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the society—

but nothing in this sub-section affects the operation of sub-section (5).

(8) Except as provided by sub-section (7), the appointment of the members of a firm as auditors of a society by virtue of the appointment of the firm as auditor of the society is not affected by the dissolution of the firm.

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

(10) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a society, or prepares a report required by the friendly societies legislation to be prepared by an auditor of a society, each member of the firm commits an offence.

Maximum penalty: $25 000.

(11) A person must not—

(a) if appointed auditor of a society, knowingly disqualify himself or herself while the appointment continues from acting as auditor of the society; or

(b) if a member of a firm that has been appointed auditor of a society, knowingly disqualify the firm while the appointment continues from acting as auditor of the society.

(12) The SSA, after consultation with AFIC, may exempt a person or firm from the requirement referred to in sub-section (4)(e) or (5)(d).

Appointment of auditors

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

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

(3) A society, within 14 days after the appointment of an auditor under sub-section (2), must give a notice of the appointment in the prescribed form to the SSA.

(4) A person or firm appointed as auditor under sub-section (2) holds office, subject to this Division, until the first annual general meeting of the society.

(5) A society must—

(a) at its first annual general meeting appoint a person or firm as auditor of the society; and

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

Maximum penalty: $25 000.

(6) A person or firm appointed as auditor under sub-section (5) holds office—

(a) until death or removal or resignation from office in accordance with section 343; or

(b) until ceasing to be capable of acting as auditor because of section 340(4) or (5).

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

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

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

Maximum penalty: $5000.

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

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

(12) If an auditor of a society is removed from office at a general meeting in accordance with section 343—

(a) the society may at that meeting (without adjournment), by a resolution passed by a majority of its members as, being entitled so to do, vote in person, immediately appoint as auditor a person or firm to whom has been sent a copy of the notice of nomination in accordance with section 342; or

(b) if a resolution is not passed, or could not be passed only because a copy of the notice of nomination had not been sent to a person, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the society may, at the adjourned meeting, by ordinary resolution, appoint as auditor a person or firm notice of whose nomination for appointment as auditor has been received by the society from a member of the society at least 14 clear days before the date of the adjourned meeting.

(13) If after the removal from office of an auditor, the society fails to appoint another auditor under sub-section (12)—

(a) the society must, within 7 days after the failure, notify the SSA of the failure; and

(b) the SSA must, unless there is another auditor of the society whom the SSA believes is able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor a person who or firm that has consented to be appointed.

Maximum penalty: $25 000.

(14) Subject to sub-section (13), if a society does not appoint an auditor when required by this Division to do so, the SSA may, on the written application of a member of the society, appoint as auditor of the society a person who or firm that has consented to be appointed.

(15) A person or firm appointed as auditor of a society under sub-section (7), (12), (13) or (14) holds office, subject to this Division, until the next annual general meeting of the society.

(16) A director of a society must take all reasonable steps to comply with, or to secure compliance with, sub-section (2) or (7).

Maximum penalty applying to sub-section (16): $25 000.

Nomination of auditors

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

(a) before the meeting was convened; or

(b) not less than 21 days before the meeting.

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

(3) If a society contravenes sub-section (1), the society and any officer of the society who is in default each commits an offence.

Maximum penalty: $25 000.

(4) If notice of nomination of a person or firm for appointment as auditor is received by the society, whether for appointment at a meeting or an adjourned meeting mentioned in section 341(12) or at an annual general meeting, the society must not less than 7 days before the meeting or at the time notice of the meeting is given—

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

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

Maximum penalty applying to sub-section (4): $5000.

Removal and resignation of auditors

343.(1) Except as provided in section 44(4)(f), an auditor of a society may only be removed from office by special resolution at a general meeting of the society.

(2) If notice of a special resolution to remove an auditor is given, the society must as soon as practicable send a copy of the notice to the auditor and to the SSA.

Maximum penalty: $50 000.

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

(4) Unless the SSA on the application of the society orders otherwise, the society must display a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, if a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

Maximum penalty: $50 000.

(5) If an auditor is removed from office, the society must immediately give to the SSA written notice of the removal.

Maximum penalty: $50 000.

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

(a) by written notice given to the SSA, has applied for consent to the resignation and stated the reasons for the application; and

(b) at or about the same time as the auditor gave the notice to the SSA, has given written notice of the application to the society; and

(c) has received the consent of the SSA to the resignation.

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

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

(a) is not admissible in evidence in any civil or criminal proceeding against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor.

(9) A certificate by the SSA that a statement was made in the application or in the answer to an inquiry by the SSA is conclusive evidence that the statement was so made.

(10) Subject to sub-section (11), the resignation of an auditor takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation; or

(b) on the date on which the SSA gives its consent to the resignation; or

(c) on the date (if any) fixed by the SSA for the purpose—

whichever is the later.

(11) If, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of section 340(5)(d), of acting as auditor of a society, the member so retiring or withdrawing must(if not disqualified from acting as auditor of the society) give reasonable notice to the society of his or her retirement or withdrawal and, upon receipt of the notice by the society, the office of auditor becomes vacant.

Maximum penalty: $50 000 or imprisonment for 7 years, or both.

(12) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor, the society must—

(a) give a notice of the resignation, retirement or withdrawal in the prescribed form to the SSA; and

(b) if there is a trustee for the holders of securities issued by the society, give to the trustee a copy of the notice given to the SSA.

Maximum penalty: $50 000.

Effect of winding up on office of auditor

344. An auditor of a society ceases to hold office if—

(a) a special resolution is passed for the voluntary winding up of the society; or

(b) an order is made by the Court for the winding up of the society; or

(c) the SSA issues a certificate under section 402 (Winding up on certificate of SSA) in relation to the society.

Fees and expenses of auditors

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

Auditor's report

346.(1) An auditor of a society must report to the members on the accounts required to be laid before the society at the annual general meeting and on the society's accounting records and other records relating to those accounts and, if the society is a holding society for which group accounts are required, must also report to the members on the group accounts.

(2) The auditor must state in the report—

(a) whether the accounts and any group accounts are in the auditor's opinion properly prepared—

(i) so as to give a true and fair view of the matters required by sections 330 and 331 to be dealt with in the accounts or group accounts; and

(ii) in accordance with the friendly societies legislation; and

(iii) in accordance with applicable accounting standards; and

(b) if, in the auditor's opinion, the accounts or group accounts have not been prepared in accordance with a particular applicable accounting standard—

(i) whether, in the auditor's opinion, the accounts or group accounts, as the case may be, would, if prepared in accordance with that standard, have given a true and fair view of the matters required by sections 330 and 331 to be dealt with in those accounts; and

(ii) if, in the auditor's opinion, the accounts or group accounts would not, if so prepared, have given a true and fair view of those matters, the reasons for that opinion; and

(iii) if the directors have caused a statement to be attached to the accounts or group accounts giving particulars of the quantified financial effect on those accounts of the failure to so prepare the accounts, the auditor's opinion of those particulars; and

(iv) in a case to which neither sub-paragraph(ii) nor (iii) applies, particulars of the quantified financial effect on the accounts or group accounts of the failure to so prepare those accounts; and

(c) in the case of group accounts—

(i) the names of each entity that the society controlled during all or part of, or at the end of, the financial year but for which the auditor has not acted as auditor; and

(ii) if there are included in the group accounts(whether separately or consolidated with other accounts) the accounts of an entity controlled by the society of which he or she has not acted as auditor, and he or she has not examined the auditor's report (if any) on those accounts, the name of that entity; and

(iii) if the auditor's report on the accounts of an entity controlled by the society was made subject to any qualification, or included any comment made under sub-section (4), the name of that entity and particulars of the qualification or comment; and

(d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and

(e) if the auditor is not satisfied as to any matter mentioned in paragraph(a) or (b), the reasons for not being so satisfied.

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

(a) whether the auditor has obtained all the information and explanations that he or she required;

(b) whether proper accounting records and other records, including registers, have been kept by the society as required by the friendly societies legislation;

(c) whether the returns received from offices of the society other than the registered office are adequate;

(d) if the society is a holding society—

(i) whether the accounts of the entities controlled by the society that are to be consolidated with other accounts are, in form and content, appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether the auditor has received satisfactory information and explanations as required by him or her for that purpose; and

(ii) whether the procedures and methods used by the society and by each of the entities it controls in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation.

(4) The auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in relation to any matter mentioned in sub-section (3).

(5) The auditor must give the auditor's report to the directors of the society in sufficient time to enable the society to comply with the requirements of section 332 in relation to that report.

(6) The auditor's report—

(a) must be attached to or endorsed on the accounts or group accounts; and

(b) if a member so requires, must be read before the society at the annual general meeting; and

(c) must be open to inspection by a member at any reasonable time.

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

(a) the adequacy, in the auditor's opinion, of the systems adopted by the society to monitor and manage risks associated with its financial activities; and

(b) any other matter of a kind prescribed in a standard made for the purpose of this sub-section.

(8) An auditor must, at the time at which the auditor gives the directors of a society a report under sub-section (7), give a copy of the report to the SSA.

(9) An auditor of a society who contravenes this section commits an offence.

Maximum penalty: $5000.

Powers and duties of auditor

347.(1) An auditor of a society has a right of access at all reasonable times to the accounting records and other records and registers of the society.

(2) The auditor is entitled to require from any officer of the society any information and explanation that the auditor requires for the audit.

(3) An auditor of a holding society for which group accounts are required has a right of access at all reasonable times to the accounting records and other records and registers of each entity that the society controlled during all or part of, or at the end of, any relevant financial year even if the holding society no longer controls the entity.

(4) The auditor is entitled to require from any officer or auditor of any entity controlled by the holding society, at the expense of the holding society, any information and explanation in relation to the affairs of the entity that the auditor requires for the purpose of reporting on the group accounts.

(5) An auditor of a society, or an agent authorised by the auditor in writing for the purpose—

(a) is entitled to attend any general meeting of the society or, if held separately, any meeting of the members of any benefit fund; and

(b) is entitled to receive all notices of, and other communications relating to, any general meeting of the society or, if held separately, any meeting of the members of any benefit fund that a member is entitled to receive; and

(c) is entitled to be heard at any general meeting of the society or, if held separately, any meeting of the members of any benefit fund, that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor; and

(d) is entitled so to be heard even though—

(i) the auditor retires at that meeting; or

(ii) a resolution to remove the auditor from office is passed at that meeting.

(6) If an auditor becomes aware that the society or the directors has or have not complied with section 301, or the provisions of section 338 relating to the laying of accounts or group accounts before the annual general meeting of the society, the auditor must immediately inform the SSA by written notice and, if accounts or group accounts have been prepared and audited, send to the SSA a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

(7) Except in a case to which sub-section (6) applies, if an auditor, while performing duties as auditor of a society, is satisfied that—

(a) there has been a contravention of the friendly societies legislation; and

(b) the circumstances are such that, in the auditor's opinion, the matter has not been, or will not be, adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the society—

the auditor must immediately report the matter to the SSA by written notice.

(8) If an auditor of a society or holding society—

(a) is not satisfied that the accounts or group accounts comply with a particular applicable accounting standard; or

(b) is of the opinion that the accounts or group accounts do not comply with a particular applicable accounting standard—

the auditor must report the matter to the SSA in writing within 7 days after giving to the directors of the society or holding society his or her report under section 346.

(9) If an auditor sends to the SSA a report on the accounts or group accounts under sub-section (8), the SSA may, by written notice to the society or holding society, require it to give a copy of the accounts or group accounts to the SSA within 7 days after service of the notice.

(10) In addition to any other report that an auditor, or former auditor, of a society is required to give to the SSA, an auditor, or former auditor, of a society must give to the SSA any report in relation to the affairs of the society that the SSA requires and the auditor, or former auditor, is able to give.

(11) An auditor, or former auditor, of a society who contravenes this section commits an offence.

Maximum penalty: $5000.

Final audit on merger, etc.

348.(1) If—

(a) a society is dissolved as part of a merger or transfer of engagements, under Part 7; or

(b) a society converts to a company or an incorporated association—

the auditor of the society must prepare a report containing prescribed statements and information relating to the accounts and the accounting records of the society for the financial year up to the date of dissolution of the society or the date approved by the SSA for the conversion, as the case may be, and for the preceding financial year if an auditor's report has not been prepared relating to the accounts for that year.

(2) The provisions of section 347 relating to the rights of access of an auditor to the records of a society and any entity controlled by a society apply in relation to a report under this section as if it were a report required under section 346.

(3) If a society is dissolved as part of a merger, or transfer of engagements, a report under this section in relation to the accounts must be given by the auditor to the directors of the merged society, or transferee society, as the case may be, within 2 months after the date of the merger or transfer and the directors of the merged society or transferee society must in turn, within 3 months after the date of the merger or transfer, send each auditor's report together with the accounts of each society dissolved as part of the merger or transfer to the SSA.

(4) If a society is converted to a company or an incorporated association, a report under this section in relation to the accounts must be given by the auditor—

(a) if the society is converted to a company, to the directors of the company; or

(b) if the society is converted to an incorporated association, to the managing body of the association—

within 2 months after the date approved by the SSA for the conversion and the directors of the company or the managing body of the association must in turn, within 3 months after the date approved for the conversion, send the auditor's report together with the accounts of the society to the SSA.

(5) An auditor of a society who contravenes this section commits an offence.

Maximum penalty: $5000.

(6) A director of a society or company, or a member of the managing body of an incorporated association, must take all reasonable steps to ensure that a report required by this section to be sent to the SSA by the directors of a society or company, or the managing body of the association, is so sent.

Maximum penalty applying to sub-section (6): $5000.

Auditors and entities controlled by societies

349.(1) Despite the fact that an entity controlled by the society may be exempt from appointing an auditor under the Corporations Law, a society must ensure that the accounts and accounting records of an entity controlled by the society are audited in accordance with this Part.

Maximum penalty: $75 000.

(2) If an entity controlled by a society has not appointed an auditor to audit its accounts and accounting records under this Part, the auditor of the holding society is also auditor of the entity.

Obstruction of auditor

350.(1) An officer of a society must not—

(a) fail without lawful excuse—

(i) to allow an auditor of the society access, in accordance with this Part, to any accounting records and other records and registers of the society that are in the custody or control of the officer; or

(ii) to give any information or explanation as and when required under this Part; or

(b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

(2) An officer or auditor of an entity controlled by a society must not—

(a) refuse or fail without lawful excuse—

(i) to allow an auditor of the society that controls the entity, or has controlled but

no longer controls it, access, in accordance with this Part, to any accounting records and other records and registers of the entity in the custody or control of that officer or auditor; or

(ii) to give any information or explanation as and when required under this Part; or

(b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

Qualified privilege

351.(1) An auditor of a society has qualified privilege in relation to—

(a) any oral or written statement made by the auditor while exercising functions as auditor of the society; and

(b) the giving to the SSA of a notice or report, or a copy of any accounts or group accounts.

(2) A person has qualified privilege in relation to the publishing of—

(a) a document that is prepared by an auditor of a society while exercising functions as auditor of the society and is required under the friendly societies legislation to be lodged with the SSA or AFIC, whether or not the requirement has been complied with; and

(b) any oral or written statement made by the auditor while exercising functions as auditor of the society.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Division 8—Actuaries

Appointment of actuaries

352.(1) Subject to sub-section (2), a society must have an actuary appointed by the society.

(2) Within 6 weeks after a person ceases to be the actuary of a society, the society must appoint another person to be the actuary of the society.

(3) A person may only hold an appointment as actuary of a society if the person is eligible for such an appointment.

(4) Subject to section 353(2), a person is eligible for appointment as a society's actuary if the person—

(aa) is ordinarily resident in this State; and

(a) is a Fellow of the Institute of Actuaries of Australia; and

(b) has been such a Fellow for at least 5 years; and

(c) is not indebted to the society by more than $5000; or

(d) is not subject to a declaration in force under section 353(3).

(5) An appointment of a person as actuary of a society cannot take effect while there is in force an appointment of another person as the society's actuary.

(6) The SSA, after consultation with AFIC, may exempt a person from the requirement referred to in sub-section (4)(aa).

Cessation of appointment

353.(1) A person ceases to hold an appointment as the actuary of a society if—

(a) the person ceases to be eligible for such an appointment; or

(b) the person gives the society a written notice of resignation of the appointment; or

(c) the society gives the person written notice that the appointment is terminated.

(2) A person who, apart from this sub-section, would be eligible for appointment as a society's actuary is not so eligible if there is in force a declaration by the SSA under sub-section (3).

(3) The SSA may, in writing, declare that a person is not eligible for appointment as a society's actuary if the person has failed to perform adequately and properly the functions and duties of an actuary under this Code.

(4) A declaration takes effect 28 days after the date of the declaration or, if an earlier date is specified in the declaration, on that earlier date.

(5) The SSA must give a copy of a declaration to the person to whom it relates.

Notification of appointment etc.

354.(1) A society that appoints a person under section 352 must give the SSA written notice of—

(a) the name of the person; and

(b) details of the actuarial qualifications and experience of the person; and

(c) the date of the appointment; and

(d) any other matter prescribed by the standards.

(2) Notice under sub-section (1) must be given within 14 days after the day of the appointment.

(3) If a person ceases to be the actuary of a society, the society must give the SSA written notice that the person has so ceased and of the date on which he or she so ceased.

(4) Notice under sub-section (3) must be given within 14 days after the day on which the person ceased to be the actuary of the society.

Powers of actuary

355.(1) The actuary of a society is entitled to have access to any information or document in the possession, or under the control, of the society if such access is reasonably necessary for the proper performance of the functions and duties of the actuary.

(2) The actuary of a society may require any officer of the society to answer questions or produce documents for the purpose of enabling the actuary to have the access to information and documents provided for by sub-section (1).

(3) An officer of a society must not refuse or fail, without reasonable excuse, to comply with a requirement under sub-section (2).

(4) The actuary of a society is entitled to attend a meeting of the directors of the society and to speak on any matter being considered at the meeting—

(a) that relates to, or may affect—

(i) the solvency of the society or any of its benefit funds; or

(ii) the adequacy of the capital of the society; or

(b) that relates to advice given by the actuary to the directors; or

(c) that concerns a matter in relation to which the actuary will be required to give advice.

(5) The actuary of a society—

(a) is entitled to attend any general meeting of the society or, if held separately, any meeting of the members of any benefit fund or any other meeting of members at which accounts are to be considered or at which any matter in connection with which the actuary is or has been subject to a duty under this Code is to be considered; and

(b) is entitled to receive all notices of, and other communications relating to, any general meeting of the society or, if held separately, any meeting of the members of any benefit

fund or any other meeting of members that a member is entitled to receive; and

(c) is entitled to be heard at any general meeting of the society or, if held separately, any meeting of the members of any benefit fund or any other meeting of members that he or she attends on any part of the business of the meeting that concerns the actuary in the capacity of actuary; and

(d) is entitled so to be heard even though the actuary retires at that meeting.

Actuary's obligation to report to SSA

356.(1) The actuary of a society must draw to the attention of the society any matter that comes to the attention of the actuary and that the actuary thinks requires action to be taken by the society or its directors—

(a) to avoid a contravention of the friendly societies legislation; or

(b) to avoid prejudice to the interests of the members of the society.

(2) If the actuary of a society thinks—

(a) that there are reasonable grounds for believing that the society or a director of the society may have contravened the friendly societies legislation or any other law; and

(b) that the contravention is of such a nature that it may affect significantly the interests of the members of the society—

the actuary must inform the SSA in writing of—

(c) his or her opinion; and

(d) the information on which it is based.

(3) If—

(a) the actuary of a society has drawn to the attention of the society a matter that the actuary thinks requires action to be taken by the society or its directors—

(i) to avoid a contravention of the friendly societies legislation; or

(ii) to avoid prejudice to the interests of the members of the society; and

(b) the actuary is satisfied that there has been a reasonable time for the taking of the action but the action has not been taken—

the actuary must inform the SSA in writing of the matter referred to in paragraph(a).

(4) If the actuary of a society considers on reasonable grounds that—

(a) the directors of the society have failed to take such action as is reasonably necessary to enable the actuary to exercise his or her right under section 355(4) or (5); or

(b) an officer of the society has engaged in conduct calculated to prevent the actuary exercising his or her right under section 355(4) or (5)—

the actuary must inform the SSA of—

(c) his or her opinion; and

(d) the information on which it is based.

(5) If—

(a) the actuary of a society becomes subject to an obligation under sub-section (2) or (3) to inform the SSA of anything; and

(b) before the actuary informs the SSA, he or she ceases to be the actuary of the society concerned—

the actuary remains subject to the obligation as if he or she were still the actuary of the society.

Qualified privilege of actuary

357.(1) A person who is, or has been, the actuary of a society has qualified privilege in respect of any statement, whether written or oral, made by him or her for the purpose of the performance of his or her functions as actuary of the society.

(2) In particular (and without limiting sub-section (1)), a person who is or has been the actuary of a society has qualified privilege in respect of any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Code.

(3) The privilege conferred by this section is in addition to any privilege conferred on a person by any other law.

Actuarial investigations

358.(1) A society must arrange for its actuary to—

(a) conduct a financial investigation in accordance with the standards either—

(i) as at the end of each financial year of the society; or

(ii) as otherwise determined by the SSA, in accordance with applicable standards, and notified in writing by the SSA to the society; and

(b) give the society a written report of the results of the investigation.

(3) The society must, immediately after receipt of the report referred to in sub-section (1)(b), send a copy of the report to the SSA.

Additional actuarial investigations

359.(1) Nothing in this Division prevents a society from having its actuary investigate the financial condition of the society as at a time other than a time specified in section 358(1)(a).

(2) A society must not make public the results of an investigation referred to in sub-section (1) unless—

(a) the investigation has been conducted in accordance with applicable standards; and

(b) the actuary has given the society a written report of the results of the investigation.

(3) If the SSA, by written notice given to a society, requires that an investigation referred to in sub-section (1) be conducted by the society—

(a) the investigation must be conducted in accordance with applicable standards; and

(b) the society must arrange for its actuary to give the society and the SSA a written report of the results of the investigation.

Division 9—Returns and Relief

Returns

360.(1) A society must lodge returns with the SSA in accordance with the regulations.

Maximum penalty: $5000.

(2) The SSA may, by written notice, require a society to lodge such further returns that the SSA requires.

(3) A further return must contain the information required by the notice and must be lodged as often as is required by the notice.

(4) Without limiting the effect of this section, the information that may be required in a further return may comprise or include information relating to—

(a) an entity controlled by the society; and

(b) a body corporate or other entity formed or acquired outside Australia by an entity controlled by the society; and

(c) a body corporate or other entity(whether within or outside Australia) with which—

(i) the society; or

(ii) an entity controlled by the society; or

(iii) a body corporate or other entity mentioned in paragraph (b)—

has invested funds.

(5) The SSA may, by written notice, require a society to lodge with a return or further return a report by a registered company auditor, or other person of a specified class, on specified matters to which the return relates.

(6) A society that fails to comply with a requirement of a notice given to it under this section commits an offence.

Maximum penalty applying to sub-section (6): $100 000.

Relief from requirements as to accounts, audit and actuaries

361.(1) The directors of a society may apply to the SSA in writing for an order relieving the directors, the society or the auditor or actuary of the society from compliance with any specified requirements of Division 6 (other than section 328), 7 or 8.

(2) An application under sub-section (1) must be accompanied by a written statement made in accordance with a resolution of the directors of the society, signed by not less than 2 directors and stating the reasons for seeking the order.

(3) The SSA may require the directors making the application to supply such information relating to the operations of the society, and of any entity controlled by the society, as the SSA thinks necessary for the purpose of determining the application.

(4) The SSA may make an order unconditionally or subject to any conditions it considers appropriate.

(5) Notice of an order under sub-section (4) must be given to the society.

(6) The SSA may, if it considers it appropriate, make an order in relation to a specified class of societies relieving the directors of a society included in that class, a society included in that class, the auditor of a society included in that class or the actuary of a society included in that class, from compliance with any specified requirements of Division 6 (other than section 328), 7 or 8.

(7) The SSA may make an order under sub-section (6) unconditionally or subject to any conditions it considers appropriate.

(8) Notice of an order under sub-section (6) must be published in the Gazette.

(9) The SSA must not make an order in relation to a society, or a class of societies, under this section unless the SSA is of the opinion, in relation to each requirement of this Code specified in the order, that compliance with the requirement—

(a) would render accounts or group accounts, or a report required in relation to those accounts, misleading; or

(b) would be inappropriate to the circumstances of the society, or of the societies included in that class; or

(c) would impose unreasonable burdens on—

(i) the society, an officer of the society or the auditor or actuary of the society; or

(ii) the societies, or officers or auditors or actuaries of the societies, included in that class—

as the case may be.

(10) An order under this section may be limited in its effect to a period specified in the order.

(11) The SSA may, on application by the directors of a society or on its own initiative, revoke or suspend an order under this section.

(12) A revocation or suspension does not take effect—

(a) in the case of an order under sub-section (4), until written notice of the revocation or suspension is given to the society; or

(b) in the case of an order under sub-section (6), until notice of the revocation or suspension is published in the Gazette.

PART 7—MERGERS OF SOCIETIES AND TRANSFERS OF ENGAGEMENTS

Division 1—Preliminary

Definitions

362. In this Part—

"certificate of confirmation" means a certificate given by the SSA to confirm a transfer of engagements;

"transferee society" means a society to whom another society is to transfer, or has transferred, its engagements under this Part;

"transferor society" means a society that is to transfer, or has transferred, its engagements under this Part.

Application of Part

363. 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

Application for registration of merger or transfer

364.(1) If 2 or more societies propose to consolidate all or any of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements.

(2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the SSA has determined that it may be approved by the society's board.

(3) A society that is to approve the proposed merger, or transfer of engagements, by special resolution must send to each of its members a statement approved by the SSA specifying—

(a) the financial position of each of the societies as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any proposal in relation to the appointment of directors of a merged society; and

(c) any interest that any officer of any of the societies has in the proposed merger, or transfer of engagements; and

(d) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of a society in relation to the proposed merger, or transfer of engagements; and

(e) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements; and

(f) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and

(g) any other matter specified by the SSA.

(4) The statement mentioned in sub-section (3) must be sent to the members of the society so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than—

(a) where the resolution is to be decided at a meeting, 21 days before the date of the meeting; or

(b) where the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with sub-section (3).

(6) The SSA may grant an exemption, or approve a statement, subject to any conditions it considers appropriate.

(7) An application for the registration of a merger or transfer of engagements under this Division must be made in the way and form required by the SSA.

(8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

SSA may register merged society

365.(1) If, in relation to an application under this Division by societies for registration of a proposed merger, the SSA is satisfied that—

(a) the societies involved have complied with section 364; and

(b) the proposed rules of the merged society are adequate; and

(c) there are reasonable grounds for believing that the merged society will be able to comply with all applicable standards; and

(d) the certificates of incorporation of the societies involved in the merger have been surrendered to the SSA; and

(e) there is no good reason why the merged society and its rules should not be registered—

the SSA must—

(f) register the merged society; and

(g) register its rules; and

(h) cancel the registration of the societies involved in the merger.

(2) On registering the merged society, the SSA must issue to the society a certificate of incorporation.

(3) A merger takes effect on the issue of the certificate of incorporation under sub-section (2).

Certificate of confirmation (voluntary transfer)

366.(1) This section applies to a transfer of engagements following an application under section 364.

(2) For a total transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

(a) the societies have complied with section 364; and

(b) the rules, or proposed rules, of the transferee society are adequate; and

(c) the certificate of incorporation of the transferor society has been—

(i) surrendered to the SSA; or

(ii) lost or destroyed; and

(d) there is no good reason why the transfer should not take effect.

(3) For a partial transfer of engagements, the SSA must issue a certificate of confirmation if it is satisfied that—

(a) the societies have complied with section 364; and

(b) the rules, or proposed rules, of the societies are adequate; and

(c) there is no good reason why the transfer should not take effect.

SSA may direct a transfer of engagements between societies

367.(1) The SSA may, by written notice given to a society, direct it to totally or partially transfer its engagements to another society(the "transferee society") if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The SSA must give a copy of the direction to the transferee society.

(3) For a total transfer of engagements, the direction must specify that the transferor society must surrender its certificate of incorporation to the SSA or satisfy the SSA that its certificate has been lost or destroyed.

(4) The SSA must not direct a society to transfer its engagements under this section unless—

(a) the SSA is of the opinion that—

(i) the society has contravened the friendly societies legislation or the society's rules and, after being given written notice of the contravention by the SSA, has allowed the contravention to continue or has again contravened the legislation or rules; or

(ii) the management fund of the society has an accumulated deficit; or

(iii) the affairs of the society or a fund of the society are being managed or conducted in an improper or financially unsound way; or

(b) after making such inquiries in relation to one or both of the societies as the SSA considers appropriate, the SSA is satisfied that it is in the interest of members or creditors of the society that is to be directed to transfer its engagements; or

(c) the SSA has certified, in relation to the society, that any of the events mentioned in section 402 (1)(a), (b), (c) or (g) (Winding up on certificate of SSA) has happened.

SSA may modify rules to facilitate transfer of engagements

368.(1) If the SSA has directed a transfer of engagements under section 367, the SSA may, by notation on the registered copy of the rules of the transferor society (if it is to continue to exist) or the transferee society or both, amend the rules of the society to the extent necessary to ensure that the rules are appropriate.

(2) The SSA must amend the rules by notation on the registered copy.

(3) The SSA must immediately give written notice to the society of—

(a) an amendment of the society's rules made under this section; and

(b) the day on which the amendment takes effect.

(4) A society must give to its members, not later than the day on which notice is given of the next general meeting of the society, a written notice containing the text or a summary of an amendment of the society's rules under this section.

(5) The notice may, with the prior written approval of the SSA, be given by advertisement published in a newspaper circulating generally—

(a) in the area of the State in which the society operates; and

(b) if the society operates in another State, or other States, in the other State or States.

Society to comply with direction

369.(1) A society must take all reasonable steps to comply with a direction under this Division to transfer its engagements.

Maximum penalty: $100 000.

(2) An officer of a society must not—

(a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements; or

(b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Certificate of confirmation (transfer by direction)

370.(1) This section applies to a transfer of engagements by a direction under section 367.

(2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation.

(3) If the transfer does not take effect immediately—

(a) the direction must specify the day when the SSA proposes to issue the certificate of confirmation; and

(b) when the SSA is satisfied that the societies have complied with the direction, it must issue a certificate of confirmation.

Who receives the certificate of confirmation

371. The SSA must give a certificate of confirmation—

(a) for a partial transfer, to each of the societies; or

(b) for a total transfer, to the transferee society.

When transfer of engagements takes effect

372. A transfer of engagements takes effect on the date of issue of the certificate of confirmation of the transfer or such later date as specified in the certificate.

Cancellation of registration after total transfer

373. When a total transfer of engagements takes effect, the SSA must cancel the transferor society's registration.

Effect of merger

374.(1) This section applies on a merger of societies under this Division taking effect.

(2) The merged society is the successor of the merging societies.

(3) Without limiting sub-section (2)—

(a) the members of each merging society become members of the merged society; and

(b) all assets and liabilities of each merging society become assets and liabilities of the merged society without any conveyance, transfer or assignment; and

(c) in all documents(including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society; and

(d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society; and

(e) the duties, obligations, immunities, rights and privileges applying to a merging society apply to the merged society.

Effect of transfer of engagements

375.(1) This section applies on a transfer of engagements under this Division taking effect.

(2) However, for a partial transfer, this section applies—

(a) subject to the terms on which the transfer takes place; and

(b) only to the extent necessary to give effect to the transfer.

(3) The transferee society is the successor of the transferor society.

(4) Without limiting sub-section (3)—

(a) the members of the transferor society become members of the transferee society; and

(b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and

(c) in all documents(including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and

(d) a legal proceeding by or against the transferor society that is not finished when the transfer takes effect may be continued and finished by or against the transferee society; and

(e) the duties, obligations, immunities, rights and privileges applying to the transferor society apply to the transferee society.

Division 3—Mergers and transfers of engagements involving foreign societies

Definitions in Division 3

376. In this Division—

"certificate of confirmation" means a certificate given by the SSA, or by the SSA of a participating State, to confirm a transfer of engagements;

"corresponding provision", in relation to a specified provision of this Code, means the provision of the friendly societies legislation of the participating State corresponding to the specified provision;

"foreign society" means a body corporate that is a society under the friendly societies legislation of another participating State, whether or not it is registered as a foreign society under Part 11;

"participating State", in a provision of this Division about a foreign society, means the State in which the foreign society is incorporated;

"transferee society" means—

(a) a society to which a foreign society is to transfer, or has transferred, totally or partially, its engagements; or

(b) a foreign society to which a society is to transfer, or has transferred, totally or partially, its engagements;

"transferor society" means—

(a) a society that is to transfer, or has transferred, totally or partially, its engagements to a foreign society; or

(b) a foreign society that is to transfer, or has transferred, totally or partially, its engagements to a society.

Proposal for merger or transfer of engagements

377.(1) This section applies if a society proposes a consolidation of some or all of its assets, liabilities and undertakings with some or all of the assets, liabilities and undertakings of a foreign society, by—

(a) the merger of the society and the foreign society; or

(b) a total or partial transfer of the engagements of the society to the foreign society; or

(c) a total or partial transfer of the engagements of the foreign society to the society.

(2) The proposed merger, or transfer of engagements, must be approved by a special resolution of the society unless the SSA has determined that it may be approved by the society's board.

(3) If the society is to approve the proposed merger or transfer of engagements by special resolution, it must prepare, and send to each of its members, a statement approved by the SSA specifying—

(a) the financial position of the society and foreign society as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) if the proposal is for a merger, any proposal for the composition of the board of directors of the merged society; and

(c) if the proposal is for a total transfer of engagements, any proposal for the composition of the board of directors of the transferee society; and

(d) any interest that any officer of the society or foreign society has in the proposed merger, or transfer of engagements; and

(e) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the society or foreign society in relation to the proposed merger, or transfer of engagements; and

(f) whether the proposal is a merger, or transfer of engagements and the reason for the merger or transfer of engagements; and

(g) if the proposal is for a transfer of engagements, whether it is a total or partial transfer of engagements; and

(h) if the proposal is for a merger, the participating State in which the merged society will be incorporated; and

(i) any other matter specified by the SSA.

(4) If, under the corresponding provision to this section, the foreign society is required to give its members a statement, the statement given by the society and the statement given by the foreign society must be consistent.

(5) The statement mentioned in sub-section (3) must be sent to the members of the society so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than—

(a) if the resolution is to be decided at a meeting, 21 days before the date of the meeting; or

(b) if the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(6) The SSA may exempt the society—

(a) from the requirements to prepare the statement mentioned in sub-section (3) and to send the statement to its members; or

(b) only from the requirement to send the statement mentioned in sub-section (3) to its members.

(7) The SSA may grant an exemption, or approve a statement, subject to the conditions it considers appropriate.

SSA may register merged society

378.(1) This section applies if—

(a) a society proposes a merger with a foreign society; and

(b) the merged society is proposed to be incorporated in this State.

(2) An application may be made to the SSA to register the merged society.

(3) The application must be made by the society and the foreign society jointly.

(4) The SSA must register the merged society if it is satisfied that—

(a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and

(b) the proposed rules of the merged society are adequate; and

(c) there are reasonable grounds for believing that the merged society will be able to comply with the standards; and

(d) one of the following applies—

(i) the certificate of incorporation of the society has been surrendered to the SSA;

(ii) the society's certificate of incorporation has been lost or destroyed; and

(e) one of the following applies—

(i) the certificate of incorporation of the foreign society has been surrendered to the SSA of the participating State;

(ii) the foreign society has satisfied the SSA of the participating State that its certificate of incorporation has been lost or destroyed; and

(f) there is no good reason why the merged society and its rules should not be registered.

(5) If the SSA registers the merged society, it must also—

(a) register its rules; and

(b) cancel the registration of the society.

(6) On registering the merged society, the SSA must issue a certificate of incorporation to the merged society.

(7) A merger takes effect on the issue of the certificate of incorporation under sub-section (6).

(8) An application for the registration of a merger under this Division—

(a) must be made in the way and form required by the SSA; and

(b) must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the SSA.

Certificate of confirmation for total transfer

379.(1) This section applies if a society proposes a total transfer of engagements from a foreign society to the society.

(2) The society may apply to the SSA for a certificate of confirmation of the total transfer of engagements.

(3) The SSA must issue a certificate of confirmation if it is satisfied that—

(a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and

(b) the rules, or proposed new rules, of the society are adequate; and

(c) one of the following applies—

(i) the certificate of incorporation of the foreign society has been surrendered to the SSA of the participating State;

(ii) the foreign society has satisfied the SSA of the participating State that its certificate of incorporation has been lost or destroyed; and

(d) there is no good reason why the transfer should not take effect.

(4) An application for a certificate of confirmation of a total transfer of engagements under this Division—

(a) must be made in the way and form required by the SSA; and

(b) if new rules are proposed for the society, must be accompanied by 2 copies of the proposed new rules.

Certificate of confirmation for partial transfer

380.(1) This section applies if a society proposes a partial transfer of engagements from a foreign society to the society or from the society to a foreign society.

(2) The society may apply to the SSA for a certificate of confirmation of the partial transfer of engagements.

(3) The SSA must issue a certificate of confirmation if it is satisfied that—

(a) the society has complied with section 377 and the foreign society has complied with the corresponding provision to section 377; and

(b) the rules, or proposed new rules, of the transferee society are adequate; and

(c) the SSA of the participating State has issued, or is about to issue, a certificate of confirmation of the partial transfer of

engagements for the foreign society under the corresponding provision to this section; and

(d) there is no good reason why the transfer should not take effect.

(4) An application for a certificate of confirmation of a partial transfer of engagements under this Division—

(a) must be made in the way and form required by the SSA; and

(b) if the society is the transferee society, and new rules are proposed for the society, must be accompanied by 2 copies of the proposed new rules for the society.

When transfer of engagements takes effect

381.(1) This section applies to a total or partial transfer of engagements from a society to a foreign society or from a foreign society to a society.

(2) The transfer of engagements takes effect—

(a) if it is a total transfer of engagements—

(i) on the issue under section 379, or the corresponding provision to section 379, of the certificate of confirmation of the transfer; or

(ii) if a later time is stated in the certificate, at the later time; or

(b) if it is a partial transfer of engagements—

(i) when the certificates of confirmation of the transfer have issued, under section 380, and the corresponding provision to section 380, to both the transferor and transferee societies; or

(ii) if a later time is stated in the certificates, at the later time.

Effect of merger

382.(1) This section applies on a merger of a society and a foreign society taking effect, whether the merged society is registered under section 378 or the corresponding provision to section 378.

(2) The merged society is the successor of the merging societies.

(3) Without limiting sub-section (2)—

(a) the members of each merging society become members of the merged society; and

(b) all assets and liabilities of each merging society become assets and liabilities of the merged society without any conveyance, transfer or assignment; and

(c) in all documents(including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society; and

(d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society; and

(e) the duties, obligations, immunities, rights and privileges applying to a merging society apply to the merged society.

Effect of transfer of engagements

383.(1) This section applies on a total transfer of engagements taking effect under section 381.

(2) This section also applies on a partial transfer of engagements taking effect under section 381, but only—

(a) subject to the terms on which the transfer takes place; and

(b) to the extent necessary to give effect to the transfer.

(3) The transferee society is the successor of the transferor society.

(4) Without limiting sub-section (3)—

(a) the members of the transferor society become members of the transferee society; and

(b) all assets and liabilities of the transferor society become assets and liabilities of the transferee society without any conveyance, transfer or assignment; and

(c) in all documents(including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society; and

(d) a legal proceeding by or against the transferor society that is not finished when the transfer of engagements takes effect may be continued and finished by or against the transferee society; and

(e) the duties, obligations, immunities, rights and privileges applying to the transferor society apply to the transferee society.

Surrender of certificate of incorporation

384.(1) This section applies if a society proposes—

(a) to merge with a foreign society, and under the proposal, the merged society is to be incorporated in the participating State; or

(b) a total transfer of its engagements to a foreign society.

(2) After the proposed merger or transfer has been approved under section 377, the society must surrender its certificate of incorporation to the SSA.

(3) Upon the merger or transfer of engagements taking effect under the friendly societies legislation of the participating State, the SSA must cancel the registration of the society.

PART 8—CONVERSIONS TO COMPANIES AND INCORPORATED ASSOCIATIONS

Division 1—Conversion to Company

Society may convert to company

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

Proposal to convert by society to be approved by members

387.(1) Before a society applies to the SSA for approval to convert, the proposal and the memorandum of association and articles of association (if any) proposed for the company must be approved—

(a) in a postal ballot conducted in accordance with the regulations in which not less than 20% (or in the case of a society whose rules specify a greater percentage, that greater percentage) of the members of the society have voted; and

(b) by not less than 75% of the members who have voted; and

(c) where the society has issued shares of more than one class, by members who have voted and who hold not less than 75% of the shares in each class held by all the members who have voted.

(2) Before a society applies to the SSA for approval to convert, the society must send to each of its members—

(a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed memorandum of association and articles of association (if any) of the proposed company; and

(b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and

(c) a statement, the contents of which have been approved by the SSA, relating to—

(i) the financial position of the society; and

(ii) the reasons for the proposal to convert; and

(iii) any interest that its officers may have in the conversion; and

(iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and

(v) any payments to be made to its members arising out of the conversion; and

(vi) the proposals for dealing with any benefit funds of the society; and

(d) any other matters that the SSA directs.

(3) The part of a statement under sub-section (2)(c)(i) must include—

(a) profit and loss accounts for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the society and any fund of the society for that period; and

(b) balance sheets as at the end of the last day of the period to which the profit and loss accounts relate, giving a true and fair view of the state of affairs of the society and any fund of the society on that day; and

(c) a report prepared by the auditor of the society containing prescribed statements and information relating to the accounts for the period to which the profit and loss accounts relate.

(4) The documents mentioned in sub-section (2), and the ballot papers to be used in the postal ballot, must be sent to the members of the society so that they will in the ordinary course of post reach each member who is entitled to vote not later than 21 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

(5) The SSA may exempt a society from having to comply with sub-section (2) or (3).

(6) The SSA may grant an exemption, or approve a summary or statement, subject to any conditions it considers appropriate.

SSA may direct as to percentage

388.(1) If—

(a) a postal ballot is conducted for the purpose of section 387(1); and

(b) the percentage of members of the society who are required to vote in the postal ballot is 20%; and

(c) less than 20% of members of the society vote in the postal ballot—

the SSA may, by written notice given to the society, direct that for the purpose of the postal ballot, the sub-section is taken to have had effect as if the percentage specified by the SSA in the notice had been substituted for the 20% at all relevant times.

(2) The SSA must not give a notice to a society under sub-section (1) unless the SSA is of the opinion that it is in the interests of the public, and of members of the society, to do so.

(3) A notice under sub-section (1) has effect according to its tenor.

Application by society to SSA for approval of proposal

389.(1) An application for conversion by a society must be made in the prescribed form and must be accompanied by—

(a) 2 copies of the proposed memorandum of association and articles of association (if any) of the proposed company; and

(b) a copy of the register of members of the society and of the register of members of each of the benefit funds of the society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and

(c) a statement setting out the day and terms on which the conversion of the society to a company is proposed to take effect; and

(d) any other documents or information that the SSA requires; and

(e) the prescribed fee.

(2) In determining whether or not to approve the proposal to convert, the SSA must have regard to—

(a) the public interest; and

(b) the interest of the members of the society to which the proposal relates; and

(c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and

(d) whether the company would be subject to prudential regulation similar to that applying to the society; and

(e) proposals for the payment of expenses associated with the proposal; and

(f) any other relevant matter.

(3) The SSA—

(a) may approve the proposal to convert subject to any conditions it considers appropriate; or

(b) may refuse to approve the proposal.

Conversion of society to company

390. If—

(a) a proposal by a society that it convert to a company is approved by the SSA; and

(b) the company is formed and incorporated in accordance with any conditions of the SSA's approval; and

(c) any other conditions of the approval relating to the transfer of membership, issuing of shares or any other matter are complied with—

then, on the day the society is registered as a company under the Corporations Law—

(d) the property of the society vests in the company without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and

(e) the debts and liabilities of the society become debts and liabilities of the company; and

(f) the society's personality merges in that of the company.

Surrender of certificate of incorporation and cancellation of registration of society

391.(1) A society that proposes to convert to a company must surrender its certificate of incorporation to the SSA.

(2) On the conversion of a society to a company, the SSA must cancel the registration of the society.

(3) A society that contravenes this section commits an offence.

Maximum penalty applying to sub-section (3): $5000.

Certificate of SSA

392.(1) The SSA may, on application by the company resulting from a conversion and production of any evidence that the SSA requires and on payment of the prescribed fee, issue to the company a certificate stating that a conversion under this Part has taken effect.

(2) A certificate issued by the SSA under sub-section (1) is conclusive evidence as to the matters so certified and that the conditions of any approval have been complied with.

Division 2—Conversion to Incorporated Association

Society without benefit fund may convert to incorporated association

393. Subject to its rules, a society that does not have a benefit fund may apply to the SSA for approval of a proposal that the society convert to an incorporated association.

Proposal to convert to be approved by members or society's board

394.(1) Before a society applies to the SSA for approval to convert, the proposal and the rules proposed for the incorporated association must be approved—

(a) by a special resolution of the members of the society; or

(b) if the SSA so determines, by a resolution of the society's board.

(2) If the proposal and the rules proposed for the incorporated association are to be approved by special resolution under sub-section (1)(a), the society must send to each of its members—

(a) a summary, approved by the SSA and containing such information as is prescribed, of the proposed rules of the proposed incorporated association; and

(b) a copy of such reports, valuations and other material prepared by experts that may be required and approved by the SSA; and

(c) a statement, the contents of which have been approved by the SSA, relating to—

(i) the financial position of the society; and

(ii) the reasons for the proposal to convert; and

(iii) any interest that its officers may have in the conversion; and

(iv) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to its officers arising out of the conversion; and

(v) any payments to be made to its members arising out of the conversion; and

(d) any other matters that the SSA directs.

(3) The part of a statement under sub-section (2)(c)(i) must include—

(a) the profit and loss account of the society for the period up until a day not more than 6 months before the day proposed for the conversion, giving a true and fair view of the profit or loss of the society for that period; and

(b) a balance sheet as at the end of the last day of the period to which the profit and loss account relates, giving a true and fair view of the state of affairs of the society on that day; and

(c) a report prepared by the auditor of the society containing prescribed statements and information relating to the accounts of the society for the period to which the profit and loss account relates.

(4) The documents mentioned in sub-section (2) must be sent to the members of the society so that they will in the ordinary course of post reach each member who is entitled to vote on the special resolution under sub-section (1)(a) not later than 21 days before the date of the meeting at which the resolution will be determined.

(5) The SSA may exempt a society from having to comply with sub-section (2) or (3).

(6) The SSA may grant an exemption, or approve a summary or statement, subject to any conditions it considers appropriate.

Application by society to SSA for approval of proposal

395.(1) An application for conversion by a society must be made in the prescribed form and must be accompanied by—

(a) 2 copies of the proposed rules of the proposed incorporated association; and

(b) a copy of the register of members of the society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than 6 days before the day of the application; and

(c) a statement setting out the day and terms on which the conversion of the society to an incorporated association is proposed to take effect; and

(d) any other documents or information that the SSA requires; and

(e) the prescribed fee.

(2) In determining whether or not to approve the proposal to convert, the SSA must have regard to—

(a) the public interest; and

(b) the interests of the members of the society to which the proposal relates; and

(c) the information given to those members in relation to the proposal and in relation to the interests of directors and others promoting the proposal; and

(d) proposals for the payment of expenses associated with the proposal; and

(e) any other relevant matter.

(3) The SSA—

(a) may approve the proposal to convert subject to any conditions it considers appropriate; or

(b) may refuse to approve the proposal.

Conversion of society to incorporated association

396. If—

(a) a proposal by a society that it convert to an incorporated association is approved by the SSA; and

(b) the incorporated association is formed and incorporated in accordance with any conditions of the SSA's approval; and

(c) any other conditions of the approval relating to the transfer of membership or any other matter are complied with—

then, on the day the society is incorporated as an incorporated association in accordance with the law of this State relating to incorporated associations—

(d) the property of the society vests in the incorporated association without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property; and

(e) the debts and liabilities of the society become debts and liabilities of the incorporated association; and

(f) the society's personality merges in that of the incorporated association.

Surrender of certificate of incorporation and cancellation of registration of society

397.(1) A society that proposes to convert to an incorporated association must surrender its certificate of incorporation to the SSA.

(2) On the conversion of a society to an incorporated association, the SSA must cancel the registration of the society.

(3) A society that contravenes this section commits an offence.

Maximum penalty applying to sub-section (3): $5000.

Certificate of SSA

398.(1) The SSA may, on application by the incorporated association resulting from a conversion and production of any evidence that the SSA requires and on payment of the prescribed fee, issue to the incorporated association a certificate stating that a conversion under this Part has taken effect.

(2) A certificate issued by the SSA under sub-section (1) is conclusive evidence as to the matters so certified and that the conditions of any approval have been complied with.

PART 9—EXTERNAL ADMINISTRATION

Arrangements and reconstructions

399.(1) Parts 5.1 and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to a compromise or arrangement between a society and its creditors or a reconstruction of a society.

(2) Without limiting sub-section (1), a reference in Part 5.1 or 5.9 of the Corporations Law to the Commission is taken to be a reference to the SSA.

Receivers and other controllers of property of societies

400.(1) Parts 5.2 and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to a receiver or other controller of property of a society.

(2) Without limiting sub-section (1), a reference in Part 5.2 or 5.9 of the Corporations Law to the Commission is taken to be a reference to the SSA.

Winding-up

401.(1) A society may be wound-up voluntarily or by the Court or on a certificate of the SSA.

(2) Subject to this Part, a society may be wound-up in the way and circumstances in which a company may be wound-up under the Corporations Law.

Winding-up on certificate of SSA

402.(1) In the case of a winding-up on a certificate of the SSA, the society may be wound-up if the SSA certifies that any of the following events has happened—

(a) that the number of members is reduced to less than 25;

(b) that the society has not started business within a year of registration or has suspended or ceased to carry on business for a period of more than 6 months;

(c) that an event(to be specified in the certificate) has happened on the happening of which the regulations or the society's rules provide that the society is to be wound-up;

(d) that the registration of the society has been obtained by mistake or fraud;

(e) that the society exists for an illegal purpose;

(f) that the society has, after notice by the SSA of any contravention of this Code or the society's rules, failed, within the time specified in the notice, to remedy the contravention or has committed any further contravention of a kind specified in the notice;

(g) that there are, and have been for a period of 1 month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum as provided by the society's rules;

(h) that, because of an investigation under this Code into the affairs of the society, it is in the interests of the public, members or creditors that the society should be wound-up.

(2) The SSA must not so certify unless—

(a) the event has been proved to its satisfaction; and

(b) in the case of an event mentioned in sub-section (1)(d), (e), (f) or (h), AFIC has been informed of the happening of the event.

(3) If the SSA so certifies, the SSA may appoint a person to be the liquidator of the society.

(4) The liquidator appointed by the SSA may be employed in the office of the SSA and, if so, need not be a registered liquidator under the Corporations Law.

(5) The liquidator, unless employed in the SSA's office is entitled to receive an amount of remuneration that the SSA considers appropriate, having regard to the rate of payment that normally would apply for such an appointment.

(6) Any vacancy in the office of a liquidator appointed under sub-section (3) must be filled by a person appointed by the SSA for the purpose.

(7) A winding-up on a certificate of the SSA is taken to commence on the date that the certificate is issued by the SSA.

(8) The liquidator must, within 14 days after the appointment, give notice of the appointment by Gazette notice.

Application of Corporations Law to winding-up

403.(1) Subject to this Part, Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7A, 5.7B (except section 588G) and 5.9 of the Corporations Law apply, with all necessary modifications and any prescribed modifications, to or in relation to the winding-up or dissolution of a society or to a defunct or dissolved society.

(2) Without limiting sub-section (1), a reference in Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7A, 5.7B (except section 588G) and 5.9 of the Corporations Law—

(a) to a special resolution, is a reference to a special resolution of the society within the meaning of this Code; and

(b) to the Commission, is a reference to the SSA; and

(c) to a voluntary winding-up, includes a reference to a winding-up of a society on a certificate of the SSA.

Voluntary winding-up

404.(1) If a society is to be wound-up voluntarily, a person employed in the office of the SSA may be appointed liquidator.

(2) If a society is being wound-up voluntarily and a vacancy happens in the office of liquidator, a person employed in the office of the SSA may be appointed liquidator to fill the vacancy.

(3) An appointment under sub-section (1) or (2) is not effective unless made with the written approval of the SSA.

(4) A person appointed as liquidator under this section need not be a registered liquidator under the Corporations Law.

(5) The remuneration payable in relation to a liquidator appointed under this section must be paid to the SSA.

Vacancy in office of liquidator on voluntary winding-up

405. Where—

(a) a society is being wound-up voluntarily; and

(b) the liquidator was not appointed under section 404; and

(c) a vacancy happens in the office of liquidator that, in the SSA's opinion, is unlikely to be filled in the way provided by Part 5.5 of the Corporations Law—

the SSA may appoint as liquidator, a person qualified under that Part for such appointment.

Remuneration of liquidator on voluntary winding-up

406. Despite anything in this Code or in the Corporations Law, the remuneration paid to the liquidator of a society wound-up voluntarily must not exceed the amount fixed by the SSA.

Priority on winding-up

407.(1) Subject to this section, in the winding-up of a society, the assets of a society must first be applied in accordance with the provisions of the Corporations Law referred to in section 403(1) in discharging debts and claims referred to in section 556(1) of that Law.

(2) Sub-section (1) has effect in relation to the assets of a benefit fund of a society only to the extent that debts or claims are liabilities that are referable to the fund.

(3) If any assets remain after the application of sub-section (1)—

(a) any remaining assets of a benefit fund must be applied in the following order of priority—

(i) first, in discharge of any liabilities of the society referable to the fund other than liabilities determined under section 408; and

(ii) secondly, in discharge of any liabilities of the society referable to the fund determined under section 408; and

(b) any remaining assets of the management fund must be applied in discharge of any liabilities of the society.

(4) If any assets remain after the application of sub-sections(1) and(3), those assets must be applied in such a manner as the Court considers equitable, having regard to—

(a) the interests of the members of the society;

(b) the interests of creditors of the society whose debts have not been discharged.

(5) If a liability of the society—

(a) is referable to 2 or more benefit funds; or

(b) is referable in part to a benefit fund and in part to other business carried on by the society—

the liquidator may apportion the liability according to the proportion of the liability borne by the benefit fund, or each benefit fund, as the case may be.

(6) In making an apportionment under sub-section (5), the liquidator must comply with any directions of the Court.

(7) The part of a liability apportioned to a benefit fund under sub-section (5) is to be treated as a liability of the society that is referable to that fund.

Determination of amounts to be treated as liabilities

408.(1) In relation to each person who, according to the society's records, appears to have an interest in a benefit fund, the liquidator must determine—

(a) whether the society has a liability to the person in respect of that interest; and

(b) if the society has such a liability, the amount of that liability.

(2) Determinations under sub-section (1) must be made by reference to the rules of the society and in accordance with any directions of the Court.

(3) The liquidator must notify each person referred to in sub-section (1) of the amount determined under that sub-section and, if the person has more than one interest in the benefit fund, the amount determined in respect of each interest.

(4) If the liquidator determines an amount under sub-section (1), for the purposes of the winding up—

(a) the society is to be taken to have a liability referable to the benefit fund in that amount to the person to whom the determination relates; and

(b) subject to sub-section (5), that person is bound by the liquidator's determination.

(5) A person who is notified of an amount under sub-section (3) may dispute the amount—

(a) in accordance with the rules of the Court; or

(b) as the Court otherwise directs in a particular case.

Cancellation of registration

409. As soon as practicable after the society is dissolved or taken to be dissolved, the SSA must register the dissolution and cancel the registration of the society.

PART 10—SPECIAL INVESTIGATIONS

Definition

410.(1) In this Part—

"officer", in relation to a society, includes—

(a) a person who acts, or who at any time acted, as banker, solicitor, auditor, actuary or in any other capacity for the society; and

(b) a person who—

(i) has, or has at any time had, in his or her possession any property of the society; or

(ii) is indebted to the society outside the normal trading terms of the person's membership; or

(iii) is capable of giving information concerning the affairs of the society; and

(c) if an investigator has reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph(b), that person.

(2) A reference in this Part to a society includes—

(a) if the SSA has given consent under section 412, a reference to a related body corporate; and

(b) other than in that section, a reference to a services corporation.

(3) Where 2 or more investigators have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a society, each of those investigators may exercise the powers or perform the functions under this Part independently of the other investigator or investigators.

Appointment of investigators

411.(1) The SSA may appoint an investigator to investigate the affairs of a society if the SSA considers that it is desirable to do so—

(a) for the protection of the public, or of the members or creditors of the society; or

(b) in the public interest.

(2) The SSA may appoint a person as investigator only if the person has, in the SSA's opinion, the appropriate expertise for the position (whether because of training or otherwise).

(3) The SSA must, in the instrument appointing an investigator, specify full particulars of the appointment including—

(a) the matters into which the investigations are to be made, being all the affairs or particular affairs of the society; and

(b) the terms and conditions (if any) to which the appointment is subject.

(4) The SSA—

(a) may, in the instrument appointing an investigator, specify the period in relation to which the investigation is to be made; and

(b) may, at any time by written notice given to an investigator, vary—

(i) particulars specified in the instrument of appointment, being particulars mentioned in sub-section (3)(a) or (b); or

(ii) the period in relation to which the investigation is to be made.

(5) The SSA may, by written notice given to an investigator, terminate the appointment at any time.

Investigation of affairs of related body corporate

412. If an investigator thinks it necessary, for the purposes of the investigation of affairs of a society, to investigate affairs of a body corporate that is or has at any relevant time been a related body corporate of the society, the investigator may with the written consent of the SSA investigate affairs of that body.

Powers of investigators

413.(1) An investigator may, by giving written notice to an officer of a society the affairs of which are being investigated under this Part, require the officer—

(a) to produce to the investigator all documents of the society and other documents relating to affairs of the society as are in the custody or under the control of the officer; and

(b) to give to the investigator all reasonable assistance in connection with the investigation; and

(c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation.

(3) An investigator must not exercise his or her powers under sub-section (1) in relation to an officer of a body corporate the affairs of which he or she is investigating under section 412 unless he or she has given to the officer of the body corporate a certificate stating that he or she is investigating affairs of the body corporate under that section and that the officer is an officer of the body corporate.

(4) Where documents are produced to an investigator under this Part, the investigator may take possession of the documents for such period as he or she considers necessary for the purpose of the investigation.

(5) During that period, the investigator must permit a person who would be entitled to inspect any one or more of those documents, if they were not in the possession of the investigator, to inspect at all reasonable times such of those documents as that person would be so entitled to inspect.

Examination of officers

414.(1) If affairs of a society are being investigated under this Part, an officer of the society must not—

(a) fail to comply with a requirement of an investigator under section 413 to the extent to which he or she is able to comply with it; or

(b) in purported compliance with such a requirement, knowingly give information that is false or misleading in a material particular; or

(c) when appearing before an investigator for examination under such a requirement—

(i) make a statement that is false or misleading in a material particular; or

(ii) fail to be sworn or make an affirmation.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

(2) A legal practitioner acting for the officer—

(a) may attend the examination; and

(b) may, to the extent that the investigator permits—

(i) address the investigator; and

(ii) examine the officer—

in relation to matters in relation to which the investigator has questioned the officer.

(3) A person who complies with the requirement of an investigator under this section does not incur any liability to any person merely because of that compliance.

(4) A person required to attend for examination under this Part is entitled to such allowances and expenses as are prescribed.

Self-incrimination

415.(1) An officer is not excused from—

(a) answering a question put to the officer by an investigator; or

(b) producing a document to an investigator—

on the ground that the answer or production of the document might tend to incriminate the officer.

(2) The answer is not admissible in evidence against the officer in a criminal proceeding(other than a proceeding in relation to the falsity of the answer or document) if—

(a) before answering the question or producing the document, the officer claims that answering the question or production of the document might tend to incriminate the officer; and

(b) answering the question or production of the document might in fact tend to incriminate the officer.

Privileged communications

416.(1) An officer who is a legal practitioner may refuse to give information or produce a document to an investigator if—

(a) the information or document is a privileged communication between the legal practitioner as such and another person; and

(b) the other person does not agree to its being given or its production; and

(c) sub-section (2) does not apply.

(2) If the society to which the information or document relates is being wound-up, the legal practitioner must give the information or produce the document if the liquidator agrees to its being given or to its production.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

(3) A legal practitioner commits an offence if he or she—

(a) refuses to give information or produce a document to an investigator on the ground that it is a privileged communication between the legal practitioner and another person who has not agreed to its being given or to its production; and

(b) knows the name of that other person and the residential or other address at which the person might be found; and

(c) fails to comply with a request by the investigator to supply the investigator with that name and address in writing.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

Failure of officer to comply with requirement of investigator

417.(1) If an officer of a society fails to comply with a requirement of an investigator appointed to investigate affairs of the society, the investigator may, unless the officer proves that the officer had a lawful excuse for the failure, certify the failure by signed writing to the Court.

(2) If an investigator gives a certificate under sub-section (1), the Court may inquire into the case and—

(a) order the officer to comply with the requirements of the investigator within a period fixed by the Court; or

(b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator, punish the

officer in like way as if the officer had been guilty of contempt of the Court and may also make an order under paragraph(a).

Recording of examination

418.(1) An investigator may cause to be made a record of the questions asked and the answers given at an examination under this Part.

(2) Except as provided by section 415, a record of the examination of any person under this Part may be used in evidence in any legal proceeding against the person.

(3) A copy of the record of the examination of any person must be given without fee to the person upon the written request of the person.

(4) Nothing in this section affects or limits the admissibility of other written or oral evidence.

(5) The SSA may give a copy of the record of any examination made under this section to a legal practitioner who satisfies the SSA that he or she is acting for a person who is conducting, or is in good faith contemplating, legal proceedings in relation to affairs being investigated by an investigator under this Part.

(6) A legal practitioner to whom a copy of a record is given under sub-section (5) must—

(a) use the record only in connection with the institution or preparation of, and in the course of, legal proceedings; and

(b) not publish or communicate the record or any part of it for any other purpose.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

(7) If a report is made under section 420, any record made under this section relating to that report must be given with the report.

Delegation of powers by investigator

419.(1) An investigator may delegate the investigator's powers under this Part except—

(a) the power to administer oaths or affirmations; and

(b) the power to examine on oath or affirmation.

(2) A delegate must produce the instrument of delegation for inspection on request by an officer of a society the affairs of which are being investigated under this Part.

Report of investigator

420.(1) An investigator may, and if so directed by the SSA must, make interim reports to the SSA.

(2) On the completion or termination of the investigation, the investigator must report to the SSA the investigator's opinion in relation to the affairs the investigator has investigated, together with the facts on which the opinion is based.

(3) An investigator may, when making a report under this section, give to the SSA any documents of which the investigator has taken possession under section 413(4).

(4) The SSA—

(a) may retain the documents for such period as it considers to be necessary to enable a decision to be made as to whether or not any legal proceeding ought to be instituted because of the investigation; and

(b) may retain the documents for such further period as it considers to be necessary to enable any such proceeding to be instituted and prosecuted; and

(c) may permit other persons to inspect the documents while they are in its possession; and

(d) may permit the use of the documents for the purposes of any legal proceeding instituted as a result of the investigation; and

(e) must permit a person who would be entitled to inspect any of the documents if they were not in the possession of the SSA to inspect at all reasonable times such of the documents as the person would be so entitled to inspect.

(5) Subject to sub-section (6), a copy of a final report must, and a copy of the whole or any part of an interim report may if the SSA considers it appropriate, be forwarded by the SSA to the registered office of the society to which it relates.

(6) The SSA is not bound to give a society or any other person a copy of a report, or any part of a report, by an investigator if the SSA is of the opinion that there is good reason for not divulging the contents of the report or part.

(7) The SSA may, if it is of the opinion that it is in the public interest to do so, cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this Part to be forwarded to the SSA with the report to which the record relates, a copy of the record may, subject to section 418, be given to such persons and on such conditions as the SSA considers appropriate.

Proceedings following investigation

421.(1) If from a report under section 420 or from the record of an examination under this Part, the SSA is of the opinion that an offence may have been committed by a person and that a prosecution ought to be instituted, the SSA must cause a prosecution to be instituted and prosecuted.

(2) The SSA may, by written notice given before or after the institution of a prosecution under sub-section (1), require an officer of the society the affairs of which were investigated(not being an officer who is or, in the opinion of the SSA, is likely to be, a defendant in the proceeding) to give all assistance in connection with the prosecution or proposed prosecution that he or she is reasonably able to give.

(3) If a person to whom a notice is given under sub-section (2) fails to comply with the requirement specified in the notice, the Court may on the application of the SSA, direct that person to comply with the requirement.

(4) If from a report of an investigator made under section 420 or from the record of an examination under this Part, the SSA is of the opinion that proceedings ought in the public interest to be brought by a society the affairs of which were investigated by the investigator, for the recovery of damages in relation to fraud, misfeasance or other misconduct in connection with affairs of the society, or for the recovery of property of the society, the SSA may cause proceedings to be instituted accordingly in the name of the society.

Admission of investigator's report in evidence

422.(1) A document certified by the SSA as a copy of an investigator's report is admissible in legal proceedings as evidence of—

(a) the investigator's report of his or her opinion for the purposes of Part 9; and

(b) any facts or matters found by the investigator to exist.

(2) The court before which legal proceedings are brought against a society or other person for or in respect of matters dealt with in an investigator's report under section 420 may order that a copy of the report be given to that society or person.

(3) Nothing in this section operates to diminish the protection given to witnesses by law.

Expenses of investigation

423.(1) Subject to this section, the expenses of and incidental to an investigation under this Part(including the costs incurred and payable by the SSA in a proceeding

brought by it in the name of a society) must be paid by the SSA.

(2) If the SSA is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a society under this Part(including the costs incurred and payable by it in a proceeding brought by it in the name of a society) should be paid by the society, the SSA may—

- (a) by order direct that the whole, or part of, the expenses be so paid; or
- (b) if they have been paid under sub-section (1), direct the society to reimburse the SSA; or
- (c) in either case, direct the society to reimburse the SSA in relation to the remuneration of any employee of the SSA concerned with the investigation.

(3) An order under sub-section (2) may specify—

- (a) the amount of the expenses to be paid or reimbursed; and
- (b) the time or times and the way in which the payment or reimbursement of the expenses is to be made.

(4) If an order has been made by the SSA under sub-section (2), the society named in the order, to the extent specified in the order, is liable to pay the expenses or reimburse the SSA in relation to the expenses.

(5) An amount for which the society is liable under an order under sub-section (2) may be recovered as a debt due to the SSA in a court having jurisdiction for the recovery of debts up to the amount concerned.

(6) An investigator may include in the report a recommendation whether—

- (a) an order under sub-section (2) should be made; or
- (b) an application under sub-section (7) for a like order should be made; or
- (c) both an order and an application should be made.

(7) An application may be made to a court by or on behalf of the SSA for the court to make the same order as the SSA is empowered to make under sub-section (2).

(8) The court may make an order with respect to the application or its subject matter as it considers appropriate.

(9) Sub-sections (3), (4) and (5) apply to an order by the court as if it were an order made by the SSA.

(10) An application under sub-section (7) may be made—

- (a) during proceedings in the court instituted in the name of the society under section 421(4); or
- (b) on, or within 14 days after, a conviction by the court in proceedings certified by the SSA for the purposes of the application to have been instituted as a result of an investigation under this Part of affairs of a specified society.

Offences

424. A person who—

- (a) conceals, destroys, mutilates or alters a document of or relating to a society the affairs of which are being investigated under this Part; or
- (b) sends, causes to be sent or conspires with another person to send, out of this State such a document or any property belonging to or under the control of the society—

commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Defence

425. In a prosecution for an offence against section 424, it is a defence if the person charged proves that he or she did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

PART 11—FOREIGN SOCIETIES

Definitions

426. In this Part—

"carrying on business" means—

- (a) establishing or using an office for receiving amounts in consideration of the acquisition of an interest in a society or contributions to a benefit fund of a society; or
- (b) advertising in relation to raising share capital or inviting contributions to a benefit fund of a society—

but does not include—

- (c) maintaining an account at a bank, building society or credit union; or
- (d) creating evidence of a debt or creating a charge on property; or
- (e) securing or collecting any debts or enforcing rights in respect of such debts; or
- (f) conducting an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (g) investing funds or holding property; or
- (h) continuing to provide benefits to, and accept contributions to a benefit fund from, a member who, at the time of applying to contribute to a benefit fund, was resident in another State and has subsequently moved to this State; or
- (i) continuing to receive amounts in consideration of an interest in a society from a member who, at the time of acquiring the interest, was resident in another State and has subsequently moved to this State.

Registration

427.(1) A body corporate that is a society under the friendly societies legislation of another participating State and that proposes to carry on business as a society in this State may apply to the SSA in the prescribed way to be registered as a foreign society.

(2) An application for registration as a foreign society must be accompanied by—

- (a) a certificate issued within the preceding 2 months by the SSA of the participating State in which the society is incorporated stating that it considers there is no good reason why the society should not be registered as a foreign society in this State;
- (b) the documents given to the society under the provisions of the friendly societies legislation of the participating State corresponding to section 436(2); and
- (c) a statutory declaration by 2 directors of the society stating—
  - (i) the name and address of the office of the person who is to act as agent of the society in this State; and
  - (ii) any names that the society proposes to use in this State that have been approved under Part 6A of the AFIC Code and the conditions for the use of any approved name; and
- (ca) the prescribed fee; and
- (d) any documents prescribed for the purpose of this section.

(3) If, on due application, the SSA is satisfied that the society is eligible for registration, the SSA must—

(a) register the society as a foreign society and issue a certificate of registration in accordance with the regulations;

(4) A society is not eligible for registration under this section unless each name under which it proposes to carry on business in this State—

(a) is identical with a name under which it carries on business in the participating State in which the society is incorporated; and

(b) has been reserved for the society for use in this State by AFIC under Part 6A of the AFIC Code.

Agents

428.(1) A foreign society must appoint a person to act as agent for it in this State and must ensure that, at all times, it has such an agent.

(2) A foreign society must—

(a) appoint an agent who is a person ordinarily resident in this State or a body corporate incorporated in this State; and

(b) obtain the written consent of the agent to act as the agent of the society in this State; and

(c) authorise the agent to accept on the society's behalf service of processes and notices; and

(d) ensure that the agent maintains an office in this State and that the office is attended by the agent or a representative of the agent at all times during ordinary business hours.

Liability of agent

430. An agent of a foreign society—

(a) is answerable for the doing of all acts, matters and things that the foreign society is required by or under this Code to do; and

(b) is personally liable to a penalty imposed on the foreign society for a contravention of this Code if the court or tribunal hearing the matter is satisfied that the agent should be so liable.

Service on agent

431.(1) A document may be served on a foreign society by leaving a copy of the document at, or posting it to, the office of the agent of the foreign society in this State.

(3) Nothing in this section affects—

(a) the power of the Court to authorise a document to be served on a foreign society in a manner not provided for by this section; or

(b) the operation of the law of a State or the Commonwealth authorising a document to be served on a foreign society in a manner not provided for by this section.

Application of Code to foreign societies

432. The prescribed provisions of this Code apply, with all necessary modifications and any prescribed modifications, to a foreign society as if the foreign society were a society.

SSA to be notified of certain changes

433.(1) A foreign society must, within one month after a change affecting the agent of the foreign society(or the address of the agent's office), lodge with the SSA particulars of that change accompanied by the prescribed documents.

(2) A change referred to in sub-section (1) takes effect at the end of the day on which the society lodges the particulars and the documents required under sub-section (1).

Cessation of business

435.(1) A foreign society must, within 7 days of ceasing to carry on business as a society in this State, notify the SSA in writing of that fact.

Maximum penalty: $25 000.

(2) On notifying the SSA that it has ceased to carry on business as a society in this State, a foreign society is no longer obliged to comply with this Part.

(3) Unless the SSA has been notified in writing that the foreign society has resumed carrying on business as a society in this State, the SSA must, one year after receiving a notification under sub-section (1), cancel the registration of the foreign society.

Society proposing to register as foreign society

436.(1) A society that proposes to apply to be registered as a foreign society in another participating State may apply to the SSA for a certificate stating that it considers that there is no good reason why the society should not be registered as a foreign society.

(1A) An application under sub-section (1) must be accompanied by the prescribed fee.

(2) If the SSA issues the certificate, it must also give to the society the prescribed documents.

SSA to provide certain documents

437. The SSA, on request by the SSA of a participating State in which a foreign society (within the meaning of this Code) is registered as a society must, without charge, provide copies of any public documents that may be inspected at the office of the SSA in this State.

PART 12—ASSOCIATIONS

Formation of associations

438. A body proposed to be an association may be formed by 2 or more societies.

Objects of associations

439. The objects of an association are such of the following as are authorised by the rules of the association—

(a) to promote the interests of, and strengthen co-operation among, societies;

(b) to render services, other than financial or commercial services, to its members;

(c) to act on behalf of its members;

(d) to advocate and promote practices and reforms that may be conducive to objects of the association;

(e) to co-operate with other bodies with similar objects;

(f) to promote the formation of societies;

(g) to encourage the formulation, adoption and observance by societies of standards and conditions governing the carrying on of their business;

(h) to perform such other functions as may be prescribed.

Registration

440.(1) Two or more societies may apply to the SSA, in accordance with the regulations, for a body to be registered under this Part as an association.

(2) The application must be accompanied by—

(a) the proposed rules of the body; and

(b) such other documents as are prescribed; and

(c) such evidence as the SSA requires—

(i) that the body is eligible for registration as an association; and

(ii) that the body, if registered, will be able to comply with the friendly societies legislation and all applicable standards; and

(d) the prescribed fee.

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

(4) If the SSA is satisfied that the body is eligible for registration, the SSA must register the body as an association and register its proposed rules.

(5) A body is eligible for registration as an association only if—

(a) the body's application for registration complies with this Part; and

(b) the proposed rules of the body are not contrary to the friendly societies legislation; and

(c) the objects of the body are appropriate for an association; and

(d) there are reasonable grounds for believing that the body will, if registered, be able to carry out its objects successfully; and

(e) there is no good reason why the body should not be registered.

Certificate of incorporation

441.(1) On registering an association under this Part, the SSA must issue a certificate of incorporation to the association.

(2) A certificate of incorporation is conclusive evidence that all requirements of this Part in relation to registration and matters precedent or incidental to registration have been complied with.

Effect of incorporation

442. On the issue under this Part of a certificate of incorporation to an association, the association is a body corporate with perpetual succession and—

(a) has, subject to this Code and the association's rules, the legal capacity of a natural person; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

Membership

443.(1) The members of an association are the societies by which the association is formed, and any other societies that are admitted to membership of the association under its rules.

(2) A body corporate that is a society under the friendly societies legislation of another participating State may be admitted to membership of an association.

Share capital

444. The share capital (if any) of an association must be divided into shares in accordance with its rules.

Meetings

445.(1) Meetings of the members of an association must be convened and conducted under the association's rules.

(2) A member of an association is, at any such meeting, entitled—

(a) to be represented; and

(b) to exercise voting rights;

under the rules.

(3) An association must cause full and accurate minutes to be kept of every meeting of its board and of the members of the association.

Application of Code to associations

446. The prescribed provisions of this 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

Reviewable decisions

447.(1) Every decision of the SSA made under the friendly societies legislation is a reviewable decision.

(2) Sub-section (1) does not apply to—

(a) a decision under—

(i) section 25 (Application of variation under standards); or

(ii) Subdivision 2 (Enforcement powers) of Division 2 of Part 2; or

(iii) section 43 (Special meeting and inquiry); or

(iv) section 45 (Power to suspend operations); or

(v) section 46 (Appointment of administrator); or

(vi) Subdivision 7 (Levies) of Division 2 of Part 2; or

(vii) section 55 (Power to control advertising); or

(viii) section 228 (Issue of preference shares); or

(ix) section 367 (SSA may direct a transfer of engagements between societies); or

(x) Part 10 (Special investigations); or

(b) a decision under section 44 (Intervention by SSA) other than—

(i) a decision to remove an individual director; or

(ii) a decision to remove an auditor; or

(iii) a decision to remove an actuary; or

(iv) a decision directing a society to change any practice if the practice is not dealt with by a standard; or

(c) a decision prescribed by a regulation made for the purposes of this sub-section.

Application for review of decisions

448.(1) A person whose interests are affected by a reviewable decision may apply to the Appeals Tribunal for review of the decision.

(2) The Appeals Tribunal has 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.

Application of AFIC Code

449.(1) The AFIC Code applies to the review of reviewable decisions by the Appeals Tribunal.

(2) Without limiting sub-section (1), the AFIC Code applies to—

(a) the parties to proceedings before the Appeals Tribunal; and

(b) the conduct of proceedings before the Appeals Tribunal; and

(c) the places where the Appeals Tribunal may sit; and

(d) the powers of the Appeals Tribunal and its members; and

(e) payment of costs; and

(f) appeals from decisions of the Appeals Tribunal; and

(g) the operation and implementation of decisions that are the subject of review or appeal; and

(h) the protection and immunity of members of the Appeals Tribunal, persons representing parties before the Tribunal and persons summoned to attend or appearing before the Tribunal; and

(i) offences in relation to the Appeals Tribunal and proceedings of the Tribunal.

SSA to review certain decisions

450.(1) A person whose interests are affected by a decision of the SSA made under the friendly societies legislation (other than a decision to cancel the certificate of approval of an auditor or to refuse to consent to the resignation of an auditor) may, by written notice given to the SSA within 1 month after the decision is made, request the SSA to review the decision.

(1A) A notice under sub-section (1) must be accompanied by the prescribed fee.

(2) The SSA must comply with a request under sub-section (1).

(3) When reviewing a decision, the SSA must give the person who requested the review an opportunity to appear before the SSA and make a submission in relation to the decision.

(4) The SSA may confirm, vary or reverse the decision.

(5) Section 448 applies whether or not a person has requested a review of a decision under this section.

PART 14—MISCELLANEOUS

Division 1—Evidence

Certificates etc.

451.(1) In a proceeding, a document that appears to be a certificate of registration, certificate of incorporation or other certificate, or an authority, issued by the SSA under this Code, or a copy of any such document appearing to be certified as such by the SSA, is evidence of the matters stated in the certificate, authority or copy.

(2) Judicial notice must be taken of the imprint of the SSA's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

(3) A copy of, or extract from, a document lodged with, created by or otherwise held by the SSA, and certified to be a true copy or extract under the SSA's seal—

(a) is as admissible in a proceeding as the original document; and

(b) has the same validity in evidence as the original document or the extracted part of the original document.

(4) In a proceeding, a certificate of the SSA stating that a requirement of this Code specified in the certificate—

(a) had, or had not, been complied with at a date or within a period specified in the certificate; or

(b) had been complied with at a date specified in the certificate but not before that date—

is evidence of the matters specified in the certificate.

Rules

452. A printed copy of the rules of a society appearing to be certified by the society's secretary to be a true copy of its registered rules is evidence of the rules.

Registers

453.(1) The registers kept under this Code are evidence of the particulars directed or authorised by or under this Code to be inserted.

(2) A copy of an entry in a register is, if apparently certified by the secretary of the society concerned to be a true copy of the entry in question, evidence of the particulars to which the entry relates.

Minutes

454.(1) An entry in the minutes purporting to be—

(a) a minute of the business transacted at a meeting of a society, members of a benefit fund of the society, or the society's board; and

(b) signed by the chairperson of the meeting at which the business was transacted or a subsequent meeting—

is evidence that the business as recorded was transacted at the meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a society, or of members of a benefit fund of the society, to the effect that a resolution was carried or was lost is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

Entries

455. A copy of an entry in a book of a society regularly kept in the course of business is, if certified by statutory declaration of the secretary to be a true copy of the entry, admissible in evidence in any case where, and to the same extent as, the original entry itself is admissible.

Division 2—Offences

Defaults by societies

456.(1) A society must comply with a lawful requirement under the friendly societies legislation to give information to the SSA or another person.

(2) If a society contravenes sub-section (1), the society and any officer of the society who is in default each commit an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Restrictions on powers

457.(1) A society must not contravene a restriction imposed on its powers, or in relation to its exercise of its powers, under the friendly societies legislation.

Maximum penalty: $100 000.

(2) Without limiting sub-section (1), a society must not—

(a) accept as a member a person who is not eligible for membership under the society's rules; or

(b) raise money on loan or accept contributions to a benefit fund except as authorised and within the limits imposed by the friendly societies legislation or, subject to that legislation, the society's rules.

(3) If a society contravenes this section, any officer of the society who is in default commits an offence.

Maximum penalty applying to sub-section (3): $100 000 or imprisonment for 15 years, or both.

Offences by officers

458.(1) In this section and sections 459 and 460—

"appropriate officer" means—

(a) in relation to a society that is being wound-up, the liquidator; and

(b) in relation to a society that is under the management of an administrator, the administrator; and

(c) in relation to a society the affairs of which are being investigated under Part 10, the person nominated as the appropriate officer in the particular case by the SSA; and

(d) in relation to a society in relation to which a receiver or manager of all or any of the society's property has been appointed, whether by the Court or under the powers contained in any instrument, the receiver or manager; and

(e) in relation to a society that, within the meaning of sub-section (2), has ceased to carry on business or is unable to pay its debts, the SSA;

"society to which this section applies" means a society—

(a) that is being wound-up; or

(b) that is under the management of an administrator; or

(c) the affairs of which are being investigated under Part 10; or

(d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or

(e) that, within the meaning of sub-section (2), has ceased to carry on business or is unable to pay its debts;

"the relevant day" means—

(a) in relation to a society that is being wound-up, the day on which under this Code the winding-up has started or is taken to have started; and

(b) in relation to a society that is under the management of an administrator, the day on which the administrator is appointed; and

(c) in relation to a society the affairs of which are being investigated under Part 10, the day on which the investigator under that Part was appointed; and

(d) in relation to a society in relation to which a receiver or manager has been appointed, the day on which the receiver or manager was appointed; and

(e) in relation to a society that is, within the meaning of sub-section (2), unable to pay its debts, the day on which the execution or other process was returned unsatisfied in whole or in part; and

(f) in relation to a society that has, within the meaning of sub-section (2), ceased to carry on business, the day on which a letter was first sent to the society or a notice was first published in the Gazette in relation to the society.

(2) For the purposes of sub-section (1), a society is taken to have ceased to carry on business if the SSA—

(a) has sent to the society by post a letter under section 572(1) of the Corporations Law as applied by Part 9 of this Code and has not, within one month of sending the letter, received an answer to the effect that the society is carrying on business; or

(b) has published in the Gazette a notice under section 572(3) of that Law as so applied.

(3) An officer, or former officer, of a society to which this section applies who—

(a) does not to the best of the person's knowledge and belief fully and truly disclose to the appropriate officer—

(i) all the property of the society; and

(ii) how and to whom and for what consideration and when the society disposed of any part of its property, except such part as has been disposed of in the ordinary course of the society's business; or

(b) does not deliver up to the appropriate officer, or as the appropriate officer directs—

(i) all the property of the society in the person's custody or under the person's control and that the person is required by law to deliver up; or

(ii) all documents in the person's custody or under the person's control belonging to the society and that the person is required by law to deliver up; or

(c) within 5 years before the relevant day or at any time on or after that day—

(i) has concealed any part of the society's property to the value of $100 or more, or has concealed a debt due to or from the society; or

(ii) has fraudulently removed part of the society's property to the value of $100 or more; or

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of a document affecting, or relating to, the society's property or affairs; or

(iv) has made, or has been privy to the making of, a false entry in any document affecting, or relating to, the society's property or affairs; or

(v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making an omission in a document affecting or relating to the society's property or affairs; or

(vi) by a false representation or other fraud, has obtained on credit for or on behalf of the society, property that the society has not subsequently paid for; or

(vii) has obtained on credit for or on behalf of the society, under the false pretence that the society is carrying on business, property that the society has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any of the society's property that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the society's business; or

(d) knowingly makes any material omission in any statement relating to the society's affairs; or

(e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the appropriate officer of the knowledge or belief; or

(f) prevents the production of any document affecting or relating to the society's property or affairs; or

(g) within 5 years before the relevant day, or at any time on or after that day, has attempted to account for any part of the society's property by making entries in the society's documents showing fictitious transactions, losses or expenses; or

(h) within 5 years before the relevant day, or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the society's creditors or any of them to an agreement relating to the society's affairs or to the winding-up—

commits an offence.

Maximum penalty applying to sub-section (3): $100 000 or imprisonment for 15 years, or both.

(4) It is a defence to a charge—

(a) under sub-section (3)(a), (b) or (d) or sub-section (3)(c)(i), (vii) or (viii), if the accused person proves that the person had no intent to defraud; and

(b) under sub-section (3)(c)(iii) or (iv) or sub-section (3)(f), if the accused person proves that the person had no intent to conceal the state of affairs of the society or to defeat the law.

(5) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under sub-section (3)(c)(viii), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

Maximum penalty applying to sub-section (5): $100 000 or imprisonment for 15 years, or both.

Incurring debts not likely to be paid

459.(1) If an officer of a society to which section 458 applies was knowingly a party to the contracting of a debt by the society and had at the time the debt was contracted, no probable or reasonable grounds of expectation, after taking into consideration the society's

other liabilities (if any) at the time, of the society being able to pay the debt, the officer commits an offence.

Maximum penalty: $25 000.

(2) If any business of a society to which section 458 applies has been carried out with intent to defraud the society's creditors or creditors of another person or for any fraudulent purpose, a person who is knowingly a party to the carrying on of the business in that way commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Powers of Court

460.(1) If a person has been convicted of an offence under section 459, the Court on the application of the SSA or a prescribed person may declare that the person is personally responsible without any limitation of liability—

(a) in the case of a conviction under section 459(1), for the payment to the society of an amount equal to the whole of the debt to which the conviction relates or such part of the debt as the Court considers appropriate; and

(b) in the case of a conviction under section 459(2), for the payment to the society of the amount required to satisfy all or any of the society's debts as the Court considers appropriate.

(2) In relation to a society to which a conviction mentioned in sub-section (1) relates—

(a) the appropriate officer; and

(b) a creditor of the society authorised by the SSA to make an application under sub-section (1)—

are prescribed persons for the purposes of that sub-section.

(3) If the Court makes a declaration under sub-section (1) in relation to a person it may—

(a) give such further directions as it considers proper for the purpose of giving effect to the declaration and, in particular, may order that the liability of the person under the declaration is a charge on—

(i) a debt or obligation due from the society to the person; or

(ii) any charge or any interest in any charge on any of the society's assets held by or vested in the person or any body corporate or person on the person's behalf or any person claiming as assignee from or through the person liable or any body corporate or person acting on the person's behalf; or

(b) from time to time make such further order as is necessary for the purpose of enforcing a charge imposed under this sub-section.

(4) This section has effect despite the fact that the person concerned is criminally liable in relation to the matters on the ground on which the declaration is made.

(5) On the hearing of an application under sub-section (1), the appropriate officer or other applicant may give evidence or call witness.

(6) In sub-section (3)—

"assignee" includes any person to whom or in whose favour, by the direction of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the matters on which the conviction or declaration was made.

Inducement to be appointed as liquidator

461. A person must not give, or agree or offer to give, to a member or creditor of a society valuable consideration with a view to securing the person's appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the liquidator of the society.

Maximum penalty: $75 000 or imprisonment for 10 years, or both.

Falsification of records

462.(1) An officer of a society must not destroy, mutilate, alter or falsify a document or security, or make or be privy to the making of any false or fraudulent entry in a document, belonging to the society with intent to defraud or deceive a person.

(2) A person who, having a duty to record information in the documents of a society, fails to record the information in the documents—

(a) with intent to defraud another person; or

(b) knowing that the failure will render other matter contained in the documents false or misleading in a material particular—

commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Frauds by officers

463. An officer of a society who—

(a) by false pretence, or by means of another fraud, induces a person to give credit to the society; or

(b) with intent to defraud creditors of the society, makes or causes to be made a gift or transfer of, or charge on, or causes or connives at the levying of any execution against, the society's property; or

(c) with intent to defraud the society's creditors, conceals or removes part of the society's property within 2 months before, or after, the date of any unsatisfied judgment or order for payment of money obtained against the society—

commits an offence.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

False or misleading information

464. A person must not make available, or give, information in a return, report, certificate, accounts or other document required by or for the purposes of this Code(other than Part 4B) or the friendly societies legislation or a standard—

(a) that the person knows is false or misleading in a material particular; or

(b) that has omitted from it a matter or thing the omission of which makes the information misleading in a material particular.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Power to examine defaulting officers

465.(1) In this section—

"society to which this section applies" means a society—

(a) that has been, or is being, wound-up; or

(b) that is under the management of an administrator; or

(c) the affairs of which are being investigated under Part 10; or

(d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or

(e) that, within the meaning of sub-section (2), has ceased to carry on business or is unable to pay its debts; or

(f) that has entered into a compromise or scheme of arrangement with its creditors.

(2) For the purposes of sub-section (1), a society has ceased to carry on business in the circumstances mentioned in section 458(2).

(3) This section applies if it appears to the SSA that an officer or former officer of a society to which this section applies has conducted himself or herself in such a way that the officer or former officer has rendered himself or herself liable to action by the society in relation to the performance of the person's duties as an officer of the society.

(4) The SSA, or a person who is authorised by it in that behalf, may apply ex parte to the Court for an order that the officer or former officer must attend before the Court on a day appointed by the Court to be examined as to the person's conduct and dealings as an officer of the society.

(5) An examination under this section must not be held in open court unless the Court otherwise orders.

(6) The Court, on making the order under sub-section (4) or at any subsequent time, on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it considers appropriate.

(7) The application and, with the leave of the Court, a creditor or member of the society, may take part in the examination either personally or by a legal practitioner.

(8) The person examined—

(a) must be examined on oath; and

(b) must answer all questions that the Court puts or allows to be put; and

(c) is not entitled to refuse to answer a question that is relevant or material to the examination on the ground that the answer might tend to incriminate the person.

(9) The answer to a question put to a person under this section is not admissible in evidence against the person in a criminal proceeding(other than a proceeding in relation to the falsity of the answer) if—

(a) before answering the question, the person claims that answering the question might tend to incriminate the person; and

(b) answering the question might in fact tend to incriminate the person.

(10) A person ordered to be examined under this section may be represented by a legal practitioner who is at liberty to put to the person examined any questions for the purpose of enabling the person to explain or qualify any answer given.

(11) Notes of the examination—

(a) must be reduced to writing; and

(b) must be read over to and signed by the person examined; and

(c) may, subject to sub-section (9), be used in evidence in a legal proceeding against the person examined; and

(d) may be inspected and copied by the person examined, the SSA or applicant or, with the consent of the Court, by a creditor or member of the society.

(12) The Court may adjourn the examination from time to time.

(13) If the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or another person who with the consent of the Court takes part in the examination.

Power of Court to assess damages against certain persons

466.(1) In this section—

"society to which this section applies" means a society—

(a) that is being wound-up; or

(b) that is under the management of an administrator; or

(c) the affairs of which are being investigated under Part 10; or

(d) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument; or

(e) that, within the meaning of sub-section (2), has ceased to carry on business or is unable to pay its debts; or

(f) that has entered into a compromise or scheme or arrangement with its creditors;

"prescribed person" means—

(a) a liquidator or provisional liquidator of the society concerned; or

(b) if the society concerned is under the management of an administrator, the administrator or a member of the society; or

(c) a person authorised by the SSA to apply under sub-section (3).

(2) For the purposes of sub-section (1), a society has ceased to carry on business in the circumstances mentioned in section 458(2).

(3) If, on application by the SSA or a prescribed person, the Court is satisfied that a person who has taken part in the formation, promotion, administration, management or winding-up of a society to which this section applies—

(a) has misapplied or retained or become liable or accountable for property of the society; or

(b) has been guilty of negligence, default, breach of trust or breach of duty in relation to the society and that the society has suffered, or is likely to suffer, loss or damage as a result—

the Court may make one or both of the orders mentioned in sub-section (4).

(4) The orders that may be made under sub-section (3) are—

(a) an order directing the person to pay money or transfer property to the society; and

(b) an order directing the person to pay to the society the amount of the loss or damage.

(5) This section applies to the receipt of any money or property by an officer or former officer of the society, whether by way of salary or otherwise, that appears to the Court to have been unfair or unjust to the society or its members.

(6) This section applies despite the fact that the person concerned may be criminally liable in relation to the matters in relation to which the order is sought.

(7) If the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

False copies of rules

467. A person must not—

(a) give to a member of a society or a person intending or applying to become a member, a copy of any rules or any amendment of the rules other than those that have been duly registered, representing that they are binding on the society's members; or

(b) make any amendment in any of the rules of the society after they have been duly registered and circulate them representing that they have been duly registered.

Maximum penalty: $25 000.

Fraud or misappropriation

468. A person must not—

(a) by false representation or imposition obtain possession of property of a society; or

(b) having property of a society in the person's possession, withhold or misapply that property, or wilfully apply part of the property, to purposes other than those specified or authorised in the society's rules or by or under the friendly societies legislation.

Maximum penalty: $100 000 or imprisonment for 15 years, or both.

Commissions

469.(1) An officer of a society must not accept from a person who enters into a transaction with the society a commission, fee or reward, whether pecuniary or otherwise, for or in connection with that transaction.

Maximum penalty: $5000.

(2) An officer of a society who commits an offence against sub-section (1) is indebted to the society for double the value or amount of the commission, fee or reward.

Officers and other persons in default

470. If this Code provides that an officer of a society or other body corporate who is in default commits an offence, the reference to the officer who is in default is, in relation to a contravention of, or an offence against, this Code, a reference to an officer of the society or other body corporate(including a person who subsequently ceased to be such an officer) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.

Division 3—Proceedings

Proceedings for offences

471.(1) A proceeding for an offence against this Code may be brought by—

(a) the SSA; or

(b) a person authorised in writing by the SSA.

(2) A proceeding may be started within—

(a) for an alleged offence not punishable by imprisonment, 2 years; and

(b) for an alleged offence punishable by imprisonment, 5 years;

after the alleged offence is committed or, with the consent of the Minister, at any later time.

Reciprocity in relation of offences

472. If a person does or omits to do anything in this State and the person, if the person had done or omitted to do the thing in another participating State, would have committed an offence against the provision of a law of that State that corresponds with a provision of this Code, the person commits an offence against that provision of this Code.

Continuing offences

473.(1) If—

(a) under this Code anything is required or directed to be done within a particular period or before a particular time; and

(b) failure to do the thing within the period or before the time constitutes an offence; and

(c) the thing is not done within the period or before the time—

then—

(d) the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done; and

(e) if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time, the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues; and

(f) the penalty applicable to each such separate and further offence is $500.

(2) If—

(a) under this Code anything is required or directed to be done but no period within which or time by which the thing is to be done is specified; and

(b) failure to do the thing constitutes an offence; and

(c) a person is convicted of an offence in relation to a failure to do the thing—

the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues and the penalty applicable to each such separate and further offence is $500.

Injunctions

474.(1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

(a) a contravention of this Code; or

(b) attempting to contravene this Code; or

(c) aiding, abetting, counselling or procuring a person to contravene this Code; or

(d) inducing or attempting to induce(whether by threats, promises or otherwise) a person to contravene this Code; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Code; or

(f) conspiring with others to contravene this Code—

the Court may, on the application of the SSA or a person whose interests have been, are or would be affected by the conduct, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring that person to do anything.

(2) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Code, the Court may, on the application of—

(a) the SSA; or

(b) a person whose interests have been, are or would be affected by the failure to do the thing—

grant an injunction, requiring the person to do the thing.

(3) If an application is made for an injunction under sub-section (1) or (2), the Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that the sub-section applies.

(4) The Court may grant an interim injunction pending determination of an application under sub-section (1).

(5) The Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(7) The power of the Court to grant an injunction requiring a person to do a thing may be exercised—

(a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing; and

(b) whether or not the person has previously failed to do the thing; and

(c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(8) If the SSA applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In a proceeding under this section against a person, the Court may make an order under section 299 (Prohibition on transfer of money) in relation to the person.

(10) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

(11) The Court's powers under this section are in addition to its other powers.

Penalty notices

475.(1) If the SSA or a person authorised by it has reason to believe that a person (including a society) has committed a prescribed offence, the SSA or authorised person may serve on the person a notice in accordance with the regulations—

(a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and

(b) setting out the prescribed penalty in relation to the prescribed offence; and

(c) in the case of a prescribed offence constituted by a failure to do a particular thing, stating—

(i) that the obligation to do the thing continues despite the service of the notice or the payment of the prescribed penalty; and

(ii) that if, within the period specified in the notice(not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the thing, no further action will be taken against the person in relation to the prescribed offence; and

(iii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the thing, a proceeding may be instituted against the person; and

(d) in the case of a prescribed offence that is not constituted by a failure to do a particular thing, stating—

(i) that if, within the period specified in the notice(not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and

(ii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person.

(2) Sub-section (1) does not authorise the SSA or an authorised person—

(a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by the person of a particular prescribed offence; or

(b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against the person for the offence under section 471.

(3) If a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by the failure to do a particular thing—

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice and does the thing, no proceedings may be instituted against the person in relation to the prescribed offence; or

(b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice, but has not done the thing, no proceedings may be instituted against the person in relation to the prescribed offence, but the obligation to do the thing continues; or

(c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, but has done the thing, a proceeding may be instituted against the person in relation to the prescribed offence; or

(d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the thing, the obligation to do the thing continues, and a proceeding may be instituted against the person in relation to the prescribed offence.

(4) If a notice under sub-section (1) is served on a person in relation to a prescribed offence, that is not constituted by a failure to do a particular thing—

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, no proceedings may be instituted against the person in relation to the prescribed offence; or

(b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person in relation to the prescribed offence.

(5) The payment of an amount by a person under a notice served on the person under this section in relation to a prescribed offence is not to be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

Power to grant relief

476.(1) This section applies to a person who is—

(a) an officer of a society; or

(b) an auditor or actuary of a society, whether or not the auditor or actuary is an officer of the society; or

(c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise; or

(d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty in relation to a society.

(2) If, in a civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, it appears to the court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate.

(3) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in relation to any negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, the person may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under sub-section (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

Division 4—Other matters

Secrecy

477.(1) In this section—

"court" includes a tribunal, authority or person having the power to lawfully require the production of documents or the answering of questions;

"financial sector supervisory agency" means a person or body declared by the Regulations to be a financial sector supervisory agency for the purposes of this section;

"Government agency" includes a person or body declared by the Regulations to be an agency of a State or Territory Government;

"law enforcement agency" means a person or body declared by the Regulations to be a law enforcement agency for the purposes of this section;

"protected document" means a document that—

(a) contains information that concerns a person; and

(b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under or in relation to the friendly societies legislation;

"protected information" means information that—

(a) concerns a person; and

(b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under or in relation to the friendly societies legislation.

(2) This section applies to a person who is or has been appointed or employed by AFIC or the SSA for the purposes of carrying out any duties under the friendly societies legislation.

(3) A person to whom this section applies must not—

(a) make a record of protected information; or

(b) whether directly or indirectly, divulge or communicate to a person protected information concerning another person—

unless the record is made, or the information divulged or communicated—

(c) under or for the purposes of friendly societies legislation; or

(d) in the performance of duties, as a person to whom this section applies, under or in relation to the friendly societies legislation.

Maximum penalty: $25 000.

(4) Sub-section (3) does not prevent a person to whom this section applies from disclosing protected information or producing a protected document, to—

(a) a court; or

(b) AFIC or the SSA of another State;

(c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers;

(d) a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth or a State;

(e) a Minister or nominee of the Minister;

(f) a Government agency.

(5) Sub-section (3) does not prohibit a person to whom this section applies from disclosing protected information or producing a protected document relating to the affairs of a person if the person agrees in writing to the disclosure of the protected information or the production of a protected document.

(6) A person to whom this section applies cannot be required to disclose to a court any protected document or to produce protected information except when it is necessary to do so for the purposes of the friendly societies legislation.

Powers about money of members who have died

478. If a member of a society dies, the society may, without production of probate of the will or letters of administration of the estate, apply an amount(not exceeding the amount prescribed by the regulation) held by the society for the deceased person—

(a) in payment of the deceased person's funeral expenses or debts; or

(b) in payment to the executor of the deceased person's will; or

(c) in payment to anyone else who is, in the society's opinion, entitled to the amount, having regard to the will of the deceased person or, if there is no will, the laws of intestacy.

Limitation of doctrine of ultra vires

479.(1) A transaction to which a society is a party is not invalid as against another party to the transaction merely because of any deficiency in the capacity of the society to enter into, or carry out, the transaction unless the other party to the transaction has actual notice of the deficiency.

(2) A society is authorised to carry out a transaction that would, but for sub-section (1), be invalid.

(3) The section does not prejudice a proceeding by a member of a society to restrain the society from entering into or carrying out a transaction that lies beyond the powers conferred on the society by the friendly societies legislation, any other law or the society's rules.

(4) To the extent that sections 30 (Services corporations) and 67 (Control of certain financial arrangements) are inconsistent with this section, those sections prevail.

Abolition of doctrine of constructive notice

480. A person dealing with a society, or an agent of a society, is not to be presumed to have notice of the society's rules and any document registered by or lodged with the SSA in relation to the society.

PART 15—TRANSITIONAL

Continuing societies

481. A continuing society continues in existence and is taken to be registered under this Code as a society, and to be the same body on and after the date on which this section comes into operation as before that date.

Application for certificate of incorporation

482.(1) On application by a society to which section 481 applies and on payment of the prescribed fee, the SSA must issue to the society a certificate of incorporation stating that the society is incorporated under this Code.

(2) The SSA need not issue a certificate of incorporation to a society under sub-section (1) unless the society—

(a) surrenders to the SSA its certificate of incorporation under the previous law or a corresponding previous enactment; or

(b) satisfies the SSA that the certificate has been lost or destroyed.

Benefit funds

483.(1) A benefit fund(within the meaning of the previous law) of a continuing society existing under the previous law immediately before the commencement of this section is deemed to be established under this Code as a benefit fund (within the meaning of this Code) of the continuing society.

(2) Sub-section (1) does not apply to a benefit fund of a continuing society from which only non-monetary benefits were provided before the commencement of this section.

Rules

484.(1) The rules of a continuing society, in force immediately before the commencement of this section, become its rules under this Code.

(2) The rules have effect subject to this Code.

(3) If any rules of a continuing society do not comply with this Code, the regulations or the standards, the society must, within 2 years after the commencement of this section, take all necessary steps to ensure that its rules do so comply.

Subsidiaries

485. A continuing society that, immediately before the commencement of this section, is the holder of a subsidiary because of the lawful investment of its funds may continue to hold the subsidiary and is taken to do so with the approval of the SSA.

Directors

486.(1) An existing term of office of a director of a continuing society that is not due to end until 3 years or more after the commencement of this section ends—

(a) immediately before the re-election of directors at the third annual general meeting of the society after commencement of this section; or

(b) at the end of that third annual general meeting.

(2) Sub-section (1) does not, by implication, prevent the office of the director becoming vacant at an earlier time.

Annual general meeting

487. If—

(a) the time within which a continuing society must hold its annual general meeting under the previous law has been extended under the law; and

(b) the extension of time is in force immediately before the commencement of this section—

the extension of time is taken to have been allowed by the SSA under section 301(2).

Special resolutions

488. A special resolution passed by a continuing society under the previous law, and not registered under the law before the commencement of this section, may be registered by the SSA under this Code.

Registers

489. A register kept by the SSA under the relevant previous law may be incorporated in a register kept by the SSA under this Code.

Accounts

489A. The directors of a society must prepare, or cause to be prepared, accounts for the financial year last ended before the commencement of this Code—

(a) as if the friendly societies legislation had not been enacted; or

(b) in accordance with Part 6 of this Code and the standards.

Winding-up

490. If—

(a) under the previous law, a certificate has been issued for the winding-up of a continuing society; and

(b) immediately before the commencement of this section, a person has not been appointed liquidator of the society because of the certificate—

the certificate is taken to have been issued by the SSA under section 402 and the society may be wound-up accordingly.

Documents

491. A certificate or other document, relating to a continuing society, issued or registered by, filed or lodged with or given to the SSA under the previous law has effect as if it were a certificate or other document issued or registered by, filed or lodged with or given to the SSA under this Code.

Operation of Part 4B

492.(1) Despite the commencement of Part 4B, a failure to comply with that Part during the period of 6 months after that commencement is not a contravention of this Code.

(2) The SSA may, in writing given to a society, exempt the society from compliance with Division 2 of Part 4B in respect of one or more benefit funds for a further period ending not later than 12 months after the commencement of that Division.

(3) An exemption under sub-section (2) applies to the society and anything done by any person in relation to the society and may be given subject to such conditions as are specified in the notice.

Interstate society carrying on business in this State

493.(1) An interstate society that prior to the commencement of this section carried on business within the meaning of section 426 in this State—

(a) must as soon as practicable notify the SSA that it is carrying on business in this State;

(b) if the society proposes to continue carrying on business in this State, must, within 6 months after the commencement of this section (or such longer period as the SSA may allow) apply to the SSA for registration under Part 11 as a foreign society.

(2) An interstate society that notifies the SSA in accordance with sub-section (1) is deemed to be registered under Part 11 as a foreign society for 6 months after the commencement of this section, or such longer period as the SSA may allow.

(3) An interstate society that notifies the SSA and applies for registration in accordance with sub-section (1) is deemed to be registered under Part 11 as a foreign society until so registered or until the SSA gives written

notice to the society that its application for registration has been refused.

(4) In this section "interstate society" means a body incorporated as a friendly society in another State.

SCHEDULE A

MISCELLANEOUS PROVISIONS RELATING TO INTERPRETATION

PART 1—PRELIMINARY

Displacement of Schedule by contrary intention

1. The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Code.

PART 2—GENERAL

Code or Act includes statutory instruments under Code or Act

2. In this Code, a reference to this Code, the AFIC Code or an Act, or a provision of this Code, the AFIC Code or an Act, includes a reference to the statutory instruments made under, or in force under or for the purposes of, those Codes, the Act or provision.

Code to be construed not to exceed legislative power of Legislature

3.(1) This Code is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this State.

(2) If a provision of this Code, or the application of a provision of this Code to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Legislature of this State—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Code, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Code in addition to, and without limiting the effect of, any provision of this Code.

Every section to be a substantive enactment

4. Every section of this Code has effect as a substantive enactment without introductory words.

Material that is, and is not, part of Code

5.(1) The heading to a Part, Division or Subdivision into which this Code is divided is part of this Code.

(2) A Schedule to this Code is part of this Code.

(3) A heading to a section of this Code is not part of this Code.

(4) A footnote to this Code or to a provision of this Code, and an endnote to this Code, are not part of this Code.

References to particular Acts

6. In this Code—

(a) an Act of this State may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; or

(iii) in another way sufficient in an Act of this State for the citation of an Act;

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act—

together with a reference to the Commonwealth;

(c) an Act of another State may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the State for the citation of such an Act—

together with a reference to the State.

References taken to be included in Act or Code citation etc.

7.(1) A reference in this Code to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Code to a provision of this Code or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) A reference in this Code to a provision of the AFIC Code includes a reference to—

(a) the provision as in force from time to time; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the commencement of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(4) Sub-clauses (1) and (2) apply to a reference in this Code to a law of the Commonwealth or another State as they apply to a reference in this Code to an Act and to a provision of an Act.

References to commencement of AFIC Code

8. In this Code, a reference to the commencement of the AFIC Code, or a provision of the AFIC Code, means the time at which the provision of this Code containing the reference comes into operation or, in the case of a provision of the AFIC Code, the time at which the provision comes into operation, whichever is the later.

Interpretation best achieving Code's purpose

9.(1) In the interpretation of a provision of this Code, the interpretation that will best achieve the purpose of this Code is to be preferred to any other interpretation.

(2) Sub-clause (1) applies whether or not the purpose is expressly stated in this Code.

Use of extrinsic material in interpretation

10.(1) In this clause—

"extrinsic material" means relevant material not forming part of this Code, including, for example—

(a) material that is set out in the document containing the text of this Code as printed by authority of the Government Printer for Victoria; and

(b) a report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Assembly or Legislative Council of Victoria before the provision concerned was enacted; and

(c) a report of a committee of the Legislative Assembly or Legislative Council of Victoria that was made to the Legislative Assembly or Legislative Council of Victoria before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Code; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or

given to the members of, the Legislative Assembly or Legislative Council of Victoria by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Legislative Assembly or Legislative Council of Victoria by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Legislative Assembly or Minutes of Proceedings of Victoria or in any official record of debates in the Legislative Assembly or Legislative Council of Victoria; and

(h) a document that is declared by this Code to be a relevant document for the purposes of this section;

"ordinary meaning" means the ordinary meaning conveyed by a provision having regard to its context in this Code and to the purpose of this Code.

(2) Subject to sub-clause (3), in the interpretation of a provision of this Code, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

Effect of change of drafting practice and use of examples

11.(1) If—

(a) a provision of this Code expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example, the use of a clearer or simpler style, the ideas must not be taken to be different merely because different words are used.

(2) If this Code includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Code, but, if the example and the provision so read are inconsistent, the provision prevails.

Compliance with forms

12.(1) If a form is prescribed or approved by or for the purpose of this Code, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Code requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way—

the form is not properly completed unless the requirement is complied with.

PART 3—TERMS AND REFERENCES

Definitions

13.(1) In this Code—

"Act" means an Act of the Legislature of this State;

"adult" means an individual who is 18 or more;

"affidavit", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

"amend" includes—

(a) omit or omit and substitute; and

(b) add to; and

(c) alter or vary; and

(d) amend by implication;

"appoint" includes re-appoint;

"Australia" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

"business day" means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

"calendar month" means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day, at the end of the next named month;

"calendar year" means a period of 12 months beginning on 1 January;

"commencement", in relation to this Code or an Act or a provision of this Code or an Act, means the time at which this Code, the Act or provision comes into operation;

"Commonwealth" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

"confer", in relation to a function, includes impose;

"contravene" includes fail to comply with;

"country" includes—

(a) a federation; or

(b) a state, province or other part of a federation;

"date of assent", in relation to an Act, means the day on which the Act receives the Royal Assent;

"definition" means a provision of this Code or the AFIC Code (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

"document" includes—

(a) any paper or other material on which there is writing; and

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

"estate" includes easement, charge, right, title, claim, demand, lien and encumbrance, whether at law or in equity;

"expire" includes lapse or otherwise cease to have effect;

"external Territory" means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

"fail" includes refuse;

"financial year" means a period of 12 months beginning on 1 July;

"foreign country" means a country (whether or not an independent sovereign State) outside Australia and the external Territories;

"function" includes duty;

"Gazette" means the Government Gazette of this State;

"Gazette notice" means notice published in the Gazette;

"gazetted" means published in the Gazette;

"Government Printer" means the Government Printer for this State, and includes any other person authorised by the Government of this State to print an Act or instrument;

"indictment" includes information, inquisition and presentment;

"individual" means a natural person;

"insert", in relation to a provision of this Code or the AFIC Code, includes substitute;

"instrument" includes a statutory instrument;

"interest", in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

"internal Territory" means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

"Jervis Bay Territory" means the Territory mentioned in the Jervis Bay Territory Acceptance Act 1915 of the Commonwealth;

"land" includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land;

"liability" means any liability or obligation (whether liquidated or unliquidated, certain or contingent, or accrued or accruing);

"make" includes issue and grant;

"Minister" has the meaning given by clause 18;

"minor" means an individual who is under 18;

"modification" includes addition, omission and substitution;

"month" means a calendar month;

"named month" means one of the 12 months of the year;

"Northern Territory" means the Northern Territory of Australia;

"number" means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

"oath", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

"office" includes position;

"omit", in relation to a provision of an Act, includes repeal;

"party" includes an individual and a body politic or corporate;

"penalty" includes forfeiture and punishment;

"person" includes an individual and a body politic or corporate;

"power" includes authority;

"prescribed" means prescribed by, or by regulations or standards made or in force for the purposes of or under, this Code;

"printed" includes typewritten, lithographed or reproduced by any mechanical means;

"proceeding" means a legal or other action or proceeding;

"property" means any legal or equitable estate or interest(whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

"provision", in relation to this Code, the AFIC Code or an Act, means words or other matter that form or forms part of this Code, the AFIC Code or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, sub-section, paragraph, sub-paragraph, sub-subparagraph or Schedule of or to this Code, the AFIC Code or the Act; and

(b) a section, clause, sub-clause, item, column, table or form of or in a Schedule to this Code, the AFIC Code, or the Act; and

(c) the long title and any preamble to the Act;

"purpose", in relation to an Act, includes object;

"record" includes information stored or recorded by means of a computer;

"regulation" means a regulation made under the Friendly Societies (Victoria) Act 1996 of Victoria;

"repeal" includes—

(a) revoke or rescind; and

(b) repeal by implication; and

(c) abrogate or limit the effect of this Code or the instrument concerned; and

(d) exclude from, or include in, the application of this Code or the instrument concerned any person, subject matter or circumstance;

"sign" includes the affixing of a seal and the making of a mark;

"statutory declaration" means a declaration made under an Act, or under a Commonwealth Act or an Act of another State, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

"statutory instrument" means an instrument (including a regulation, standard or rule) made or in force under or for the purposes of this Code or the AFIC Code, and includes an instrument made or in force under any such instrument;

"swear", in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare and promise;

"Territory" means a Territory of the Commonwealth;

"word" includes any symbol, figure or drawing;

"writing" includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

"the Code" means the Code under, or for the purposes of, which the instrument is made or in force.

Provisions relating to defined terms and gender and number

14.(1) If this Code defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Code apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Code, words indicating a gender include each other gender.

(4) In this Code—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

Meaning of "may" and "must"

15.(1) In this Code, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Code, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

Words and expressions used in statutory instruments

16.(1) Words and expressions used in a statutory instrument made or in force under or for the purposes of this Code have the same meanings as they have, from time to time, in this Code, or relevant provisions of this Code.

(2) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

Effect of express references to bodies corporate and individuals

17. In this Code, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Code there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Code there is particular reference to an individual (however expressed).

References to Minister

18.(1) In this Code—

(a) a reference to a Minister is a reference to a Minister of the Crown of this State; and

(b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this State, who is acting for or on behalf of the Minister.

(2) In a provision of this Code, a reference to "the Minister" without specifying a particular Minister by title is a reference to—

(a) the Minister of this State administering the provision; or

(b) if, for the time being, different Ministers of this State administer the provision in relation to different matters—

(i) if only one Minister of this State administers the provision in relation to the relevant matter, the Minister; or

(ii) if 2 or more Ministers of this State administer the provision in relation to the relevant matter, any one of the Ministers; or

(c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision, any one of the Ministers.

(3) To allay any doubt, it is declared that if—

(a) a provision of this Code is administered by 2 or more Ministers of this State; and

(b) the provision requires or permits anything to be done in relation to any of the Ministers—

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

Production of records kept in computers etc.

19. If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Code—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person—

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

Application of offence provisions to bodies corporate

20.(1) A provision of this Code relating to offences punishable on indictment or summary conviction applies to bodies corporate as well as to individuals.

(2) If under this Code, a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate if the body corporate is the party aggrieved.

References to this State to be implied

21. In this Code—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this State; and

(b) a reference to a locality, jurisdiction or other matter or thing is a reference to such a locality, jurisdiction or other matter or thing in and of this State.

References to officers and holders of offices

22. In this Code, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

Reference to certain provisions of this Code

23. If a provision of this Code refers—

(a) to a Part, section or Schedule by a number and without reference to this Code, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Code; or

(b) to a Schedule without reference to it by a number and without reference to this Code, the reference, if there is only one Schedule to this Code, is a reference to the Schedule; or

(c) to a Division, Subdivision, sub-section, paragraph, sub-paragraph, sub-subparagraph, clause, sub-clause, item, column, table or form

by a number and without reference to this Code, the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the sub-section, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, sub-section, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, sub-clause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the sub-paragraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, sub-clause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs—

as the case requires.

Words that form part of provision

24. The word "and", "or" or "but", or a similar word, at the end of a paragraph, subparagraph or sub-subparagraph or another provision of this Code forms part of the provision concerned.

Reference to provisions of a Code or an Act is inclusive

25. In this Code, a reference to a portion of this Code or the AFIC Code or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, sub-section or other provision of this Code, the AFIC Code or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, sub-section or other provision of this Code, the AFIC Code or the Act referred to that forms the end of the portion.

PART 4—FUNCTIONS AND POWERS

Performance of statutory functions

26.(1) If this Code confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Code confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Code confers a function or power on a body(whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

Power to make instrument or decision includes power to amend or repeal

27. Except as otherwise provided in this Code, if this Code authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Matters for which statutory instruments may make provision

28.(1) If this Code authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Code may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document(whether of the same or a different kind)—

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) apply generally throughout this State or be limited in its application to a particular part of this State; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Code authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Code authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Code may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Code in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument made or in force under this Code may provide for the review of, or a right of appeal against, a decision made under the statutory instrument or this Code and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

Presumption of validity and power to make

29.(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Code or a particular provision of this Code.

Appointments may be made by name or office

30.(1) If this Code authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing—

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

Acting appointments

31.(1) If this Code authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Code, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned—

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to sub-section (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy—

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Code and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Code authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

Powers of appointment imply certain incidental powers

32.(1) If this Code authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under sub-clause (1)(b) may be exercised even if this Code provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under sub-clause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under sub-clause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

Delegation of powers

33.(1) If this Code authorises a person or body to delegate a power, the person or body may, in accordance with this Code, delegate the power to—

(a) a person or body by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation may be—

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated power, do anything that is incidental to the delegated power.

(6) A delegated power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a power is, under this Code, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the power when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a power is delegated to a particular officer or the holder of a particular office—

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and

(b) the power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A power that has been delegated may, despite the delegation, be exercised by the delegator.

(11) Subject to sub-clause(12), this section applies to a sub-delegation of a power in the same way as it applies to a delegation of a power.

(12) If this Code authorises the delegation of a power, the power may be sub-delegated only if this Code expressly authorises the power to be sub-delegated.

Exercise of power between enactment and commencement

34.(1) If a provision of this Code (the "empowering provision") that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing—

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect—

before the empowering provision commences.

(2) If a provision of a Victorian Act (the "empowering provision") that does not commence on its enactment would, had it commenced, amend a provision of this Code so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing—

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect—

before the empowering provision commences.

(3) If—

(a) this Code has commenced and confers a power to make a statutory instrument (the "basic instrument-making power"); and

(b) a provision of a Victorian Act that does not commence on its enactment would, had it commenced, amend this Code so as to confer additional power to make a statutory instrument (the "additional instrument-making power")—

then—

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under sub-clause (2).

(4) If an instrument, or a provision of an instrument, is made under sub-clause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the sub-section; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect—

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under sub-clause (1) or (2); or

(b) an instrument, or provision of an instrument, made under sub- clause (1) or (2) is not necessary for a purpose mentioned in sub-clause (4)—

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under sub-clause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in sub-clause (2) but before the provision's commencement, this section applies as if the references in sub-clauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in sub-clause (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

PART 5—DISTANCE, TIME AND AGE

Matters relating to distance, time and age

35.(1) In the measurement of distance for the purposes of this Code, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Code, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Code for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Code for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Code, there is a reference to time, the reference is, in relation to the doing of anything in a State, a reference to the legal time in the State.

(7) For the purposes of this Code, a person attains an age in years at the beginning of the person's birthday for the age.

PART 6—SERVICE OF DOCUMENTS

Service of documents

36.(1) If this Code requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

(a) on an individual—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or

(b) on a body corporate—

(i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or

(ii) by sending it by post, telex, facsimile or similar facility to its registered office.

(2) Nothing in sub-clause(1)—

(a) affects the operation of another law that authorises the service of a document otherwise than as provided in the sub-section; or

(b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the sub-section.

Meaning of service by post

37.(1) If this Code requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

(a) may be effected by properly addressing, prepaying and posting the document as a letter; and

(b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Code requires or permits a document to be served by a particular postal method(whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

Time of provision of Code ceasing to have effect

38. If a provision of this Code is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day—

the provision has effect until the last moment of the specified day.

PART 7—EFFECT OF REPEAL, AMENDMENT OR EXPIRATION

Repealed or amended provision of Code not revived

39. If a provision of this Code is repealed or amended by a Victorian Act or a provision of a Victorian Act, the provision is not revived merely because the Victorian Act or the provision of the Victorian Act—

(a) is later repealed or amended; or

(b) later expires.

Saving of operation of repealed provision of Code

40.(1) The repeal, amendment or expiry of a provision of this Code does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

Continuance of repealed provisions

41. If a Victorian Act repeals some or all of the provisions of this Code and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

Code and amending Acts to be read as one

42. This Code and all Victorian Acts amending this Code are to be read as one.

PART 8—OFFENCES UNDER CODE

Penalty at end of provision

43. In this Code, a penalty specified at the end of—

(a) a section (whether or not the section is divided into sub-sections); or

(b) a sub-section (but not at the end of a section); or

(c) a section or sub-section and expressed in such a way as to indicate that it applies only to part of the section or sub-section—

indicates that an offence mentioned in the section, sub-section or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, sub-section or part constitutes an offence against the provision that is punishable on conviction—

(d) if a minimum as well as a maximum penalty is specified, by a penalty not less than the minimum and not more than the maximum; or

(e) in any other case, by a penalty not more than the specified penalty.

Penalty other than at end of provision

44.(1) In this Code, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable on conviction—

(a) if a minimum as well as a maximum penalty is specified, by a penalty not less than the minimum and not more than the maximum; or

(b) in any other case, by a penalty not more than the specified penalty.

(2) This clause does not apply to a penalty to which clause 43 applies.

Indictable offences and summary offences

45.(1) An offence against this Code that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Code that is punishable by imprisonment is, subject to sub-section (3), punishable on indictment.

(3) If—

(a) a proceeding for an offence against this Code that is punishable by imprisonment is brought in a court of summary jurisdiction; and

(b) the prosecutor requests the court to hear and determine the proceeding—

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

(a) impose, in relation to a single offence against this Code, a period of imprisonment of more than 2 years; or

(b) impose, in relation to offences against this Code, cumulative periods of imprisonment that are, in total, more than 5 years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

Double jeopardy

46. If an act or omission constitutes an offence—

(a) under this Code; or

(b) under another law of this State or a law of another State—

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Code.

Aiding and abetting, attempts etc.

47.(1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Code is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Code commits an offence and is punishable as if the attempted offence had been committed.

PART 9—INSTRUMENTS UNDER CODE

Schedule applies to statutory instruments

48.(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Code, and things that may be done or are required to be done under this Code, except so far as the context or subject matter indicates or requires.

(2) The fact that a provision of this Schedule refers to this Code and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to that Code.

[2] Friendly Societies Code as amended by the Friendly Societies (Victoria) Amendment) Act 1997 (Vic)

Mr J. H. SULLIVAN (9.41 p.m.): I want to speak to this amendment, and I will do so very briefly because I understand that there are other imperatives. In relation to clause 210 of the code, where the Scrutiny of Legislation Committee——

A Government member interjected.

Mr J. H. SULLIVAN: I am prepared to have side debates with the member for——

The CHAIRMAN: Order! I am not prepared to have side debates.

Mr J. H. SULLIVAN: I would hope that you, Mr Chairman, would protect me from the temptation. The Treasurer responded to the Scrutiny of Legislation Committee about one of the clauses, in particular our queries about the Henry VIII nature of that clause. I will try to find it very quickly as I speak. The Treasurer said that we should be satisfied that the MINFIN provides us with all the safeguards. We cannot be satisfied that MINFIN safeguards the interests of this Parliament, because during the course of this debate it has been discovered that MINFIN can make changes to the legislation despite the objection of the Queensland Executive through the Treasurer. Things that could happen pursuant to this Henry VIII clause, despite the objection of the Queensland Government, could happen anyway. None of us ought to accept the Treasurer's view that MINFIN provides us with the appropriate safeguard. Having said that, it would be worth while for other Ministers entering into national schemes of legislation, as we do all the time. As I have said on a number of occasions, these can be beneficial to the State. Other Ministers entering into them should not regard the ministerial council as the place where the interests of Queensland are protected.

I would attract the Treasurer's attention briefly to say in conclusion that I am extremely pleased that, in response to matters raised during the debate on the Bill, the Treasurer made frequent references to the fact that she would refer the concerns of the Scrutiny of Legislation Committee to the ministerial council. That is a positive step. Whilst our exchanges today have not necessarily been friendly, I conclude my contribution by thanking the Treasurer for that. I look forward to her reporting back to us on the manner in which those concerns have been received by her colleagues in that forum. I commend the Treasurer for that and I commend that course of action to her colleagues where other national scheme legislation is concerned.

Amendment agreed to.

Bill reported, with amendments.

Third Reading

Bill, on motion of Mrs Sheldon, by leave, read a third time.

COURTS REFORM AMENDMENT BILL

Committee

Mr Beanland (Indooroopilly—Attorney-General and Minister for Justice) in charge of the Bill.

Resumed from 8 July (see p. 2407).

Clause 1—

Mr LUCAS (9.45 p.m.): The short title of this Bill is the Courts Reform Amendment Bill 1997. Indeed, there is no doubt whatsoever that that is a misnomer. The Bill should not be called the Courts Reform Amendment Bill; it should be called the "Get Tony Fitzgerald Bill 1997" or the "Courts Lack of Reform Bill 1997".

If the Attorney-General were serious about decreasing costs and access to justice, he would undertake drastic reform of the present woeful system for the assessment of costs in the court system. The ridiculously outdated and archaic procedure known as taxation severely penalises plaintiffs and their legal representatives and only results in the plaintiffs wearing more and more legal costs to the gain of inefficient bureaucracies. There could not be less reform in the taxation of costs where the only winners are the bureaucrats and the administration. Costs are assessed by people who often have no idea whatsoever what, in practice, is a

reasonable incursion of legal costs. The people whom that penalises are the little people who are predominantly plaintiffs in personal injuries and master-servant claims.

If the Attorney-General were serious about this Courts Reform Amendment Bill, he would look at addressing the massive problems that exist with the Small Claims Tribunal, particularly in its dealings with residential tenancy disputes. If he were serious, the Attorney-General would look at officers of the court, barristers and solicitors. He would fuse the profession in the interests of having a more efficient administration of justice.

If this were a true courts reform Bill, the Attorney-General would look at implementing decent Supreme Court and District Court rules. It is very instructive that the rules committee of the Supreme Court has been working for about 15 or 20 years and it still has not come up with a set of court rules either modelled on the Victorian Supreme Court or the Federal Court, which are seen throughout Australia as the two models.

If the Attorney-General were serious about court reform, he would look at access to justice by making available video tapes and user guides for people who want to use the courts, particularly the lower courts. In that way, those people would be able to go to their local libraries to find out how to run a claim for motor vehicle accidents and so on.

If the Attorney-General were serious about a courts reform Bill, he would look at giving the Small Claims Tribunal jurisdiction to deal with neighbourhood disputes. For example, recently a tree lopper dropped a tree branch on the roof of a caravan which belongs to a constituent of mine. The claim amounted to $1,000. My constituent could not practically bring the proceedings to the Magistrates Court, although he could do so legally. He had to be in a position to shell out a lot of money for the lawyers for what was a fairly complex claim. He could have brought the claim to the Small Claims Tribunal had the law been adequately focused on the interests of justice. However, we do not see any of that sort of court reform in this Bill.

If the Attorney-General were seriously interested in court reform, I would have thought that he would look at addressing all of those issues. Despite the title of this Bill, I do not think that the battler at the Caxton Legal Service or the small-business person in Gladstone will be punching the air tonight when the Bill is passed, because it does nothing in any major way to address the problems of access to justice and of making justice cheaper for Queenslanders.

Clause 1, as read, agreed to.

Clauses 2 to 40, as read, agreed to.

Clause 41——

Mr FOLEY (9.49 p.m.): The Opposition opposes this clause. Clause 41 inserts a new Division 2A of the District Courts Act concerning the powers and responsibilities of the Chief Judge of the District Court. The clause provides that—

> "The Chief Judge is responsible for the administration of District Courts and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of District Courts."

It goes on to provide that—

> "Subject to any Act, the Chief Judge has power to do all things necessary or convenient to be done for the administration of District Courts and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of District Courts."

In other words, it gives to the Chief Judge of the District Court the authority with respect to the administration of the court that is expressed to be given a little later in the Bill in respect of the Chief Justice of the Supreme Court.

The Opposition says that this is unnecessary. No argument has been advanced by the Government as to why it is necessary. There is no evidence placed before the Parliament that this will make access to justice speedier or cheaper for the ordinary citizen. There is no evidence placed before the Parliament that this will do anything to assist in the administration of justice. It is there simply for one reason, and that is that the Government wishes to dismantle a number of Labor reforms in the Supreme Court. In order to do that, it seeks to cloak itself under the slogan of restoring the authority of the Chief Justice. Once it does that, to be consistent, it must give to the Chief Judge of the District Court a similar power.

This clause is simply unnecessary. The Government's Explanatory Notes simply state that it is intended to clarify the powers of the Chief Judge in relation to the administration of the District Courts. In what case has there been a lack of clarity? In what circumstance has there been a problem? The principle of judicial comity involves cooperation among judges and involves judges sorting out matters for themselves, having respect to the principles which govern the exercise of judicial office. The Opposition opposes this course of action. It is unnecessary. It is not supported by any evidence or argument on the part of the Government and introduces a provision which is there for no reason other than to be consistent with the later provision which the Government wishes to put in place. That later provision with respect to the Chief Justice of the Supreme Court is central to the Government's task of dismantling important reforms with respect to the Litigation Reform Commission, the effective management of the business of the Court of Appeal and the effective case management of the trial division in the Supreme Court.

Mrs CUNNINGHAM: There are a number of amendments on the sheet circulated by the shadow Minister. The first amendment, and quite a number of subsequent amendments, just propose omissions from the Bill before the Chamber. In trying to understand the implications of the changes being proposed and the shadow Minister's intention to remove those changes, I have not honestly been able to find a clear-cut position. Even within the judiciary, there is a split opinion about whether the

ideas and changes are good or not. The differences of opinion in the Chamber appear to be fundamental in the sense of philosophy to the judiciary. For that reason, I will not be supporting the proposed amendments moved by the shadow Minister. The philosophy behind the amendments appears to be politically and ideologically based. However, there is another amendment about which I will be asking some questions.

Mr BEANLAND: The Opposition is suggesting that the Government is trying to do some dastardly deed. However, back in 1991 the Opposition, when in Government, knifed the judiciary with a whole range of changes that it put forward. The member for Yeronga is fully aware of that. All sorts of assertions have been made in relation to the erosion of judicial power and the independence of the judiciary. That is not the case at all.

The real basis of judicial independence is that judges should be able to carry out judicial functions without fear of removal from office. Interestingly, the previous Government was unable to bring itself to place District Court judges in the same position as judges of the Supreme Court with respect to the conditions of their removal from office. In 1996, the coalition Government amended the District Courts Act to preserve the independence of judges of the District Courts by providing that they could be removed only on grounds of incapacity or misbehaviour and only following an address to the Legislative Assembly.

The powers to administer the court conferred on the Chief Judge are consistent with the powers given to the Chief Stipendiary Magistrate, powers which were introduced by the previous Government. I will take some time to look at those powers in a moment. This legislation is clarifying the situation from the point of view of the judiciary. The powers conferred on the Chief Judge are identical to those conferred on the President of the Court of Appeal under the Supreme Court of Queensland Act. The Supreme Court of Queensland Act provides that the President of the Court of Appeal has power to do all things as necessary or convenient to be done in connection with the administration of the Court of Appeal.

In respect of the conferral of specific administrative powers on the Chief Judge of the District Courts, this Bill ensures that the respective judicial heads of the Supreme, District and Magistrates Courts are vested with similar powers. It does not give increased powers, but it certainly clarifies the situation. These amendments in respect of the Chief Judge of the District Courts clarify the situation. After all, someone has to be responsible for the administration of the courts. In no way does it stop judges from forming committees, councils or anything else. They can do what they will within the current arrangements under the legislation.

In this State we have a hierarchical court structure. Whether we like it or not, that is the fact of life. That was and is the fact, and this legislation does not change that position. For example, the Stipendiary Magistrates Act of 1991 gave the Chief Stipendiary Magistrate enormous powers. This legislation does not confer power to that extent. It goes as far as ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Magistrates Court, and goes so far as addressing discipline by way of reprimand and transfer of stipendiary magistrates. It covers a far greater range of issues than this power being given to the Chief Judge. That is a power which the Chief Judge has exercised but which has never been clarified as such, even though we have had a hierarchical system of courts.

As I said, these amendments are in line with the current arrangements, and that is as it should be and that is how it should continue. At the end of the day, someone has to be responsible. I heard the member for Lytton speak about the efficiencies of courts, access to justice, speedy trials and so forth. Someone has to administer the courts, and in the case of the District Courts that responsibility falls upon the Chief Judge. He may be advised by a council or committee of judges. That is a matter for the judges of the courts; it is certainly not a matter for the Executive of the Government. I believe that the amendments put forward are reasonable. There is certainly nothing extraordinary about them. Of course, they are in line with other amendments; in no way do they go as far as the amendments which the former Government introduced with respect to stipendiary magistrates and judicial officers in this State.

Mr LUCAS: I want to make a few observations in the light of the comments that the member for Gladstone has made. They relate to her statement that she thought it was a question of philosophy that divided those of us on this side of the Chamber and those on the other side. Certainly there are many questions of philosophy that do divide us, but I think it is instructive to examine the position in a number of other jurisdictions and whether they adopt a collegiate model or not.

It is interesting to note that when the District Courts jurisdiction was created in the District Courts Act 1967, the person who now occupies the position of Chief Judge was called the Chairman of District Courts—not "the boss" but the Chairman of District Courts. I am not exactly sure why that title was changed, but I think it more reflects a switch to gender-neutral language than any other factor. If the member for Gladstone does take that view about ideology, it is important that one looks at the Alert Digest of the Scrutiny of Legislation Committee, which very comprehensively dealt with the issue. In particular, it quotes Daryl Williams, QC, who quoted Mr Justice McPherson, who in my respectful view is one of the pre-eminent jurists on the Queensland bench. There is no shadow of a doubt about that. He is very well written and a very talented and experienced judge in appeal.

Mr Woolmer interjected.

Mr LUCAS: The member for Springwood might know Daryl Williams, QC. We will talk a little bit about Daryl Williams' qualifications later. He quotes Mr Justice McPherson as stating—

> "... it is exceptional for a Chief Justice to be invested with any specific legal authority over

> court affairs or with any particular power or control over other judges."

Mr Daryl Williams, QC, indicated in a speech that he made that—

> "It is wrong, in my view, for the administration (of the court) to be vested solely in one person ..."

He went on to say some other things, and they are outlined in the Scrutiny of Legislation Committee report. Daryl Williams is a QC and I understand that he is a former president of the Law Council of Australia. What other qualifications does he have? Of course, he is the Liberal Commonwealth Attorney-General, and he expressed that point of view. So if we want to talk about philosophy—I have many philosophical divergences with him. He is a far greater lawyer than I could ever aspire to be. But, as Garfield Barwick learned, being a great lawyer is not a qualification for political office.

Mr FitzGerald interjected.

Mr LUCAS: No. It is interesting that Garfield Barwick's name has come up. As the Leader of Government Business is obviously quite interested in the subject, I will talk about the High Court of Australia Act 1979. I believe that in 1979 Malcolm Fraser was the Prime Minister. Again we will discuss philosophical issues. What did the Government do with respect to the administration of the High Court? Section 46(1) of the High Court of Australia Act 1979 states that, subject to this section, the powers of the High Court under the Act may be exercised by the justices or by a majority of them.

It is important for the member for Gladstone to realise that there is not really a philosophical divide in relation to the collegiate issue. Many senior people in the Liberal Party—no less senior than the first law officer of the Commonwealth, the Liberal Attorney-General, Daryl Williams, QC—have expressed that view on that issue.

Mr BEANLAND: Despite all the comments by the member for Lytton, it is interesting to note that the Federal Court and the Family Court are hierarchical structures. Comment was made about the High Court. It has seven judges whereas the District Court has 32 judges. If we are going to have an efficient courts system, someone is going to have to administer it. That administration should be done by a judge and not by some other person. A few moments ago the member for Lytton referred to some of the comments made by Mr Williams, QC, the Federal Attorney-General. I point out that he also stated—

> "I do not here seek to prefer or advocate a model of absolute collegiality wherein all decisions must be made by all the judges collectively.
>
> It may be that the courts, if left free to decide the matter, would choose full collegiality, but in the cases of the Family Court and the Federal Court, that is unlikely.
>
> It is more likely that they would choose to vest their management responsibilities in some of their number."

Some of those comments may have suited the member's argument to a degree, but he quoted only those supporting comments. At the end of the day his argument does not stand up. He should have quoted all of the comments to present them in their true light.

There are 32 judges of the District Court, and that number is going to expand in the future. Before I miss the point, the member for Lytton also mentioned the change of title from the Chairman of District Courts to the Chief Judge of the District Court. If my memory serves me correctly, that change was made back in 1991—at the same time as these other changes were made. I cannot remember the reason for that change—I do not think any reason was given, except to bring it into line with the title of the chief judges of the other courts. Without touching on the position of the Supreme Court, I think it is fair to say that this provision clarifies the current position. It does not go as far as the former Government saw fit to go in terms of the Magistrates Court, where the Chief Stipendiary Magistrate has all sorts of enormous powers that are well in excess of those of administrative responsibility but also cover matters of discipline, the expeditious exercise of the jurisdiction and the powers of the Magistrates Court and transfers. No Chief Judge or Chief Justice has those powers; nor am I suggesting for a moment that they should have.

This relates to the administration of the courts. The clause clearly spells that out. While some members opposite might suddenly take a dislike to it, I note that they did not take a dislike to this position back in 1991 when they spelt out certain matters in relation to the Senior Judge Administrator and the President of the Court of Appeal. The Opposition may seek to have its cake and eat it too, but its past actions are coming back to haunt it. What is proposed by the Government in relation to the District Court is the same as was proposed by the former Government in those cases I mentioned, except that in this case it is the Chief Judge administering the District Court.

Mr FOLEY: The Government's argument is singularly barren in the purpose for which one puts in place powers in respect of courts. At the outset, the Opposition has criticised the Government's approach to the changing of this legislation because it does not address the purpose for which court reform legislation should be aimed, namely, enhancing access to justice.

Mr Lucas: It does nothing about it.

Mr FOLEY: The member for Lytton is quite correct. The Honourable the Attorney-General seems unable to understand, for example, that with respect to stipendiary magistrates, they were moving out of a model which was a direct hierarchical model itself based on the Public Service. That was the model out of which they came. Similarly, the Attorney-General does not appear to understand that there was a good reason for giving certain powers to the Senior Judge Administrator, and that reason was to get more efficient case management to respond to the heartfelt desire of the Queensland people to get speedier and cheaper access to justice. It is for

those policy reasons that certain powers were put in place in respect of the management of the Court of Appeal.

Similarly, establishing a new court, a permanent Court of Appeal, was an attempt to ensure that the appeal process was reformed and streamlined. That is to say, one does not consider these models in the abstract; one considers them in the context of proper social and legal policy. That is what is missing in the Government's analysis. That is what leads it to make fatuous comparisons with the other courts. Again, I conclude with the point with which I commenced: nowhere in the arguments advanced by the Attorney-General have we heard any good policy reason as to how a single litigant in this State will be better off as a result of the changes proposed by introducing clause 41.

Mr BEANLAND: Case management is a very important point, and I referred to that before. The District Court of Queensland is a very fine example of how the civil list is managed and cases are kept flowing through the system. The Chief Judge has the responsibility for managing that court list, and so he should. We want to ensure that that continues with the growth of the District Courts and that he continues to manage that case load. That is a particularly important matter.

Mr Foley: He does a very fine job.

Mr BEANLAND: He does a very excellent job. He manages that. We want to be sure that that continues. Therefore, I am pleased to have the honourable member's support on that matter. As he believes that, I am surprised that he is not supporting this particular amendment. Also we will have a considerable increase in appeals that are going to occur elsewhere if these other amendments are accepted—and that is a matter for the Parliament. For example, we have other changes: we have increases in the jurisdictional limits from $200,000 to $250,000; we also have a considerable increase in workload as far as appeals are concerned in this State. Appeals are going from the Magistrates Court to the District Courts rather than going to the Appeal Court in this State. That will mean an increased workload. Therefore, it is important to have someone who is able to be responsible for the management of the case load and the case flow.

It is exactly for those reasons that we are putting this proposal in here: to ensure that these are managed and that there is a responsibility for this case flow, which needs to be kept at a cracking pace. After all, with the spread and the number of District Court judges, it would be an area in which one could get oneself into trouble very quickly indeed.

Mr Foley: You just defeated your own argument. You said that it was already achieving that under the existing system.

Mr BEANLAND: It is, but there is a growth in this area. It is important to ensure——

Mr Foley: You defeated your own argument.

Mr BEANLAND: No, the honourable member opposite is saying that some former judges were incompetent in that regard. That is what he is saying.

Mr Foley: No, that is not what I am saying at all.

Mr BEANLAND: Yes, the honourable member did. It is very important that he walked into that. "One question too many Matt" they call him, and he asked one question too many then. The name sticks very well. He did it; he walked into it hook, line and sinker. Very well done! What he said—and I listened very carefully to his other words—is that the previous policy was put in place because the system was not working; it was a matter of getting the Supreme Court to work. He said that in other words but it meant that. We are very clearly aware of what he said, which is that this is working well compared with the previous system; therefore, changes needed to be made previously but we do not have to do that here. What I am saying to him is that the District Court is growing considerably and it is going to continue to grow. Therefore, it is very important that the Chief Judge has the appropriate powers to administer the District Courts now and in the future.

It is also important that we look to the future because from time to time judges retire and other judges take their place, judges go on leave and so forth. That is another good reason to ensure that the Chief Judge has the appropriate power to get on with the administration of the courts—and that is exactly what this does; it does nothing more and nothing less. It is good court administration to ensure that there is the ability to keep the list flowing along and the cases heard, which are the very points which have been made by that side of the Chamber as well as this side.

Clause 41, as read, agreed to.

Clause 42, as read, agreed to.

Clause 43—

Mr LUCAS (10.15 p.m.): I have just a brief query of the Attorney in relation to clause 43, which raises the level of District Court civil jurisdiction to $250,000. I understand that in a number of other jurisdictions in Australia the jurisdiction of the District Courts in personal injuries claims is unlimited. I am interested as to why the Attorney did not adopt that provision. The principles involved in personal injuries cases once they get to that sort of level are the same regardless of whether the claims are for more or less than $250,000.

I think it is very worth while noting that the Attorney commented before that the Chief Judge of the District Courts is very hardworking. Indeed he is and he is very effective. Of course, so are all the other judges of the District Courts. It is an extremely hardworking court and it has worked very hard to eliminate lengthy delays to give access to justice. But I would like to know why the Attorney does not believe in adopting the principles. We have got the full bench advising the Attorney here. In my short time I have seen a few advisers, but I have never seen the full bench out there. We have certainly got that here tonight. I would be interested to hear the answer.

Mr BEANLAND: I thank the member for Lytton for the compliment. It must be this hour of the night. I think there have been some other activities

elsewhere down at Parliament House that have brought a range of other people to the Chamber this evening, although, not particularly for this matter, but perhaps they have stayed on for this item. The issue of the limits to the jurisdictional figures and personal injuries was considered by the Government. After a great deal of consultation occurred, it was considered that there would be a continuation of the limit at $250,000, including personal injury cases. This came about not without a great deal of consultation—and I mean that—with a range of groups within the community. But I think it is fair to say that there was not general support for that. I am not saying that there was not a large amount of support in some areas, but generally there was not support for that. So the Government decided to put the limit on, which is largely in line with the increase in the CPI. I think it was 1989 when the limit was last increased.

Mr LUCAS: The problem is this: personal injuries claims are unliquidated claims. In other words, if the Transport Minister has a broken arm, I might think that he is worth a certain amount of money and someone else might think that he is worth a different amount. There is always a degree of assessment involved in personal injuries claims. In the past one of the avenues for injustices that have occurred in the legal system has been when there is a claim that has a distinction between the lower court and the higher court. There are frequently cases where a District Court which is able to award only up to $200,000 exclusive of interest and costs has said, "This person is worth $240,000 or $300,000" and they are in a position where they are not able to recover that extra amount due to a line being drawn in the sand. I would have thought that having an unlimited jurisdiction would certainly overcome that.

It is worthwhile remembering, too, that for claims where liability is admitted in the Supreme Court, the plaintiff can apply to the Supreme Court judge to have that matter remitted to the District Court. If there is any view that the District Court is incapable of doing these claims, that is quite wrong. That is something that I think the Attorney is not prepared to canvass at this stage. I am not aware of the views of the Law Society or the Bar, but I think it is something that certainly needs to be kept under review. It has struck me on a number of occasions as being quite arbitrary and unfair to people that the judge has said, "Look you are worth $300,000 and some other judge might have said you are worth $175,000, but because of the line you have been discriminated against."

Mr BEANLAND: It was certainly canvassed widely. I understand the arguments that the honourable member has put forward. I am not unsympathetic to some of the arguments. But nevertheless, after canvassing the matter widely, the facts were that it was felt generally that there should still be a limit on personal injuries cases and, as the member pointed out, cases can be remitted down to the District Court in certain circumstances.

Clause 43, as read, agreed to.

Clauses 44 to 61, as read, agreed to.

Clause 62—

Mr BEANLAND (10.20 p.m.): I move the following amendment—

"At page 32, line 12, before 'insert'—

insert—

'omit,'."

This amendment is a technical amendment. A word was missed out. In fact, the word that was missed out was the word "omit" in that particular section. So in this case we are inserting the word "omit".

Amendment agreed to.

Clause 62, as amended, agreed to.

Clauses 63 to 73, as read, agreed to.

Insertion of new clause—

Mr FOLEY (10.21 p.m.): I move the following amendment—

"At page 38, after line 20—

insert—

'Amendment of s 15 (In what Magistrates Courts actions to be brought)

73A.(1) Section 15, 'brought and'—

omit.

(2) Section 15—

insert—

'(2) However, a proceeding may be started in any district or Magistrates Court, irrespective of where the claim or cause of action arose.'."

This amendment gives flexibility in the bringing of actions in Magistrates Courts. It provides that a proceeding may be started in any District Court or Magistrates Court irrespective of where the claim or cause of action arose. I thank the member for Lytton for suggesting this amendment.

The existing provisions in the Magistrates Court Rules, as set out at Rule 11, provide for jurisdiction as to locality. One contrasts the provision in the Magistrates Courts Act and Rules with the provisions in the District Courts Act and Rules. Although a similar provision appears in Rule 9 of the District Court Rules with respect to jurisdiction, when one goes to section 7 subsection (2) of the District Courts Act one finds the provision that every District Court shall have jurisdiction throughout the whole of Queensland. In other words, this amendment gives the same flexibility in bringing actions in the Magistrates Court as that available through the existing legislation governing the District Court. As such, it is designed as a positive contribution to law reform—one which will assist in the bringing of actions and will overcome some technical problems that can arise when actions are brought in the wrong Magistrates Court and may, in turn, give rise to limitation problems if they have been brought close upon the expiration of a limitation period.

Mrs CUNNINGHAM: I have two questions, one of which is to the mover of the amendment. I would like an indication of what process is involved to decide which jurisdiction will hear a case,

particularly where there is conflict between the victim and the person who is being held responsible. I also wondered whether the Minister could advise if there would be any disadvantages in having this included.

Mr FOLEY: The short answer is that either party, the defendant or the plaintiff, can make an application for a change of venue. For example, if the plaintiff were in Brisbane but the defendant were in Gladstone and it was inconvenient for the defendant to come to Brisbane, then an application could be made for a change of venue to Gladstone. As well, if the application had been brought unreasonably in Brisbane by, say, a plaintiff who was seeking to be exploitative or unfair, then I have no doubt that the court would make that sound in a costs order against the plaintiff for bringing the action in an inappropriate venue.

Mr BEANLAND: Whereas the member for Yeronga says that there is all upside to this and no downside, that is not my view currently of the matter. There are some difficulties or disadvantages. People are presently able to make an application to the court to have a case moved to another district or court in the State. Magistrates Courts generally comprise districts of the court itself, and one can approach the court to have a case heard elsewhere in the State. I am not aware of any real problems in relation to that. I am not saying that there are not some problems, but I am not aware of any. However, I am concerned about this matter.

Whereas the member for Yeronga, in common with the member for Lytton, thinks that this allows one to move cases around more freely, nevertheless we could have a situation in which unscrupulous people or unscrupulous companies, for example, might want to start an action in Charleville against somebody who is resident in Brisbane, or someone who is resident in Gladstone might want to start an action against someone in Mount Isa. I imagine that there would be a problem in relation to that if we made the changes which the member is proposing.

I want to make it quite clear that, if the Opposition is prepared to accept this, I am prepared to have a look at this matter in the uniform court rules. As members of the Committee would be aware, the Government has been working on those rules for some months. They are almost complete. Instead of having a long debate in here about this—and I will give a commitment to this effect—I would much rather put this proposal with the uniform court rules for consultation. We will have several weeks of consultation about those court rules. We can then let everyone have a look at this. If people come back to us and say, "Look, this is a great idea. There is no downside", that is fine. However, at the moment I am concerned that there are some downsides, and I am concerned that those downsides will affect defendants and that unscrupulous people will be able to use this to their benefit. The member for Yeronga can tell me that that will not be the case, but I believe that that is a possibility. There has not been any public consultation about this particular issue.

Mr Foley: Basically it is the same situation, though, as with the District Court.

Mr BEANLAND: Yes, but smaller matters go before the Magistrates Court—cases involving claims of up to $40,000. Those cases involve mums and dads, or perhaps the local painter or the local tradesman. An unscrupulous financier might decide to take those people on, and they might live in Brisbane or Gladstone. I mention this because the member for Gladstone has raised it. One of her constituents could be having an altercation with someone, and that person could suddenly find that, instead of having that case heard in Gladstone, where it should be heard, the other party could file the application in Mount Isa or Charleville. The cost and the hassles of getting there would be quite severe.

If the Opposition is prepared to accept this, fine. If not, that is a matter for the Opposition. However, the Government would be prepared to look at this with the uniform court rules program, which is not very far away—only a matter of weeks—and, after public consultation, we can ascertain what people believe. I am concerned that this could be used by unscrupulous people and that it could have significant adverse effects. However, if it goes out for consultation and people say that there is no real problem, then we will have another look at it.

Progress reported.

ADJOURNMENT

Mr FITZGERALD (Lockyer—Leader of Government Business) (10.30 p.m.): I move—

"That the House do now adjourn."

Driver Education

Mrs ROSE (Currumbin) (10.30 p.m.): Tonight I call on the Government to reinvest revenue from traffic fines in a Statewide scheme for driver training. Such a scheme, as a weapon to tackle the root cause of the road toll, particularly on the Gold Coast, which last year had the highest accident rates in the State, is long overdue. I caution the Government against overreliance on new technology, such as the speed camera, to control the problem. Measures such as the speed camera and the breathalyser are valuable deterrents in curbing potential offenders, but the real answer lies in education to give people better driving skills and a real sense of responsibility on the roads. There should be a two-pronged approach: firstly, pre-licence driver training built into the State's education system; and, secondly, compulsory advanced driver training for people seeking their first licence renewal.

Police and qualified officers from the Transport Department should be brought into the schools to assist in properly constructed courses from at least Year 10, educating young people in road safety from the age of 14 or 15. That way, by the time they are old enough to have a licence, young people, who see the car as a means of freedom, will also have a real background in the kind of responsibilities that go with that. The Transport Department must also take responsibility for ensuring that people remain

qualified to drive in the years after obtaining their initial licence. For example, advanced training for existing licensees would be one way of ensuring an overall and continuing increase in the level of driving skills Statewide. The Government should consider making it compulsory for people to attend advanced driving courses before their first licence renewal.

As a former member of the Parliamentary Travelsafe Committee, I am aware that the committee has already made detailed recommendations to the Government to upgrade driver education. The committee has noted that Queensland's road deaths have been trending upward since 1990, despite falling rates nationally and in comparable States. It is an alarming fact that Queenslanders aged between 25 and 59 are 45% more likely to be killed on the road than other Australians. On the Gold Coast, we are the most vulnerable of all. Statistics last year showed that drivers on the Gold Coast are 33% more likely to be involved in a fatal car crash than drivers in the rest of Queensland. Another frightening statistic is the unacceptably high death toll in the 17 to 24-year-old age group. Seventeen to 24-year-olds make up 13% of the population in Queensland, but they make up 28% of the road toll; in other words, they are twice as likely to be a road fatality than any other age group in Queensland. Of that 28%, over 80% are males.

In analysing the causes of Queensland road crashes, the police say that disregard of traffic rules is the most common factor involved in 34% of all fatal crashes. They blame alcohol and drug use for 22% of fatal crashes and speed for 14%. So it is apparent that we have to do far more than simply stop people from speeding and drink-driving; they have to be educated from an early age to appreciate that the rules are for their own safety and the welfare of others. They need to be imbued with a regard for road safety and the rights of other road users well before they even think of getting a licence. The place to start is in the schools. The Government cannot afford to continue to turn a deaf ear to its own experts when they pinpoint the need for better driver education. We need that as a matter of urgency to turn around the frightening figures of the road toll and to safeguard the very lives of the young people coming through our schools. The extra money that the Government spends in this way will be saved many times over by reducing the immense cost the community is forced to bear through road accidents and fatalities. The extra road education would be valuable insurance for the future of our young.

Road fatality figures for the months of May and June this year provide their own clear indication that innovations such as the speed camera are not the total answer to road safety. The figures show that in the first two much-publicised months, when it should have made its biggest impact, the speed camera certainly slowed traffic; yet it failed to make a dent in the road death statistics. No doubt the figures after 12 months will produce a truer reflection, but the initial figures are disturbing in themselves. The Government must be made to realise that other important factors continue to be overlooked. The most pressing of those is the wilful disregard—very often defiance—by many drivers of the road rules that they should be following. That can be corrected only by a massive change in public attitudes. The key to that is education and enforcement.

The extra revenue from fines brought in by measures such as the speed camera should be ploughed back into education for road safety that impresses upon existing drivers and future drivers that holding a driver's licence is a responsibility not an entitlement and that every time they get behind the wheel of a vehicle they are entering a potentially dangerous environment.

Time expired.

Health Services, North Queensland

Mrs WILSON (Mulgrave) (10.35 p.m.): I rise to outline to the House the significant improvements in health services that have been delivered to north Queensland in April and May of this year. The list is comprehensive and demonstrates the coalition Government's commitment to offering north Queenslanders access to quality health care and the commitment of the Minister for Health to the northern regions of the State.

On 3 April, the Minister for Health announced the construction of the Edmonton community health centre. Edmonton will benefit from the diverse range of services provided by its new $3.5m community health centre. It will provide various services, including family and health services, alcohol and drug counselling, women's health, sexual health, mental health, dental health, youth health, environmental health, health promotion as well as visiting medical specialist services. People in urban areas will be able to access local health services on a public transport system. Many families in the north rely on public transport.

On 4 April, the Minister announced $650,000 in tenders for the $7.5m Proserpine Hospital redevelopment project. That project is expected to be completed late next year. Also on 4 April, an extra $5m for the Cairns Base Hospital redevelopment was announced, which will allow rehabilitation services including oncology and haematology services. $3.2m of that money will be used for a 12-bed rehabilitation unit, complete with a hydrotherapy pool that will treat young people with brain damage, long-term stroke patients and spinal injury patients. Families in the north have waited for a long time to have a service such as that so that those needing rehabilitation can remain close to their homes. The remaining $1.8m will be allocated to the hospital's new clinical building for increased facilities for oncology and haematology specialists and for education and research.

On 17 April, the upgrade for the Ayr maternity block was announced, injecting $240,000 into the upgrade. Many women will benefit from that project as Ayr services a large area. The upgraded facility will include five to six single and shared ensuites, a complete renovation of the existing ablution unit, as well as airconditioning.

As a result of the health summit, Queensland Health, the AMAQ and combined specialist colleges have agreed to negotiate additional positions for the

north. Those include one diagnostic radiologist for Townsville, three emergency medical officers for Cairns and four for Townsville, two general surgery positions for the Townsville rural service and one radiation oncologist for Townsville. Those additional positions will make significant improvements to the health services in the north. On 1 May, $85,000 was announced for the Richmond Hospital. As a result of that funding, the Richmond Hospital will be able to replace its airconditioning unit and the wall and floor vinyls in outpatients. Also on 1 May, $300,000 for the Charters Towers Hospital was announced. That funding will replace the roof on the laundry, provide new floor coverings for outpatients, replace the refrigerated airconditioning systems as well as upgrade the electricity supply system.

On 14 May, $385,000 for new radiology equipment in Bowen was announced. The provision of X-ray equipment in Bowen means that people within the area will no longer need to undertake a 440 kilometres to 600 kilometres round trip to access that service. The new equipment has the potential to increase examinations by 500%, from 350 to 1,700 per year. Also on 14 May, $300,000 for new X-ray equipment for the Atherton Hospital was announced. That funding will replace the Atherton X-ray equipment, which is almost 20 years old. The improved service from the upgraded equipment will be significant.

Those services being delivered to our north Queenslanders by the coalition Government just keep on improving. The Mareeba and Atherton Hospitals have received an extra $93,000 on top of the previous $600,000. The $600,000 will go towards a relocation of the Atherton Hospital's community health service to the refurbished former nurses quarters. The additional $93,000 will be used to improve the smoke detectors and the fire alarm system at the Mareeba Hospital.

The rural medical indemnity scheme, an initiative of this Government, will help many procedural rural GPs in the north to maintain vital services in rural communities, including obstetrics, minor surgery and anaesthetics. The provision of those services enables people to receive treatment in their own home town where their family and friends are. The coalition Government is committed to maintaining and forever improving services available in the bush. That initiative is simply one of the many that this Government has implemented. I have outlined to the House the improvements in health services in the north of this State. I believe that the services outlined clearly illustrate that this Government——

Time expired.

The Queenslander

Mr ARDILL (Archerfield) (10.40 p.m.): The projected demise of the Queenslander, one of the world's great trains and certainly Australia's best, is a prospect to be deplored and a matter of great regret. It follows the elimination of dozens of important trains around Australia in the last 20 years—and this is the first main train in Queensland to be eliminated—just as the Americans realised their previous mistakes and established a network of excellent trains around that country under the Amtrak system, which is a Government service. It should be said that none of these is up to the standard of the Queenslander.

The Queenslander has an outstanding staff, geared to pleasing the patrons in a friendly, obliging and entertaining way. The train manager, Mr Stephen Mooney, is an outstanding manager of staff. He has the best relationship with passengers of any public transport officer I have seen in hundreds of thousands of kilometres of travel over many decades. His commentary on the journey is informative and interesting and supports local initiatives as well as being ambassadorial for Queensland. Stephen Mooney is an essential and intrinsic part of tourism promotion in this State.

The Queenslander was a concept devised by Jack Duggan in the 1950s when he introduced the first State-owned airconditioned sleeping car trains in the world. The Queenslander was constructed at the Ipswich workshops in the mid 1950s, but before it became a reality it was submerged in the election debacle of 1957 and scattered around the trains of Queensland. The Queenslander emerged 30 years later as a concept of Don Lane. It did not include any of the original cars but used cars mainly from other trains which had been refurbished three times. It was an excellent concept.

The present train has a capacity of 96 sleepers and 144 seated passengers, giving a total capacity of 480 each week or 19,200 per annum of 40 weeks. There is a further capacity of 14 sleepers in peak times. The fact that during 1995-96 it carried 18,983, less then 300 below capacity, means that it attracts very good patronage, although admittedly this could be improved by double use of seats where one passenger leaves the train en route and another joins. However, that is limited by early arrival in Mackay.

Obviously, the Sunlander does have double use, with a total capacity of 139 sleepers and 180 seats, or 319 all up per train. The three return trains provide accommodation for 1,914 passengers per week and, in fact, average 2,460 passengers per week. Sometimes during peak times an additional train is provided and sometimes an additional car is attached. So the 500 overcapacity is not totally correct. However, it must be said that at various times of the year it is often impossible to book sleepers on either trains. Therefore, it is most disappointing and unacceptable that the present Government proposes to eliminate the best train in Australia. It is essential that the public cars be retained, because Labor will reinstate this train. A lot can be done to increase patronage in the same manner as John Angell did in the early years of the Labor Government.

Advertising is an essential part of any tourism activity. Very few travel agents are aware of the benefits of modern train services, or fail to promote them. It is significant that more people travel north on the Queenslander than those who travel southbound. The fact that the Queenslander has a motorail facility should not be forgotten and should be better promoted.

Not enough use is being made of the Queenslander consist. It should be serviced on Wednesdays after an accelerated journey and returned to Townsville on Wednesday night. It could then return from Townsville on Friday morning, taking up the running of the present Spirit of the Tropics from Proserpine, arriving in Brisbane on Saturday morning. That would still allow a 24-hour window for servicing each week.

The new Orient Express will never replace the Queenslander—a uniquely Queensland product for Queenslanders and all Australians. The Orient Express will attract the very rich in our community and once-only overseas tourists. The Queenslander is a regular, affordable facility for Australians while still in the luxury class.

Incidentally, the third or "short" Sunlander should be put to work to provide five services a week to Cairns, with the Queenslander providing a sixth and an extra trip to Townsville. The third Sunlander now provides only an occasional service. That would also allow an upgrading of Inlander services to Mount Isa to three per week. Queensland Rail should be providing a three-times weekly service overnight to Rockhampton and Mackay with at least one extending to Proserpine and Bowen, as at present these tourism areas are badly served by the early hours of the morning arrivals.

With daily and expanded services, at least in holiday and tourism periods, the railways would have more credibility and support. But abolish the Queenslander? Perish the thought! This train must be retained.

I ask that the table be incorporated in Hansard.

Leave granted.

The Queenslander 1997

	1st	Econ
MPC 1437 Power car		
MAS 1501 Pandora	14	
LAR 1901 Mary Watson	14	
LAR 1902 Yongala	14	
MAS 1492 Flinders	14	
MAS 1493 Coral Sea	14	
MLC 1504 Daintree		
LDC 1936 Coral Cay		
MCD 1518 Canecutters Bar		
MAS 1491 James Cook	14	
MAS 1500 Saville Kent	12	
MSC 1471 staff car		
MCC 1521 Club Loco		
LBL 1883 J		48
LBL 1882 K		48
LBL 1881 L		48
MPC 1432 Power Car		
MBC 1455 baggage car		
Total	96 1st	144 Econ.

Time expired.

Machans Activities Groups; Ms M. Jarvis

Ms WARWICK (Barron River) (10.45 p.m.): I would like to take this opportunity to tell the House about two very positive events which have occurred in the electorate of Barron River. The first concerns youth and, more specifically, a pro-active plan which is solution driven.

Machans Beach is a beachside suburb that rests in the Barron River delta and is located five kilometres north of the Cairns city centre. Local residents were concerned about an increase in petty crime and vandalism at Machans Beach and a perceived lack of activities for young people. Instead of whingeing about the situation, they initiated the Machans Activities Groups, or MAGs. That occurred during the 1996 Christmas holidays and kicked off with music workshops on Friday nights and Saturday mornings organised by local post office manager Peter Johnson.

Peter then approached Ruby Red, an arts administrator and performing artist, and Marybeth Gundrum of FunWorks Communications and Events, to meet to discuss fundraising activities and promoting the group to both the local community and the broader Cairns area. Michelle Milne, Deryck Thompson, Neville and Jo Brown, and Alan and Marilynne Andrewartha also joined the group to assist with the promotion and organisation of the first Untalented Talent Quest, about which I will speak later.

The name MAGs was devised by the young people at one of its regular meetings. Young people are encouraged to have input into all major decisions. They have expressed interest in expanding activities to include sea skills, fishing, cooking and hygiene, constructing a BMX track and practical mechanics. Camping trips are also on the agenda for the future. A pool table is circulating between households through a roster system. Pool sessions are supervised with each household establishing times for the sessions and the ground rules for behaviour. Through that, the young people have learned to respect other people's rights and property. The MAGs committee believes that the overall success of the project lies in the interaction between young people and adults in a non-judgmental, supervised environment where skills and information are shared.

Adult members of the community have come forward to offer their time and skills free of charge. The support base continues to expand as time passes. The activities are open to all residents regardless of age, sex, religion or ethnic background. The organisers believe it is important that wherever possible the activities are provided free of charge to ensure that everyone can participate. That is especially relevant for those families on low incomes. The organisers endeavour to promote healthy choices by providing good food at meetings, keeping all the youth activities drug and alcohol free and offering only low-alcohol drinks for adults attending MAGs events.

On 4 May the first Untalented Talent Quest was held. That event was aimed at participation, not the quality of the acts, and 20 acts participated. An amount of $1,000 in kind sponsorship was raised to provide prizes. Five hundred residents attended the event with over $1,000 being raised, which was injected back into youth activities. The Machans Beach P & C was also able to raise funds through the sale of food.

That event was a truly community-focused event, which raised the self-esteem of the young people and alerted the adults to the depth of talent of the local youth and the positive contribution that they are capable of making to the community. As a result of the talent quest, Alan Andrewartha of Sound Barrier Audio at Machans Beach suggested that the music group record three original tracks performed by these youngsters.

On 20 June, Machans Magic was launched in Machans Beach. The launch celebrations included a live performance of the recorded songs. That launch was a huge local success, with approximately 150 local residents, the local committee and myself present. That night the feeling in the hall was overwhelmingly supportive, with the young people receiving affirmative feedback from all members of the community. To date, profits from the sale of the tapes and T-shirts and donations have exceeded $1,000. As a result of the launch and the subsequent media coverage, the music group has been invited to perform in the Cairns City Council Chambers and at the Pier Marketplace on the Esplanade. I salute and congratulate the people of the Machans Beach community.

Margaret Jarvis of Holloways Beach is no ordinary human being. She has been involved in caring for physically and intellectually disabled people for many years, 170 of whom have lived with her during that time. When the Rotary Club of Cairns/Mulgrave, a club which is committed to assisting foster parents and children, heard that Margaret needed a van to transport the five children—three of them in wheelchairs—who are currently in her care, it was decided that the club would raise funds for the purchase. Westco Motors and Mazda Australia made generous contributions, as did other people, but there was still a shortfall of some $30,000. So the club approached me for assistance. Because of the lack of time, I will just say to members that I decided that I would help them. I approached the Minister.

Time expired.

Queensland Fire and Rescue Authority

Mr PEARCE (Fitzroy) (10.50 p.m.): Tonight I call on the Minister for Emergency Services to abandon the back-door move by the Queensland Fire and Rescue Authority, QFRA, to take away the autonomy of the Rural Fire Division and, in turn, the rural fire brigades. My comments are in response to the launch of the Queensland Fire and Rescue Authority's strategic plan and the future directions of the authority for a more integrated approach to service delivery between rural and urban services.

Nowhere in the strategic plan released last week in central Queensland is there mention of the Rural Fire Division being able to continue with the role it plays in this big State. Therefore, it can only be assumed that, as an entity, it will be swallowed up by the QFRA. This means that funding normally allocated specifically to rural fire brigades through the Rural Fire Division will be absorbed into the QFRA budget. The outcome of that will be that rural brigades will have to beg for moneys to maintain their services. Areas such as Gogango, Westwood, Alton Downs, Alpha and the gemfields will be financially disadvantaged.

When informed of this move, some 47,000 volunteer firefighters belonging to 1,600 rural brigades will, I believe, object strongly to having their identity as rural bush fire brigade members taken away. Instructions by the QFRA to remove rural brigade logos is like taking the word "Queenslander" away from our State of Origin team. The Minister should be able to relate to that! Rural fire brigades and their volunteers stand apart from urban services. They are different people with a different purpose in life. They do not wish to be engulfed in the bureaucratic nonsense of the urban services.

With the move by the QFRA to integrate the two services, the volunteers will be betrayed by the Minister. It is against their wishes that the Rural Fire Division will no longer be recognised by the Queensland Fire and Rescue Authority. It is against the wishes of the volunteers that they will no longer be recognised as rural bush fire brigade members. If the logo is taken away, the identification of being a volunteer for a rural-based service is taken away. This is akin to the Chinese takeover of Hong Kong. The two groups will be integrated, but one will have a lost identity and a new culture.

As a local member elected to this place by the people, I am angered by the fact that no-one within the fire service is prepared to talk about the dissatisfaction in the administration area of the Rural Fire Division, because they fear for their jobs. This situation may change soon as I am told that a number of district inspectors are so demoralised by the actions of the Government, the Minister and his Commissioner for Rural Operations that it could mean resignations across-the-board. I fear that that is what the QFRA is hoping will happen.

Regional assistant commissioners have been appointed along political lines and because they believe in the integration of the urban and rural fire services. The opinions of volunteers are given no consideration; anyone who disagrees with the new direction of the QFRA is told, "The gate is open, you can leave if you want to." That shows how much respect the Minister and his Commissioner for Rural Operations have for the volunteers who risk their lives and who give up their time and resources to prepare for and fight fires that threaten the homes and properties of friends and neighbours. The Minister and his bureaucrats have taken the Queensland Fire and Rescue Authority back to looking after mates ahead of looking after the people who are fighting the fires.

When in Government, Labor lifted the rural fire brigade out of a pit of humiliation and restored in it a sense of pride and commitment. This Government is about ripping the heart out of an organisation that now stands tall in the eyes of the public. This Government is taking rural fire brigades back to a time when they were forced to beg for money to purchase vehicles and safety equipment. They were ignored and cast aside by politicians who were supposed to support the people of the bush. Back in

Government by the grace of the Independent member for Gladstone, National Party members have again turned their backs on their own constituency. If they allow the rural bush fire brigade's identity to be rubbed out in favour of the Queensland Fire and Rescue Authority, they will be responsible for delivering the biggest ever kick in the guts to our volunteers—the people of the bush: the graziers, the grain growers and the people of rural communities who volunteer their time in the interests of providing an essential service to the community.

Members opposite are a mean and ungrateful mob. They are taking for granted the loyalty of the people who traditionally support them. I might be a Labor member of this Parliament, but I am proud to represent a large rural area of central Queensland. I will stand up and fight for rural producers. Many of them do not support me at the ballot box, but their voice is still heard in this place. I did that in Government and I continue to do it in Opposition. When in Government again, I will do it on my own, if I have to, in order to ensure that my constituents get a fair go. That is more than a lot of those sitting on the other side of the House are prepared to do.

Time expired.

Great Barrier Reef Marine Park Authority

Mr MALONE (Mirani) (10.55 p.m.): The concerns highlighted this morning by the Minister for Primary Industries and the member for Hinchinbrook on the moves to ban mesh netting in Queensland waters throws into serious doubt the manner in which the Great Barrier Reef Marine Park Authority, GBRMPA, undertakes its scientific endeavours.

I note what the member for Hinchinbrook had to say about Tony Preen, the so-called objective scientist commissioned by GBRMPA to do a report on a system of dugong sanctuaries for the recovery and conservation of the dugong population in the Great Barrier Reef World Heritage area and adjacent southern waters. The fact that he is willing to be identified as a member of the dugong mafia is beyond belief. In any event, since the meeting of the ministerial council for the Great Barrier Reef took place on 14 June in Cairns, there now exists serious doubt about GBRMPA's advice.

GBRMPA's research on the status of the dugong population is so dodgy that it has become a laughing-stock in the scientific community. It has now come to light that GBRMPA used 13-year-old aerial survey maps as the basis for its knowledge of seagrass distribution. Those maps date back to 1984. Serious doubts have arisen about the validity of the seagrass maps used by GBRMPA in preparing its closed areas, as there have been many changes since then.

Any fool knows that the dugong, commonly called sea cows, feed on seagrass. Therefore, where there is no seagrass there are no dugong, as demonstrated by the mass migration of dugong from Hervey Bay after the 1992 cyclone and floods. The 1994 report by Tony Preen himself shows that dugong numbers went from 1,700 in 1988 to 70 following the floods and then back up to 600 only 12 months later. In his published report Preen himself has stated that the disappearance and return of dugong in Hervey Bay is directly related to the disappearance and regrowth of seagrass.

This highlights that GBRMPA has rushed into this without the quality of research that Australians have a right to expect of it. This would suggest that the scientists involved have abandoned the first principle of science, which is to always maintain objectivity. Instead, they have become partisan proponents of a narrow point of view. What is frightening is that it is on this haphazard and misleading so-called research that GBRMPA is prepared to put at risk the futures of hundreds of Queensland families in the fishing and seafood industries.

There is not time to go into it here because it is a complex issue, but it is clear that dugong are not at risk of extinction in Australia at all. For example, scientists have recorded an increase in dugong numbers in the Torres Strait region from 13,000 to 24,000 in just four years. This has not stopped GBRMPA from putting out highly emotive and misleading material such as this information kit titled "Dugong Facing Extinction".

Previous work on the dugong has been described by other scientists as biased. I refer to a 1997 review by Professor Bob Kearney, the head of the School of Environmental Heritage and Resource Science at the University of Canberra, in which he criticises an earlier report on dugong for GBRMPA as being biased towards total preservation at the expense of multiple-use management. The preliminary results of aerial, boat and foot surveys reveal no luxuriant beds of seagrass as claimed by GBRMPA.

A newspaper article in the Mackay Daily Mercury dated 28 May 1997 features Tony Stokes and Janet Slater of GBRMPA staring intently at a blade of seagrass obtained from Newry Island. I have been told that this so-called research at Newry Island involved little more than a walk along the beach with the media in tow. This suggests that GBRMPA has engaged in misleading conduct and that any changes in dugong numbers may well be largely explained by the change in the occurrence of seagrass.

Time expired.

Motion agreed to.

The House adjourned at 11.01 p.m.