



REPORT OF THE
STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
IN RELATION TO THE
***FRIENDLY SOCIETIES (WESTERN
AUSTRALIA) BILL 1998***
AND
FRIENDLY SOCIETIES (TAXING) BILL 1998

Presented by the Hon Murray Nixon (Chairman)

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

21 December 1989

Terms of Reference:

1. The functions of the committee are to inquire into and report on:
 - (a) the constitutional law, customs and usages of Western Australia;
 - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,

and any related matter or issue;
 - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - (d) any petition.

2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the date of this report:

Hon Murray Nixon MLC (Chairman)
Hon Ray Halligan MLC
Hon Tom Helm MLC

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STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL 1998

AND

FRIENDLY SOCIETIES (TAXING) BILL 1998

This Report contains both a Majority Report and a Minority Report.

The Majority consisted of -

Hon Murray Nixon MLC
Hon Ray Halligan MLC

The Minority consisted of -

Hon Tom Helm MLC

The Majority Report is presented before the Minority Report.

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL 1998

AND

FRIENDLY SOCIETIES (TAXING) BILL 1998

MAJORITY REPORT

MAJORITY REPORT: TABLE OF CONTENTS

| | | |
|----|--|---|
| 1. | Executive Summary | 1 |
| 2. | Recommendations | 1 |
| 3. | Reference and Procedure | 2 |
| 4. | Background of Friendly Societies | 2 |
| 5. | Contents and Purpose of the Bill | 3 |
| 6. | Contents and purpose of the Taxing Bill | 5 |
| 7. | Committee review of the Bill and Taxing Bill | 5 |
| 8. | Selected Clauses of the Friendly Societies (Western Australia) Bill 1998 | 6 |
| 9. | Appendix - Friendly Societies (Western Australia) Code | 9 |

**Majority Report of the Legislative Council Constitutional Affairs
Committee**

in relation to

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL 1998

AND

FRIENDLY SOCIETIES (TAXING) BILL 1998

1. Executive Summary

- 1.1 The *Friendly Societies (Western Australia) Bill 1998* (the "Bill") and *Friendly Societies (Taxing) Bill 1998* (the "Taxing Bill") were referred to the Constitutional Affairs Committee ("the Committee") by the Legislative Council under Standing Order 230(d).
- 1.2 The purpose of the Bill is to implement model friendly societies legislation. The Bill is part of the legislative process required to include national uniform regulation of friendly societies within the framework of the existing financial institutions scheme which currently regulates permanent building societies and credit unions.
- 1.3 The Bill implements the Friendly Societies (Western Australia) Code (the "Code") as a law of Western Australia. The Code is contained in Appendix 1 and contains 345 clauses in 15 Parts.
- 1.4 The purpose of the Taxing Bill is to ensure that, to the extent that any fee referred to in section 13 of the Bill may be considered to be a tax, it can properly be imposed. The Taxing Bill has no other purpose and operates entirely as a supplement to the Bill.

2. Recommendations

- 2.1 In the report, the Committee has provided comment and recommendations on certain selected clauses of the Bill. It should be noted that the remainder of the clauses not mentioned are recommended to be passed by the Committee.
- 2.2 The Committee recommends that all clauses of the Taxing Bill should be passed.

**Report of the Legislative Council
Constitutional Affairs Committee**

in relation to the

**Friendly Societies (Western Australia) Bill 1998
and
Friendly Societies (Taxing) Bill 1998**

3. Reference and Procedure

- 3.1 The *Friendly Societies (Western Australia) Bill 1998* (the "Bill") and *Friendly Societies (Taxing) Bill 1998* (the "Taxing Bill") were referred to the Constitutional Affairs Committee ("the Committee") by the Legislative Council under Standing Order 230(d).

4. Background of Friendly Societies

- 4.1 The first legislation relating to friendly societies was enacted in the United Kingdom in 1793. That Act defined them to be "societies for raising, by voluntary subscriptions of the members, separate funds for their mutual relief and maintenance in sickness, old age and infirmity." Later legislation in the United Kingdom and Australia extended the functions of societies to many other areas including the relief of persons in widowhood, for medical attendances and pharmaceutical benefits.¹
- 4.2 There are two "specially" authorised societies and nine "traditional" societies registered in Western Australia. The specifically authorised societies are HBF Friendly Society controlled by Hospital Benefits Fund and Home Owners Friendly Society controlled by Home Building Society. The "traditional" societies offer funeral, death, medical, sickness, endowment benefit and the like to members. The societies are funded by voluntary subscriptions or levies on members. Currently, the specially authorised and traditional societies are registered under the *Friendly Societies Act 1894 (Western Australia)*.²
- 4.3 In 1994, the Attorney General's of each of the States resolved to create a uniform scheme for friendly societies. It was also resolved that the proposed new scheme be integrated into the existing Financial Institutions scheme covering permanent building societies and credit unions. The scheme is based on legislation enacted by the Queensland Parliament as the "host" State entitled the *Financial Institutions (Queensland) Act 1992*. All other States enacted legislation that applied the

¹ Submission received from the Registrar of Co-operative and Financial Institutions, Mr Peter Richards, 29 October 1998

² *ibid*

Queensland legislation as laws in the States. The relevant legislation in Western Australia is called the *Financial Institutions (Western Australia) Act 1992*.³

- 4.4 The prudential standards under which the Financial Institutions industry operates are created and administered by the Australian Financial Institutions Authority ("AFIC"). AFIC is created by the *Australian Financial Institutions Commissions Act 1992*.⁴
- 4.5 Each State and Territory also created a State Supervisory Authority ("SSA") that provides the day-to-day supervision of permanent building societies and credit unions in their jurisdictions. The SSA in Western Australia is the Western Australian Financial Institutions Authority ("WAFIA") created under the *Western Australian Financial Institutions Commission Act 1992*.⁵
- 4.6 Both AFIC and WAFIA are controlled by independent boards and are funded by levies on the bodies they administer so that there is no cost to the State.⁶
- 4.7 The uniform legislation for friendly societies is hosted by Victoria under the *Friendly Societies (Victoria) Act 1996*. It was decided that Victoria should host the legislation as over 80% of the industry in Australia is controlled in Victoria.

5. Contents and Purpose of the Bill

- 5.1 The purpose of the Bill is to implement model Friendly Societies legislation. The Bill is part of the legislative process required to include national uniform regulation of friendly societies within the framework of the existing financial institutions scheme which currently regulates permanent building societies and credit unions.
- 5.2 The Bill implements the Friendly Societies (Western Australia) Code (the "Code") as a law of Western Australia.
- 5.3 The Bill contains 24 clauses in 7 Parts -

- Part 1 - Preliminary
- Part 2 - Friendly Societies (Western Australia) Code
- Part 3 - Conferral of Functions and Powers
- Part 4 - Friendly Societies (Western Australia) Regulations
- Part 5 - Levies, fees and other amounts
- Part 6 - Miscellaneous
- Part 7 - Consequential amendments

3 *ibid*

4 *ibid*

5 *ibid*

6 *ibid*

5.4 The Code is contained in Appendix 1 and contains 345 clauses in 15 Parts -

| | | |
|----------|---|--|
| Part 1 | - | Preliminary |
| Part 2 | - | Functions and Powers |
| Part 3 | - | Societies |
| Part 4A | - | Benefit Funds |
| Part 4 B | - | Offering and Marketing of Benefits |
| Part 5 | - | Shares and Charges |
| Part 6 | - | Management |
| Part 7 | - | Mergers of Societies and Transfers of Engagements |
| Part 8 | - | Conversions to Companies and Incorporated Associations |
| Part 9 | - | External Administration |
| Part 10 | - | Special Investigations |
| Part 11 | - | Foreign Societies |
| Part 12 | - | Associations |
| Part 13 | - | Review of Decisions |
| Part 14 | - | Miscellaneous |
| Part 15 | - | Transitional |

5.5 Schedule A contains Miscellaneous Provisions Relating to Interpretation and contains 48 clauses in nine 9 Parts -

| | | |
|--------|---|---|
| Part 1 | - | Preliminary |
| Part 2 | - | General |
| Part 3 | - | Terms and References |
| Part 4 | - | Functions and Powers |
| Part 5 | - | Distance, Time and Age |
| Part 6 | - | Service of Documents |
| Part 7 | - | Effect of Repeal, Amendment or Expiration |
| Part 8 | - | Offences under Code |
| Part 9 | - | Instruments under Code |

5.6 Certain selected clauses of the Bill and Code are outlined below and the Committee has provided comment and recommendations on each of these clauses. It should be noted that the remainder of the clauses not mentioned are recommended to be passed by the Committee.

5.7 The Committee heard evidence from the Secretary of the Victoria Park and Districts United Friendly Societies Council, Ms Mavis Glewis, and the State Secretary of the Western Australian Friendly Societies Association, Ms Margaret Paternoster. Ms Glewis and Ms Paternoster both expressed concern regarding the application of the Bill to small friendly societies in Western Australia. Ms Glewis also expressed additional concern regarding the application of the Bill to non-benefit fund societies. A detailed comment on these concerns is contained at 9.11 and 9.12 of the Report.

5.8 The Committee has recommended that all clauses of the Bill should be passed.

6. Contents and purpose of the Taxing Bill

- 6.1 Section 13 of the Taxing Bill imposes a liability to pay any fees which may be prescribed by regulations made under the Bill, except to the extent that those fees may be taxes. In the case of taxes, section 46(7) of the *Constitution Acts Amendment Act 1899* directs that a Bill imposing taxation shall deal only with the imposition of taxes.
- 6.2 The purpose of the Taxing Bill is to ensure that, to the extent that any fee referred to in section 13 of the Bill may be considered to be a tax, it can properly be imposed. The Taxing Bill has no other purpose and operates entirely as a supplement to the Bill.
- 6.3 The Committee recommends that all clauses of the Taxing Bill should be passed.

7. Committee review of the Bill and Taxing Bill

- 7.1 As part of the review, the Committee placed an advertisement in the *Western Australian* newspaper inviting submissions on the Bill and Taxing Bill. In response, the Committee received six (6) submissions which were considered as part of the inquiry.
- 7.2 As part of the review, the Committee heard evidence from a number of witnesses concerning the operation of the Bill and Taxing Bill. The witnesses who appeared before the Committee were -
- Ms Mavis Glewis, Secretary, Victoria Park and Districts United Friendly Societies Council;
 - Mr Ron Edwards, President, Victoria Park and Districts United Friendly Societies Council;
 - Ms Margaret Paternoster, State Secretary, Western Australian Friendly Societies Association;
 - Mr Neil Ryan, Chief Executive Officer, Western Australia Financial Institutions Authority; and
 - Mr Peter Richards, Registrar of Cooperative and Financial Institutions, Ministry of Justice.

8. Selected Clauses of the Friendly Societies (Western Australia) Bill 1998

8.1 *CLAUSE 3 - Definitions*

This clause contains a number of important definitions which include -

- "AFIC" means the Australian Financial Institutions Commission which is the standards setting body under the proposed Act and is established by the *Australian Financial Institutions Commission Act 1992*;
- "friendly societies legislation of Western Australia" means the proposed Act, the Code made under this Act, regulations made under this proposed Act and legislation creating the existing Financial Institutions legislation in Western Australia; and
- "Friendly Societies (Western Australia) Code" means the Code set out in the Appendix.

Recommendation 1: the clause be passed

8.2 *CLAUSE 5 - Friendly Societies (Western Australia) Code enacted*

This clause provides that the Code will have effect as a law of Western Australia.

Recommendation 2: the clause be passed

8.3 *CLAUSE 7 - Conferral of functions and powers on AFIC*

This clause provides that the AFIC has the functions and powers conferred or expressed to be conferred on it by or under the friendly societies legislation of Western Australia.

Recommendation 3: the clause be passed

8.4 *CLAUSE 8 - Conferral of functions and powers on Tribunal*

This clause provides that the Australian Financial Institutions Appeals Tribunal (established under the AFIC legislation) will have the powers and functions conferred by the Code.

Recommendation 4: the clause be passed

8.5 ***CLAUSE 9 - State supervisory authority***

This clause establishes the Western Australian Financial Institutions Authority as the State supervisory authority for Western Australia.

Recommendation 5: the clause be passed**8.6** ***CLAUSE 11 - General regulation-making power for the Code***

This clause provides that the Governor may make regulations prescribing all matters that are required or permitted by the Act or the Code to be prescribed or are necessary or convenient for giving effect to the purposes of the Act or the Code.

The clause specifically states that a regulation may only be made on the recommendation of the Ministerial Council for Financial Institutions.

Recommendation 6: the clause be passed**8.7** ***CLAUSE 12 - Savings and transitional regulations for Code***

This clause provides that regulations may be made to save or preserve certain functions under previous legislation regulating friendly societies. Such regulations have effect despite any provision of the Act or Code.

Recommendation 7: the clause be passed**8.8** ***CLAUSE 14 - Levies***

This clause provides that regulation of the industry will be funded by levies on the friendly society industry.

Recommendation 8: the clause be passed**8.9** ***CLAUSE 15 - Fees, fines and penalties***

This clause provides that the fees, fines and penalties imposed by the Bill are payable into the Western Australian Consolidated Fund.

Recommendation 9: the clause be passed

8.10 *CLAUSE 16 - Crimes*

This clause provides that an offence that is punishable by imprisonment, under the Code, for a period exceeding 2 years is a crime.

Recommendation 10: the clause be passed

8.11 *CLAUSE 17 - Repeal of Friendly Societies Act 1894*

This clause repeals the *Friendly Societies Act 1894*.

Recommendation 11: the clause be passed

9. Appendix - Friendly Societies (Western Australia) Code

9.1 CLAUSE 3 - Definitions

This clause contains numerous definitions concerning interpretation of the Code. The majority of the definitions and interpretations are similar to those in the Corporations Law and the Financial Institutions legislation.

Recommendation 12: the clause be passed

9.2 CLAUSE 17 - Extraterritorial operation of legislation

This clause provides that the friendly societies legislation applies throughout Australia and both within and outside Australia.

Recommendation 13: the clause be passed

9.3 CLAUSE 20 - Corporations Law adopted under a regulation

This clause provides that a regulation may adopt, with or without modification, a provision of the Corporations Law for application to societies or the securities of societies. However, a regulation may not adopt a provision of the Corporations Law to the extent that the provision as adopted would be inconsistent with a provision of the friendly societies legislation.

Recommendation 14: the clause be passed

9.4 CLAUSE 22 - Functions of SSA

This clause outlines the functions of the SSA (State Supervisory Authority). The SSA for Western Australia is the Western Australian Financial Institutions Authority.

The functions of the SSA under the Code include to -

- register, supervise and regulate societies;
- supervise and enforce compliance by societies with this Code and with standards;
- protect the interests of members of societies;
- undertake the administration and enforcement of the financial institutions scheme so far as it relates to societies; and

- advise, and make recommendations to AFIC.

Recommendation 15: the clause be passed

9.5 *CLAUSE 26 - SSA to keep Minister informed*

This clause provides that the SSA must keep the Minister informed of -

- (a) the operations of the SSA in relation to this Code; and
- (b) the operations, administration and enforcement of this Code.

Furthermore, the SSA must give the Minister such reports and information in relation to those matters as the Minister requires.

Recommendation 16: the clause be passed

9.6 *CLAUSE 56 - Primary objects*

This clause lists the primary objects in relation to a society which are to provide health and welfare benefits and services and facilities to members including hospital, medical, dental, pharmaceutical and other benefits. Societies may also provide death, sickness and accident benefits and services relating to the education of members or their dependants.

Recommendation 17: the clause be passed

9.7 *CLAUSE 59 - Formation of societies*

This clause deals with formation of societies and provides that a society is formed by 25 or more persons at a meeting for the purposes of forming a society. A written statement setting out the proposed primary objects and the reasons for the formation must be presented at the meeting. At that time, the persons may also approve the rules, apply for shares and appoint directors.

Recommendation 18: the clause be passed

9.8 *CLAUSE 60 - Registration*

This clause outlines the procedure for an application for registration as a society. Essentially, the SSA may register the application if it is in accordance with the Code.

Recommendation 19: the clause be passed

9.9 *CLAUSE 71 - Society and members to be bound by rules*

The society and members are bound by the rules as if there was a contract. If there is a conflict between a rule and the law, the law prevails and to that extent the rule is invalid.

Recommendation 20: the clause be passed**9.10** *CLAUSE 97 - Establishment of a benefit fund*

This clause provides that a society may, under its rules, establish a benefit fund in accordance with the Code and the standards.

Recommendation 21: the clause be passed**9.11** *CLAUSE 135 - Disclosure document to be lodged*

This clause provides that a person cannot contribute to a benefit fund unless a disclosure document has been lodged with the SSA in the preceding 12 months. The disclosure document must be lodged with the SSA if the society wishes to invite contributions to a benefit fund.

Comment: In evidence to the Committee, Ms Mavis Glewis, Secretary of the Victoria Park and Districts United Friendly Societies Council, expressed concern regarding the application of the Bill to non-benefit fund societies. Ms Glewis explained that the Victoria Park and Districts United Friendly Society (the "society") operated as a special purpose society, namely a pharmacy. The society simply offers members discounts on goods sold at the pharmacy and does not offer any benefit funds. In this regard, Ms Glewis believed that the requirements placed on the society should differ to those societies which operate benefit funds.

In response to a request by the Committee, the Western Australian Financial Institutions Authority ("WAFIA") advised that the Victoria Park and Districts United Friendly Society is not regarded as a benefit fund society as it only offers a dispensary service. As a non-benefit society, the operation requirements placed on the society are different from those relating to a benefit society. In particular, a non-benefit society is simply required to complete an annual return rather than a disclosure document as required by benefit societies.

cont...

WAFIA also advised that a friendly society operating a pharmacy is liable for fees to the Australian Financial Institutions Commission ("AFIC") and the State Supervisory Authority. The level of AFIC fees which would have been applied to the Victoria Park and Districts United Friendly Society for 1998/99 was \$39.00. The State Supervisory Authority has not determined a fees structure, however, it would not be significant.

On the information provided, the Committee is satisfied that a non-benefit society is not subject to the same requirements under the Bill as a benefit society. Therefore, it is clear that the Victoria Park and Districts United Friendly Society would not be required to lodge disclosure documents but rather to continue its current practice of submitting annual returns. Furthermore, the Committee considers that the fees required to be paid by non-benefit societies would not place an unreasonable financial burden on the societies. In these circumstances, the Committee is satisfied that the concerns expressed by the Victoria Park and Districts United Friendly Society have been adequately addressed.

Recommendation 22: the clause be passed

9.12 ***CLAUSE 137 - Form of disclosure document and date of issue***

This clause sets out the required format for a disclosure document. In particular, clause 137(f) provides that the disclosure document "must comply with any requirements of the standards applicable to disclosure documents". The standards applicable to disclosure documents are contained in the Prudential Standards for Friendly Societies.

Comment: The Committee heard evidence from Ms Margaret Paternoster, State Secretary, Western Australian Friendly Societies Association, concerning the operation of the Bill.

Ms Paternoster expressed concern that the requirements for disclosure, as outlined in clause 137, would place a considerable burden on the smaller friendly societies in the State of Western Australia. In particular, Ms Paternoster said that the cost of producing disclosure documents may "outweigh" the return the smaller societies obtained from the policies. In this regard, Ms Paternoster requested that special consideration be given to smaller societies to enable them to continue to operate in State of Western Australia.

In evidence to the Committee, Mr Neil Ryan, Chief Executive Officer of the Western Australian Financial Institutions Authority, said that he did not believe that the disclosure requirements would place an unreasonable financial burden on the smaller societies. According to Mr Ryan, a disclosure document could be drafted on a word processor and submitted on "A4 paper".

cont...

In the light of these concerns, the Committee requested that the Western Australian Financial Institutions Authority ("WAFIA") conduct further enquiries into the possibility of adopting a standard disclosure document that could be made available to the smaller friendly societies. The Committee believed that such a document could save the societies the expense associated with the creation of a disclosure document, or the variation of an existing product, for each new investment product being offered by the society.

The enquiries conducted by the WAFIA revealed that small friendly societies in another State had sought to have a standard disclosure document prepared. However, it was concluded that it was too difficult to draft a standard disclosure document due to the varying terms and conditions relating to the products marketed by societies.

In these circumstances, WAFIA decided against implementing a standard disclosure document due to the variance of conditions and the potential risk of not including all relevant conditions in the document. In this regard, WAFIA considered that the onus is on the society, offering the product, to ensure that the disclosed information meets all the criteria required by the Friendly Societies Code. WAFIA also commented that, following proclamation of the Bill, they anticipated that there would be a transitional period of six (6) months for societies to develop and obtain approval for disclosure documents.

WAFIA re-iterated that the purpose of the disclosure document is to protect members of the public who may be contemplating investing in a product sold by the society. Therefore, it is important that the disclosure document contains sufficient information to enable the prospective investor to make an informed decision.

The Committee appreciates the concerns expressed by Ms Paternoster concerning the possibility of the disclosure documents placing an unreasonable financial burden on the smaller friendly societies. However, the Committee accepts that the disclosure requirements are important in offering protection to members of the public when making a financial investment. The Committee also accepts the difficulties in drafting a standard disclosure document for smaller societies as a result of the varying conditions and terms on products offered by the societies.

The Committee notes, however, the comment made by Mr Ryan regarding the presentation of the disclosure document using a word processor and presented on "A4" paper. The Committee believes that compliance with the disclosure requirements in this manner would alleviate some concern expressed by smaller societies regarding the financial problems with presenting disclosure documents.

It was noted that Mr Ryan commented that, in July 1998, the Commonwealth will, in all probability, legislate to control friendly societies throughout Australia. The Committee therefore queries the need to undertake the current major review of the *Friendly Societies (Western Australia) Bill 1998* and *Friendly Societies (Taxing) Bill 1998*.

Recommendation 23: the clause by passed

9.13 *CLAUSE 219 - Share capital*

This clause provides that a society may issue permanent shares or redeemable preference shares in accordance with Part 5.

Recommendation 24: the clause be passed

Hon Ray Halligan MLC

Date:

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL 1998

AND

FRIENDLY SOCIETIES (TAXING) BILL 1998

MINORITY REPORT

**Minority Report of the Legislative Council Constitutional Affairs
Committee**

in relation to

FRIENDLY SOCIETIES (WESTERN AUSTRALIA) BILL 1998

AND

FRIENDLY SOCIETIES (TAXING) BILL 1998

- 1.1 It is with regret that I wish to dissent from the contents of the Majority Report for the following reasons -
- i) The Committee is required to report on the *Friendly Societies (Western Australia) Bill 1998* (the "Bill") and the *Friendly Societies (Taxing) Bill 1998* (the "Taxing Bill") subject to SO 230(d).
 - ii) At a meeting in May 1994, the Ministerial Council for Financial Institutions ("MINFIN") resolved that friendly societies be subject to national uniform supervision. At that stage, it was decided that the initial legislation should be introduced into the Parliament of Victoria and adopted by jurisdictions.
 - iii) As a result of the Commonwealth Wallis Inquiry, bodies regulated under the Financial Institutions scheme (which include friendly societies) may be transferred to Commonwealth regulation on or before 1 July 1999.
 - iv) In the light of "ii" and "iii" above, it is submitted that the Bill and Taxing Bill could result in unnecessary change and disturbance to friendly societies operating in Western Australia.
 - vi) It is also submitted that the correspondence the Committee received from the Registrar of Co-operative and Financial Institutions and the Western Australian Financial Institutions Authority fails to clarify how the Bill and Taxing Bill will effect the financial operation of friendly societies in Western Australia.

Hon Tom Helm MLC

Date: