



AUSTRALIAN CAPITAL TERRITORY

Financial Institutions Duty (Amendment) Act 1998

No. 34 of 1998

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AUSTRALIAN CAPITAL TERRITORY

Financial Institutions Duty (Amendment) Act 1998

No. 34 of 1998

An Act to amend the *Financial Institutions Duty Act 1987*

[Notified in ACT Gazette S199: 30 September 1998]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Financial Institutions Duty (Amendment) Act 1998*.

2. Commencement

(1) Sections 1, 2, 3 and 4 commence on the day on which this Act is notified in the *Gazette*.

(2) Subject to subsection (4), the remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

(4) The following provisions of this Act commence as indicated:

- (a) paragraphs 5 (a), (d), (e) and (f) commence on the day that is 3 months after the earlier commencement day;

- (b) paragraphs 5 (b) and (c) commence on the earlier commencement day;
- (c) section 15, insofar as it inserts the heading of new Part IIA, and new section 13D, into the Principal Act, commences on the earlier commencement day;
- (d) section 15, insofar as it inserts new sections 13A, 13AA, 13B, 13C, 13E, 13F and 13G into the Principal Act, commences on the day that is 3 months after the earlier commencement day;
- (e) section 25, insofar as it inserts the heading of new Part VI, and new section 26, into the Principal Act, commences on the earlier commencement day;
- (f) section 25, insofar as it inserts new sections 24, 25, 27 and 28 into the Principal Act, commences on the day that is 3 months after the earlier commencement day.

(5) In subsection (4)—

“earlier commencement day” means the day on which the remaining provisions referred to in subsection (2) commence.

3. Principal Act

In this Act, “Principal Act” means the *Financial Institutions Duty Act 1987*.¹

4. Application—registration of credit providers as financial institutions

A person who will, by virtue of the amendments to the Principal Act effected by paragraphs 5 (a), (d), (e) and (f) of this Act, be defined as a financial institution within the meaning of the Principal Act as from the day on which those paragraphs commence, may apply for registration as a financial institution under section 12 of the Principal Act before that day.

5. Interpretation

Section 3 of the Principal Act is amended—

- (a) by inserting after paragraph (a) of the definition of “financial institution” in subsection (1) the following paragraph:
 - “(aa) a credit provider;”;
- (b) by omitting from subsection (1) the definition of “registered financial institution”;
- (c) by inserting in subsection (1) the following definitions:

“ ‘agent’ means, in relation to an interstate financial institution—

(a) a person who manages or controls, in whole or in part, the business of the institution in the Territory; or

(b) a person who otherwise represents the institution in the Territory, or acts in the Territory on behalf of the institution;

other than a director or servant of the institution;

‘corresponding law’ means a law of a State or another Territory that imposes a duty on receipts of financial institutions;

‘credit contract’ has the same meaning as in the *Credit Act 1985*, and includes—

(a) a contract or agreement which, but for sections 18, 19 and 19B of that Act, would be a credit contract within the meaning of that Act; and

(b) a contract or agreement made with a body corporate that, if made with a natural person, would be a credit contract within the meaning of that Act;

‘credit provider’ means a person who provides credit, or who is to provide credit, under credit contracts, in the course of a business carried on by the person;

‘interstate financial institution’ means a financial institution within the meaning of a corresponding law, but does not include a registered financial institution;

‘registered’ means registered under this Act;”;

(d) by omitting from paragraph (2) (c) “and”;

(e) by adding at the end of paragraph (2) (d) “and”; and

(f) by adding at the end of subsection (2) the following paragraph:

“(e) the provision of credit pursuant to a credit contract or proposed credit contract.”.

6. Insertion

After section 4 of the Principal Act the following section is inserted:

“4A. Territorial nexus—persons

This Act extends to the following persons:

- (a) a person who is resident or domiciled in the Territory who receives a receipt to which this Act applies;
- (b) a person who carries on business wholly or partly in the Territory who receives a receipt to which this Act applies in the course of that business;
- (c) a person who enters into a transaction within or outside the Territory as a consequence of which the person receives a receipt to which this Act applies;
- (d) a person who receives a receipt of money outside the Territory, being a receipt to which this Act applies, as a consequence of any act, matter or thing done by the person in the Territory;
- (e) a person who receives a receipt of money in the course of short-term dealings.”.

7. Receipts to which Act applies

Section 5 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Except as otherwise provided, this Act applies to the following receipts:

- (a) a receipt of money received in the Territory;
- (b) a receipt of money received outside the Territory by a registered financial institution to the credit of an account held by a person who resides within the Territory, except where the institution could not be reasonably expected to know that this Act applies to that receipt;
- (c) any other receipt of money received outside the Territory, to the extent only that it relates to—
 - (i) goods supplied or to be supplied in the Territory;
 - (ii) services rendered or to be rendered in the Territory;
 - (iii) property situated in the Territory;
 - (iv) a matter or thing done or to be done in the Territory; or
 - (v) a contract, arrangement or transaction, being a contract, arrangement or transaction prescribed by the regulations.

“(1A) This Act (except section 24) does not apply to a receipt of money referred to in paragraph (1) (c) by a financial institution if the institution is

liable to pay duty in respect of that receipt under a provision of a corresponding law that corresponds to section 10.”.

8. Dutiable and non-dutiable receipts

Section 6 of the Principal Act is amended—

- (a) by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) a receipt of money in the course of short-term dealings by a registered financial institution that is a certified short-term dealer, where the receipt is taken into account in the calculation of duty payable under section 13H by the institution;”;

- (b) by omitting paragraph (2) (m) and substituting the following paragraph:

“(m) a receipt of money by a registered financial institution to the extent that it is for the sale of goods by the financial institution, other than a receipt—

(i) under a credit contract; or

(ii) for the purposes of a hire of goods within the meaning of section 64K of the *Stamp Duties and Taxes Act 1987*;”;

- (c) by adding at the end of subsection (2) the following paragraph:

“(s) a receipt of money by a registered financial institution, being a receipt prescribed by the regulations as a non-dutiable receipt.”.

9. Short-term dealing

Section 7 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

“(1) In this Act—

‘short-term dealing’ means—

- (a) the making or receiving of a deposit (other than a deposit to the credit of an account with a bank that is repayable on demand or to the credit of a current account, in either case, kept by the bank for another person) if the amount of the deposit is no less than \$50,000 and is deposited—

(i) at call;

- (ii) for a term not exceeding 185 days; or
 - (iii) for a term not exceeding 185 days and thereafter at call;
- (b) the making or receiving of a loan or advance if the amount of the loan or advance is not less than \$50,000 and is loaned or advanced—
 - (i) at call;
 - (ii) for a term not exceeding 185 days; or
 - (iii) for a term not exceeding 185 days and thereafter at call;
- (c) a dealing in securities, mortgage-backed securities, bills of exchange, promissory notes, certificates of deposit, or interest-bearing deposits, if the amount involved in the dealing is not less than \$50,000 or the dealing (not being a dealing in a security) is in a bill of exchange, promissory note, certificate of deposit or interest-bearing deposit having a nominal value on the day on which the dealing is entered into, or a face value, of not less than \$50,000, and the amount involved in the dealing is invested—
 - (i) at call;
 - (ii) for a term not exceeding 185 days; or
 - (iii) for a term not exceeding 185 days and thereafter at call; or
 - (iv) in the case of a dealing in a security, bill of exchange, promissory note, certificate of deposit or interest-bearing deposit—for a term exceeding 185 days, where the dealing is completed no later than 185 days after the date of the investment;
- (d) a dealing in securities for the purpose of a securities lending arrangement, if the dealing is completed within 185 days;
- (e) a foreign exchange dealing for the purposes of a foreign exchange hedging agreement if the amount involved in the dealing is not less than \$50,000, and the dealing is completed not later than 185 days after the date on which the agreement was entered into; or
- (f) a futures contract within the meaning of section 72 of the *Corporations Law* if the amount involved in the contract is

not less than \$50,000, and the contract is completed within 185 days.”.

10. Short-term dealing

Section 7 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

“(3) For the purposes of this Act, the average daily liability during a month of a registered financial institution in respect of short-term dealings by the institution is an amount calculated in accordance with the formula—

$$ADL = \frac{B}{D}$$

where:

ADL is the institution’s average daily liability in respect of short-term dealings during the month;

B is the amount comprising 5% of the sum of the short-term liabilities in respect of the institution’s Australian-based operations at the close of each day during the month;

D is the number of days in the month.

“(4) For the purposes of this Act, the average daily liability during a month of a person in whose name a short-term dealing account is kept by a registered financial institution, in respect of the person’s short-term dealings, is an amount calculated in accordance with the formula—

$$ADL = \frac{B}{D}$$

where:

ADL is the person’s average daily liability in respect of short-term dealings during the month;

B is the sum of the daily closing credit balances during the month in that account;

D is the number of days in the month.”.

11. Substitution

The heading to Part II of the Principal Act is omitted and the following heading substituted:

“PART II—REGISTERED FINANCIAL INSTITUTIONS”.

12. Insertion

Before section 10 of the Principal Act the following section is inserted in Part II:

“9A. Exclusion of interstate agency receipts

This Part does not apply to a receipt of money by a registered financial institution in relation to which duty is payable by the institution under section 13A.”.

13. Relocation

Section 11 of the Principal Act is relocated before section 14 of the Principal Act in Part III and renumbered as section 13H.

14. Registered financial institution—returns

Section 13 of the Principal Act is amended by omitting from subparagraphs (2) (b) (ii) and (c) (ii) “\$1,000,000” and substituting “\$2,000,000, or such other amount as the Minister determines under section 38.”.

15. Insertion

After section 13 of the Principal Act the following Part is inserted:

“PART IIA—AGENTS OF INTERSTATE FINANCIAL INSTITUTIONS

“13A. Liability for duty—agents of interstate financial institutions

“(1) If a registered agent of an interstate financial institution receives a dutiable receipt on behalf of the institution, the agent and the institution are jointly and severally liable to pay financial institutions duty at the rate determined by the Minister in respect of that receipt.

“(2) If an unregistered agent of an interstate financial institution receives a dutiable receipt on behalf of the institution, the agent and the institution are jointly and severally liable to pay twice the amount of the financial institutions duty in respect of that receipt that they would be liable to pay under subsection (1) if the agent were registered.

“13AA. Registered financial institutions—deemed registration as agents

A financial institution that is registered under section 12 and that acts as an agent of an interstate financial institution is to be taken to be registered as an agent under section 13D for the purposes of this Part.

“13B. Requirement to apply for registration

“(1) If the Commissioner believes on reasonable grounds that an unregistered person is acting as an agent of an interstate financial institution, the Commissioner may give the person a notice inviting the person to show cause within 28 days after the date of the notice why the person should not be required, under subsection (3), to apply for registration as an agent.

“(2) A notice under subsection (1) shall contain—

- (a) particulars of the facts and circumstances relied on by the Commissioner to justify the requirement that the person apply for registration; and
- (b) a statement to the effect that the person may, within 28 days after the date of the notice, give the Commissioner particulars of the facts and circumstances relied on to show cause why the proposed requirement should not be made.

“(3) No earlier than 28 days after giving a person a notice under subsection (1), the Commissioner may, by notice in writing, require the person to apply for registration as an agent in accordance with section 13D within 14 days after the date of the second notice.

“(4) The Commissioner shall not give a person a notice under subsection (3) if, taking into account any representation by the person made pursuant to the invitation under subsection (1), the Commissioner is not satisfied on reasonable grounds that the person is an agent of an interstate financial institution.

“13C. Offence—unregistered agents

A person required to apply for registration as an agent by notice under subsection 13B (3) shall comply with that requirement within the 14-day period specified in the notice.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“13D. Registration of agents

“(1) An agent may apply to the Commissioner for registration under this section.

“(2) An application shall—

- (a) be in writing, signed by the agent; and
- (b) include the following particulars:

- (i) the name and address of the agent;
- (ii) the place or places of business of the agent in the Territory;
- (iii) the interstate financial institution or institutions for which the applicant is, or is to be, an agent;
- (iv) a description, in general terms, of the relationship, or proposed relationship, between the applicant and each such institution.

“(3) On application, the Commissioner shall register the applicant as an agent if the Commissioner is satisfied on reasonable grounds that the applicant is, or is to be, an agent of any interstate financial institution.

“(4) Within 14 days after any change to the information specified in an application for registration, a registered agent shall not, without reasonable excuse, fail to give the Commissioner written notice specifying the change.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“(5) If the Commissioner is satisfied on reasonable grounds that a registered agent has contravened subsection (4), he or she may, by written notice to the agent, suspend the agent’s registration for a period specified in the notice of suspension.

“(6) If the Commissioner is satisfied on reasonable grounds that a person registered as an agent has ceased to be an agent of any interstate financial institution, the Commissioner may, by written notice to the person, cancel the registration with effect from a date specified in the notice, being a date on or after the date of the notice.

“(7) In this section—

‘agent’ includes a person who intends to be an agent.

“13E. **Returns by agents**

“(1) Subject to this section, an agent of an interstate financial institution shall, within 21 days after the end of each month, furnish to the Commissioner a return relating to that month.

“(2) A return shall—

- (a) be in writing, in a form approved by the Commissioner; and

(b) specify—

- (i) the total of the dutiable receipts received by the agent in respect of which duty is payable under section 13A, other than receipts referred to in subparagraph (ii); and
- (ii) the number of such dutiable receipts of, or exceeding, \$2,000,000, or such other amount as the Minister determines under section 38.

“(3) If an interstate financial institution is approved under section 13F, or if the Commissioner issues a notice to such an institution under section 13G, the institution shall furnish the Commissioner with returns under this section in accordance with the approval or notice (as the case may be) on behalf of the agent concerned.

“(4) If an interstate financial institution is required by an approval under section 13F or a notice under section 13G to furnish a return in relation to a period or periods prior to the month in which the approval or notice is issued, the institution shall furnish that return to the Commissioner within 21 days after the date of the notice of approval, or the notice under section 13G (as the case may be).

“13F. **Returns by interstate financial institutions—approvals on application by institutions**

“(1) An interstate financial institution may apply in writing to the Commissioner for an approval for the institution to furnish returns on behalf of an agent of the institution under subsection 13E (3).

“(2) An application may specify a period or periods of a month, being the month in which the application is made or any previous month, in relation to which the interstate financial institution is to furnish a return on behalf of the agent.

“(3) On application for an approval, the Commissioner may, by written notice to the interstate financial institution—

- (a) grant the approval; or
- (b) refuse to grant the approval, if he or she considers on reasonable grounds that it is necessary or desirable to do so for the purposes of the administration of this Act.

“(4) An approval has effect in relation to—

- (a) the return relating to the month in which the notice of approval is issued, or any later month specified in the notice, and in relation to all subsequent returns required under section 13E; and

- (b) if the application specifies a period or periods under subsection (2)—a return in relation to that period or those periods, in addition to the returns referred to in paragraph (a).

“(5) The Commissioner may, by written notice to an approved institution, cancel an approval if he or she considers on reasonable grounds that it is necessary or desirable to do so for the purposes of the administration of this Act.

“(6) The cancellation of an approval has effect in relation to the return relating to the month in which the notice of cancellation is issued, or any later month specified in the notice, and in relation to all subsequent returns required under section 13E.

“(7) The Commissioner shall give a copy of any notice given to an interstate financial institution under this section to the agent concerned.

“13G. Returns by interstate financial institutions—Commissioner’s notice

“(1) The Commissioner may issue a notice to an interstate financial institution requiring the institution to furnish a return or returns on behalf of an agent of the institution under subsection 13E (3).

“(2) A notice may specify a period or periods of a month, being a month or months prior to the month in which the notice is issued, in relation to which the interstate financial institution is to furnish a return on behalf of the agent.

“(3) The Commissioner may only issue a notice if he or she considers on reasonable grounds that it is necessary or desirable to do so for the purposes of the administration of this Act.

“(4) A notice has effect in relation to—

- (a) the return relating to the month in which the notice is issued, or any later month specified in the notice, and in relation to all subsequent returns required under section 13E; and
- (b) if the notice specifies a period or periods under subsection (2)—a return in relation to that period or those periods, in addition to the returns referred to in paragraph (a).

“(5) On written application by an interstate financial institution that is the subject of a notice under subsection (1), or on his or her own motion, the Commissioner may, by written notice to the institution, revoke the notice under subsection (1) if he or she considers on reasonable grounds that it is necessary or desirable to do so for the purposes of the administration of this Act.

“(6) The revocation of a notice has effect in relation to the return relating to the month in which the notice of revocation is issued, or any later month specified in the notice, and in relation to all subsequent returns required under section 13E.

“(7) The Commissioner shall give a copy of any notice given to an interstate financial institution under this section to the agent concerned.”.

16. Heading to Part III

The heading to Part III is amended by omitting “**DEALING**” and substituting “**DEALERS**”.

17. Short-term dealers’ exempt accounts—certification

Section 16 of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “and”; and
- (b) by omitting paragraph (3) (c) and substituting the following paragraphs:

“(c) the account is only used for all or any of the following purposes:

- (i) making payments or deposits in respect of short-term dealings;
- (ii) making payments to another account held by the dealer with a registered financial institution, being an account established at an office or branch of the institution situated in the Territory;
- (iii) making payments or deposits of any other type specified by the Commissioner in the certificate; and

(d) the dealer maintains the account in credit.”.

18. Insertion

After section 16 of the Principal Act the following sections are inserted:

“16A. Short-term dealers’ exempt accounts—designation

Where a certificate of approval issued under section 16 is produced to the registered financial institution at which the account to which the certificate relates is kept, the financial institution shall designate the account as an exempt account.

“16B. Short-term dealers’ exempt accounts—cancellation

“(1) The Commissioner may, by written notice to the relevant short-term dealer, cancel a certificate of approval issued under section 16 if he or she is no longer satisfied in relation to any matter referred to in subsection 16 (3).

“(2) The cancellation of a certificate of approval takes effect from the date of the notice under subsection (1).

“(3) The Commissioner shall give written notice of the cancellation of a certificate of approval to the registered financial institution by which the exempt account is kept.

“(4) A financial institution shall cancel the designation as an exempt account of an account in relation to which the institution is notified under subsection (3).

“16C. Use of short-term dealers’ exempt accounts

A short-term dealer shall not use an account that is exempt under section 16 for a purpose other than a purpose referred to in paragraph 16 (3) (c).

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.”.

19. Returns by short-term dealers

Section 17 of the Principal Act is amended—

- (a) by omitting from subparagraph (2) (b) (i) “sum of the daily closing balances of the liability of the dealer ascertained for the purposes of symbol **B** in the formula in paragraph 7 (3) (a) or (b), as the case requires” and substituting “amount represented by the symbol **B** in the relevant formula in subsection 7 (3) or (4)”; and
- (b) by adding at the end of subparagraph (2) (b) (ii) “or (4), as the case requires”.

20. Substitution

The heading to Part IV of the Principal Act is omitted and the following heading substituted:

“PART IV—EXEMPT ACCOUNTS: CHARITIES ETC.”.

21. Exempt accounts—designation

Section 20 of the Principal Act is amended by omitting “16 or”.

22. Exempt accounts—cancellation

Section 21 of the Principal Act is amended by omitting “16 or”.

23. Substitution

The heading to Part V of the Principal Act is omitted and the following heading substituted:

“PART V—UNREGISTERED FINANCIAL INSTITUTIONS”.

24. Liability for duty—payments to unregistered financial institutions

Section 23 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Where” and substituting “Subject to subsection (1A), where”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Subsection (1) does not apply in relation to money received by an unregistered financial institution to the extent that duty is payable in respect of that receipt by the institution under section 13A or 24.”;
- (c) by omitting from paragraph (3) (a) “of \$1,000,000 or more” and substituting “referred to in paragraph (b)”;
- (d) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) the number of such payments of, or exceeding, \$2,000,000, or such other amount as the Minister determines under section 38.”.

25. Insertion

After section 23 of the Principal Act the following Part is inserted:

“PART VI—LARGE RECEIPTS

“24. Liability for duty—large aggregate receipts

“(1) Subject to section 25, a person is liable to pay financial institutions duty in respect of a receipt to which this Act applies if, during the month in

which the receipt was received, the total amount of such receipts received by the person is not less than \$100,000, or such other amount as the Minister determines by instrument.

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“25. Exemptions from s. 24 duty

“(1) Financial institutions duty is not payable under section 24 in respect of any of the following receipts:

- (a) a receipt of money by a registered financial institution, where duty is payable in respect of that receipt under section 10;
- (b) a receipt of money by an agent of an interstate financial institution, where duty is payable in respect of that receipt under section 13A;
- (c) a receipt of money by a short-term dealer that is taken into account in calculating the average daily liability of the dealer, where duty is payable in respect of that liability under section 13H or 15;
- (d) a receipt of money by a certified short-term dealer in respect of a short-term investment;
- (e) where this Act applies to a receipt of money by virtue of paragraph 5 (1) (c)—such a receipt of money outside the Territory by a financial institution, if the institution could not reasonably be expected to know that this Act applies to the receipt by virtue of that paragraph;
- (f) a receipt of money by a person that, within 14 days after its receipt by the person, is lodged or deposited by the person—
 - (i) to the credit of an account held with a registered financial institution, being an account established at an office or branch of the institution situated in the Territory, if duty is payable under this Act in respect of the receipt of the money by the institution; or
 - (ii) to the credit of an account that is exempt under section 19;
- (g) a receipt of money by a person to the extent that it is for the sale of goods by that person, other than a receipt—
 - (i) under a credit contract; or
 - (ii) for the purposes of a hire of goods within the meaning of section 64K of the *Stamp Duties and Taxes Act 1987*;

- (h) a receipt of money by a person who is approved under section 26, where—
 - (i) the money has been used, or is intended to be used, in the ordinary course of the person's business without first being lodged or deposited with a financial institution;
 - (ii) the receipt is in cash or a form approved by the Commissioner under section 26; and
 - (iii) the failure to lodge or deposit the money with a financial institution is not solely or substantially for the purpose of avoiding (in part or in whole) payment of financial institutions duty;
- (i) any other receipt of a type prescribed by the regulations.

“(2) In paragraph (1) (h), a reference to an approval under section 26 does not include a reference to such an approval while it is suspended under subsection 27 (2).

“26. Approvals—exemption from duty under s. 25 (1) (h)

“(1) A person may apply to the Commissioner for a certificate of approval in relation to the exemption from section 24 of receipts of the type referred to in paragraph 25 (1) (h).

“(2) An application shall—

- (a) be in writing, signed by the applicant; and
- (b) specify—
 - (i) the name and address of the applicant;
 - (ii) the actual or proposed place or places of business of the applicant in the Territory;
 - (iii) the actual or proposed nature of the applicant's business;
 - (iv) how any receipt in relation to which the approval is required is used or to be used by the applicant if it is not (or is not to be) lodged or deposited with a financial institution; and
 - (v) any form of receipt other than cash or cheques in relation to which the approval is required.

“(3) The Commissioner shall grant a certificate of approval to the applicant by written notice to the applicant if the Commissioner is satisfied that—

- (a) the applicant does not hold an approval that is suspended under section 27;

- (b) the applicant is not disqualified from holding an approval under section 27;
- (c) the applicant receives, or is to receive, receipts of money to which this Act applies;
- (d) the money so received, or to be received, is used or is to be used in the ordinary course of the applicant's business without first being lodged or deposited with a financial institution; and
- (e) the failure or intended failure to lodge or deposit any such money with a financial institution is not, or is not to be, solely or substantially for the purpose of avoiding (in part or in whole) payment of financial institutions duty.

“(4) A certificate of approval may specify an approved form of receipt other than cash or cheques to which the approval relates for the purposes of subparagraph 25 (1) (h) (ii).

“(5) Within 14 days after any change to the information specified in an application for approval, an approved person shall give the Commissioner written notice specifying the change.

Penalty for contravention of subsection (5):

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“27. Approvals—suspension and disqualification

“(1) This section applies where the Commissioner is satisfied on reasonable grounds that—

- (a) in relation to a receipt or receipts by a person who is approved under section 26 in any particular month—
 - (i) duty is payable under section 24 in relation to that receipt or those receipts;
 - (ii) the approved person has not included that receipt or those receipts in a return lodged under section 28; and
 - (iii) the failure to include that receipt or those receipts in such a return was solely or substantially for the purpose of avoiding (in part or in whole) the payment of financial institutions duty; or
- (b) a person who is approved under section 26 has contravened subsection 26 (5).

“(2) Where this section applies, the Commissioner may, by notice in writing to the approved person—

- (a) if paragraph (1) (a) applies—
 - (i) suspend the person’s approval for a period specified in the notice; or
 - (ii) cancel the approval with effect from the date of the notice, and disqualify the person from holding an approval for a period specified in the notice; or
- (b) if paragraph (1) (b) applies—suspend the person’s approval for a period specified in the notice.

“28. Returns—s. 24 duty

“(1) A person shall, within 21 days after the end of each month, furnish a return in relation to any receipts by that person during the month in relation to which duty is payable under section 24.

“(2) A return shall—

- (a) be in writing, in a form approved by the Commissioner; and
- (b) specify—
 - (i) the total of receipts by the person in relation to which duty is payable under section 24, other than receipts referred to in subparagraph (ii); and
 - (ii) the number of such receipts of, or exceeding, \$2,000,000, or such other amount as the Minister determines under section 38.”.

26. Relocation

Section 24 of the Principal Act is relocated after section 10 of that Act and renumbered as section 11.

27. Substitution

Sections 25, 26 and 27 of the Principal Act are repealed and the following Part, heading and sections are substituted:

“PART VII—ADMINISTRATIVE REVIEW

“29. Decisions subject to administrative review

This Part applies to the following decisions of the Commissioner:

- (a) a decision under section 8 to refuse to approve a person as a pastoral finance company;

- (b) a decision under section 8 to cancel the approval of a person as a pastoral finance company;
- (c) a decision under section 12 to refuse to register a financial institution;
- (d) a decision under section 12 to cancel the registration of a financial institution;
- (e) a decision under section 13D to refuse to register a person as an agent of an interstate financial institution;
- (f) a decision under section 13D to suspend the registration of a person as an agent of an interstate financial institution;
- (g) a decision under section 13D to cancel the registration of a person as an agent of an interstate financial institution;
- (h) a decision under section 13F to refuse to grant an approval to an interstate financial institution for the institution to furnish returns on behalf of an agent;
- (i) a decision under section 13F to cancel an approval for an interstate financial institution to furnish returns on behalf of an agent;
- (j) a decision under section 13G to issue a notice to an interstate financial institution requiring the institution to furnish returns on behalf of an agent;
- (k) a decision under section 13G to refuse an application for the revocation of a notice requiring an interstate financial institution to furnish returns on behalf of an agent;
- (l) a decision under section 13G to revoke a notice requiring an interstate financial institution to furnish returns on behalf of an agent;
- (m) a decision under section 14 to refuse to certify a financial institution as a short-term dealer;
- (n) a decision under section 14 to cancel the certification of a financial institution as a short-term dealer;
- (o) a decision under section 16 to refuse to certify an account held by a short-term dealer as an exempt account;
- (p) a decision under section 16B to cancel the certification of an account held by a short-term dealer as an exempt account;
- (q) a decision under section 19 to refuse to certify an account as an exempt account;

- (r) a decision under section 21 to cancel the certification of an account as an exempt account;
- (s) a decision under section 26 to refuse to approve a person in relation to the exemption from section 24 of receipts referred to in paragraph 25 (1) (h);
- (t) a decision under section 27 to suspend the approval of a person in relation to the exemption from section 24 of receipts referred to in paragraph 25 (1) (h);
- (u) a decision under section 27 to cancel the approval of a person in relation to the exemption from section 24 of receipts referred to in paragraph 25 (1) (h) and to disqualify the person from holding such an approval for a specified period.

“30. Notice of decisions

“(1) The Commissioner shall give notice of a decision to which this Part applies to the following persons:

- (a) in the case of a decision to refuse an approval, registration or certification—the applicant for the approval, registration or certification (as the case may be);
- (b) in the case of a decision to cancel or suspend an approval, registration or certification—the holder of the approval, the registered person or the holder of the certificate (as the case may be);
- (c) in the case of a decision under section 13F or 13G—the interstate financial institution and the agent concerned.

“(2) Where a decision to which this Part applies is made by a delegate of the Commissioner, the notice of the decision under subsection (1) shall include—

- (a) a statement of the reasons for the decision;
- (b) a statement to the effect that the recipient of the notice may object to the decision under section 31; and
- (c) a statement of the requirements for making such an objection.

“(3) Where a decision to which this Part applies is made by the Commissioner personally (rather than by a delegate of the Commissioner), the notice of the decision under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

“31. Objections

“(1) If a decision to which this Part applies is made by a delegate of the Commissioner, the person to whom notice of the decision is given under section 30 may object to the decision by written notice to the Commissioner.

“(2) An objection to a decision shall be made within 60 days after the notice of the decision is given, subject to section 32.

“(3) An objection shall be in writing setting out the grounds of objection.

“(4) Upon an objection being made in accordance with this section, the Commissioner, or a delegate of the Commissioner other than the delegate who made the original decision, shall, by written notice to the objector—

- (a) allow the objection; or
- (b) disallow the objection.

“(5) A notice under subsection (4) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

“(6) Where a decision is made to allow an objection, the Commissioner shall take any action, including the repayment of an amount to the objector, that is necessary to give effect to the decision.

“32. Late objections

“(1) If the period within which an objection to a decision may be made under section 31 has ended, the person otherwise entitled to object to the decision may give the Commissioner—

- (a) a written objection to the decision setting out the grounds of objection; and
- (b) a written application to have the objection treated as being duly made under section 31, stating fully and in detail the circumstances concerning, and the reasons for, the person’s failure to make the objection within the period of 60 days after notice of the objection was given.

“(2) On application under subsection (1), the Commissioner, or a delegate of the Commissioner other than the person who made the decision objected to, may—

- (a) treat the objection as having been duly made; or
- (b) refuse to consider the objection.

“(3) The Commissioner shall give written notice of a decision under subsection (2) to the applicant.

“(4) Notice of a decision under paragraph (2) (b) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

“33. **AAT review**

Application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions:

- (a) a decision to which this Part applies made by the Commissioner personally (rather than by a delegate of the Commissioner);
- (b) a decision under section 31 to disallow an objection;
- (c) a decision under section 32 to refuse to consider a late objection.

“34. **Effect of decision pending review**

The fact that the consideration of an objection, review or appeal in relation to a decision to which this Part applies is pending—

- (a) does not in the meantime interfere with or affect the decision to which the objection, review or appeal relates; and
- (b) does not affect any action to recover an amount payable under this Act.

“35. **Reduction of amounts payable**

If, as a result of a decision on an objection, review or appeal for the purposes of this Part, an amount previously required to be paid to the Territory is reduced, or is not required to be paid, the amount by which it is reduced or the whole amount (as the case may be) shall be taken, for the purposes of this Act, never to have been payable.

“36. **Effect of AAT decisions**

“(1) Within 60 days after a decision by the Administrative Appeals Tribunal on an application made under this Part becomes final, the Commissioner shall take any action, including the repayment of an amount to the applicant, that is necessary to give effect to the decision.

“(2) If no appeal to a court from—

- (a) the decision of the Administrative Appeals Tribunal; or
- (b) the decision of the Supreme Court or the Federal Court in an appeal to that court in relation to the decision of the Tribunal;

is instituted within 30 days after the day on which the decision (or the later or latest of those decisions) is made, the decision of the Tribunal shall be taken,

for the purposes of subsection (1), to have become final at the end of that period.

“PART VIII—MISCELLANEOUS

“37. Conduct of directors, servants and agents

“(1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

“(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body’s or person’s reasons for the intention, opinion, belief or purpose.

“(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

“(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

“(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

“(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

“38. Determination for the purposes of returns

“(1) The Minister may, by instrument, determine an amount for the purposes of the following provisions:

- (a) subparagraphs 13 (2) (b) (ii) and (c) (ii);
- (b) subparagraph 13E (2) (b) (ii);
- (c) paragraph 23 (3) (b);
- (d) subparagraph 28 (2) (b) (ii).

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

28. Renumbering

Section 28 of the Principal Act is renumbered as section 39.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Act No. 46, 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 25 June 1998]

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