

ELECTRONIC VERSION

**NATIONAL UNIFORM REGULATION OF FRIENDLY
SOCIETIES AND THE FRIENDLY SOCIETIES
(QUEENSLAND) BILL 1997**

LEGISLATION BULLETIN NO 8/97

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1. PURPOSE

The purpose of the Friendly Societies (Queensland) Bill 1997 is to integrate friendly societies into the existing Financial Institutions Scheme (FI Scheme) which already regulates building societies and credit unions.¹ The Bill repeals the existing *Friendly Societies Act 1991* (Qld) (**Clause 37**) and applies the Friendly Societies (Victoria) Code and regulations as the law of Queensland (**Clause 5**).

The Victorian Code is template legislation, which can be adopted through an application of laws mechanism by other Australian jurisdictions. To date, Bills to apply the Friendly Societies (Victoria) Code and regulations as the law in other Australian states or territories have been introduced into the Parliaments of

¹ Friendly Societies (Queensland) Bill 1997, *Explanatory Notes*, p 1.

Queensland, New South Wales², South Australia³ and the Northern Territory.⁴ In Western Australia, it is anticipated that the template legislation will be put in place during the Spring Session of the 1997 Parliament. Advice received from the Australian Capital Territory is that the ACT intends to apply the Victorian Friendly Societies Code as ACT law, but has not to date prepared legislation. According to the latest information available, friendly societies legislation is still under consideration by the Tasmanian Cabinet.

2. BACKGROUND

2.1 THE CURRENT LEGISLATION

Prior to the introduction of template friendly legislation, friendly societies were subject to regulation by separate legislation in each state and territory.⁵ As explained in the *Explanatory Notes* to the Friendly Societies (Queensland) Bill 1997: “*These various Acts were sometimes outdated and often differed widely between jurisdictions*”.⁶ To illustrate, the existing Tasmanian *Friendly Societies Act* dates back to 1888, while the Western Australian legislation was first introduced in 1894.

In Queensland, the existing friendly society legislation is the *Friendly Societies Act 1991*. This Act is administered by the Queensland Office of Financial Supervision (QOFS), subject to the Minister (the Treasurer). The role of the QOFS in supervising the operation of friendly societies, under both the existing and the proposed legislation, is further discussed in Section 3.3 of this *Legislation Bulletin*.

² Friendly Societies (New South Wales) Bill 1997.

³ Friendly Societies (South Australia) Bill 1997.

⁴ Friendly Societies (NT) Bill 1997.

⁵ Friendly Societies (Queensland) Bill 1997, *Explanatory Notes*, p 1.

⁶ Friendly Societies (Queensland) Bill 1997, *Explanatory Notes*, p 1.

2.2 FRIENDLY SOCIETIES - AN OVERVIEW

The development of friendly societies in Australia has been traced back to England⁷, with the first Australian friendly society being established in New South Wales in 1830.⁸ According to Green and Cromwell, the first friendly society to be set up in Queensland was a branch of Manchester Unity, established in 1848.⁹ Green and Cromwell describe the development of friendly societies in Australia as the story of:

*... ordinary Australians - labourers, miners, carpenters, bricklayers, stonemasons, blacksmiths, shopworkers, railwaymen - band[ing] together to provide, by their own exertions and from their own slender resources, some of the medical and other essential services they lacked.*¹⁰

In its 1990 report, the Committee of Inquiry into Non-Bank Financial Institutions and Related Financial Processes in the State of Queensland stated that:

*Friendly societies reached their peak as welfare organisations in the 1930s, after which Government involvement in the area of social security greatly reduced the need for their services. Major inroads into friendly society services resulted from the introduction in Queensland of free public hospital and associated medical care in the 1930s and 1940s, and the introduction of an extended range of pensions and subsidised medical care by the Commonwealth.*¹¹

As explained in the recently released Final Report of the Inquiry into the Australian Financial System (the “Wallis Report”):

Friendly societies enjoyed a resurgence in the 1980s when a number of them offered tax advantaged savings products in the form of insurance bonds. The investment earnings of the friendly society were not taxed and earnings were tax free in the hands of the member. At that time, some societies, including new societies established specifically to exploit the tax concession, grew rapidly. Many of the tax advantages were subsequently removed and today the investment savings products, particularly single premium bonds and annuities, which are

⁷ Allan Hallady, Morrie O'Connor and Richard de Simone, *Friendly Societies in Today's world: Looking Back, Looking Forward with the ANA Friendly Society*, ANA Friendly Society (Qld), 1994, pp 8-13.

⁸ David Green and Lawrence Cromwell, *Mutual Aid or Welfare State: Australia's Friendly Societies*, George Allen & Unwin, Sydney, 1984, p 4.

⁹ Green and Cromwell, p 11.

¹⁰ Green and Cromwell, p xiii.

¹¹ *Report of the Committee of Inquiry into Non-Bank Financial Institutions and Related Financial Processes in the State of Queensland*, November 1990, p 31.

*similar to those offered by life companies, are subject to broadly similar taxation treatment, including the taxation deeming provisions.*¹²

Currently, there are approximately 200 friendly societies in Australia.¹³ For the December quarter 1996, the total assets of friendly societies in Australia totalled \$7.0 billion.¹⁴

2.2.1 Friendly Societies in Queensland

As at 30 June 1996, there were 63 friendly societies in Queensland, with total assets of approximately \$356 million.¹⁵ According to the industry review of Queensland friendly societies contained in the 1996 *Annual Report* of the Queensland Office of Financial Supervision, 15 of the 63 friendly societies offered flexible insurance products as their main business. The assets of this group of friendly societies, which typically offer investment bonds with a life insurance component, totalled \$184 million of the total industry assets.¹⁶

Friendly societies operating in the health sector included 13 pharmacies, two provincial hospitals, two nursing and retirement facilities, and several health funds. In relation to the friendly societies which carried on business as pharmacies, the QOFS stated:

*These operate throughout the State and some have been operating for more than 100 years. As an industry they are expanding their traditional lines of products and services to meet the challenges of a very competitive industry. Their principal regulation is through various pharmacy and health Acts relating to their operations. QOFS ensures compliance with the Friendly Societies Act 1991 and regularly reviews their financial performance. The industry sector is displaying consistent growth and the entities are assessed to have sound financial structures that are appropriate to their retail operations.*¹⁷

¹² Australia. *Financial System Inquiry Final Report*, (chaired by Stan Wallis), March 1997, p 328.

¹³ *Financial System Inquiry Final Report*, p 328.

¹⁴ Australian Bureau of Statistics, *Managed Funds, Australia*, December 1996, p 7.

¹⁵ Queensland Office of Financial Supervision, *Annual Report 1996*, p 24.

¹⁶ Queensland Office of Financial Supervision, p 25.

¹⁷ Queensland Office of Financial Supervision, p 25.

There are also a number of friendly societies which are principally involved in offering social, cultural and sporting activities, and do not offer financial products or services. In its 1996 *Annual Report*, the QOFS stated:

*QOFS supervises these societies by review of financial statements and ensuring general statutory compliance. While these societies may be more logically accommodated under the Associations Incorporation Act 1981, they have determined not to change their status - which in some cases has existed for over a century.*¹⁸

Over 20 friendly societies offer single benefits to their members. According to the 1996 *Annual Report* of the QOFS, these benefits are typically workplace based and take the form of sickness or unemployment benefits. In relation to these types of Queensland friendly societies, the QOFS stated:

*With modern social security systems the relevance of these societies is often questioned, and their generally modest size creates doubt as to their medium term survival.*¹⁹

Appendix A to this *Bulletin* reproduces statistical trend data on Queensland friendly societies, compiled and published by the Queensland Office of Financial Supervision in its 1996 *Annual Report*. **Appendix B** lists all Queensland friendly societies as at May 1997. This information has been provided by the QOFS from its register of friendly societies.

2.3 PROPOSALS FOR NATIONAL UNIFORM REGULATION OF FRIENDLY SOCIETIES

At a Special Premiers' Conference held in Brisbane on 30-31 October 1990, heads of government agreed that legislation governing the operations and supervision of non-bank financial institutions (NBFIs) should be reformed to ensure the stability of the financial system. A Special Premiers Working Group was subsequently established to examine proposals for national uniform regulation of non-bank financial institutions.²⁰

The Working Group identified the following shortcomings in the existing friendly societies scheme of supervision:

¹⁸ Queensland Office of Financial Supervision, p 25.

¹⁹ Queensland Office of Financial Supervision, p 25.

²⁰ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

- prudential standards and supervisory practices were not uniform across jurisdictions, with efficient interstate expansion of friendly societies being inhibited as a result;
- there was potential for loss of public confidence in individual friendly society institutions, and possibly loss of confidence in the industry, and
- constraints on supervisory bodies existed, because of a lack of legislative authority.²¹

The Working Group recommended that friendly societies should be subject to national uniform supervision, by being incorporated within the framework of the Financial Institutions Scheme.²²

In May 1994, the Ministerial Council for Financial Institutions adopted recommendations made by the Special Premiers Working Group on non-bank financial institutions. As recommended by the Working Group, the Ministerial Council resolved, in relation to friendly societies:

- that friendly societies should be integrated into the financial institutions scheme
- that the Australian Financial Institutions Commission (AFIC) should operate as the sole national co-ordinating and standard setting body, with supervision to be undertaken by the state supervisory authorities (SSAs)
- that an implementation task force, accountable to the Ministerial Council, should be set up to develop discrete legislation to be consistent with existing financial institutions legislation, to provide a uniform national scheme of supervision, and
- that template legislation be initially introduced into the Victorian Parliament.²³

²¹ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

²² Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

²³ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

2.4 DEVELOPMENT OF THE FRIENDLY SOCIETIES CODE

The template friendly societies legislation, in the form of the Friendly Societies (Victoria) Code and Regulations, was first introduced in Victoria on the ground that: "... *friendly society regulation is more significant to Victoria than any other Australian jurisdiction*".²⁴ In her Second Reading Speech to introduce the Friendly Societies (Victoria) Bill 1996, the Attorney-General, Mrs Wade, explained:

*Approximately 37 per cent of Australian friendly societies are located in Victoria and Victorian societies control approximately 82 per cent of funds committed to friendly societies. In the 1995-96 financial year Victorian friendly societies controlled \$7.952 billion of gross total assets under the control of friendly societies in Australia of \$9.723 billion.*²⁵

The Wallis report attributes the predominance of industry assets held by Victorian friendly societies to the situation during the 1980s when friendly society investment earnings received tax concessions. Many friendly societies grew rapidly during that period, particularly in Victoria, where the maximum benefit limit for a member was \$150,000, by comparison with limits of less than \$20,000 in other States.²⁶

The template friendly societies legislation was introduced into the Victorian Legislative Assembly on 30 October 1996 by the Attorney-General, Mrs Wade and was passed in the Lower House on 21 November 1996. It was introduced into the Victorian Legislative Council on 3 December 1996 by the Minister for Small Business, Hon Louise Asher and was passed in the Upper House on 5 December 1996. The legislation is intended to come into operation on a national basis on 1 July 1997.

Certain amendments to the Friendly Societies (Victoria) Act 1996 have recently been introduced into the Victorian Parliament (on 20 May 1997) by the Friendly Societies (Victoria) (Amendment) Bill 1997. According to its *Explanatory Memorandum*, the 1997 Bill amends the Friendly Societies Code to rectify some practical problems and problems of interpretation that had been identified. The Friendly Societies (Victoria) (Amendment) Bill 1997 was further amended at the Committee stage in the Victorian Legislative Assembly. Amendments to two

²⁴ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

²⁵ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

²⁶ *Financial System Inquiry Final Report*, p 327.

clauses (Clauses 2 and 26) and the insertion of a new clause to follow Clause 32 (Clause 32AA) were designed to provide for fees under the Friendly Societies Code to be prescribed by regulation. The amended clauses and new clause were agreed to at the Committee stage. The Victorian Labor Opposition indicated that it had no objection to the Friendly Societies (Victoria) (Amendment) Bill as originally introduced²⁷, or to the subsequent amendments dealing with prescribed fees.²⁸

The Bill passed through all stages in the Victorian Legislative Council on 22 May 1997, with one amendment to correct a typographical error being reported back to the Legislative Assembly.

The Friendly Societies (Victoria) (Amendment) Bill 1997 has now passed through all stages in both Houses of the Victorian Parliament.

In her Second Reading Speech to the 1997 amending Bill, the Victorian Attorney-General, Mrs Wade, explained that the amendments contained in the Friendly Societies (Victoria) (Amendment) Bill were identified by the Friendly Societies Implementation Task Force as necessary to ensure the successful operation of the Friendly Societies Code on a national basis from 1 July 1997.²⁹

2.5 FRIENDLY SOCIETIES AND THE FINANCIAL INSTITUTIONS SCHEME

As explained previously, the primary objective of the Friendly Societies (Queensland) Bill 1997 is to facilitate the integration of friendly societies into the Financial Institutions Scheme, which was introduced in 1992. To achieve integration, complementary amendments must be made to the Australian Financial Institutions Commission Code (AFIC Code) and the Financial Institutions Code (FI Code).³⁰ These complementary amendments are now proposed under the Financial Institutions Legislation Amendment Bill 1997, which was introduced into the Queensland Parliament on the same day as the Friendly Societies (Queensland) Bill 1997.

²⁷ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading, Legislative Assembly, Mr Hulls (Member for Niddrie) (ALP), *Victorian Parliamentary Debates*, 20 May 1997, p 58.

²⁸ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading, Legislative Assembly, Mr Hulls (Member for Niddrie) (ALP), *Victorian Parliamentary Debates*, 20 May 1997, p 59.

²⁹ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA (Attorney-General), *Victorian Parliamentary Debates*, 23 April 1997, pp 94-95.

³⁰ Financial Institutions Legislation Amendment Bill 1997 (Qld), *Explanatory Notes*, p 1.

As explained in the *Explanatory Notes* to the Financial Institutions Legislation Amendment Bill:

*As the host State for the template legislation enshrining the abovementioned Codes, it is necessary for these complementary amendments to be passed by the Queensland Parliament.*³¹

To achieve the necessary integration of friendly societies into the Financial Institutions Scheme, the Financial Institutions Legislation Amendment Bill 1997 provides, for example, for the amendment of the principal objects of the Financial Institutions Scheme to reflect the inclusion of friendly societies within the scheme (**Clause 7**), and inserts various definitions and other minor amendments necessary to accommodate the inclusion of friendly societies.³²

3. MAIN PROVISIONS OF THE BILL

3.1 DISCRETE LEGISLATION

According to the Attorney-General's Second Reading Speech to the Friendly Societies (Victoria) Bill 1996:

*Because of the unique structure of friendly societies it was decided that discrete legislation be prepared rather than integrating friendly societies into the Financial Institutions Code. Discrete legislation is required because the structure and activities of friendly societies are different from the structure and activities of building societies and credit unions. Whereas the main business of building societies and credit unions is similar to traditional banking - that is, taking deposits and making loans - friendly societies generally do not offer banking products.*³³

3.2 APPLICATION OF LAWS MECHANISM

Clause 5 of the Friendly Societies (Queensland) Bill 1997 states that the Friendly Societies Code, as set out in Schedule 1 to the *Friendly Societies (Victoria) Act*

³¹ Financial Institutions Legislation Amendment Bill 1997 (Qld), *Explanatory Notes*, p 1.

³² Financial Institutions Legislation Amendment Bill 1997 (Qld), *Explanatory Notes*.

³³ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1018.

1996, applies as Queensland law. The Code, as it applies to Queensland, is to be known as the Friendly Societies (Queensland) Code: **Clause 5(b)**.

In the remainder of this *Bulletin*, key provisions of the Friendly Societies (Victoria) Code and Regulations, which will apply as the law of Queensland by virtue of the Friendly Societies (Queensland) Bill 1997, are discussed. Key amendments to the Friendly Societies Code, as introduced by the Friendly Societies (Victoria) (Amendment) Bill 1997, are also outlined. Specific complementary amendments to the Financial Institutions Code and the AFIC Code are also discussed where appropriate. Finally, the findings of the recently published report of the Wallis inquiry into the Australian financial system, are outlined, insofar as they affect the regulation of friendly societies.

3.3 STATE SUPERVISORY AUTHORITIES

Clause 11 of the Friendly Societies (Queensland) Bill provides that the Queensland Office of Financial Supervision is to be the State supervisory authority for Queensland. The Queensland Office of Financial Supervision was established under s 5 of the *Queensland Office of Financial Supervision Act 1992*. According to the *Explanatory Notes* to this Act, which was introduced in 1992, the QOFS was established “... to administer, in Queensland, the financial institutions legislation enacted in accordance with the Financial Institutions Agreement and any other similar legislation which may be referred to it”.³⁴ As explained in the Office of Financial Supervision’s *Annual Report* for 1996, the Office was originally responsible for supervising building societies and credit unions in Queensland. Currently it is also responsible for supervising Queensland friendly societies and cooperative housing societies. Section 8.1 of the *Friendly Societies Act 1991* provides that the Queensland Office of Financial Supervision is responsible for administering the Friendly Societies Act (the existing legislation governing friendly societies in Queensland).

3.3.1 Functions of the State Supervisory Authority

Part 2 of the Friendly Societies Code sets out the functions of the State supervisory authority. They include to:

- register, supervise and regulate friendly societies: s 22(a)

³⁴ Queensland Office of Financial Supervision Bill 1992, Explanatory Notes, *Queensland Explanatory Notes for Bills Passed During the Year 1992*, prepared for publication by the Office of the Queensland Parliamentary Counsel, p 119.

- supervise and enforce compliance by friendly societies with the Friendly Societies Code and prudential standards: s 22(b)
- ensure that an effective and efficient system of prudential supervision is applied to friendly societies: s 22(c), and
- protect the interests of members of friendly societies: s 22(d).

The duties and powers of State supervisory authorities in relation to the supervision of friendly societies under the Friendly Societies Code are similar to those they already have in relation to the supervision of building societies and credit unions under the Financial Institutions Code (see the Financial Institutions (Queensland) Code 1992, Part 2).

3.3.2 Supervision Levies

The scheme of supervision by the State supervisory authority is to be industry funded through the payment of levies. Section 51 of the Friendly Societies Code provides that the State supervisory authority may determine that an amount is to be paid to it by societies as a supervision levy. The SSA may decide that the levy is not payable by specified friendly societies: s 51(4)(b).

To decide how much should be paid as a supervision levy, the SSA is empowered to consult industry bodies and societies, where appropriate and practicable: s 52.

A friendly society which defaults in making payments required to be made under s 51 is guilty of an offence, the maximum penalty for which is \$25,000: s 53.

A levy system already applies to financial bodies such as building societies and credit unions under the Financial Institutions (Queensland) Code 1992 (see s 95 of that Code). The penalty for failing to make a required payment is the same as under the Friendly Societies Code (see s 101 of the Financial Institutions (Queensland) Code).

3.4 BENEFIT FUNDS

As explained in the Minister's Second Reading Speech to the Friendly Societies (Victoria) Bill 1996:

A friendly society conducts its business activities by establishing separate benefit funds to support the society's contractual obligations to its members. Although the activities undertaken by a friendly society are diverse, the administration and organisational infrastructure of a friendly society are financed by its management fund - as distinct from the separate member benefit funds. The existence of benefit funds allows friendly societies to engage in such a diverse range of activities

*because they have an operating structure to legally segregate different activities. Therefore, it is essential that the legislation take into account this structure, hence detailed provisions dealing with the concept of benefit funds are included in the code.*³⁵

Part 4A of the Friendly Societies Code, which deals specifically with benefit funds, includes provisions covering the establishment, management, restructure, termination and assignment of benefits.

Under Part 4A, Division 4 “**Termination of Benefit Funds**”, a friendly society may terminate a benefit fund without the society as a whole having to be wound up. Part 4A, Division 3 allows a friendly society to restructure a benefit fund by transferring the whole or part of an existing fund to another existing fund, or to a new fund. According to the Attorney-General’s Second Reading Speech to the Friendly Societies (Victoria) Bill 1996, these provisions were incorporated into the Friendly Societies Code as a result of industry recommendations.³⁶

Elsewhere in the Code are provisions describing how the assets of benefit funds are to be applied in the event of a winding up (s. 407 “**Priority on Winding Up**”). As explained in the Attorney-General’s Second Reading Speech to the Friendly Societies (Victoria) Bill 1996:

*These provisions are based on similar provisions in the commonwealth Life Insurance Act which deal with the application of the assets of life offices statutory funds on a winding up. These provisions ensure that the assets of each benefit fund are only available to meet the liabilities of the society which are referable to that benefit fund. The liabilities of a society which are not referable to a benefit fund are to be met by the remaining assets of the society.*³⁷

3.5 NAMES OTHER THAN REGISTERED NAMES

Part 2 of the Financial Institutions Legislation Amendment Bill 1997, currently before the Queensland Parliament, amends the Australian Financial Institutions

³⁵ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1019.

³⁶ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1019.

³⁷ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1019.

Commission Code (the AFIC Code), which is set out in s 21 of the *Australian Financial Institutions Commission Act 1992* (Qld).

Clause 17 of the Financial Institutions Legislation Amendment Bill 1997 inserts a proposed new s 47BA into Part 6A of the AFIC Code, which deals with the registration and reservation of names, and name changes. This provision gives the AFIC the power to approve the use by a fiscal body of a name other than its registered name. **Clause 4** of the Financial Institutions Legislation Amendment Bill 1997 makes certain amendments to s 3 (the definitions section) of the AFIC Code. Among the changes is the insertion of a definition of “**fiscal body**” which is defined to mean a financial institution or a friendly institution. A “**friendly institution**” is in its turn defined to mean a friendly society or a friendly association.

Under **proposed new s 47BA**, before giving its approval for the use of a name other than its registered name, the AFIC must first consult with the State supervisory authority with which the fiscal body’s rules are registered (in the case of Queensland friendly societies, this would be the Queensland Office of Financial Supervision). The AFIC’s approval may be subject to conditions the AFIC decides. Under **proposed new s 47BA(5)**, a fiscal body must comply with the conditions of an approval by the AFIC under s 47BA. The maximum penalty for failing to do so is \$75,000.

Section 87(5) of the Friendly Societies Code provides that the State supervisory authority may approve the use by a friendly society of a name other than its registered name. As a consequence of the AFIC becoming responsible for approving a friendly society’s use of a name other than a registered name (as proposed above), **Clause 8** of the Friendly Societies (Victoria) (Amendment) Bill 1997 repeals s 87, sub-section 5. Consequential amendments are also made to s 87(8)³⁸ and to s 88(2)(b)³⁹ to reflect the transfer of responsibility for approval of a friendly society’s use of a name other than a registered name from the State supervisory authority to the AFIC.

Consequential amendments to the Financial Institutions Code, under **Clauses 69** and **70** of the Financial Institutions Legislation Amendment Bill, also support the abovementioned transfer of responsibility from the State supervisory authority to the AFIC.

³⁸ amended by Clause 8 of the Friendly Societies (Victoria) (Amendment) Bill 1997.

³⁹ amended by Clause 9 of the Friendly Societies (Victoria) (Amendment) Bill 1997.

3.6 REGISTRATION OF FOREIGN FRIENDLY SOCIETIES

The Friendly Societies Code makes provision for a friendly society which is registered under the friendly societies legislation of another participating state or territory to carry on business in Queensland: Part 11. Application to be registered as a foreign society is made to the host SSA (ie the QOFS): s 427(1). This involves the friendly society obtaining a certificate from its home SSA stating that the home SSA considers that there is no good reason why the society should not be registered as a foreign society in Queensland: s 427(2)(a).

Clause 26 of the Friendly Societies (Victoria) (Amendment) Bill 1997 amends s 427 of the Friendly Societies Code to provide that the certificate from the home SSA referred to above must have been issued within the previous two months.

The friendly society seeking registration as a foreign society in Queensland must also provide the name and address of the society's nominated agents in this state: **proposed new s 427(2)(c)(i)**.

Clause 27 of the Friendly Societies (Victoria) (Amendment) Bill 1997 omits the existing s 428(2) of the Friendly Societies Code and substitutes a **proposed new s 428(2)**. **Proposed new s 428(2)** makes it mandatory for a foreign friendly society to:

- appoint an agent resident in the host State;
- obtain the written consent of the agent to act as agent of the friendly society in the host State;
- authorise the agent to accept service of processes and notices, and
- maintain an office in the host State and ensure that the office is attended during ordinary business hours.

3.7 CONVERSION TO COMPANIES OR INCORPORATED ASSOCIATIONS

Part 8, Division 1 of the Friendly Societies Code sets out a procedure whereby a friendly society may convert to a company.

Part 8, Division 2 sets out a procedure to be followed where a friendly society wishes to convert to an incorporated association. According to the Attorney-General's Second Reading Speech to Victoria's template friendly society legislation, the inclusion in the Friendly Societies Code of a mechanism to allow friendly societies to convert to incorporated associations was designed:

*... to allow certain small societies - some of which operate like a social club - to move to a less onerous regulatory regime and for various fraternal activities to be conducted by incorporated associations.*⁴⁰

Only friendly societies which do not have benefit funds may apply to the SSA for approval to convert to an incorporated association: s 393. The reason for this is that:

*... it is considered that societies with benefit funds must be subject to some form of prudential regulation for the protection of members of the funds.*⁴¹

3.8 PENALTIES

Referring to the penalties contained in the Friendly Societies Code, the Attorney-General stated in her Second Reading Speech to the Friendly Societies (Victoria) Bill:

*The penalties are consistent with the significant penalties under the Financial Institutions Code for similar offences. It has been recognised that the penalties are, in some circumstances, inappropriate for the offences to which they relate. As part of the ongoing review of the Financial Institutions Code, MINFIN officers from the ministerial council on financial institutions have reviewed the penalties in the Financial Institutions Code in light of general commercial law principles. One tenet of the financial institutions scheme is the desire to promote uniformity of legislation for like entities across Australia. To this end, the MINFIN secretariat has approached the Corporations Law Simplification Task Force with a view to conducting a joint exercise to work towards the consistent treatment of penalty provisions between the Corporations Law and the financial institutions legislation. Therefore it has been agreed by all jurisdictions that the penalties in the Friendly Societies Code remain consistent with the Financial Institutions Code with a view to amending the legislation at a later date to take advantage of the proposed review by MINFIN and the simplification task force.*⁴²

⁴⁰ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1020.

⁴¹ Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, p 1020.

⁴² Friendly Societies (Victoria) Bill 1996, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 31 October 1996, pp 1020-21.

3.9 TRANSITIONAL PROVISIONS

3.9.1 Accounting Procedures

Part 6, Divisions 6 and 7 of the Friendly Societies Code set out the accounting and auditing requirements respectively under the Friendly Societies Code.

Clause 34 of the 1997 Victorian amending Bill inserts a **proposed new s 489A** into the Friendly Societies Code. **Proposed new s 489A** provides that for the financial year last ended before the commencement of the Friendly Societies Code (ie the accounting period for the financial year ended 30 June 1997), the directors of a friendly society must prepare the society's accounts either in accordance with the law before the enactment of the friendly societies legislation, or under Part 6 of the Friendly Societies Code.

As explained in the Second Reading Speech to the 1997 Victorian amending Bill, the purpose of this transitional provision is:

... to allow friendly societies a period in which to develop the appropriate procedures and systems to comply with the new accounting and auditing requirements under the code - in particular, the requirements relating to accounts for the benefit funds of societies - which are, in some jurisdictions, a substantial change from existing accounting practices.⁴³

3.9.2 Disclosure Documents

Part 4B of the Friendly Societies Code deals with the offering and marketing of benefits (ie interests in benefit funds of friendly societies⁴⁴). Part 4B, Division 2 of the Friendly Societies Code sets out the requirements governing disclosure documents.

Section 492 (in Part 15 of the Friendly Societies Code) currently provides that Part 4B of the Code applies to disclosure documents issued after Part 4B commences. **Clause 35** of the Friendly Societies (Victoria) Amendment Bill 1997 omits the existing s 492 and substitutes a **proposed new s 492** in its place. **Proposed new s 492(1)** of the Friendly Societies Code provides a general exemption from the operation of Part 4B for the period of six months after the commencement of that Part. Under **proposed new s 492(2)**, the State supervisory authority may exempt a friendly society from complying with the requirements of Part 4B, Division 2 for a longer period, not greater than 12 months following the commencement of the

⁴³ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading Speech, Hon Jan Wade MLA (Attorney-General), *Victorian Parliamentary Debates*, 23 April 1997, p 96.

⁴⁴ Friendly Societies Code, s 3 definition of "benefit".

Friendly Societies Code. As explained by the Attorney-General in her Second Reading Speech to the 1997 Victorian Bill, these provisions:

*Provide transitional provisions for disclosure documents which have been issued by friendly societies prior to the operation of the code and which still have an effective life once the code comes into operation. The transitional relief allows SSAs a period, not exceeding 12 months, in which to review the adequacy or otherwise of the documents which are in the marketplace and to determine when societies are to comply with the new disclosure document regime under the code.*⁴⁵

3.9.3 Non-Monetary Benefits

Section 483 of the Friendly Societies Code is a transitional provision. It provides that a benefit fund which existed under the law before s 483 commenced is deemed to be established under the Friendly Societies Code as a benefit fund of a friendly society which continues as such under the new law.

Section 483 is amended by **Clause 33** of the Friendly Societies (Victoria) (Amendment) Bill 1997 so that this will not apply to a benefit fund of a continuing society from which only non-monetary benefits were being provided.

As explained in the Second Reading Speech, the purpose of the amendment is to:

*Clarify the intention of the code that once the code comes into operation non-monetary products offered by friendly societies - for example, retirement villages, nursing homes and dispensaries - be conducted through the management fund of the society and not through the society's benefit funds. The prudential standards are to provide that new benefit funds established under the code are not to provide non-monetary benefits.*⁴⁶

4. INDUSTRY AND SUPERVISORY BODY COMMENT

In its 1996 *Annual Report*, the Australian Friendly Societies Association expressed regrets that the policy goal of national friendly societies legislation had not to date been achieved, commenting that "... continuing delays must affect our competitive position as an industry".⁴⁷

⁴⁵ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading Speech, Hon Jan Wade MLA, Attorney-General, *Victorian Parliamentary Debates*, 23 April 1997, p 96.

⁴⁶ Friendly Societies (Victoria) (Amendment) Bill 1997, Second Reading Speech, Hon Jan Wade MLA, *Victorian Parliamentary Debates*, 23 April 1997, p 95.

⁴⁷ Australian Friendly Societies Association, *Annual Report 1996*, "President's Report", p 1.

The 1996 *Annual Report* of the Queensland Office of Financial Supervision described the delays with the introduction of national uniform legislation for friendly societies as “... *proving to be increasingly frustrating to both supervisors and industry*”.⁴⁸

5. THE WALLIS INQUIRY

The *Explanatory Notes* to the Friendly Societies (Queensland) Bill 1997 state:

*Uniform supervision of friendly societies may be achieved by either Commonwealth legislation, or some form of State-based Scheme that is agreed between participating jurisdictions. The Commonwealth was not prepared to develop necessary legislation for the supervision of friendly societies, particularly, as the FI Scheme was already operating successfully in relation to building societies and credit unions.*⁴⁹

Since the Victorian template friendly legislation was enacted, the Commonwealth Government inquiry into the Australian financial system (the Wallis inquiry) has published its report (the Wallis report) on the regulatory arrangements affecting the operation of the financial system. Recommendation 39 of the report is that the regulation of friendly societies should be transferred to the Commonwealth. Specifically, the report recommended that:

- responsibility for the registration and corporate governance of friendly societies should be transferred to the Corporations and Financial Services Commission (CFSC), and
- the future regulation of friendly societies should provide for:
 - disclosure regulation under the Corporations Law and surveillance by the Corporations and Financial Services Commission, and
 - prudential regulation by the Australian Prudential Regulation Commission (APRC) of those societies that provide products under exemption from the Life Insurance Act.⁵⁰

However, the Wallis report also specifically recommended that its recommendation to move to Commonwealth arrangements for the prudential regulation of friendly

⁴⁸ Queensland Office of Financial Supervision, *Annual Report 1996*, “Chairman’s Report”, p 6.

⁴⁹ Friendly Societies (Queensland) Bill 1997, *Explanatory Notes*, p 2.

⁵⁰ *Financial System Inquiry Final Report*, p 46.

societies should not delay introduction of the new friendly societies scheme on 1 July 1997.⁵¹

As acknowledged by the Victorian Attorney-General in her Second Reading Speech to the Friendly Societies (Victoria) (Amendment) Bill 1997, the operation of the Friendly Societies Code may of course be subject to amendment as a result of the Wallis report.⁵²

The Wallis report's recommendations in relation to friendly societies, and the rationale behind those recommendations, are discussed in more detail below.

5.1 FRIENDLY SOCIETIES OFFERING LIFE INSURANCE INVESTMENT PRODUCTS

Under exemptions contained in the *Life Insurance Act 1995* (Cth)⁵³, friendly societies are permitted to offer annuities and conduct certain types of life insurance business. As explained by the Wallis report:

*Friendly societies provide these financial products through benefit funds which, like the statutory funds of a life company, are not legal entities but exist in the accounts of the society. In many respects, the benefit fund structure offers greater transparency than the equivalent statutory fund structure of a life company. Only one type of benefit is provided per fund, whereas life companies generally offer a number of different types of policies from a single statutory fund.*⁵⁴

In relation to friendly societies offering life insurance investment products, the Wallis report took the view that:

In the interests of competitive neutrality, efficiency and investor protection, the Inquiry believes that friendly society products offered under exemption from the Life Insurance Act should be subject to the same prudential regulation as that applying to life companies. One approach would be to remove the friendly society exemption under the Life Insurance Act. This would force friendly societies either to transfer the affected business to life companies, or to apply for licensing as a

⁵¹ *Financial System Inquiry Final Report*, p 46.

⁵² Friendly Societies (Victoria) Amendment Bill 1997, Second Reading Speech, Legislative Assembly, Hon Jan Wade MLA (Attorney-General), *Victorian Parliamentary Debates*, 23 April 1997, p 96.

⁵³ Section 11(3)(a) of the Commonwealth *Life Insurance Act 1995* provides that business in relation to benefits provided by a friendly society for its members or their dependants does not constitute life insurance business.

⁵⁴ *Financial System Inquiry Final Report*, p 328.

life company. An alternative would be to adopt a similar approach to recommendations made for building societies and credit unions, namely:

- transfer registration and corporate governance responsibilities to the CFSC;
- subject the offer of financial products and services to disclosure under the Corporations Law and CFSC surveillance; and
- subject the provision of life insurance products to prudential regulation by the APRC. Regulation by the APRC would not preclude continuation of the current approach that eases some prudential requirements applying to low-risk/low-value benefits, such as funeral funds.⁵⁵

5.2 OTHER TYPES OF FRIENDLY SOCIETIES

In relation to friendly societies not offering life insurance investment products, the Wallis report said:

While there are some 200 friendly societies, fewer than 70 offer long-term savings investments, typically single premium insurance bonds through a benefit fund structure. The largest 10 societies account for more than 80 per cent of industry assets. A number of friendly societies are effectively conglomerates and offer a range of financial and non-financial services. Most of these other activities either do not warrant prudential regulation or are adequately regulated by other agencies such as health funds regulated by the Private Health Insurance Administrative Council, pharmacy/dispensary societies regulated by State laws governing pharmacies, provision and management of retirement housing regulated by various State retirement villages laws, superannuation products offered outside benefit funds under the Superannuation Industry (Supervision) Act 1993 (SIS), and deposit taking through ownership of building societies under the FI Scheme.⁵⁶

⁵⁵ *Financial System Inquiry Final Report*, p 329.

⁵⁶ *Financial System Inquiry Final Report*, pp 328-329.

In relation to friendly society products other than life company products, the Wallis report proposed that:

Disclosure of all friendly society products should be transferred to the Corporations Law and CFSC at the same time as transfer of disclosure of life company products.⁵⁷

5.3 COMMONWEALTH REGULATION OF FRIENDLY SOCIETIES

In relation to its recommendation that the regulation of friendly societies should be transferred to the Commonwealth, the Wallis report stated:

Regulation of friendly societies is fragmented and legislation is generally outdated. While a number of States have raised the level of regulation, a strong national prudential framework is long overdue. However, the approach proposed under the new friendly society legislation will create a new disclosure regime for friendly society products, including retail investments regulated currently under the Corporations Law and subject to ASC [Australian Securities Commission] surveillance.

The Inquiry has reservations regarding the fragmentation of investment product disclosure, duplication of infrastructure at the State level and the ability of AFIC and SSAs to maintain consistency with the Corporations Law and ASC enforcement. Against this, the issue of retail investments by friendly societies, other than those offered under exemptions from the Life Insurance Act, is likely to be small and there is an urgent need to establish a modern uniform regulatory scheme. Therefore, the recommended transfer of friendly societies to a Commonwealth regulatory framework should not delay the prior introduction of the new State based arrangements under the FI Scheme.⁵⁸

⁵⁷ *Financial System Inquiry Final Report*, p 330.

⁵⁸ *Financial System Inquiry Final Report*, p 330.

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Statistical Digest - Friendly Societies

Source: Queensland Office of Financial Supervision Annual Report 1996, p 24.

	<i>6/96</i>	<i>3/96</i>	<i>12/95</i>	<i>9/95</i>	<i>6/95</i>	<i>6/94</i>	<i>6/93</i>	<i>6/92</i>
Total No of Societies	63	69	74	78	85	114	116	119
Total Assets (\$M)	356	n/a	n/a	n/a	370	400	n/a	n/a
Flexible Insurance Funds								
No of societies	15	16	16	17	17	19	20	21
No of Funds	27	31	31	32	32	32	33	34
Gross Assets (\$M)	184	188	195	198	197	216	221	226
Liquidity Ratio (%)	70.00	74.33	67.63	76.57	65.00	n/a	n/a	n/a
Other Societies by Type								
Social/Cultural/ Sporting	7	9	13	15	20	37	37	39
Dispensaries & Health Providers	18	19	19	19	19	19	19	19
Single Benefit	21	23	24	25	26	36	37	37
Retirement Villages & Nursing Homes	2	2	2	2	3	3	3	3

Notes

- 1 Data prior to September 1994 not collected by QOFS. Accuracy cannot be guaranteed. Some data is not available
- 2 Flexible Insurance Fund - a withdrawable investment product not offering a defined benefit
- 3 Liquidity Ratio - the ratio of Liquid Funds to Total Assets.
- 4 1995/96 data is subject to audit of societies.
- 5 Classification by type is by principal business activity of society.

APPENDIX B

Register of Queensland Friendly Societies (as at 27 May 1997)

Source: *Queensland Office of Financial Supervision*

Ampol Employees Accident/Sickness Benefit Fund Friendly Society
Ancient Order of Foresters Friendly Society in Queensland
Ausdef Friendly Society
Australian Fidelity Friendly Society
Australian Independent Friendly Society
Australian Natives Association of Queensland Friendly Society
Australian Pensioner's League Toowoomba Friendly Society
Aviation Mutual Benefit Fund
Ayr Friendly Societies' Medical Union
Brisbane Deutscher Turn-Verein
CPS Friendly Society
Callide Sickness & Distress Fund Friendly Society
Carlton and United Breweries (Queensland) Employees' Benefit and Social Society
Community Benefits Association of Queensland Friendly Society
CUA Members Benefits Friendly Society
EDI Welfare Club
Family Security Friendly Society (Under Administration)
Fire Service Friendly Society
Grand United Friendly Society Queensland
Hibernian (Qld) Friendly Society
Ipswich City Council Employee Retirement and Distress Fund
MIM Employees Health Society
Manchester Unity Oddfellows Friendly Society Queensland
Mount Isa Benefit Friendly Society
Mount Isa Irish Association
Mourilyan Mill Employees' Benevolent Fund
Mulgrave Central Mill Provident Fund
Mutual Friendly Society
Myer Queensland Stores Employees' Friendly Society
Noosa District Hospital Friendly Society
Pioneer Mill Employees Sick and Accident Friendly Society
QPS Friendly Society
Queensland Alumina Limited Sickness Benefit Society
Queensland Cement Limited Employees Sick Benefit and Welfare Club Friendly Society
Queensland Irish Association
Queensland Newspapers Pty Ltd., Employees' Mutual Benefit Society
Queensland Teachers Union Health Society
Rockhampton District Associated Friendly Societies' Dispensary
The Brisbane Associated Friendly Societies' Dispensary
The Bundaberg Associated Friendly Societies' Medical Institute
The Castlemaine Perkins Employees' Sick Benefit Society
The Dalby and District Friendly Societies' Dispensary
The Independent Order of Odd Fellows Friendly Society
The Ipswich and West Moreton United Friendly Societies Dispensary
The Mackay Associated Friendly Societies Pharmacy
The Over 50's Queensland Friendly Society
The Pittsworth and District Hospital Friendly Society
The Public Service Family Benefit Friendly Society of Queensland
The Queensland Chamber of Agricultural Societies
The Queensland District No 87 Independent Order of Rechabites Friendly Society
The Toowoomba Associated Friendly Societies Dispensary
The Townsville Associated Friendly Societies Pharmacy
The Walkers Limited House Friendly Society
The Warwick Friendly Societies Association
Total Care Friendly Society of Queensland
United Friendly Societies' Association of Gympie and District
United Friendly Societies' Association of Maryborough and District