

Friendly Societies (Reserve Board) Bill

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 8 May 1991

(Brought in by Mr Kennan and Mr Roper)

A BILL

to amend the **Friendly Societies Act 1986**, the **Building Societies Act 1986**, the **Building Societies (Prudential Standards) Act 1990**, the **Benefit Associations Act 1958** and the **Trade Unions Act 1958** and for other purposes.

Friendly Societies (Reserve Board) Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- 5 (a) to amend the **Friendly Societies Act 1986** to
 establish a Friendly Societies Reserve Board and
 to facilitate the transfer of the functions and powers
 of the Registrar of Friendly Societies; and
- 10 (b) to amend the **Buildings Societies Act 1986** to
 facilitate the transfer of the functions and powers
 of the Registrar of Building Societies; and

Section headings appear in bold italics and are not part of the Act
(see **Interpretation of Legislation Act 1984**).

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- (c) to make miscellaneous amendments to specified Acts.

2. Commencement

- (1) This Act (other than section 12) comes into operation on a day or days to be proclaimed. 5
- (2) Section 12 is deemed to have come into operation on 11 December 1990.

PART 2—AMENDMENTS TO THE FRIENDLY SOCIETIES ACT 1986

3. Establishment of Friendly Societies Reserve Board 10

After Division 2 of Part 7 of the Friendly Societies Act 1986 insert—

“Division 2A—The Friendly Societies Reserve Board

101A. Friendly Societies Reserve Board

- (1) There is established by this Act a Reserve Board by the name of the Friendly Societies Reserve Board. 15
- (2) The Reserve Board—
 - (a) is a body corporate with perpetual succession; and 20
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is, subject to this Act, capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and 25
 - (e) is capable of doing and suffering all such acts and things as bodies corporate may by law do and suffer and which are 30

necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.

- 5 (3) The common seal of the Reserve Board must be—
- (a) kept in such custody as the Reserve Board directs; and
 - (b) used only as authorised by the Reserve Board.

10 **101B. *Functions of the Reserve Board***

The functions of the Reserve Board are to—

- 15 (a) administer the Reserve Board Administration Levy Fund established under this Act; and
- (b) advise the Minister about investments by friendly societies; and
- (c) advise the Minister as to the liquidity of investments held by friendly societies; and
- 20 (d) facilitate or direct the acquisition or merger of a friendly society by or with another person; and
- (e) report to the Minister on representations made by the directors of a friendly society where a direction to merge with another friendly society has been issued under section 90 or an administrator has been appointed under section 115; and
- 25 (f) monitor and enforce prudential standards applicable to friendly societies and ensure that an effective system of prudential supervision is applied to friendly societies; and
- 30 (g) make recommendations and submit proposals to the Minister on any matter relating to the operations of friendly societies or the administration of this Act; and
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- (h) advise the Minister in relation to the operation of the Act and any amendments that may be required to the Act; and
 - (i) institute proceedings for any offence against this Act; and 5
 - (j) generally to ensure that friendly societies are complying with this Act and to carry out such other functions as are specified in this Act or the regulations.
- 101C. *General Powers of the Reserve Board*** 10
- (1) Subject to this Act, the Reserve Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
 - (2) The Reserve Board must consult with the Committee before the Reserve Board makes a decision under section 101Q. 15
- 101D. *Reserve Board to maintain a public office***
- (1) The Reserve Board must maintain a public office in which must be kept any document lodged with the Reserve Board. 20
 - (2) Any person may inspect at the public office any document required to be lodged with the Reserve Board under this Act.
- 101E. *Constitution of the Reserve Board*** 25
- (1) The Reserve Board is to consist of 7 members appointed by the Minister.
 - (2) The Minister must appoint as members persons who in the opinion of the Minister have skills, experience or knowledge in the industrial commercial or financial sectors. 30
 - (3) A member holds office for a term not exceeding 3 years, as is specified in the instrument of

appointment of that member, and is eligible for re-appointment.

(4) The Minister may at any time remove a member from office.

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(5) The office of a member becomes vacant—

(a) if the member resigns by writing addressed to the Minister; or

(b) if the member is removed from office by the Minister; or

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(c) if the member's term of office expires; or

(d) if the member becomes a director or officer of a friendly society; or

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(e) if the person becomes a patient within the meaning of the **Mental Health Act 1986**; or

(f) if the member becomes bankrupt; or

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(g) if the member is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(h) if the member is absent from 3 consecutive meetings of the Reserve Board without leave granted by the Reserve Board

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(6) A member is not in respect of the office of member subject to the **Public Service Act 1974**.

(7) The Minister may appoint a person to be the deputy of a member.

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(8) The deputy of a member may exercise the powers and functions of the member at a meeting of the Reserve Board at which the member is not present.

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(9) A member or deputy, other than a member or deputy who is an officer or employee who holds a full-time government office or a full-time office with a statutory corporation, is entitled to be paid—

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- (a) remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and
- (b) travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council. 5

101F. Procedure of the Reserve Board

- (1) The Minister must appoint a member to be the Chairperson of the Reserve Board. 10
- (2) The Chairperson must preside at any meeting of the Reserve Board at which the Chairperson is present.
- (3) If the Chairperson is not present at the time fixed for the commencement of a meeting of the Reserve Board the members present at the meeting must elect a member to preside. 15
- (4) A majority of members in office at the time constitutes a quorum at a meeting of the Reserve Board. 20
- (5) If there is a quorum at a meeting, the Reserve Board may act even though there is a vacancy in the office of a member.
- (6) Any question arising at a meeting of the Reserve Board may be determined by a majority of votes of the members present and voting on the question. 25
- (7) In the event of an equality of votes on any question at a meeting of the Reserve Board, the Chairperson or other person presiding at that meeting has a second vote. 30
- (8) Subject to this Act, the Reserve Board may regulate its own procedure.

101G. *Validity of acts or decisions*

An act or decision of the Reserve Board is not invalid by reason only—

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(a) of any defect or irregularity in or in connection with the procedures of the Reserve Board; or

(b) of any defect or irregularity in or in connection with the appointment of a member; or

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(c) in the case of a person appointed to act as a member, that the occasion for so acting had not arisen or had ceased.

101H. *Delegation*

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The Reserve Board may by instrument under its common seal delegate—

(a) to a member, officer or employee of the Reserve Board or to any officer or class of officers in the public service; or

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(b) in the case of a delegation of powers to administer the Reserve Board Administration Levy Fund to any other person approved by the Minister—

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any power or function of the Reserve Board under this Act other than this power of delegation.

101I. *Staff of the Reserve Board*

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(1) With the approval of the Minister, the Reserve Board may appoint such officers and employees as the Reserve Board considers necessary for the purposes of this Act.

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(2) The terms and conditions of employment of officers and employees of the Reserve Board are the terms and conditions which are determined from time to time by the Reserve Board with the approval of the Minister.

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- (3) Persons appointed as officers or employees of the Reserve Board under this section are not subject to the **Public Service Act 1974**.
- (4) If any person at the date of appointment as an officer or employee of the Reserve Board is an officer within the meaning of the **State Superannuation Act 1988** that person is despite that appointment deemed to continue subject to that Act to be an officer within the meaning of that Act.

101J. Appointment of examiners

- (1) The Reserve Board may appoint an examiner to investigate any of the following and report to the Reserve Board—
 - (a) Any matter relating to a report by an auditor or an actuary;
 - (b) Any matter relating to prudential standards;
 - (c) Any matter relating to the compliance of a friendly society (including any subsidiary) with this Act.
- (2) An examiner is not subject to the **Public Service Act 1974**.
- (3) An examiner has the powers specified in section 101K.
- (4) A member of the Reserve Board has the same powers as an examiner.

101K. Powers of examiners

- (1) An examiner has the following powers in relation to an investigation being carried out by the examiner—
 - (a) Power to administer an oath or affirmation;

- 5
- (b) Power to require by notice in writing a person to attend at a time and place specified in the notice;
- (c) Power to require a person attending at a specified time and place to—
- 10
- (i) answer any question put by the examiner; or
- (ii) produce for inspection any documents of a friendly society or a subsidiary which the examiner believes on reasonable grounds are in the person's custody or control and relate to the investigation; or
- 15
- (iii) do both;
- (d) Any power conferred on the Reserve Board under section 96 or an investigator under section 104;
- 20
- (e) If the examiner has exercised the power of entry conferred by section 96 (2) (a), the power—
- 25
- (i) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and
- (ii) to seize any document which the examiner believes on reasonable grounds relates to the investigation; and
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- (iii) to make copies of, or take extracts from, any document which the examiner believes on reasonable grounds relates to the investigation;
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- (f) Power to require a friendly society or a subsidiary to provide reasonable assistance to the examiner in the exercise of his or her powers.
- (2) An examiner must obtain a warrant under sub-section (3) before he or she can exercise

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- the power of entry conferred by section 96 (2)
(a) in respect of any premises used for residential purposes.
- (3) A magistrate may issue a warrant in respect of a premises used for residential purposes if the magistrate is satisfied on the evidence on oath or by affidavit of the examiner that there are reasonable grounds for suspecting that documents relevant to an investigation are kept at those premises. 5 10
- (4) The powers conferred by this section extend to a subsidiary and any related party of a friendly society which is being investigated by an examiner.
- (5) A person is not excused from answering a question asked by an examiner on the ground that the answer might tend to incriminate the person. 15
- (6) If before answering a question, a person claims that the answer might tend to incriminate him or her, the question and the answer are not admissible in evidence against the person in any criminal proceedings other than proceedings under section 101L or in relation to a charge of perjury in respect of the answer. 20 25
- (7) An examiner may direct that a record of an examination must be recorded or transcribed in any manner that is authorised by Part VI of the **Evidence Act 1958**.
- (8) Except as otherwise provided in sub-section (6), a record of an examination may be used in any legal proceedings against the person who is examined. 30
- (9) This section does not affect or limit the admissibility of other written or oral evidence. 35
- (10) A person is entitled, on written request, to a free copy of the record of his or her examination.

(11) If a report is made, any record of examination that relates to that report must be given with it.

5 (12) The Reserve Board may give a copy of the record of examination to a duly qualified legal practitioner who the Reserve Board is satisfied is acting for a person who is conducting, or is in good faith contemplating, legal proceedings in respect of any affairs of a friendly society that are being investigated by an examiner.

10 (13) A duly qualified legal practitioner may only use a copy of the record of examination in connection with the institution or preparation of legal proceedings, and in the course of those proceedings, and must not publish or communicate to any person for any other purpose the record or any part of the record.

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Penalty: 10 penalty units or imprisonment for 3 months.

20 **101L. *Offences in relation to examiners***

A person must not—

(a) without reasonable excuse, refuse or fail to comply with a requirement made under section 101K; or

25 (b) obstruct or hinder an examiner acting in the course of his or her powers; or

(c) assault, intimidate or threaten or attempt to assault, intimidate or threaten an examiner acting in the course of his or her powers.

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Penalty: 200 penalty units or imprisonment for 5 years or both.

101M. *Quarterly returns*

35 (1) A friendly society must submit a return in the form approved by the Reserve Board as to its

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compliance with Part 4 to the Reserve Board within 21 days after the end of each quarter or in respect of any other period as the Reserve Board may require.

Penalty: 200 penalty units. 5

- (2) The Reserve Board may by notice in writing require a friendly society to provide further information in relation to any matter contained in or arising out of a quarterly or other return or any other information which the Reserve Board considers is relevant. 10
- (3) A friendly society must provide the information within the period specified by the Reserve Board in the notice.
- (4) If a friendly society does not comply with this section each director of the friendly society is guilty of an offence. 15
- (5) The penalty for an offence under sub-section (3) or (4) is a penalty of not more than 100 penalty units and a daily penalty of not more than 10 penalty units for each day during which the default continues. 20

101N. *Suitability of auditors of friendly societies*

Unless the Reserve Board is satisfied that a person meets the requirements of the Reserve Board as to suitability for appointment as an auditor of a friendly society, the Reserve Board must— 25

- (a) not issue a certificate of approval to that person under section 41; or 30
- (b) if the person holds a certificate of approval, cancel the certificate of approval.

101O. *Auditor to submit quarterly report*

- (1) The Reserve Board may by notice in writing require the auditor of a friendly society to 35

submit a report to the Reserve Board in respect of the period specified in the notice stating the auditor's opinion as to—

- 5 (a) whether or not the information provided by the friendly society in its quarterly returns is accurate; and
- (b) whether or not the friendly society is complying with Part 4.
- 10 (2) The auditor must submit the report within 60 days of the end of each quarter.
- (3) The Reserve Board may by notice in writing require a friendly society or its auditor to provide further information in relation to any matter contained in or arising out of the auditor's quarterly report or any other information which the Reserve Board considers is relevant.
- 15 (4) A friendly society or an auditor of a friendly society must provide the information within the period specified by the Reserve Board in the notice.
- 20 Penalty: 100 penalty units.
- (5) If a friendly society does not comply with subsection (4), each director of the friendly society is guilty of an offence.
- 25 Penalty: 100 penalty units.

101P. Reserve Board may give direction

- 30 (1) If the Reserve Board is of the opinion that a friendly society or its subsidiary is not complying with a provision of this Act, the Reserve Board may by notice direct the friendly society or its subsidiary to comply with the provision within the period specified in the notice.
- 35 (2) If a friendly society or its subsidiary does not comply with the direction, the friendly society

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and each director of the friendly society is guilty of an offence.

Penalty: 100 penalty units and a daily penalty of not more than 10 penalty units for each day during which the default continues. 5

101Q. Administration Levy

(1) Within 30 days of the commencement of section 3 of the **Friendly Societies (Reserve Board) Act 1991** and on or before 30 June in each subsequent year, the Reserve Board must determine the amount to be paid by each friendly society as an administration levy to the Reserve Board. 10

(2) The administration levy may be determined by the Reserve Board to be— 15
(a) a fixed amount; or
(b) a specified percentage of the total assets of the friendly society as at 30 June; or
(c) both. 20

(3) The Reserve Board may require the administration levy to be paid in one amount or by instalments which may include an amount for interest at a rate fixed by the Reserve Board. 25

(4) The administration levy must be paid by the friendly society within 30 days of being notified by the Reserve Board by notice in writing of the amount that is payable.

(5) If a friendly society is in default in payment of the administration levy— 30
(a) interest accrues on the amount outstanding from the date of default at the rate specified by the Reserve Board; and
(b) the Reserve Board may recover any amount outstanding together with interest 35

accrued as a debt in any court of competent jurisdiction.

- 5 (6) The Reserve Board may on the application of a friendly society—
- (a) vary the amount of the levy payable by the friendly society; or
- (b) vary the period within which the levy is to be paid; or
- 10 (c) exempt the friendly society from payment of the levy.
- (7) The amount paid by a friendly society as an administration levy is to be treated as an expense in the accounts of the friendly society.

101R. Reserve Board Administration Levy Fund

- 15 (1) There is established a Fund called the Reserve Board Administration Levy Fund.
- (2) The Reserve Board must pay into the Reserve Board Administration Levy Fund—
- 20 (a) all amounts received as administration levy; and
- (b) any income from the investment of any money credited to the Reserve Board Administration Levy Fund and the proceeds of the sale of any investment.
- 25 (3) The Reserve Board must pay out of the Reserve Board Administration Levy Fund—
- (a) any payment for or towards the costs and expenses of performing its functions and exercising its powers under this Act; and
- 30 (b) costs incurred in administering the Reserve Board Administration Levy Fund.
- (4) The Reserve Board may invest any money in the Reserve Board Administration Levy Fund in any manner which may be approved by the Treasurer for the purposes of this section.
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101s. Quarterly Reports

- (1) The Reserve Board must submit a report to the Minister as to its monitoring and enforcement of Part 4 within 30 days of the end of each quarter. 5
- (2) The Minister may by notice in writing require the Reserve Board to provide information in relation to any matter contained in or arising out of the quarterly return or any other information which the Minister considers is relevant. 10
- (3) The Reserve Board must submit a report to the Minister as to the performance of its functions and the exercise of its powers under this Act within 3 months of the end of each financial year. 15

101t. Budget

- (1) The Reserve Board must on or before 31 March each year submit to the Committee and to the Minister for his or her approval an operating budget for the next financial year. 20
- (2) The budget must be in a form and contain the matters required by the Minister and must include an estimate of the amount of administration levy to be paid under section 101Q and a statement of the proposed application of that amount. 25
- (3) After consulting with the Committee, the Minister may approve the budget or approve the budget subject to any amendment that the Minister requires. 30

101u. Accounts and records

- (1) The Reserve Board must ensure that there are kept proper accounts and records of the transactions and affairs of the Reserve Board 35

and such other records as sufficiently explain the financial position of the Reserve Board.

(2) The Reserve Board must do all things necessary to do each of the following:

- 5
- (a) Ensure that all money payable to the Reserve Board is properly collected;
- (b) Ensure that all money expended by the Reserve Board is properly expended and properly authorised;
- 10
- (c) Ensure that adequate control is maintained over assets secured by, or in the custody of, the Reserve Board;
- (d) Ensure that all liabilities incurred by the Reserve Board are properly authorised;
- 15
- (e) Ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) Develop and maintain an adequate budgeting and accounting system;
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- (g) Develop and maintain an adequate internal audit system.

101v. *Annual report*

(1) The Reserve Board must, in respect of each financial year, prepare an annual report containing—

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- (a) a report of its operations during the financial year; and
- (b) financial statements for the financial year—

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and submit the report to the Minister not later than the following 30 September.

(2) The report of operations referred to in subsection (1) (a)—

- 35
- (a) must be prepared in a form and contain information determined by the Reserve Board to be appropriate; and

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- (b) must contain any further information required by the Minister.
- (3) The financial statements referred to in subsection (1) (b)—
- (a) must contain information determined by the Treasurer to be appropriate; and 5
- (b) must be prepared in a manner and form approved by the Treasurer; and
- (c) must present fairly the result of the financial transactions of the Reserve Board during the financial year to which they relate and the financial position as at the end of that year; and 10
- (d) must be signed by the principal accounting officer (by whatever name called) of the Reserve Board and by the Chairperson and another member of the Reserve Board who shall— 15
- (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Reserve Board during the financial year to which they relate and whether they sufficiently explain the financial position of the Reserve Board as at the end of the year; and 20 25
- (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and 30
- (e) must be audited as required by section 101w (1). 35
- (4) The Minister must cause each annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of

the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

5 (5) If the Reserve Board fails to submit an annual report to the Minister—

(a) if an extension has not been granted under sub-section (7)—by 30 September in any year; or

10 (b) if such an extension has been granted—by the date to which the extension was granted—

15 the Minister must report or cause to be reported that failure and the reasons for the failure to each House of Parliament.

(6) The Reserve Board may apply in writing to the Minister for an extension of the date by which an annual report is to be submitted to the Minister.

20 (7) The Minister may in writing grant to the Reserve Board an extension to such date as the Minister determines.

25 (8) The Minister must advise or cause to be advised each House of the Parliament of each extension granted under this section and the reasons for the extension.

30 (9) This section does not apply to the Reserve Board if, as a result of an order made under the **Annual Reporting Act 1983**, the Reserve Board is required to submit an annual report under that Act.

101w. Audit

(1) The financial statements referred to in section 101v must be audited by the Auditor-General.

35 (2) The Auditor-General has in respect of the audit of the financial statements all the powers

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conferred on the Auditor-General by any law relating to the audit of the public accounts.

- (3) Without limiting the generality of sub-section (2), the Auditor-General and the officers of the Auditor-General— 5
- (a) have right of access at all times to the books of the Reserve Board; and
- (b) may require from an officer, employee or member of the Reserve Board any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit. 10
- (4) The Reserve Board must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General under this section.”. 15

4. Consequential amendments

- In the **Friendly Societies Act 1986**— 20
- (a) In section 3 (1) after the definition of “**Books**” insert—
- “**“borrow”** means to obtain a loan;”;
- (b) In section 3 (1) after the definition of “**Company**” insert— 25
- “**“control”**, in relation to a related party, means the capacity of an entity (including a friendly society) to dominate the decision making, directly or indirectly, in relation to either or both of the financial and operating policies of another entity (including a friendly society);” 30
- (c) In section 3 (1) after the definition of “**Insolvent under administration**” insert—
- “**“loan”** includes any form of financial accommodation;” 35

(d) In section 3 (1) the definition of “**Registrar**” is repealed;

(e) In section 3 (1) before the definition of “**Rules**” insert—

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“ **related party**”, in relation to a friendly society, means—

(a) any entity that, at any time during the relevant period, has control or significant influence over the friendly society; or

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(b) any entity that, at any time during the relevant period, is subject to control or significant influence by the friendly society; or

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(c) any entity that, at any time during the relevant period, is controlled by the same entity that controls the friendly society; or

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(d) any entity that, at any time during the relevant period, is controlled by the same entity that significantly influences the friendly society; or

(e) any entity that, at any time during the relevant period, is significantly influenced by the same entity that controls the friendly society; or

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(f) any director of the friendly society or of any other entity identified under paragraphs (a) to (e) or a spouse of that director or a relative of that director or that spouse; or

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(g) any other entity under the joint or several control or significant influence of a director, spouse or relative specified under paragraph (f)—

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but does not include any other entity where the related party relationship results solely from the normal dealings of a financial institution, authorised trustee corporation, fund manager, trade union, statutory authority,

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government department or local government body;

“Reserve Board” means the Friendly Societies Reserve Board established under Division 2A of Part 7;”;

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(f) In section 3 (1) after the definition of **“share”** insert—

““significant influence”, in relation to a related party, means the capacity of an entity (including a friendly society) to affect substantially, without controlling, either or both of the financial and operating policies of another entity (including a friendly society);”;

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(g) After section 3 insert—

“3A. Construction of references to Registrar

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Any reference in this Act or the regulations or in any other Act, subordinate instrument or other document whatsoever to the Registrar is to be construed as a reference to the Reserve Board, unless a contrary intention appears.”;

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(h) In sections 5 (j), 64 (1), 64 (3), 66 (1) (f), 66 (1) (i), 66 (2) 66 (4), 67 (1) and 67 (2) (f) for **“Minister”** (wherever occurring) **substitute “Reserve Board”**;

25

(i) In sections 64 (2), 76 (1) and 76 (4) for **“Treasurer”** (wherever occurring) **substitute “Reserve Board”**;

(j) For section 66 (3) **substitute—**

“(3) The Reserve Board may, by notice in writing, declare that on and from the date that is specified in the notice, a friendly society cannot invest in the manner that is specified in the notice.”;

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(k) In the Heading to Division 1 of Part 7 for **“The Registrar”** **substitute “General”**;

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(l) Section 94 is **repealed**;

(m) In section 125 (1) after paragraph (b) **insert—**

“(ba) a member of the Reserve Board; or”;

(n) In section 125 (1) (d) after “Committee” insert “or the Reserve Board”;

(o) Section 138 is repealed.

5 **5. *Protection and enhancement of investments***

In section 66A of the **Friendly Societies Act 1986** insert—

(a) After “66A.” insert “(1)”;

(b) At the end of the section insert—

“(2) If—

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(a) a friendly society enters into, or purports to enter into, a financial transaction that is not, or may not be, a transaction or arrangement for the protection or enhancement of investments; and

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(b) another party to the financial transaction enters into the financial transaction in good faith and with no reason to suspect, at the time of entering into the financial transaction, that the transaction is not a transaction or arrangement for the protection or enhancement of investments—

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the financial transaction may be enforced as if it were a transaction or arrangement for the protection or enhancement of investments which the friendly society had been authorised to enter into.”.

6. *Registration of an industrial and provident society as a friendly society*

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After section 126 of the **Friendly Societies Act 1986** insert—

“126A. Registration of an industrial and provident society as a friendly society

- (1) If a society registered under the **Industrial and Provident Societies Act 1958** has complied with the requirements of sections 47B and 47D of that Act, the Reserve Board must in accordance with section 47D (2) of that Act register the society as a friendly society under this Act. 5
- (2) If a society registered under the **Industrial and Provident Societies Act 1958** has complied with a direction under section 47E of that Act and the Reserve Board is satisfied that the rules of the society are appropriate, subject to any modifications that the Reserve Board may require, register the society as a friendly society in accordance with this Act.”. 10 15

7. References to Corporations Law of Victoria

In the Friendly Societies Act 1986—

- (a) In section 3 (1), in the definitions of “**Company**”, “**Corporation**”, “**Insolvent under administration**” and “**Share**” for “section 5 (1) of the **Companies (Victoria) Code**” substitute “section 9 of the **Corporations Law of Victoria**”; 20
- (b) In section 3 (8) for “**Companies (Victoria) Code**” substitute “**Corporations Law of Victoria**”; 25
- (c) In section 3 (9) for “**Companies (Acquisition of Shares) (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
- (d) In section 18 (2) (a) for “section 227 (2) of the **Companies (Victoria) Code**” substitute “section 229 (3) of the **Corporations Law of Victoria**”; 30
- (e) In sections 19 (3) (a) (ii) and 19 (3) (b) (ii) for “section 383 of the **Companies (Victoria) Code**” substitute “section 482 of the **Corporations Law of Victoria**”; 35

- 5 (f) In section 38 for “Part VI of the **Companies (Victoria) Code (except sections 274, 278, 279 and 280)**” substitute “Parts 3.6 and 3.7 of the **Corporations Law of Victoria (except sections 315, 325, 326 and 327)**”;
- (g) In section 38 (h) for “section 240 of that Code” substitute “section 245 of the **Corporations Law of Victoria**”;
- 10 (h) In sections 39 (2), 41 (1), 41 (3) and 44 (a) for “**Companies (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
- (i) In section 65 for “Division 9 of Part IV of the **Companies (Victoria) Code**” substitute “Part 3.5 of the **Corporations Law of Victoria**”;
- 15 (j) In section 67 (2) (d) for “section 97 (7) (b) of the **Companies (Victoria) Code**” substitute “section 65 (1) (a) of the **Corporations Law of Victoria**”;
- (k) In section 86A, in the definition of “**Securities**” for “**Securities Industry (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
- 20 (l) In section 86B (3) (b), 86B (5) (a) and 86B (6) for “section 6 of the **Securities Industry (Victoria) Code**” substitute “sections 10 to 17 of the **Corporations Law of Victoria**”;
- 25 (m) In section 120 for “Parts X and XI of the **Companies (Victoria) Code**” substitute “Parts 5.2 and 5.3 of the **Corporations Law of Victoria**”;
- (n) In sections 121 (2) and 121 (4) for “Part XII of the **Companies (Victoria) Code**” substitute “Parts 5.4, 5.5 and 5.6 of the **Corporations Law of Victoria**”.
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**PART 3—AMENDMENTS TO THE BUILDING SOCIETIES
ACT 1986**

8. *Transfer of functions and powers of Registrar of Building Societies*

- 35 (1) In the **Building Societies Act 1986**—
- (a) In section 3 (1) the definition of “**Registrar**” is repealed;

(b) After section 3 insert—

“3A. Construction of references to Registrar

Any reference in this Act or the regulations or in any other Act, subordinate instrument or other document whatsoever to the Registrar is to be construed as a reference to the Reserve Board, unless a contrary intention appears.”;

(c) In the Heading to Division 1 of Part 2 for “**The Registrar**” substitute “**General**”;

(d) Sections 5, 13 (c), 25F (6), 125 (1) (a), 131A, 137 and 139 (4) are repealed;

(e) In section 13 (f) omit “by the Registrar”;

(f) In section 13 (g) omit “and the Registrar”;

(g) For section 15 (1) substitute—

“(1) The Reserve Board is to consist of 7 members appointed by the Minister.”;

(h) In sections 25K (1) and 25K (2) for “Registrar” substitute “Minister”;

(i) In sections 33 (7) and 33 (8) omit “and after consultation with the Reserve Board”;

(j) In section 36 (2) omit “after consulting with the Reserve Board”;

(k) In section 52 (1) (f) omit “after consultation with the Council”;

(l) In section 108 (1) omit “after consulting with the Reserve Board and”;

(m) In section 119 (1) omit “after consulting with the Reserve Board”;

(n) In section 122 (1) omit “and after consulting with the Reserve Board”;

(o) In sections 129 (1) and 129 (2) omit “the Registrar or”.

(2) Despite any reconstitution of the Reserve Board effected by sub-section (1) (g), the Reserve Board is deemed to be the same body on or after as before the commencement

of this section and no act, matter or thing is to be in any way abated or affected by reason of that reconstitution and such act, matter or thing may be continued and concluded in all respects as if this Act had not been passed.

5 **9. Powers of the Reserve Board**

In the **Building Societies Act 1986**—

(a) After section 13 (*h*) insert—

“; and

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(i) institute proceedings for any offence against this Act.”;

(b) After section 14 insert—

“**14A. Reserve Board to maintain a public office**

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(1) The Reserve Board must maintain a public office in which must be kept any document lodged with the Reserve Board.

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(2) Any person may inspect at the public office any document required to be lodged with the Reserve Board under this Act.”;

(c) In section 18 (*a*) after “member” insert “, officer or employee”;

(d) For section 24 substitute—

“**24. Suitability of auditors**

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Unless the Reserve Board is satisfied that a person meets the requirements of the Reserve Board as to suitability for appointment as an auditor of a building society, the Reserve Board must—

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(a) not issue a certificate of approval to that person under section 92; or

(b) if the person holds a certificate of approval, cancel the certificate of approval.”

- (e) In section 25I (1) **omit** “and approved by the Minister”;
- (f) In section 45 (2) **omit** “and” after paragraph (c) and **omit** paragraph (d);
- (g) In sections 52 (1) (d) and 52 (1) (g) (iii) for “Minister” **substitute** “Reserve Board”; 5
- (h) In section 52 (1) (k) for “Minister and notified in the Government Gazette” **substitute** “Reserve Board and notified in writing to each building society”; 10
- (i) For section 52 (3) **substitute**—
 “(3) The Reserve Board may, by notice in writing, declare that on and from the date that is specified in the notice, a building society cannot invest in the manner that is specified in the notice.”; 15
- (j) Sections 60D (5) and 60D (6) are **repealed**.

10. *Miscellaneous amendments*

In the **Building Societies Act 1986**—

- (a) Section 49 is **repealed**; 20
- (b) Section 50 (2) is **repealed**;
- (c) After section 50A (2) **insert**—
 “(3) Regulations made under sub-section (1) may include regulations exempting specified foreign building societies from compliance with any or all of the provisions of Part 7.12 of the **Corporations Law of Victoria** subject to any conditions that may be prescribed.”. 25
- (d) After section 53 **insert**—
“53A. Financial arrangements 30
- (1) A building society may, with the approval of the Reserve Board, enter into financial arrangements.
- (2) In sub-section (1), “**financial arrangement**” means an arrangement 35
 entered into for the purpose of

managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or other costs of obtaining financial accommodation.

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(3) If—

(a) a building society enters into, or purports to enter into, a financial transaction that is not, or may not be, a financial arrangement; and

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(b) another party to the financial transaction enters into the financial transaction in good faith and with no reason to suspect, at the time of entering into the financial transaction, that the transaction is not a financial arrangement—

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the financial transaction may be enforced as if it were a financial arrangement which the building society had been authorised to enter into.”.

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(e) In section 63 (3) (a) for “Fund” (where twice occurring) **substitute** “Building Societies General Reserve Fund”.

25

(f) Section 114 (2) (e) is **repealed**;

(g) For section 114 (2) (j) **substitute**—

“(j) the building society is in the breach of any of the provisions of Division 3 of Part 4.”

30

(h) Section 122 (1) (e) is **repealed**;

(i) For section 122 (1) (j) **substitute**—

“(j) the building society is in the breach of any of the provisions of Division 3 of Part 4.”

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(j) In section 127 (1) for “to which section 54 applies” **substitute** “by a building society or a foreign building society for approved residential purposes within the meaning of section 53.”.

11. References to Corporations Law of Victoria**(1) In the Building Societies Act 1986—**

- (a) In section 3 (1), in the definitions of “**Company**”, “**Corporation**”, “**Debenture**”, “**Insolvent under administration**” and “**Share**” for “section 5 (1) of the **Companies (Victoria) Code**” substitute “section 9 of the **Corporations Law of Victoria**”; 5
- (b) In section 3 (11) for “**Companies (Acquisition of Shares) (Victoria) Code**” substitute “**Corporations Law of Victoria**”; 10
- (c) In sections 3 (10), 45, 46, 47 (1), 47 (2) and 47 (6) for “**Companies (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
- (d) In sections 46 and 47 for “**National Companies and Securities Commission**” substitute “**Australian Securities Commission**”; 15
- (e) For section 47 (7) substitute—
 “(7) In sub-section (8) “**prescribed provision**” means a provision of sections 1005 to 1012 or Division 2, 4 or 6 of Part 7.12 of the **Corporations Law of Victoria** or section 126 of this Act.” 20
- (f) For section 47 (8) (d) substitute—
 “(d) The definition of “**debenture**” in section 9 of the **Corporations Law of Victoria** has effect in its application to the building society as if the reference in paragraph (c) to an “**Australian bank**” included a reference to the building society and the reference to “**banking business**” included a reference to the building society’s business.” 25 30
- (g) In section 47 (9) for “section 152 (1) of the **Companies (Victoria) Code**” substitute “section 1052 of the **Corporations Law of Victoria**”;
- (h) In section 47 (9) for “Division 5 of Part IV of the **Companies (Victoria) Code**” substitute “Division 4 of Part 7.12 of the **Corporations Law of Victoria**”; 35

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- (i) In section 50A (2) for “Division 1 of Part IV of the **Companies (Victoria) Code**” substitute “Parts 7.11 and 7.12 of the **Corporations Law of Victoria**”;
 - (j) In section 51 for “Division 9 of Part IV of the **Companies (Victoria) Code**” substitute “Part 3.5 of the **Corporations Law of Victoria**”;
 - (k) In section 60A (5) in the definitions of “**prime assets**” for “section 97 (7) (b) of the **Companies (Victoria) Code**” substitute “section 65 (1) (a) of the **Corporations Law of Victoria**”;
 - (l) In section 60A (5) in the definition of “**security**” for “**Companies (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
 - (m) In section 60E (4) (c) for “section 97 (7) (b) of the **Companies (Victoria) Code**” substitute “section 65 (1) (a) of the **Corporations Law of Victoria**”;
 - (n) In section 62 (2) (a) for “section 227 (2) of the **Companies (Victoria) Code**” substitute “section 229 (3) of the **Corporations Law of Victoria**”;
 - (o) In sections 63 (3) (a) (ii) and 63 (3) (b) (ii) for “section 383 of the **Companies (Victoria) Code**” substitute “section 482 of the **Corporations Law of Victoria**”;
 - (p) In section 81 (1) for “Division 3 of Part VI” substitute “Part 3.7”;
 - (q) In section 81 (1) for “**Companies (Victoria) Code**” (where twice occurring) substitute “**Corporations Law of Victoria**”;
 - (r) In section 92 (1) for “**Companies (Victoria) Code**” substitute “**Corporations Law of Victoria**”;
 - (s) In sections 109A (1) and 109A (2) for “Part VIII of the **Companies (Victoria) Code**” substitute “Part 5.1 of the **Corporations Law of Victoria**”;
 - (t) In section 109A (2) (a) omit “(other than where thirdly occurring in section 318 (7) and where secondly and thirdly occurring in the definition of “prescribed shares” in section 318 (16))”;
 - (u) In section 109A (2) (d) for “section 315 (7) (b)” substitute “section 411 (7) (b)”;

- (v) In section 109A (2) (e) for “section 315 (13)”
substitute “section 411 (11)”;
 - (w) In section 109A (2) (f) for “section 315 (15)”
substitute “section 411 (13)”;
 - (x) In section 109A (2) (g) for “section 315 (15) (a)” 5
substitute “section 411 (13) (a)”;
 - (y) In section 109A sub-sections (2) (h), (2) (i), (2) (j)
and (2) (k) are **repealed**.
- (2) In the **Building Societies Act 1986**—
- (a) In section 120 for “Parts X and XI of the **Companies 10**
(Victoria) Code” **substitute** “Parts 5.2 and 5.3 of
the **Corporations Law of Victoria**”;
 - (b) In sections 121 (2) and 121 (4) for “Part XII of the
Companies (Victoria) Code” **substitute** “Parts 5.4,
5.5 and 5.6 of the **Corporations Law of Victoria**”. 15

PART 4—AMENDMENTS TO OTHER ACTS

12. *Amendment of Building Societies (Prudential Standards) Act 1990*

- In the **Building Societies (Prudential Standards) Act 20**
1990—
- (a) In sections 2 (1) and 2 (3) for “16 (b)” **substitute**
“16 (1) (b)”;
 - (b) Section 18 is **repealed**.

13. *Amendment of Benefit Associations Act 1958*

- In the **Benefit Associations Act 1958**— 25
- (a) In section 3 the definition of “**Registrar**” is **repealed**;
 - (b) For section 5 **substitute**—

“5. *Construction of references to Registrar*

Any reference in this Act, the regulations
any subordinate instrument or other 30
document whatsoever to the Registrar is
to be construed as a reference to the
Friendly Societies Reserve Board, unless a
contrary intention appears.’ ”.

14. Amendment of Trade Unions Act 1958

For section 3 (2) of the **Trade Unions Act 1958**
substitute—

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“(2) Any reference in this Act, the regulations, any subordinate instrument or other document whatsoever to the Registrar is to be construed as a reference to the Friendly Societies Reserve Board, unless a contrary intention appears.”.

