

AUSTRALIAN MUTUAL PROVIDENT SOCIETY ACT 1988
No. 47

NEW SOUTH WALES



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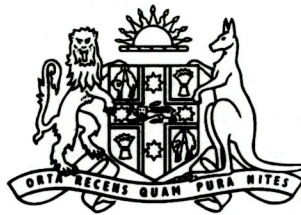
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AUSTRALIAN MUTUAL PROVIDENT SOCIETY ACT 1988 No. 47

NEW SOUTH WALES



Act No. 47, 1988

An Act to provide for the application of certain laws to the Australian Mutual Provident Society. [Assented to 6 September 1988]

Australian Mutual Provident Society 1988

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Australian Mutual Provident Society Act 1988.

Commencement

2. (1) Sections 1 and 2 commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act commences on a day or days to be appointed by proclamation.

(3) A proclamation shall not be made under this section unless—

- (a) AMP has lodged with the Corporate Affairs Commission proposed by-laws that have been approved by the Minister; and
- (b) the Corporate Affairs Commission has issued a certificate stating that the proposed by-laws have been lodged with it.

(4) AMP's proposed by-laws shall be divided into—

- (a) Part 1 which contains only matter of a type appropriate for inclusion in a memorandum of association; and
- (b) Part 2 which contains only matter of a type appropriate for inclusion in articles of association.

(5) The Corporate Affairs Commission is required to accept the proposed by-laws lodged in accordance with this section and to issue a certificate for the purposes of this section.

Definitions

3. (1) In this Act—

“AMP” means Australian Mutual Provident Society continued as a body corporate by the Australian Mutual Provident Society's Act 1910;

“Code” means the Companies (New South Wales) Code;

“Code regulations” means the provisions applying as regulations made under the Code because of section 7 of the Companies (Application of Laws) Act 1981;

“member” means a member of AMP;

“officer” has the same meaning as it has in the Code.

(2) In this Act, a reference to the Code or the Code regulations is a reference to that Code or those regulations—

- (a) as in force on the commencement of section 4; or
- (b) if the regulations under this Act so provide, as in force at a later specified time.

PART 2—APPLICATION OF CODE**Code to apply generally**

4. (1) Subject to this Act, the Code and the Code regulations apply—
- (a) to AMP as if it were a company that had been duly registered under the name “Australian Mutual Provident Society” and had been duly incorporated, in each case under the Code and on the commencement of this section; and
 - (b) to the members and officers of AMP as if they were members and officers, respectively, of such a company.

(2) Part 80 of the Supreme Court Rules applies to AMP and to its members and officers in the same way that the Code and the Code regulations apply under subsection (1).

Provisions of Code that do not apply

5. The provisions of the Code that are listed in Schedule 1 do not apply to AMP.

AMP not a company

6. Nothing in this Act is to be taken as constituting AMP as a company for the purposes of any law, or previous law, of the State relating to companies.

Conversion and directors (Code ss. 69, 226 (9))

7. Sections 69 and 226 (9) of the Code apply to AMP as if it were a company limited by guarantee.

Rights of classes of members (Code s. 127)

8. A member shall not be taken to be in a class of members having special rights for the purposes of section 127 of the Code just because the member holds a life insurance policy or other policy, annuity or contract issued by AMP with terms or conditions that differ from the terms or conditions of another life insurance policy or other policy, annuity or contract issued by AMP.

Annual returns (Code reg. 56A)

9. The only documents regulation 56A (b) (ii) of the Code regulations requires to accompany an annual return of AMP are those section 52 of the Life Insurance Act 1945 of the Commonwealth requires to be lodged for the relevant financial year.

By-laws

10. (1) On and from the commencement of section 4, the by-laws of AMP are those by-laws lodged with the Corporate Affairs Commission in accordance with section 2, as altered or added to from time to time in accordance with this section.

Australian Mutual Provident Society 1988

(2) Parts 1 and 2 of the by-laws of AMP—

- (a) shall, for the purposes of the application of the Code and of the Code regulations to AMP and to its members and officers, be taken to be the memorandum of association and articles of association, respectively, of AMP; and
- (b) bind AMP, and the persons who are from time to time its members, accordingly.

(3) The by-laws may be altered or added to only in accordance with the Code and the Code regulations applying to memoranda and articles of association.

PART 3—MEMBERSHIP OF AMP

Membership criteria

11. Membership of AMP shall be in accordance with the by-laws of AMP.

Members' liability

12. (1) If AMP is wound up—

- (a) a person is not, as a present or past member, liable to contribute to the property of AMP for the purposes of payment of AMP's debts or liabilities or of the costs, charges or expenses of the winding up or for the purposes of the adjustment of the rights of such members among themselves; and
- (b) the property of AMP alone is liable for those purposes.

(2) In this section—

“past member” includes a person who ceased to be a member before the commencement of section 4.

PART 4—MISCELLANEOUS

Regulations

13. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may provide that specified provisions of the Code, or the Code regulations, do not apply to AMP or to its members or officers.

Australian Mutual Provident Society 1988

Amendment of Australian Mutual Provident Society's Act 1910

14. The Australian Mutual Provident Society's Act 1910 is amended—

- (a) by omitting the preamble and by inserting instead the following preamble:

WHEREAS:

- (1) The Australian Mutual Provident Society was established in pursuance of an Act to regulate Friendly Societies in the Colony of New South Wales (7 Vic. No. 10);
 - (2) The Society was constituted a body corporate in 1857 under a Private Act to incorporate "The Australian Mutual Provident Society";
 - (3) It is expedient to continue the body corporate:
- (b) by omitting from section 1 (incorporation of Society) the words "(subject to the regulations and provisions hereinafter contained)" and all the words appearing after the words "'Australian Mutual Provident Society'";
- (c) by omitting sections 1A-22D and the Schedule.

Savings and transitional provisions

15. Schedule 2 has effect.

SCHEDULE 1—PROVISIONS THAT DO NOT APPLY TO AMP

(Sec. 5)

Sections 35 (6)–(9), 37, 39, 82, 217 (1) and (2), 274 and 360 of the Code.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 15)

Definitions

1. In this Schedule—

"commencement" means the commencement of section 4.

Continuing legal entity

2. Nothing in this Act affects—

- (a) the identity of AMP; or
- (b) its continuation as a body corporate by the Australian Mutual Provident Society's Act 1910.

Old by-laws of no further effect

3. The by-laws of AMP, as in force immediately before the commencement, cease to be by-laws of AMP on the commencement.

*Australian Mutual Provident Society 1988*SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Membership of AMP continued**

4. Any person who was a member immediately before the commencement shall, on the commencement, continue to be a member of AMP, but thereafter the person's membership and the continuance of that membership are subject to the by-laws.

Directors and other officers

5. (1) Any person who—

- (a) was appointed a director or other officer of AMP before the commencement; and
- (b) held that position immediately before the commencement,

shall be taken to have been appointed in accordance with the Code and the by-laws of AMP (as in force on the commencement) as if the Code applied to AMP, and the by-laws were in force, at the time of the appointment.

(2) Any such person shall continue to hold that position subject to—

- (a) the Code and the Code regulations; and
- (b) the by-laws of AMP.

Auditors

6. (1) Any person who—

- (a) was appointed an auditor of AMP before the commencement; and
- (b) held that position immediately before the commencement,

shall be taken to have been appointed in accordance with the Code and the by-laws of AMP (as in force on the commencement) as if the Code applied to AMP, and the by-laws were in force, at the time of the appointment.

(2) Any such person shall continue to hold that position subject to—

- (a) the Code and the Code regulations; and
- (b) the by-laws of AMP.

Meetings

7. (1) The last annual meeting held before the commencement under the by-laws of AMP (as in force at the time of that meeting) shall be taken to have been an annual general meeting for the purposes of the Code and the by-laws of AMP as in force on the commencement.

(2) Any meeting that had been adjourned under the by-laws of AMP (as in force at the time of the adjournment) and not reconvened before the commencement shall be taken to be an adjourned meeting for the purposes of the Code and the by-laws as in force on the commencement.

Registered office and office hours

8. (1) On, or as soon as practicable after, the commencement, AMP—

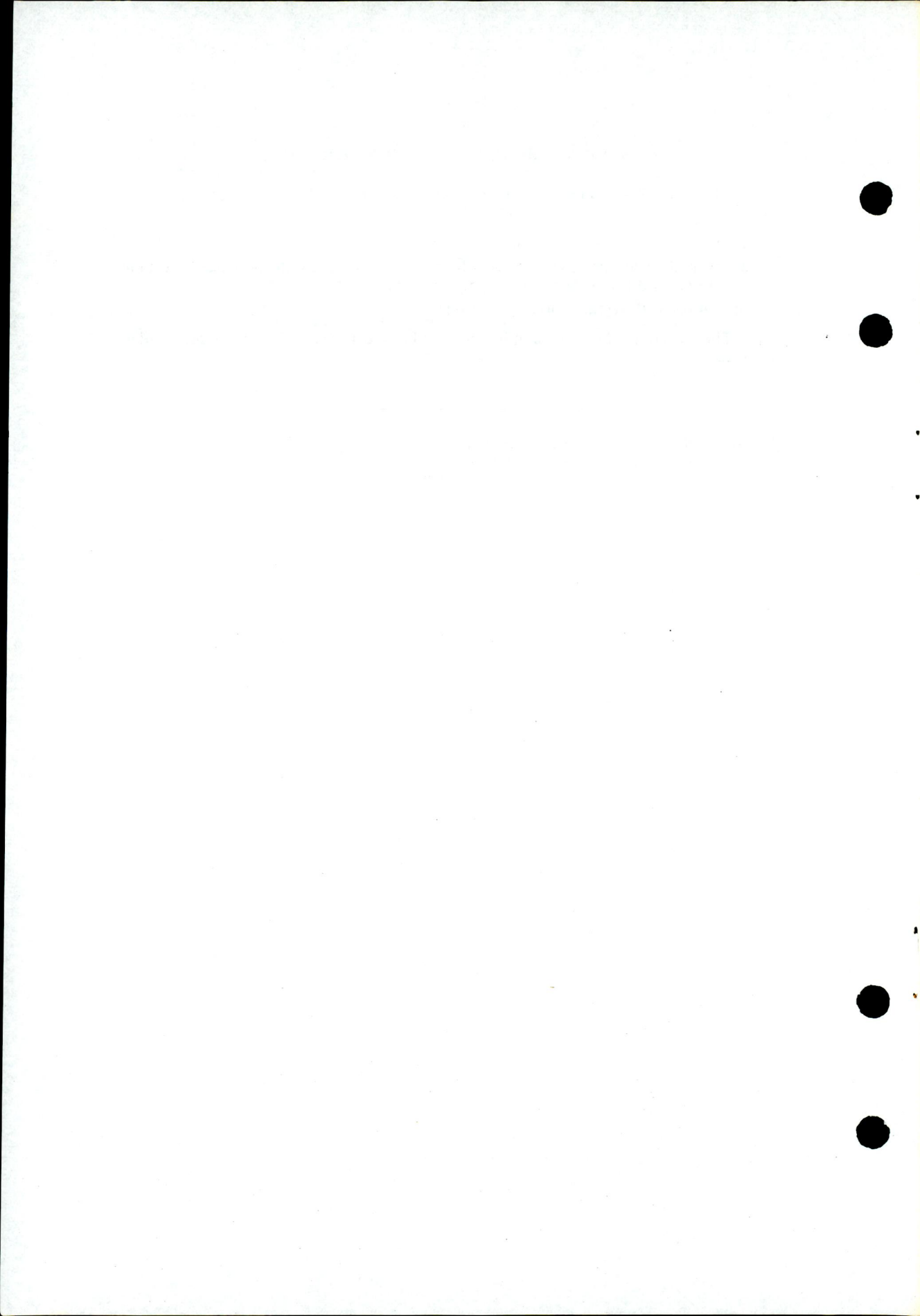
- (a) shall lodge with the Corporate Affairs Commission notice of the proposed registered office of AMP; and
- (b) may lodge with the Commission notice of the hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) during which the registered office of AMP is to be open and accessible to the public.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (2) The notices shall—
- (a) be in the forms prescribed in accordance with the Code for the purposes of section 217 (1) and (2) of the Code, respectively; and
 - (b) comply with section 530A of the Code.
- (3) The Corporate Affairs Commission is authorised to accept notices lodged under this clause.

[*Minister's second reading speech made in—
Legislative Assembly on 30 August 1988
Legislative Council on 31 August 1988*]







AUSTRALIAN MUTUAL PROVIDENT SOCIETY BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Australian Mutual Provident Society was incorporated by a Private Act in 1857. The object of this Bill is to amend and modernise laws applicable to AMP (as it is referred to in the Bill) principally by applying provisions of the Companies (New South Wales) Code to AMP as if it were a company duly registered and incorporated under the Code.

The Bill also repeals provisions of the Australian Mutual Provident Society's Act 1910 (which continues the body corporate established by the 1857 Act) which will now be redundant.

The Bill does not change the status of AMP as a body corporate incorporated by the 1857 Act and continued by the 1910 Act.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the Act is to commence on a proclaimed day or days after AMP has lodged its proposed by-laws with the Corporate Affairs Commission.

Clause 3 contains definitions used in the proposed Act.

PART 2—APPLICATION OF CODE

Clause 4 provides that, in general, the Code and Code regulations (and Part 80 of the Supreme Court Rules) apply to AMP and to its members and officers as if AMP were a company duly registered and incorporated under the Code.

Clause 5 excludes sections of the Code specified in Schedule 1 to the Bill from being applied to AMP and its members and officers because they are inappropriate.

Clause 6 makes it clear that nothing in the proposed Act is to be taken as constituting AMP as a company for the purposes of State laws relating to companies.

Australian Mutual Provident Society 1988

Clause 7 provides for AMP to be treated as if it were a company limited by guarantee for the purposes of sections 69 and 226 (9) of the Code (which deal with the conversion of a company of one type into a company of another type and the appointment of directors, respectively).

Clause 8 declares that, for the purposes of section 127 of the Code, a member who has (for example) an AMP insurance policy with terms that differ from another AMP insurance policy shall not be taken to be in a class of members having special rights. This is to prevent section 127 (which deals with the variation or abrogation of special rights) applying so as to disallow AMP to exercise contractual rights to vary the terms of its policies.

Clause 9 provides that, in order to satisfy the Code requirements relating to documents to accompany annual returns, AMP need only lodge copies of the documents which it must lodge with the Life Insurance Commissioner under section 52 of the Life Insurance Act 1945 (Cth.).

Clause 10 deals with the status and function of AMP's by-laws.

PART 3—MEMBERSHIP OF AMP

Clause 11 states that membership of AMP is governed by AMP's by-laws.

Clause 12 declares that members will not be liable to contribute to the property of AMP if it is wound up. In that event, only AMP's property is liable to be applied in the payment of its debts.

PART 4—MISCELLANEOUS

Clause 13 enables regulations to be made under the proposed Act. In particular, regulations may be made excluding provisions of the Code or the Code regulations from being applied to AMP or its members or officers.

Clause 14 amends the Australian Mutual Provident Society's Act 1910 as a consequence of the proposed Act, while retaining the provision of that Act that continues AMP as a body corporate incorporated in 1857.

Clause 15 gives effect to the savings and transitional provisions in Schedule 2.

SCHEDULES

Schedule 1 lists provisions of the Code that do not apply to AMP.

Schedule 2 contains savings and transitional provisions, including a provision that declares the identity of AMP, and its continuation as a body corporate, to be unaffected by the proposed Act.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY BILL 1988

NEW SOUTH WALES



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PART 4—MISCELLANEOUS

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SCHEDULE 1—PROVISIONS THAT DO NOT APPLY TO AMP

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS



AUSTRALIAN MUTUAL PROVIDENT SOCIETY BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to provide for the application of certain laws to the Australian Mutual Provident Society.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Australian Mutual Provident Society
5 Act 1988.

Commencement

2. (1) Sections 1 and 2 commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act commences on a day
or days to be appointed by proclamation.
- 10 (3) A proclamation shall not be made under this section unless—
(a) AMP has lodged with the Corporate Affairs Commission proposed
by-laws that have been approved by the Minister; and
(b) the Corporate Affairs Commission has issued a certificate stating that
the proposed by-laws have been lodged with it.
- 15 (4) AMP's proposed by-laws shall be divided into—
(a) Part 1 which contains only matter of a type appropriate for inclusion
in a memorandum of association; and
(b) Part 2 which contains only matter of a type appropriate for inclusion
in articles of association.
- 20 (5) The Corporate Affairs Commission is required to accept the proposed
by-laws lodged in accordance with this section and to issue a certificate for
the purposes of this section.

Definitions

3. (1) In this Act—
- 25 "AMP" means Australian Mutual Provident Society continued as a body
corporate by the Australian Mutual Provident Society's Act 1910;
"Code" means the Companies (New South Wales) Code;
"Code regulations" means the provisions applying as regulations made
under the Code because of section 7 of the Companies (Application of
30 Laws) Act 1981;
"member" means a member of AMP;
"officer" has the same meaning as it has in the Code.
- (2) In this Act, a reference to the Code or the Code regulations is a
reference to that Code or those regulations—
- 35 (a) as in force on the commencement of section 4; or
(b) if the regulations under this Act so provide, as in force at a later
specified time.

PART 2—APPLICATION OF CODE**Code to apply generally**

4. (1) Subject to this Act, the Code and the Code regulations apply—
- 5 (a) to AMP as if it were a company that had been duly registered under the name “Australian Mutual Provident Society” and had been duly incorporated, in each case under the Code and on the commencement of this section; and
- (b) to the members and officers of AMP as if they were members and officers, respectively, of such a company.
- 10 (2) Part 80 of the Supreme Court Rules applies to AMP and to its members and officers in the same way that the Code and the Code regulations apply under subsection (1).

Provisions of Code that do not apply

- 15 5. The provisions of the Code that are listed in Schedule 1 do not apply to AMP.

AMP not a company

6. Nothing in this Act is to be taken as constituting AMP as a company for the purposes of any law, or previous law, of the State relating to companies.

20 Conversion and directors (Code ss. 69, 226 (9))

7. Sections 69 and 226 (9) of the Code apply to AMP as if it were a company limited by guarantee.

Rights of classes of members (Code s. 127)

- 25 8. A member shall not be taken to be in a class of members having special rights for the purposes of section 127 of the Code just because the member holds a life insurance policy or other policy, annuity or contract issued by AMP with terms or conditions that differ from the terms or conditions of another life insurance policy or other policy, annuity or contract issued by AMP.

30 Annual returns (Code reg. 56A)

9. The only documents regulation 56A (b) (ii) of the Code regulations requires to accompany an annual return of AMP are those section 52 of the Life Insurance Act 1945 of the Commonwealth requires to be lodged for the relevant financial year.

35 By-laws

10. (1) On and from the commencement of section 4, the by-laws of AMP are those by-laws lodged with the Corporate Affairs Commission in accordance with section 2, as altered or added to from time to time in accordance with this section.

*Australian Mutual Provident Society 1988***(2) Parts 1 and 2 of the by-laws of AMP—**

- (a) shall, for the purposes of the application of the Code and of the Code regulations to AMP and to its members and officers, be taken to be the memorandum of association and articles of association, respectively, of AMP; and
- (b) bind AMP, and the persons who are from time to time its members, accordingly.

(3) The by-laws may be altered or added to only in accordance with the Code and the Code regulations applying to memoranda and articles of association.

PART 3—MEMBERSHIP OF AMP**Membership criteria**

11. Membership of AMP shall be in accordance with the by-laws of AMP.

15 Members' liability**12. (1)** If AMP is wound up—

- (a) a person is not, as a present or past member, liable to contribute to the property of AMP for the purposes of payment of AMP's debts or liabilities or of the costs, charges or expenses of the winding up or for the purposes of the adjustment of the rights of such members among themselves; and
- (b) the property of AMP alone is liable for those purposes.

(2) In this section—

“past member” includes a person who ceased to be a member before the commencement of section 4.

PART 4—MISCELLANEOUS**Regulations**

13. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may provide that specified provisions of the Code, or the Code regulations, do not apply to AMP or to its members or officers.

Amendment of Australian Mutual Provident Society's Act 1910

14. The Australian Mutual Provident Society's Act 1910 is amended—

- (a) by omitting the preamble and by inserting instead the following preamble:

5 **WHEREAS:**

- (1) The Australian Mutual Provident Society was established in pursuance of an Act to regulate Friendly Societies in the Colony of New South Wales (7 Vic. No. 10);
- 10 (2) The Society was constituted a body corporate in 1857 under a Private Act to incorporate "The Australian Mutual Provident Society";
- (3) It is expedient to continue the body corporate:
- (b) by omitting from section 1 (incorporation of Society) the words "(subject to the regulations and provisions hereinafter contained)" and all the words appearing after the words "'Australian Mutual Provident Society'";
- 15 (c) by omitting sections 1A–22D and the Schedule.

Savings and transitional provisions

15. Schedule 2 has effect.

20 **SCHEDULE 1—PROVISIONS THAT DO NOT APPLY TO AMP**

(Sec. 5)

Sections 35 (6)–(9), 37, 39, 82, 217 (1) and (2), 274 and 360 of the Code.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 15)

25 **Definitions**

1. In this Schedule—
"commencement" means the commencement of section 4.

Continuing legal entity

2. Nothing in this Act affects—
- 30 (a) the identity of AMP; or
(b) its continuation as a body corporate by the Australian Mutual Provident Society's Act 1910.

Old by-laws of no further effect

3. The by-laws of AMP, as in force immediately before the commencement, cease to
35 be by-laws of AMP on the commencement.

*Australian Mutual Provident Society 1988*SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Membership of AMP continued**

4. Any person who was a member immediately before the commencement shall, on the commencement, continue to be a member of AMP, but thereafter the person's membership and the continuance of that membership are subject to the by-laws.

5 Directors and other officers

5. (1) Any person who—

- (a) was appointed a director or other officer of AMP before the commencement; and
- (b) held that position immediately before the commencement,

10 shall be taken to have been appointed in accordance with the Code and the by-laws of AMP (as in force on the commencement) as if the Code applied to AMP, and the by-laws were in force, at the time of the appointment.

(2) Any such person shall continue to hold that position subject to—

- (a) the Code and the Code regulations; and
- (b) the by-laws of AMP.

15 Auditors

6. (1) Any person who—

- (a) was appointed an auditor of AMP before the commencement; and
- (b) held that position immediately before the commencement,

20 shall be taken to have been appointed in accordance with the Code and the by-laws of AMP (as in force on the commencement) as if the Code applied to AMP, and the by-laws were in force, at the time of the appointment.

(2) Any such person shall continue to hold that position subject to—

- (a) the Code and the Code regulations; and
- (b) the by-laws of AMP.

25 Meetings

7. (1) The last annual meeting held before the commencement under the by-laws of AMP (as in force at the time of that meeting) shall be taken to have been an annual general meeting for the purposes of the Code and the by-laws of AMP as in force on the commencement.

30 (2) Any meeting that had been adjourned under the by-laws of AMP (as in force at the time of the adjournment) and not reconvened before the commencement shall be taken to be an adjourned meeting for the purposes of the Code and the by-laws as in force on the commencement.

Registered office and office hours

35 8. (1) On, or as soon as practicable after, the commencement, AMP—

- (a) shall lodge with the Corporate Affairs Commission notice of the proposed registered office of AMP; and

40 (b) may lodge with the Commission notice of the hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) during which the registered office of AMP is to be open and accessible to the public.

Australian Mutual Provident Society 1988

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (2) The notices shall—
- (a) be in the forms prescribed in accordance with the Code for the purposes of section 217 (1) and (2) of the Code, respectively; and
 - (b) comply with section 530A of the Code.
- 5 (3) The Corporate Affairs Commission is authorised to accept notices lodged under this clause.

