

SOUTH AUSTRALIA

**FRIENDLY SOCIETIES (SOUTH AUSTRALIA) (SAVINGS AND
TRANSITIONAL) REGULATIONS 1997**

SUMMARY OF PROVISIONS

1. Citation
2. Commencement
3. Revocation
4. Interpretation
5. Effect of regulations
6. Non-application of dominant activities test to continuing societies
7. Non-application of voting provisions of Code to certain continuing societies
8. Registered office
9. Funds and separation of assets
10. Loan funds
11. Deferral of payments
12. Annual general meeting
13. Power to control advertising
14. Amalgamations
15. Transfer of engagements
16. Resolutions
17. Name
18. Certain words to be included in name of society
19. Intervention in society's affairs
20. Suspension of operations
21. Appointment of administrator
22. Proceedings under Friendly Societies Act 1919

REGULATIONS UNDER THE FRIENDLY SOCIETIES (SOUTH AUSTRALIA) ACT 1997

Friendly Societies (South Australia) (Savings and Transitional) Regulations 1997

being

No. 207 of 1997: *Gaz.* 18 September 1997, p. 856¹

¹ Came into operation 1 October 1997: reg. 2.

Citation

1. These regulations may be cited as the *Friendly Societies (South Australia) (Savings and Transitional) Regulations 1997*.

Commencement

2. These regulations will come into operation on the day on which section 16 of the *Friendly Societies (South Australia) Act 1997* comes into operation.

Revocation

3. The *Friendly Societies Regulations 1995* (see *Gazette* 21 December 1995 p. 1783) are revoked.

Interpretation

4. (1) In these regulations, unless the contrary intention appears—

"**Act**" means the *Friendly Societies (South Australia) Act 1997*;

"**Code**" means the *Friendly Societies (South Australia) Code*;

"**continuing society**" means a friendly society to which the previous law applied;

"**foreign continuing society**" means a society registered or incorporated as a friendly society in another State or a Territory of the Commonwealth immediately before the commencement of this regulation;

"**previous law**" means the *Friendly Societies Act 1919* as in force immediately before the commencement of these regulations;

"**specified name**", in relation to a continuing society, means the name of the society specified in Schedule 2 of the previous law.

(2) In section 484 (*Rules*) of the Code, the reference to the rules of a continuing society in force immediately before the commencement of that section is to be read as if it were a reference to the general laws or rules of a society under the previous law in force immediately before the commencement of that section.

(3) In section 490 (*Winding-up*) of the Code, the reference to a certificate issued for the winding-up of a continuing society under the previous law is to be read as if it were a reference to an order of the Minister to dissolve a society under section 45F of the previous law.

(4) In section 491 (*Documents*) of the Code, the reference to the SSA under the previous law is to be read as if it were a reference to the Minister under the previous law.

(5) For the purposes of the Code—

(a) a member of a committee of management; or

(b) a director,

of a continuing society under the previous law will be taken to be a director of the society.

3.

(6) For the purposes of the Code—

- (a) a fund maintained by a continuing society under section 7(1) or section 9 of the previous law immediately before the commencement of this regulation to pay, or provide for the payment of, amounts to which a member of the society or any other person may be, or become, entitled because of contributions, or payments made, to the society (whether by that member or person or by another person) will be taken to be a benefit fund of the society established under Part 4A of the Code;
- (b) any other fund (including a fund under section 9A) maintained by a continuing society under the previous law immediately before the commencement of this regulation for any other purpose will be taken to be part of the management fund of the society.

(7) All other words and expressions used in these regulations have the same respective meanings as in the Act and the Code.

Effect of regulations

5. These regulations are made pursuant to section 16 of the Act and have effect despite any provision of the Act, including the Code.

Non-application of dominant activities test to continuing societies

6. (1) A continuing society may continue to carry on activities as a society registered under the Code despite non-compliance with Part 3 Division 1 of the Code.

(2) However, a continuing society that does not, at the commencement of this regulation, comply with Part 3 Division 1 of the Code, must not extend the scope of its activities unless, taking the current and new activities into account—

- (a) the objects of the society will include one or more of the objects referred to in section 56 (*Primary objects*) of the Code; and
- (b) the dominant activities of the society will be within the scope of the primary objects of the society,

as required by Part 3 Division 1 of the Code.

Non-application of voting provisions of Code to certain continuing societies

7. (1) If, immediately before the commencement of this regulation, the rules of a continuing society were inconsistent with section 305 (*Voting*) of the Code, those rules may continue to govern the voting rights of members despite section 484(2) (*Rules*) of the Code.

(2) Section 484(3) of the Code does not apply to any such rule.

(3) If the SSA is satisfied that there is no good reason why an amendment of a continuing society's rules in relation to the voting rights of members should not be registered, the SSA must register the amendment even if the amended rules do not comply with the friendly societies legislation of South Australia, so long as the amended rules do not fail to comply with the friendly societies legislation to a greater extent than the unamended rules.

4.

(4) This regulation—

- (a) applies only to a continuing society that, immediately before the commencement of this regulation, was carrying on the business of a pharmaceutical and dispensing chemist and druggist (*see section 7(1)XII of the previous law*); and
- (b) ceases to apply if such a continuing society establishes a benefit fund under Part 4A of the Code, in which case the rules of the society relating to voting rights of members must comply with the Code.

Registered office

8. The registered office of a continuing society under section 6 of the previous law, immediately before the commencement of this regulation, will be taken to be the registered office of the society for the purposes of section 95 (*Registered office*) of the Code.

Funds and separation of assets

9. (1) A continuing society that, immediately before the commencement of this regulation, did not maintain a separate account at a bank for each fund of a kind referred to in regulation 4(6)(a) (*ie: a fund that will, for the purposes of the Code, be taken to be a benefit fund*)—

- (a) must as soon as practicable notify the SSA of the existence of each such fund; and
- (b) must—
 - (i) within 6 months of the commencement of this regulation; or
 - (ii) within such longer period as the SSA, on application by the society, allows, take all necessary steps to comply with the Code and standards in relation to benefit funds.

(2) A continuing society that, immediately before the commencement of this regulation, maintained a fund for which an authorisation was in force under section 7(8) of the previous law—

- (a) must as soon as practicable notify the SSA of the maintenance of the fund; and
- (b) must—
 - (i) within 6 months of the commencement of this regulation; or
 - (ii) within such longer period as the SSA, on application by the society, allows, take all necessary steps to comply with the Code and standards in relation to benefit funds.

(3) A continuing society that notifies the SSA in accordance with subregulation (1)(a) or (2)(a) (as the case requires) will, for the period of 6 months from the commencement of this regulation or such longer period as is allowed by the SSA, be taken to be complying with section 99 (*Assets of benefit funds*) of the Code in relation to the distinction and separation of assets of benefit funds.

Loan funds

10. (1) A continuing society that maintained a separate loan fund under section 9A of the previous law immediately before the commencement of this regulation—

- (a) must as soon as practicable notify the SSA of the maintenance of the fund; and
- (b) must not, subject to subregulation (2), accept any further contributions or deposits to the fund.

(2) The continuing society may until 30 June 1999 accept further contributions or deposits to the fund if—

- (a) each such contribution or deposit is to be repaid without advance notice of repayment being required to be given to the society (an "**at call contribution or deposit**"); and
- (b) the at call contribution or deposit is made by a person who—
 - (i) was, immediately before the commencement of this regulation, a member of the fund; and
 - (ii) has other at call contributions or deposits in the fund.

(3) The continuing society must before 1 July 1999 repay to, or in accordance with the directions of, the contributor or depositor all at call contributions or deposits, together with accrued interest.

(4) The continuing society must repay to, or in accordance with the directions of, the contributor or depositor all contributions or deposits to the fund contributed or deposited for a fixed term (as fixed immediately before the commencement of this regulation), together with accrued interest, on the expiration of that term.

Deferral of payments

11. A direction to a continuing society in force under section 22A(1) of the previous law immediately before the commencement of this regulation will be taken to be a direction to the society by the SSA under section 45(1)(e) (*Power to suspend operations*) of the Code.

Annual general meeting

12. (1) A continuing society must hold an annual general meeting within 12 months after the society's last annual general meeting held under the previous law.

(2) The accounts of a continuing society relating to the financial year ended immediately before the commencement of this regulation will, if kept and audited in accordance with the previous law, be taken, for the purposes of section 338(1) (*Accounts and reports to be laid before annual general meeting*) of the Code, to comply with Part 6 Divisions 6 and 7 of the Code.

(3) A continuing society that makes available copies of such accounts to members at the registered office and at each other office of the society from 21 days before the first annual general meeting after the commencement of this regulation is to be held until the holding of the meeting will be taken to be in compliance with section 338(2) of the Code.

Power to control advertising

13. A requirement relating to a continuing society or a foreign continuing society in force under section 35A(1) of the previous law immediately before the commencement of this regulation will be taken to be a direction to the society by the SSA under the relevant provision of section 55(1) (*Power to control advertising*) of the Code.

Amalgamations

14. (1) A resolution by two or more continuing societies to amalgamate under section 44A(1) of the previous law that has not been registered under section 45 of the previous law before the commencement of this regulation will be taken, for the purposes of section 364(2) (*Application for registration of merger or transfer*) of the Code, to be a special resolution of each of the societies involved approving the proposed merger.

(2) Compliance by a continuing society with section 44A(2) of the previous law in relation to such a resolution by the society will be taken to be compliance by the society with section 364(3) and (4) of the Code in relation to a special resolution.

(3) A copy of a resolution to amalgamate by two or more continuing societies that has been forwarded to the Minister for registration under section 45(1) of the previous law but has not, at the commencement of this regulation, been registered will be taken to be an application for the registration of a merger under section 364(7) of the Code.

Transfer of engagements

15. An order to a continuing society in force under section 44AB(1) of the previous law immediately before the commencement of this regulation will be taken to be a direction to the society by the SSA under section 367 (*SSA may direct a transfer of engagements between societies*) of the Code to totally or partially (as the case requires) transfer its engagements to another society.

Resolutions

16. (1) A resolution by a continuing society to change its specified name under section 44B(1) of the previous law that has not been registered under section 45 of the previous law before the commencement of this regulation will be taken to be a special resolution to amend the rules of the society under section 72 (*Amendment of rules by special resolution*) of the Code.

(2) Compliance by a continuing society with section 44B(2) of the previous law in relation to such a resolution will be taken to be compliance by the society with the requirements of section 307 (*Special resolutions of societies*) of the Code in relation to special resolutions.

(3) A copy of a resolution of a continuing society that has been forwarded to the Minister for registration under section 45(1) of the previous law but has not, at the commencement of this regulation, been registered will be taken to be an application for the registration of an amendment of a rule of the society under section 74 (*Registration of amendment of rule*) of the Code.

Name

17. (1) The specified name of a continuing society will, for the purposes of the Code, be taken to be the registered name of the society.

(2) A continuing society that immediately before the commencement of this regulation used a name other than its specified name must as soon as practicable notify the SSA of the society's use of that other name.

7.

(3) The SSA must as soon as practicable after being notified under subregulation (2) notify the Australian Financial Institutions Commission ("AFIC") of the society's use of a name other than its specified name.

(4) A society that proposes to continue using a name other than its specified name must—

(a) within 6 months of the commencement of this regulation; or

(b) within such longer period as the SSA, on application by the society, allows,

apply to AFIC for approval of the use of the name under Part 6A of the *AFIC (South Australia) Code*.

(5) A continuing society that notifies the SSA in accordance with this regulation will be taken to have the approval of AFIC of the use of the name—

(a) until application for such approval is made in accordance with this regulation and is determined by AFIC; or

(b) if no such application for approval is made—for the period of 6 months from the commencement of this regulation or such longer period as is allowed by the SSA.

Certain words to be included in name of society

18. (1) A continuing society must, within 12 months of the commencement of this regulation, take the necessary steps under Part 3 (*Societies*) of the Code to change its name so as to include the words "friendly society" as part of its name and "Limited", or the abbreviation "Ltd.", at the end of its name.

(2) A continuing society will, for the period of 12 months from the commencement of this regulation, be taken to be complying with Part 3 Division 6 of the Code.

Intervention in society's affairs

19. (1) Notice to a continuing society under clause 1(1) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be notice that the society has been placed under direction by the SSA under section 44(1) (*Intervention by SSA*) of the Code.

(2) A direction or requirement under clause 1(3) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be a direction or requirement of the SSA under section 44(4) of the Code.

Suspension of operations

20. Notice to a continuing society under clause 2(1) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be notice given to the society by the SSA under section 45(1) (*Power to suspend operations*) of the Code.

Appointment of administrator

21. (1) An appointment of an administrator of a continuing society under clause 3(1) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be an appointment of an administrator by the SSA under section 46(1) (*Appointment of administrator*) of the Code.

8.

(2) An appointment under clause 3(9) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be an appointment by the SSA under section 46(11) of the Code.

(3) An approval under clause 3(12)(a) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be an approval by the SSA under section 46(14)(a) of the Code.

(4) A certification under clause 3(12)(b) of Schedule 7 of the previous law in force immediately before the commencement of this regulation will be taken to be a certification by the SSA under section 46(14)(b) of the Code.

Proceedings under Friendly Societies Act 1919

22. (1) The SSA may take action or institute proceedings under the previous law in relation to a continuing society.

(2) For the purposes of subregulation (1), a reference in the previous law to the Minister is to be read as a reference to the SSA.