

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Financial Institutions (Application of
Laws) Bill 1992**

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. References to Queensland Acts

**PART II—AFIC (ACT) CODE AND AFIC (ACT)
REGULATIONS**

5. Application in the Territory of the AFIC Code
6. Application of regulations
7. Interpretation of some expressions in the Code and Regulations

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

TABLE OF PROVISIONS—continued

Section

**PART III—FINANCIAL INSTITUTIONS (ACT) CODE
AND FINANCIAL INSTITUTIONS (ACT) REGULATIONS**

- 8. Application in the Territory of the Financial Institutions Code
- 9. Application of regulations
- 10. Interpretation of some expressions in the Code and Regulations

PART IV—CONFERRAL OF FUNCTIONS AND POWERS

- 11. Conferral of functions and powers on AFIC
- 12. Conferral of functions and powers on Tribunal
- 13. Conferral of jurisdiction on Queensland Supreme Court

PART V—STATE SUPERVISORY AUTHORITY

- 14. Registrar of Financial Institutions

PART VI—APPLICATION TO THE CROWN

- 15. Crown is bound

**PART VII—IMPOSITION OF FEES AND OTHER
AMOUNTS**

- 16. Fees for chargeable matters
- 17. Levies, contributions and loans

PART VIII—GENERAL

- 18. Action by the Chief Minister under AFIC report
- 19. Amendment of Codes etc. by regulation
- 20. Fees, fines and penalties

PART IX—TRANSITIONAL

- 21. Interpretation
- 22. Mergers
- 23. Voluntary transfers of engagements
- 24. Directed transfers of engagements
- 25. Suspension
- 26. Administrators
- 27. Records
- 28. Special meetings and inquiries
- 29. Investigations
- 30. Proceedings instituted under previous law
- 31. National Deposit Insurance Corporation Limited—access to records
- 32. Disputes between members and societies
- 33. Regulations—savings and transitional

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**Financial Institutions (Application of
Laws) Bill 1992**

A BILL

FOR

**An Act to make provision for a uniform legislative
scheme for certain financial institutions, and for
other purposes**

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Financial Institutions (Application of Laws) Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

5 (3) If the 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.

Interpretation

3. In this Act—

10 “AFIC” means the Australian Financial Institutions Commission established by the AFIC Act;

“AFIC Act” means the *Australian Financial Institutions Commission Act 1992* of Queensland;

“AFIC (ACT) Code” means the provisions applying because of section 5;

15 “AFIC (ACT) Regulations” means the provisions applying because of section 6;

“Appeals Tribunal” means the Australian Financial Institutions Appeals Tribunal established under the AFIC Act;

“commencement day” means—

20 (a) the day referred to in subsection 2 (2); or

(b) if subsection 2 (3) applies—the first day after the end of the period of 6 months referred to in that subsection;

“Financial Institutions Act” means the *Financial Institutions (Queensland) Act 1992* of Queensland;

25 “Financial Institutions (ACT) Code” means the provisions applying because of section 8;

“Financial Institutions (ACT) Regulations” means the provisions applying because of section 9;

30 “financial institutions agreement” has the same meaning as in the AFIC (ACT) Code;

“Ministerial Council” means the Ministerial Council established under the financial institutions agreement;

“scheme legislation of the Territory” means—

(a) this Act and regulations under this Act;

- (b) the AFIC (ACT) Code;
- (c) the AFIC (ACT) Regulations;
- (d) the Financial Institutions (ACT) Code; and
- (e) the Financial Institutions (ACT) Regulations.

5 **References to Queensland Acts**

4. In this Act, a reference to a Queensland Act includes a reference to—

- (a) that Queensland Act as amended and in force for the time being; and
- 10 (b) an Act passed in substitution for that Act.

PART II—AFIC (ACT) CODE AND AFIC (ACT) REGULATIONS

Application in the Territory of the AFIC Code

15 5. (1) The AFIC Code set out in section 21 of the AFIC Act as in force for the time being—

- (a) applies as a law of the Territory, subject to subsection (2) of this section; and
- (b) as so applying, may be referred to as the AFIC (ACT) Code.

20 (2) Section 39 of the AFIC Code set out in section 21 of the AFIC Act does not apply as a law of the Territory.

Application of regulations

6. (1) The regulations in force for the time being under Part 5 of the AFIC Act—

- 25 (a) apply as regulations in force for the purposes of the AFIC (ACT) Code; and
- (b) as so applying, may be referred to as the AFIC (ACT) Regulations.

30 (2) Subject to subsection (3), where regulations under Part 5 of the AFIC Act take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) has effect, and is taken always to have had effect, as if those regulations had taken effect under the AFIC Act from the specified day.

(3) To the extent that a provision of the AFIC (ACT) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

- 5 (a) operates only to the advantage of a person affected by the provision (other than the Territory or an authority of the Territory) by—
- (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
- 10 (b) does not operate to the disadvantage of such a person by—
- (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

15 **Interpretation of some expressions in the Code and Regulations**

7. In the AFIC (ACT) Code and the AFIC (ACT) Regulations—

“Financial Institutions Code” means the Financial Institutions (ACT) Code;

“Legislature of this State” means the Legislative Assembly;

20 “Magistrate” has the same meaning as in the *Magistrates Court Act 1930*;

“Premier” means the Chief Minister;

“the Code” means the AFIC (ACT) Code;

“this State” means the Territory.

25 **PART III—FINANCIAL INSTITUTIONS (ACT) CODE AND FINANCIAL INSTITUTIONS (ACT) REGULATIONS**

Application in the Territory of the Financial Institutions Code

8. (1) The Financial Institutions Code set out in section 30 of the Financial Institutions Act as in force for the time being—

- 30 (a) applies as a law of the Territory, subject to subsection (2) of this section; and
- (b) as so applying, may be referred to as the Financial Institutions (ACT) Code.

(2) Sections 59, 61 and 65 of the Financial Institutions Code set out in section 30 of the Financial Institutions Act do not apply as laws of the Territory.

Application of regulations

5 **9. (1) The regulations in force for the time being under Part 3 of the Financial Institutions Act—**

- (a) apply as regulations in force for the purposes of the Financial Institutions (ACT) Code, subject to subsection (2); and
- 10 (b) as so applying, may be referred to as the Financial Institutions (ACT) Regulations.

(2) Regulations made for the purposes of section 65 of the Financial Institutions Code set out in section 30 of the Financial Institutions Act do not apply as regulations in force for the purposes of the Financial Institutions (ACT) Code.

15 (3) Subject to subsection (4), where regulations under Part 3 of the Financial Institutions Act take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) has effect, and is taken always to have had effect, as if those regulations had taken effect under the Financial Institutions Act from the specified day.

20 (4) To the extent that a provision of the Financial Institutions (ACT) Regulations is taken because of a particular application of subsection (3) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

25 (a) operates only to the advantage of a person affected by the provision (other than the Territory or an authority of the Territory) by—

- (i) increasing the person's rights; or
- (ii) relieving the person of liabilities; and

30 (b) does not operate to the disadvantage of such a person by—

- (i) decreasing the person's rights; or
- (ii) imposing liabilities on the person.

(5) Subsection (4) does not affect any other operation that the provision has because of subsection (3) or otherwise.

Interpretation of some expressions in the Code and Regulations**10. In the Financial Institutions (ACT) Code and the Financial Institutions (ACT) Regulations—**

“AFIC Code” means the AFIC (ACT) Code;

5 “continuing association” and “continuing association of credit unions” mean the A.C.T. Credit Union Association Co-operative Limited;

“continuing building society” means a building society registered under the previous law immediately before the commencement day;

10 “continuing credit union” means a credit society registered under the previous law immediately before the commencement day;

“continuing foreign society” means a body which, immediately before the commencement day—

(a) had been formed or incorporated outside the Territory;

15 (b) operated as a building society or a credit society within the meaning of the previous law (although not registered as such); and

(c) had been granted a certificate of exemption under subsection 32 (1B) of that Act;

20 “continuing society” means a continuing building society or continuing credit union;

“Executive Council” means the Executive;

“Legislature of this State” means the Legislative Assembly;

“Magistrate” has the same meaning as in the *Magistrates Court Act 1930*;

25 “previous law” means the *Co-operative Societies Act 1939*;

“Registrar” means the Registrar of Co-operative Societies under the previous law;

“the Code” means the Financial Institutions (ACT) Code;

“this State” means the Territory.

30 **PART IV—CONFERRAL OF FUNCTIONS AND POWERS**

Conferral of functions and powers on AFIC

11. AFIC has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of the Territory.

Conferral of functions and powers on Tribunal

12. The Australian Financial Institutions Appeals Tribunal established under the AFIC Act has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of the Territory.

5 **Conferral of jurisdiction on Queensland Supreme Court**

13. Jurisdiction is conferred on the Supreme Court of Queensland in the matter of—

- 10 (a) an appeal under the scheme legislation of the Territory by a party to a proceeding before the Appeals Tribunal, on a question of law, from a decision of the Tribunal in the proceeding; or
- (b) a reference under the scheme legislation of the Territory at the request of a party or by the Appeals Tribunal of its own initiative of a question of law arising in a proceeding before the Tribunal for decision.

15 **PART V—STATE SUPERVISORY AUTHORITY**

Registrar of Financial Institutions

14. The office of Registrar of Financial Institutions established under the *Financial Institutions (Supervisory Authority) Act 1992* is the State supervisory authority for the purposes of the scheme legislation of the Territory.

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PART VI—APPLICATION TO THE CROWN

Crown is bound

15. (1) The scheme legislation of the Territory binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

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(2) Nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

PART VII—IMPOSITION OF FEES AND OTHER AMOUNTS

Fees for chargeable matters

16. This section imposes the fees that the Financial Institutions (ACT) Regulations or the AFIC (ACT) Regulations prescribe.

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Levies, contributions and loans

17. (1) This section imposes—

- (a) the levy payable under sections 119 and 120 of the AFIC (ACT) Code by a financial institution;
- (b) the levy payable under section 95 of the Financial Institutions (ACT) Code by a financial body;
- 5 (c) the contributions payable under section 98 of the Financial Institutions (ACT) Code by a credit union;
- (d) the support levy payable under section 99 of the Financial Institutions (ACT) Code by a credit union; and
- 10 (e) the compulsory loans payable under section 100 of the Financial Institutions (ACT) Code by a credit union.

(2) An expression has in subsection (1) the meaning it would have if this section were in the AFIC (ACT) Code or the Financial Institutions (ACT) Code, as the case requires.

PART VIII—GENERAL

15 Action by the Chief Minister under AFIC report

18. (1) If the Chief Minister is provided with a report under subsection 49 (6) of the AFIC (ACT) Code, the Chief Minister shall provide AFIC with a response to the report within 14 days of its receipt by the Chief Minister.

20 (2) If—

- (a) the Chief Minister does not provide AFIC with a response to the report within 14 days of receipt of the report; or
- (b) AFIC is of the opinion that it is necessary to do so;

25 AFIC may, by written notice to the Chief Minister, request the Chief Minister to cause a copy of the report provided with the request to be laid before the Legislative Assembly.

(3) The Chief Minister shall comply with a request under subsection (2) within 14 days of receipt of the request, subject to subsection (4).

30 (4) If, because the Legislative Assembly is not sitting, a report cannot be laid before the Assembly within the time prescribed by subsection (3), the Chief Minister shall comply with a request under subsection (2) by—

- (a) giving a copy of the report to the Clerk to the Legislative Assembly within that time; and
- 35 (b) immediately causing the report to be printed and made available to the public.

(5) A copy of a report given to the Clerk to the Legislative Assembly under subsection (4) is to be laid before the Legislative Assembly on its next sitting day.

Amendment of Codes etc. by regulation

5 **19. (1) If, under the financial institutions agreement, the Ministerial Council—**

(a) approves—

(i) a proposed amendment of the AFIC Act or the Financial Institutions Act; or

10 **(ii) regulations proposed to be made under the AFIC Act or the Financial Institutions Act (whether or not amending other regulations); and**

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or
15 **regulations referred to in paragraph (a);**

the Executive may make regulations in accordance with that approval varying the effect in the Territory of that Act or those regulations.

20 **(2) If regulations are made under subsection (1), the AFIC Act or the Financial Institutions Act or regulations in force under either of those Acts have effect in the Territory (as the case requires) as if varied in accordance with the regulations made under subsection (1).**

Fees, fines and penalties

25 **20. All fees, fines, penalties and other money which, under or by virtue of the scheme legislation of the Territory, are authorised or directed to be imposed on any person and are not, under that legislation, fees, levies, contributions, loans or other amounts payable to a specified person shall be paid to the Territory.**

PART IX—TRANSITIONAL

Interpretation

30 **21. In this Part, unless the contrary intention appears, a word or expression has the same meaning as in the Financial Institutions (ACT) Code (referred to in this Part as “the Code”).**

Mergers

35 **22. (1) This section applies where, immediately before the commencement day—**

- (a) 2 or more continuing societies of the same type had, by special resolution, applied for registration as an amalgamated society in accordance with section 18 of the previous law; and
- (b) the Registrar of Co-operative Societies had not made a decision in relation to that application.
- 5 (2) Where this section applies—
- (a) Division 1 of Part 7 of the Code applies in relation to the relevant application as if it were an application under section 293 of the Code for the merger of the societies; and
- 10 (b) for that purpose, each relevant continuing society is to be taken to have complied with section 293 of the Code.

Voluntary transfers of engagements

23. (1) This section applies where, immediately before the commencement day—

- 15 (a) a continuing society had decided, by special resolution, to transfer its engagements to another society of the same type in accordance with section 38 of the previous law; and
- (b) that transfer had not been effected.
- (2) Where this section applies—
- 20 (a) Division 1 of Part 7 of the Code applies in relation to the proposed transfer as if it were a transfer applied for under section 293 of the Code; and
- (b) for that purpose, each relevant society is to be taken to have complied with section 293 of the Code.

25 Directed transfers of engagements

24. (1) Where, immediately before the commencement day—

- (a) the Registrar of Co-operative Societies had given a direction in accordance with section 38AA of the previous law for the transfer of engagements from a continuing society to another continuing society (whether of the same or of a different type); and
- 30 (b) that transfer had not been effected;

Part 7 of the Code applies in relation to the proposed transfer as if it were a transfer directed in accordance with section 296 or 305 of the Code (as the case requires).

- 35 (2) Where, immediately before the commencement day—

(a) the Registrar of Co-operative Societies had given a direction in accordance with section 38AA of the previous law for the transfer of engagements from—

(i) a trading society registered under that law; or

5 (ii) a housing and services society registered under that law; to a continuing society; and

(b) that transfer had not been effected;

10 section 38AA continues to apply in relation to the transfer as if the references in that section to the Registrar of Co-operative Societies were references to the SSA.

Suspension

15 25. A direction of the Registrar of Co-operative Societies in force under section 58A of the previous law immediately before the commencement day is to be taken to be a direction of the SSA under section 89 of the Code.

Administrators

20 26. (1) An administrator of a continuing society under section 58B of the previous law whose appointment was in force immediately before the commencement day is to be taken to be appointed by the SSA under section 90 of the Code.

(2) For the purposes of section 91 of the Code, directors of a continuing society appointed under paragraph 58B (7) (c) of the previous law are to be taken to have been appointed under paragraph 90 (9) (d) of the Code.

25 **Records**

27. On and from the commencement day, each record and each other document in relation to the affairs of a continuing society held by the Registrar of Co-operative Societies for the purposes of the previous law—

(a) becomes the property of the SSA; and

30 (b) is to be taken to be held for the purposes of—

(i) the financial institutions legislation; and

(ii) any proceedings in relation to the society being conducted under the previous law.

Special meetings and inquiries

5 28. (1) Where, immediately before the commencement day, a special meeting of a continuing society had been called, but not held, under section 7 of the previous law, section 87 of the Code applies in relation to the meeting as if it had been called in accordance with subsection 87 (1) of the Code.

10 (2) Where, immediately before the commencement day, an inquiry in relation to the affairs of a continuing society under section 7 of the previous law had commenced, but had not concluded, section 87 of the Code applies in relation to the inquiry as if it had been authorised in accordance with subsection 87 (1) of the Code.

Investigations

15 29. (1) Where, immediately before the commencement day, an inspection was being conducted into the affairs of a continuing society under section 5B of the previous law, the inspection may continue as an investigation under Part 10 of the Code.

(2) Where this section applies—

- 20 (a) the SSA may appoint an investigator under section 348 of the Code for the purposes of continuing the inspection as an investigation; and
- (b) any document or other information properly obtained in the course of the inspection is to be taken to have been properly obtained in the course of the continuing investigation under the Code.

Proceedings instituted under previous law

25 30. (1) The SSA may institute proceedings in relation to a continuing society under the previous law.

(2) For the purposes of subsection (1), a reference in the previous law to the Registrar of Co-operative Societies is to be read as a reference to the SSA.

30 National Deposit Insurance Corporation Limited—access to records

35 31. For the purposes of the investigation by the National Deposit Insurance Corporation Limited of a matter arising before the commencement day, section 5C of the previous law continues to apply in relation to the records of a continuing building society as if—

- (a) the *Financial Institutions (Consequential Amendments) Act 1992* had not commenced;

- (b) the references in section 5C of the previous law to the Registrar of Co-operative Societies were references to the SSA; and
- (c) the reference in subsection 5C (3) of the previous law to the Companies Act were a reference to the Corporations Law.

5 Disputes between members and societies

32. (1) This section applies—

- (a) where, immediately before the commencement day, a dispute between a continuing society and a member of that society—
 - 10 (i) had been referred to the Registrar of Co-operative Societies under section 58 of the previous law; and
 - (ii) the dispute had not been determined; or
- (b) where—
 - 15 (i) in the month before the commencement day, a dispute between a continuing society and a member of that society had been referred to arbitration in accordance with the society's rules;
 - (ii) 1 month after the reference of that dispute to arbitration, no award had been made pursuant to the arbitration; and
 - 20 (iii) a party to the dispute applies to refer it to the Registrar of Co-operative Societies.

(2) Where this section applies, section 58 of the previous law continues to apply in relation to the relevant dispute as if—

- (a) the *Financial Institutions (Consequential Amendments) Act 1992* had not commenced; and
- 25 (b) the relevant continuing society were still a society registered under the previous law.

Regulations—savings and transitional

33. (1) The Executive, on the recommendation of the Minister made with the approval of the Ministerial Council, may make regulations of a saving or transitional nature consequent on the enactment or commencement of this Act, the *Financial Institutions (Supervisory Authority) Act 1992* or the *Financial Institutions (Consequential Amendments) Act 1992*.

(2) If the regulations so provide, a provision of the regulations may have effect despite any provision of the Financial Institutions (ACT) Code or the AFIC (ACT) Code.

(3) If the regulations so provide, a provision of the regulations may take effect from a date between the commencement day and the date of notification of the regulations in the *Gazette*.

5 (4) To the extent to which a provision referred to in subsection (3) takes effect from a date that is earlier than the date of notification of the regulations in the *Gazette*, the provision—

(a) operates only to the advantage of a person affected by the provision (other than the Territory or an authority of the Territory) by—

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- (i) increasing the person's rights; or
- (ii) relieving the person of liabilities; and

(b) does not operate to the disadvantage of such a person by—

- (i) decreasing the person's rights; or
- (ii) imposing liabilities on the person.