



Australian Capital Territory

# **Financial Institutions Duty Act 1987 No 43**

## **Republication No 5**

Republication date: 12 September 2001

Last amendment made by Act 2001 No 54

Amendments incorporated to 15 August 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Financial Institutions Duty Act 1987* as in force on 12 September 2001. It includes any amendment, repeal or expiry affecting the republished law to 15 August 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
15 August 2001



Australian Capital Territory

# Financial Institutions Duty Act 1987

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Australian Capital Territory

# Financial Institutions Duty Act 1987

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An Act to impose a duty on receipts by financial institutions

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Financial Institutions Duty Act 1987*.

### 3 Interpretation

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***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.

***approved superannuation scheme*** means—

- (a) a scheme of superannuation, retirement benefit or pension created for the benefit of employees or self-employed persons, being a scheme the income of which is exempt from taxation under the *Income Tax Assessment Act 1936* (Cwlth), section 23F or 23FB; or
- (b) a scheme of superannuation, retirement benefit or pension created and operated under a law of the Territory, the Commonwealth, a State or another Territory.

***bank*** means a bank within the meaning of the *Banking Act 1959* (Cwlth) and the Reserve Bank.

***charitable organisation*** means an association, society, institution or body carried on for a religious, educational, benevolent or charitable



purpose, other than one carried on for the purpose of securing pecuniary benefit to its members.

***cheque*** includes payment order.

***commissioner***—see the *Taxation Administration Act 1999*.

***corresponding law*** means a law of a State or another Territory that imposes a duty on receipts of financial institutions.

***credit contract***—see 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.

***dealer***—see the *Securities Industry Act 1980* (Cwlth).

***dealing***, in relation to securities—see the *Securities Industry Act 1980* (Cwlth).

***exempt account*** means an account in respect of which there is in force a certificate issued by the commissioner under section 16 or 19.

***financial institution*** means—

- (a) a bank; and
- (aa) a credit provider; and
- (b) a dealer; and
- (c) a trustee corporation; and

- (d) a person whose sole or principal business in the Territory is the provision of finance; and
  - (e) a management company within the meaning of the Corporations Law, part 7.12, division 5;
- other than—
- (f) a person whose sole or principal business in the Territory is the operation of an approved superannuation scheme; or
  - (g) a corporation that is registered under the *Life Insurance Act 1945* (Cwlth); or
  - (h) a corporation whose sole or principal business is insurance business within the meaning of the *Insurance Act 1973* (Cwlth); or
  - (i) a corporation that is a medical benefits organisation or a hospital benefits organisation registered under the *National Health Act 1953* (Cwlth); or
  - (j) a dealer who is not a person referred to in paragraph (a), (c), (d) or (e) and who does not carry on a business of dealing in securities except—
    - (i) in his or her capacity as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* (Cwlth); or
    - (ii) in his or her capacity as a receiver, as a receiver and manager or as a person appointed by a court to carry on the business concerned; or
  - (k) a dealer, being a corporation other than a corporation referred to in paragraph (a), (c), (d) or (e), that carries on, or holds itself out as carrying on, a business of dealing in its debentures but does not carry on a business of dealing in any other securities; or
  - (l) a pastoral finance company.

***interstate financial institution*** means a financial institution within the meaning of a corresponding law, but does not include a registered financial institution.

***money*** includes a bill of exchange and a promissory note.

***pastoral finance company*** means—

- (a) a person whose sole or principal business is that of—
  - (i) financing pastoral pursuits; or
  - (ii) a stock and station agent in respect of whom an order under the *Banking Act 1959* (Cwlth), section 11 is in force; or
- (b) a person in respect of whom an approval under section 8 is in force.

***receipt*** includes a payment, repayment, deposit or subscription and the crediting of an account.

***registered*** means registered under this Act.

***short-term dealer*** means a person who engages in short-term dealing.

***short-term dealing*** means a dealing of the kind described in section 7.

***term deposit*** does not include a short-term dealing.

***trustee corporation*** means—

- (a) the public trustee; and
- (b) a corporation, constituted under the law of a State or another Territory, in respect of which there is in force a certificate of approval by the commissioner under section 9; and
- (c) a trustee company within the meaning of the *Trustee Companies Act 1947*; and
- (d) a corporation prescribed for the purposes of this definition.

- (2) A reference in this Act to the *provision* of finance includes a reference to—
- (a) the borrowing of money or the obtaining of other financial accommodation, including the issue of share capital by a building society or credit union; and
  - (b) the dealing in—
    - (i) securities; or
    - (ii) bills of exchange; or
    - (iii) promissory notes; or
    - (iv) certificates of deposit; or
    - (v) any matter or thing prescribed for the purposes of this paragraph; and
  - (c) the lending of money, with or without security; and
  - (d) the purchase, acquisition, discounting or factoring of debts due to another person; and
  - (e) the provision of credit pursuant to a credit contract or proposed credit contract.
- (3) In this Act, a reference to carrying on business of a particular kind includes a reference to carrying on that business in the course of, as part of, incidentally to, or in connection with, the carrying on of another business.
- (4) For the purposes of this Act, the value of a bill of exchange or a promissory note shall be taken to be its nominal or face value.
- (5) Where money is received or a liability incurred in a currency other than the currency of Australia, the amount of that receipt or liability for the purposes of this Act is the equivalent amount in the currency of Australia calculated at a rate of exchange that was the rate of exchange used to calculate that equivalent amount when the receipt or liability was incurred.

## **4 Administration**

The commissioner has the general administration of this Act.

### **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.

## **5 Receipts to which Act applies**

- (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; or
  - (ii) services rendered or to be rendered in the Territory; or
  - (iii) property situated in the Territory; or
  - (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 subsection (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.
- (2) Where a person receives a consideration, other than money (whether or not in consideration of his or her having given credit to any person), in or towards settlement, satisfaction or discharge of any debt or obligation owing to that person, the person shall, when he or she receives the consideration, be deemed to have received an amount of money equal to the value of that consideration.
- (3) For the purposes of this Act, the crediting of an account of a person, including the crediting of an account effected by means of an entry or record made by use of a machine or device, shall be deemed to constitute a receipt of money by the person by whom the account is kept.
- (4) A reference to the crediting of an account includes—
- (a) the depositing of money to the credit of the account by the person in whose name the account is kept or by another person; and
  - (b) without limiting the generality of paragraph (a), the transfer of money to the credit of the account from another account of the person in whose name the account is kept or from an account of another person; and

- (c) the transfer between ledgers or divisions in an account where different terms and conditions apply in respect of those ledgers or divisions.
- (5) Where a receipt arises by virtue of the crediting of an account, the receipt shall be regarded as a receipt of money in the Territory if—
- (a) the account was established at an office or branch of a financial institution situated in the Territory and has not been transferred to an office or branch situated outside the Territory; or
  - (b) the account was established at an office or branch of a financial institution situated outside the Territory but has been transferred (and was last transferred) to an office or branch situated in the Territory.
- (6) Where—
- (a) an account kept by a financial institution is debited by the financial institution with an amount that is to be invested, on the instructions of the person on whose behalf the account is kept, with the financial institution; and
  - (b) there is no corresponding credit to an account that constitutes a dutiable receipt for the purposes of this Act;
- the amount so debited shall be regarded as a receipt of money by the financial institution.
- (7) Where a financial institution provides cash to a person in exchange for a cheque, the financial institution shall not be regarded as having received money, except to the extent that the value of the cheque exceeds the amount of cash given in exchange.
- (8) Where a financial institution provides a cheque to a person in exchange for cash, the financial institution shall not be regarded as having received money, except to the extent that the amount of cash exceeds the value of the cheque given in exchange.

## 6 Dutiable and non-dutiable receipts

- (1) Subject to this section, a receipt to which this Act applies is a dutiable receipt.
- (2) The following are non-dutiable receipts:
  - (a) a receipt of money for the credit of an exempt account;
  - (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;
  - (c) a receipt of money by a registered financial institution, being the repayment of moneys that have been invested in the course of short-term dealings by, or on behalf of, the financial institution;
  - (d) a receipt of money by a registered financial institution for the credit of an account held by another registered financial institution;
  - (e) a receipt of money by a registered financial institution, being—
    - (i) a pension, benefit or allowance payable under—
      - (A) the *Social Security Act 1991* (Cwlth); or
      - (B) the *Veterans' Entitlements Act 1986* (Cwlth); and
    - (ii) paid by way of credit to an account kept by a person with the financial institution, being a payment caused to be made to the financial institution by the Secretary to the Department of Family and Community Services or the Repatriation Commission;
  - (f) a receipt of money by a registered financial institution for transferring or remitting out of the Territory at the request of a person, being a receipt in the form of—



- (i) a cheque drawn on the financial institution by that person; or
  - (ii) a debit to an account kept by the financial institution on behalf of that person;
- (g) a receipt of money by a registered financial institution, being the proceeds of the closing of an account with the financial institution, where the money is credited to another account with the financial institution having the same terms and conditions as the closed account;
- (h) a receipt of money—
  - (i) by a management company from a person who is the trustee or representative for the purposes of a deed relating to the management company in accordance with the Corporations Law, part 7.12, division 5 or a corresponding law in force in the Territory, a State or another Territory; or
  - (ii) by such a trustee or representative from such a management company;
- (i) a receipt of money by a trustee corporation from the estate of a deceased person committed to the management of the trustee company or the public trustee;
- (j) a receipt of money by a registered financial institution, being the crediting to an account of the financial institution of an amount of interest on a loan made by that financial institution to a person who is not a financial institution;
- (k) a receipt of money by a registered financial institution solely by reason of the making of an entry in an account kept by the financial institution in error, to correct an error or by reason of the dishonour of a cheque;
- (l) a receipt of money by a registered financial institution, being a credit to an account that is subsequently offset by a debit of the

same amount made solely by reason of the dishonour of a cheque;

- (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 the *Stamp Duties and Taxes Act 1987*, section 64K;
- (n) a receipt of money by a registered financial institution from, or on behalf of, a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, being a bill of exchange whose term is not more than 185 days and whose value is not less than \$50,000, being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange;
- (o) a receipt of money by a registered financial institution from a charitable organisation that holds a certificate under section 19 for the purpose of investing that money;
- (p) a receipt of money by a registered financial institution where—
  - (i) the receipt results from the reinvestment with the financial institution of a term deposit; and
  - (ii) the term deposit is for an amount which includes the principal sum of the previous deposit and is in the same name as the previous deposit; and
  - (iii) duty has been paid by the financial institution on the principal sum of the previous deposit;to the extent that the amount received equals the principal sum of the previous deposit;
- (q) a receipt of money by a registered financial institution where—

- (i) the receipt results from the drawing of a commercial bill to replace an expired bill; and
  - (ii) the commercial bill is for the same amount and in the same name as the expired bill; and
  - (iii) duty has been paid by the financial institution on the receipt by the financial institution of the amount for which the bill was first drawn;
- (r) a receipt of money by a registered financial institution for the credit of an account, where the receipt results from—
- (i) the takeover by that financial institution of another financial institution; or
  - (ii) the transfer by another financial institution of its engagements to that financial institution; or
  - (iii) the amalgamation by that financial institution with another financial institution; or
  - (iv) a change by that financial institution of its identity as a financial institution;
- (ra) a receipt of money in the form of a direct credit to an account held with a financial institution of any of the following payments under the *First Home Owner Grant Act 2000*, or under a law of a State corresponding to that Act (a ***corresponding State law***):
- (i) a payment of a grant by the commissioner (or the corresponding officer or authority under a corresponding State law) as directed by the applicant for the grant;
  - (ii) a payment of a grant by the commissioner to a party to an administration agreement under section 36 of that Act (or the corresponding provision of a corresponding State law);
  - (iii) a payment by a party to such an agreement as directed by the applicant for the grant;

- (s) a receipt of money by a registered financial institution, being a receipt prescribed by the regulations as a non-dutiable receipt.
- (3) Notwithstanding subsection (2) (a), a receipt to the credit of an exempt account shall, unless the receipt has been credited to an account in the books of the person in whose name the exempt account is kept, be regarded as a dutiable receipt by that person.
- (4) Where money is received in the Territory by a registered financial institution (otherwise than by the crediting of an account) for the credit of an account kept by the financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the initial receipt is non-dutiable.
- (5) Where money is received in the Territory by a registered financial institution (otherwise than by the crediting of an account) for the credit of an account kept by another registered financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the receipt by the firstmentioned institution is non-dutiable.
- (6) An entry made in an account of a registered financial institution, including an account kept by the financial institution on behalf of another person, that is made by the financial institution—
  - (a) solely in accordance with its internal accounting practices; or
  - (b) by reason of a change in its accounting practices;does not constitute a dutiable receipt.
- (7) Where a credit of an amount equal to a bad debt is made to an account held by a registered financial institution for the purpose of cancelling the bad debt and closing the account, the crediting of the account does not constitute a dutiable receipt.

## 7 Short-term dealing

- (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; or
  - (ii) for a term not exceeding 185 days; or
  - (iii) for a term not exceeding 185 days and thereafter at call; or
- (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; or
  - (ii) for a term not exceeding 185 days; or
  - (iii) for a term not exceeding 185 days and thereafter at call; or
- (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; or
  - (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; or
  - (d) a dealing in securities for the purpose of a securities lending arrangement, if the dealing is completed within 185 days; or
  - (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 the Corporations Act, section 72 if the amount involved in the contract is not less than \$50 000, and the contract is completed within 185 days.
- (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** means the institution's average daily liability in respect of short-term dealings during the month.

**B** means 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** means 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* means the person's average daily liability in respect of short-term dealings during the month.

*B* means the sum of the daily closing credit balances during the month in that account.

*D* means the number of days in the month.

## **8 Pastoral finance company**

- (1) A person a substantial part of whose business is that of—
- (a) financing pastoral pursuits; or
  - (b) a stock and station agent in respect of whom an order under the *Banking Act 1959* (Cwlth), section 11 is in force;

may apply to the commissioner for approval to be treated as a pastoral finance company.

- (2) An application shall—
- (a) be in writing, signed by the applicant; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) a general description of the business carried on by the applicant; and
    - (iii) the extent to which the applicant's business consists of financing pastoral pursuits or being a stock and station agent.

- (3) Where the commissioner is satisfied that a substantial part of the applicant's business is that of—
- (a) financing pastoral pursuits; or
  - (b) a stock and station agent in respect of whom an order under the *Banking Act 1959* (Cwlth), section 11 is in force;
- the commissioner may in writing approve that the applicant be treated as a pastoral finance company.
- (4) Where the commissioner is satisfied that a person in respect of whom an approval is in force is no longer a person of the kind described in subsection (3) (a) or (b), the commissioner may cancel the approval.

## **9 Trustee corporation**

- (1) Where the commissioner is satisfied that a corporation constituted under a law of a State or another Territory is a corporation that corresponds to the public trustee, the commissioner may issue a certificate of approval in respect of the corporation.
- (2) Where—
- (a) a certificate of approval is in force in respect of a corporation; and
  - (b) the commissioner is satisfied that the corporation no longer corresponds to the public trustee;
- the commissioner shall cancel the certificate.



## **Part 2**

# **Registered financial institutions**

### **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.

### **10 Financial institutions duty—general**

- (1) Subject to this Act, a registered financial institution that receives money during a month is liable to pay financial institutions duty at the rate determined by the Minister in respect of each such receipt to which this Act applies.
- (2) Subsection (1) does not apply to a non-dutiable receipt.

### **11 Recovery of duty**

Where a registered financial institution pays or is liable to pay duty in respect of a dutiable receipt, the person or persons to whose account the amount of the receipt is credited is liable, or are jointly and severally liable, to pay to the financial institution an amount equal to that duty.

### **12 Financial institution—application for registration**

- (1) A financial institution may apply to the commissioner for registration as a financial institution.
- (2) An application shall—
  - (a) be in writing, signed by the applicant; and
  - (b) specify—
    - (i) the name and address of the applicant; and

- (ii) the place or places of business of the applicant in the Territory; and
  - (iii) the kind of business conducted by the applicant in the Territory; and
  - (iv) the grounds on which the applicant claims to be a financial institution.
- (3) Where the commissioner is satisfied that the applicant is a financial institution, the commissioner shall register the financial institution and issue a certificate of registration to the applicant.
- (4) Where the commissioner is satisfied that a registered financial institution is no longer a financial institution, the commissioner may cancel the registration of the institution.

### **13 Registered financial institution—returns**

- (1) A registered financial institution—
- (a) that is not a certified short-term dealer; or
  - (b) that is a certified short-term dealer but that also carries on the business of a financial institution other than short-term dealing;
- 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) in the case of a financial institution that is not a certified short-term dealer, specify—
    - (i) the total of the dutiable receipts other than the dutiable receipts of the kind referred to in subparagraph (ii); and
    - (ii) the number of dutiable receipts of, or exceeding, \$2 000 000, or such other amount as the Minister determines under section 38;

that were received by the financial institution during the month to which the return relates; and

- (c) in the case of a financial institution of the kind referred to in subsection (1) (b), specify—
- (i) the total of the dutiable receipts other than the dutiable receipts of the kind referred to in subparagraph (ii); and
  - (ii) the number of dutiable receipts of, or exceeding, \$2 000 000, or such other amount as the Minister determines under section 38;

that were received by the financial institution during the month to which the return relates, not being dutiable receipts received by the financial institution in its capacity as a certified short-term dealer.

### **13AAA Cessation of effect from 1 July 2001—pt 2**

- (1) A registered financial institution is not liable to pay financial institutions duty under section 10 in relation to money received on or after 1 July 2001.
- (2) A registered financial institution is not required to give a return under section 13 relating to any month after June 2001.

## **Part 2A**                      **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 section 13B (3) shall comply with that requirement within the 14-day period specified in the notice.

Maximum penalty: 50 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.

Maximum penalty: 5 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 section 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 section 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.

**13GA Cessation of effect from 1 July 2001—pt 2A**

- (1) An agent of an interstate financial institution is not liable to pay financial institutions duty under section 13A in relation to money received on or after 1 July 2001.
- (2) A registered agent is not required under section 13D (4) to give notice of any change to information that happens on or after 1 July 2001.
- (3) An agent of an interstate financial institution, or an interstate financial institution, is not required to give a return under section 13E relating to any month after June 2001.

## Part 3 Short-term dealers

### 13H Financial institutions duty—short-term dealers

Subject to this Act, a short-term dealer is liable to pay financial institutions duty at the rate determined by the Minister in respect of the dealer's average daily liability during a month in respect of short-term dealings.

### 14 Short-term dealers—certification

- (1) A registered financial institution that is a short-term dealer may apply to the commissioner for certification as a certified short-term dealer.
- (2) An application shall—
  - (a) be in writing, addressed to the commissioner; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) the name under which the applicant carries on business; and
    - (iii) a general description of the applicant's business, including the proportion of the business that consists of short-term dealing; and
    - (iv) a description of the kind of short-term dealing engaged in by the applicant; and
    - (v) where the books of accounts are held; and
    - (vi) the name of the person authorised by the applicant to furnish returns.
- (3) Where the commissioner is satisfied that the registered financial institution is a short-term dealer, the commissioner may issue a

certificate to the effect that the institution is a certified short-term dealer.

- (4) Where the commissioner is satisfied that a registered financial institution in respect of which a certificate under this section is in force is no longer a short-term dealer, the commissioner may cancel the certificate.

### **15 Certified short-term dealers—duty**

- (1) Duty is not payable in respect of receipts of a certified short-term dealer in respect of short-term investments.
- (2) Duty at a rate determined by the Minister is payable on the average daily liability in a month of a certified short-term dealer, being liability arising from the short-term dealings of that certified short-term dealer.

### **16 Short-term dealers' exempt accounts—certification**

- (1) A short-term dealer who is not a registered financial institution may apply to the commissioner for approval as an exempt account of an account with a financial institution, being an account that is used solely for the purpose of short-term dealing.
- (2) An application shall—
- (a) be in writing, addressed to the commissioner; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) the name and number of the account; and
    - (iii) the name under which the applicant carries on business; and
    - (iv) the name of the registered financial institution by whom the account is kept; and
    - (v) the kind of business carried on by the applicant; and

- (vi) the proportion of the applicant's business that consists of short-term dealing; and
  - (vii) a description of the kind of short-term dealing engaged in by the applicant; and
  - (viii) where the books of account are held.
- (3) Where the commissioner is satisfied that—
- (a) the applicant is a short-term dealer; and
  - (b) the account to which the application relates is an account with a registered financial institution; and
  - (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; and
    - (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; and
    - (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;

the commissioner may issue a certificate of approval of the account as an exempt account.

### **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 section 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 section 16 (3) (c).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**17 Returns by short-term dealers**

- (1) A short-term dealer 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) in respect of each day during the month to which the return relates—the amount represented by the symbol **B** in the relevant formula in section 7 (3) or (4); and

- (ii) the average daily liability of the dealer, calculated in accordance with section 7 (3) or (4), as the case requires.

### **18 Cessation of effect from 1 July 2001—pt 3**

- (1) A short-term dealer is not liable to pay financial institutions duty under section 13H or 15 in relation to the dealer's average daily liability during any month after June 2001.
- (2) A short-term dealer is not required to comply with section 16C on or after 1 July 2001.
- (3) A short-term dealer is not required to give a return under section 17 relating to any month after June 2001.

## Part 4 Exempt accounts—charities etc

### 19 Exempt accounts—approval

- (1) An application may be made for approval as an exempt account of an account kept by a registered financial institution on behalf of—
  - (a) a charitable organisation; or
  - (b) a hospital that is a recognised hospital under the *Health Insurance Act 1973* (Cwlth); or
  - (c) a school that is registered under the *Education Act 1937*; or
  - (ca) the Territory, the Commonwealth, a State or another Territory, or a statutory authority of the Commonwealth, a State or another Territory, being an account which is funded solely from the consolidated revenue of the Territory, the Commonwealth or that State or other Territory; or
  - (d) a person included in a class of persons prescribed for the purposes of this paragraph; or
  - (e) a person, being a prescribed account.
- (2) An application shall—
  - (a) be in writing, addressed to the commissioner; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) the name and number of the account; and
    - (iii) the name of the registered financial institution by whom the account is kept; and
    - (iv) the grounds for making the application.



- (3) Where the commissioner is satisfied that an account to which an application relates is an account of a kind referred to in subsection (1), the commissioner may issue to the applicant a certificate of approval of the account as an exempt account.

## **20 Exempt accounts—designation**

Where a certificate issued under section 19 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.

## **21 Exempt accounts—cancellation**

Where the commissioner is satisfied that an exempt account is no longer an account of a kind described in section 19, the commissioner shall, by notice in writing forwarded to the person in whose name the account is kept, cancel the certificate of approval of the account.

## **22 Notification of cancellation**

- (1) Where, under section 21, the commissioner cancels the certificate of approval of an account, the commissioner shall forward a copy of the notice referred to in that section to the registered financial institution by whom the account is kept.
- (2) Where a registered financial institution receives a notice under this section, the institution shall cancel the designation as an exempt account of the account to which the notice relates.

## Part 5 Unregistered financial institutions

### 23 Liability for duty—payments to unregistered financial institutions

- (1) Subject to subsection (1A), where a person pays money to an unregistered financial institution the person is liable to pay to the commissioner an amount equal to the amount of duty that would have been payable by the financial institution if it were a registered financial institution and were liable in respect of the receipt of that money.
- (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.
- (2) A person who is liable under subsection (1) to pay duty shall, within 21 days after the end of the month in which the money was paid to the institution, furnish to the commissioner a return relating to that month.
- (3) A return shall specify—
  - (a) the total payments made to an unregistered financial institution during the month to which the return relates, other than payments referred to in paragraph (b); and
  - (b) the number of such payments of, or exceeding, \$2 000 000, or such other amount as the Minister determines under section 38.

### 23A Cessation of effect from 1 July 2001—pt 5

- (1) A person is not liable to pay financial institutions duty under section 23 in relation to money paid to an unregistered financial institution on or after 1 July 2001.

- (2) A person is not required to give a return under section 23 (2) relating to any month after June 2001.

## Part 6 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) The Minister may not make a determination under subsection (1) after June 2001.

### 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 section 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 the *Stamp Duties and Taxes Act 1987*, section 64K;
  - (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; and
    - (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 subsection (1) (h), a reference to an approval under section 26 does not include a reference to such an approval while it is suspended under section 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 section 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; and
    - (ii) the actual or proposed place or places of business of the applicant in the Territory; and
    - (iii) the actual or proposed nature of the applicant's business; and
    - (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; and
  - (b) the applicant is not disqualified from holding an approval under section 27; and
  - (c) the applicant receives, or is to receive, receipts of money to which this Act applies; and

- (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 section 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.

Maximum penalty ( subsection (5)): 5 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; and
    - (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 section 26 (5).

- (2) Where this section applies, the commissioner may, by notice in writing to the approved person—
- (a) if subsection (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 subsection (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.

## **28A Cessation of effect from 1 July 2001—pt 6**

- (1) A person is not liable to pay financial institutions duty under section 24 in relation to money received on or after 1 July 2001.



- (2) An approved person is not required under section 26 (5) to give notice of any change to information that happens on or after 1 July 2001.
- (3) A person is not required to give a return under section 28 relating to any month after June 2001.

## Part 7                      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 section 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 section 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 section 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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (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 subsection (2) (b) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **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 any court on an appeal in relation to the tribunal's decision (including an appeal in relation to a decision on appeal);

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 8**

## **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) section 13 (2) (b) (ii) and (c) (ii);
  - (b) section 13E (2) (b) (ii);
  - (c) section 23 (3) (b);
  - (d) section 28 (2) (b) (ii).
- (2) The Minister may not make a determination under subsection (1) after June 2001.

### **39 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

The *Financial Institutions Duty Act 1987* was originally the *Financial Institutions Duty Ordinance 1987*. It became an ACT Act on self-government (11 May 1989).

#### Legislation before self-government

##### **Financial Institutions Duty Act 1987 No 43**

notified Gaz 31 August 1987  
commenced 1 September 1987 (s 2)

as amended by

##### **Financial Institutions Duty (Amendment) Ordinance 1988 No 21**

notified Gaz 4 May 1988  
commenced 4 May 1988 (s

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified Gaz 10 May 1989  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and Gaz 1989 No S164)

#### Legislation after self-government

##### **Financial Institutions Duty (Amendment) Act 1990 No 46**

notified 30 November 1990 (Gaz 1990 No S86)  
ss 1-3 commenced 30 November 1990 (s 2 (1))  
remainder (ss 4-12) commenced 1 December 1990 (s 2 (2))

##### **Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
sch 2 commenced 27 August 1993 (s 2)

##### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 37**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 37 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

##### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)

## Endnotes

3 Legislation history

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s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

### **Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

### **Financial Institutions Duty (Amendment) Act 1998 No 34**

notified 30 September 1998 (Gaz 1998 No S199)  
ss 1-4 commenced 30 September 1998 (s 2 (1))  
ss 5 (in part), 6-14, 15 (in part), 16-24, 25 (in part) and 26-28  
commenced 1 December 1998 (s 2 (4) and (5) and Gaz 1998 No S207)  
remainder commenced 1 March 1999 (s 2 (4) and (5))

### **Acts Revision (Taxation of Territory Authorities) Act 1998 No 35 sch pt 1**

notified 14 October 1998 (Gaz 1998 No 41)  
commenced 14 October 1998 (s 2)

### **Taxation Administration (Consequential and Transitional Provisions) Act 1999 No 5 sch 2**

notified 1 March 1999 (Gaz 1999 No S8)  
s 1, s 2 commenced 1 March 1999 (s 2 (1))  
sch 2 commenced 1 March 1999 (s 2 (1))

### **Financial Relations Agreement Consequential Amendments Act 2000 No 34 pt 3**

notified 6 July 2000 (Gaz 2000 No S33)  
s 1, s 2 commenced 6 July 2000 (IA s 10B)  
s 24, s 25 commenced 1 July 2000 (s 2 (1))  
pt 3 remainder (26-30) commenced 1 July 2001 (s 2 (2))

### **Legislation (Consequential Amendments) Act 2001 No 44 pt 144**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 144 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Supreme Court Amendment Act 2001 (No 2) No 54 sch 2 pt 2.4**

notified 15 August 2001 (Gaz 2001 No S57)

commenced 15 August 2001 (s 2 (1))

**4 Amendment history****Commencement**

s 2 om 2001 No 44 amdt 1.1626

**Interpretation**

s 3 am 1998 No 34 s 5  
 def **agent** ins 1998 No 34 s 5  
 def **approved superannuation scheme** am 1989 No 38 sch 1  
 def **Commissioner** am 1999 No 5 sch 2  
 def **corresponding law** ins 1998 No 34 s 5  
 def **credit contract** ins 1998 No 34 s 5  
 def **credit provider** ins 1998 No 34 s 5  
 def **exempt account** am 1990 No 46 s 4  
 def **financial institution** am 1995 No 46 sch  
 am 1998 No 34 s 5  
 def **interstate financial institution** ins 1998 No 34 s 5  
 def **registered** ins 1998 No 34 s 5  
 def **registered financial institution** om 1998 No 34 s 5  
 def **term deposit** ins 1988 No 21 s 3

**Act binds Crown**

s 3A ins 1990 No 46 s 5  
 om 1993 No 44 sch 2

**Territorial nexus—persons**

s 4A ins 1998 No 34 s 6

**Receipts to which Act applies**

s 5 am 1998 No 34 s 7

**Dutiable and non-dutiable receipts**

s 6 am 1989 No 38 sch 1; 1990 No 46 s 6; 1995 No 46 sch; 1998 No 34 s 8; 2000 No 34 s 25

**Short-term dealing**

s 7 am 1988 No 21 s 4; 1998 No 34 s 9, s 10  
 def **short-term dealing** ins 1998 No 34 s 9

**Registered financial institutions**

pt 2 hdg sub 1998 No 34 s 11

**Exclusion of interstate agency receipts**

s 9A ins 1998 No 34 s 12

**Recovery of duty**

s 11 orig s 11 reloc and renum as s 13H

## Endnotes

4 Amendment history

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(prev s 24) reloc and renum 1998 No 34 s 13

**Registered financial institution—returns**

s 13 am 1998 No 34 s 14

**Cessation of effect from 1 July 2001—pt 2**

s 13AAA ins 2000 No 34 s 26

**Agents of interstate financial institutions**

pt 2A hdg ins 1998 No 34 s 15

**Liability for duty—agents of interstate financial institutions**

s 13A ins 1998 No 34 s 15

**Registered financial institutions—deemed registration as agents**

s 13AA ins 1998 No 34 s 15

**Requirement to apply for registration**

s 13B ins 1998 No 34 s 15

**Offence—unregistered agents**

s 13C ins 1998 No 34 s 15

**Registration of agents**

s 13D ins 1998 No 34 s 15

**Returns by agents**

s 13E ins 1998 No 34 s 15

**Returns by interstate financial institutions—approvals on application by institutions**

s 13F ins 1998 No 34 s 15

**Returns by interstate financial institutions—Commissioner's notice**

s 13G ins 1998 No 34 s 15

**Cessation of effect from 1 July 2001—pt 2A**

s 13GA ins 2000 No 34 s 27

**Short-term dealers**

pt 3 hdg am 1998 No 34 s 16

**Financial institutions duty—short-term dealers**

s 13H (prev s 11) reloc and renum 1998 No 34 s 13

**Short-term dealers' exempt accounts—certification**

s 16 am 1998 No 34 s 17

**Short-term dealers' exempt accounts—designation**

s 16A ins 1998 No 34 s 18

**Short-term dealers' exempt accounts—cancellation**

s 16B ins 1998 No 34 s 18

**Use of short-term dealers' exempt accounts**

s 16C ins 1998 No 34 s 18

**Returns by short-term dealers**

s 17 am 1998 No 34 s 19

**Cessation of effect from 1 July 2001—pt 3**

s 18 orig s 18 am 1989 No 38 sch 1  
om 1990 No 46 s 7  
ins 2000 No 34 s 28

**Exempt accounts—charities etc**

pt 4 hdg sub 1998 No 34 s 20

**Exempt accounts—approval**

s 19 am 1990 No 46 s 8; 1994 No 38 sch 1 pt 37; 1998 No 35 sch

**Exempt accounts—designation**

s 20 am 1990 No 46 s 9; 1998 No 34 s 21

**Exempt accounts—cancellation**

s 21 am 1990 No 46 s 10; 1998 No 34 s 22

**Unregistered financial institutions**

pt 5 hdg sub 1998 No 34 s 23

**Liability for duty—payments to unregistered financial institutions**

s 23 am 1998 No 34 s 24

**Cessation of effect from 1 July 2001—pt 5**

s 23A ins 2000 No 34 s 29

**Large receipts**

pt 6 hdg ins 1998 No 34 s 25

**Liability for duty—large aggregate receipts**

s 24 orig s 24 renum and reloc as s 11  
ins 1998 No 34 s 25  
am 2001 No 44 amdt 1.1627

**Exemptions from s 24 duty**

s 25 am 1994 No 81 sch  
sub 1998 No 34 s 25, s 27

**Approvals—exemption from duty under s 25 (1) (h)**

s 26 am 1989 No 38 sch 1; 1994 No 60 sch 1  
sub 1998 No 34 s 25, s 27

**Approvals—suspension and disqualification**

s 27 am 1989 No 38 sch 1; 1990 No 46 s 11; 1994 No 60 sch 1  
sub 1998 No 34 s 25, s 27

**Returns—s 24 duty**

s 28 orig s 28 reloc and renum as s 39  
ins 1998 No 34 s 25

**Cessation of effect from 1 July 2001—pt 6**

s 28A ins 2000 No 34 s 30

## Endnotes

### 5 Earlier republications

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#### **Administrative review**

pt 7 hdg ins 1998 No 34 s 27

#### **Decisions subject to administrative review**

s 29 ins 1998 No 34 s 27

#### **Notice of decisions**

s 30 ins 1998 No 34 s 27

#### **Objections**

s 31 ins 1998 No 34 s 27

#### **Late objections**

s 32 ins 1998 No 34 s 27

#### **AAT review**

s 33 ins 1998 No 34 s 27

#### **Effect of decision pending review**

s 34 ins 1998 No 34 s 27

#### **Reduction of amounts payable**

s 35 ins 1998 No 34 s 27

#### **Effect of AAT decisions**

s 36 ins 1998 No 34 s 27  
am 2001 No 54 amdt 2.5

#### **Miscellaneous**

pt 8 hdg ins 1998 No 34 s 27

#### **Conduct of directors, servants and agents**

s 37 ins 1998 No 34 s 27

#### **Determination for the purposes of returns**

s 38 ins 1998 No 34 s 27  
am 2001 No 44 amdt 1.1628

#### **Regulation-making power**

s 39 (prev s 28) am 1989 No 38 sch 1  
reloc and renum 1998 No 34 s 28  
sub 2001 No 44 amdt 1.1629

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	1990 No 46	30 June 1991



**Endnotes**

Earlier republications 5

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2	1993 No 44	31 January 1994
3	1994 No 81	28 February 1995
4	1999 No 5	1 March 1999

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