



Australian Capital Territory

Financial Sector Reform (ACT) Act 1999 No 33

Republication No 1

Republication date: 25 February 2002

Act not amended up to this date

Provisions effective to 1 July 1999

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Financial Sector Reform (ACT) Act 1999* as in force on 25 February 2002. It includes any commencement, amendment, repeal or expiry affecting the republished law to 1 July 1999 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):

- 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 is—

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

Provisions effective to
1 July 1999



Australian Capital Territory

Financial Sector Reform (ACT) Act 1999

Contents

	Page
Part 1	Preliminary
1	Short title 2
3	Dictionary 2
4	Act binds all persons 2
Part 2	Conferral of functions and powers on APRA and ASIC
5	Conferral of functions and powers on APRA 3
6	Conferral of functions and powers on ASIC 3

	Page
Part 3	
Authorised deposit-taking institutions— transfer of business	
7	Words defined in FS(TB) Act 4
8	Authorised APRA officer 4
9	Voluntary transfers 4
10	Compulsory transfers 5
11	Certificates evidencing operation of pt 3 6
12	Certificates about land and interests in land 7
13	Certificates about other assets 7
14	Documents purporting to be certificates 8
15	Relationship of pt 3 with other laws 8
Part 4	
Transitional provisions	
Division 4.2	
Provisions relating to AFIC	
17	Continuation and preservation of civil proceedings involving AFIC 10
18	Continuation of offence proceedings 10
Division 4.3	
Provisions relating to the registrar of financial institutions	
Subdivision 4.3.1	
Preliminary	
19	Meaning of registrar for div 4.3 11
Subdivision 4.3.2	
Office of registrar to continue	
20	Continuation of office of registrar for certain purposes 11
21	Registrar's final report and financial statements 12
Subdivision 4.3.3	
Provisions about particular funds	
23	Continuation and abolition of particular funds 13
24	Payments out of credit unions contingency fund 14
25	Winding-up of supervision fund 14
26	Financial statements for credit unions contingency fund 15
27	Auditor-general to report on fund 15
Subdivision 4.3.4	
Information may be given to APRA or ASIC	
28	Giving of information 15
Subdivision 4.3.5	
Transfer of registrar's assets and liabilities	
29	Transfer of assets and liabilities 16

	Page
Subdivision 4.3.6 Proceedings involving the registrar	
30 Continuation and preservation of civil proceedings involving the registrar	16
31 Continuation of certain offence proceedings	16
Division 4.4 APRA's and ASIC's functions and powers under codes	
32 Conferral of functions and powers relating to financial institutions	17
33 AFIC code provisions	17
34 Financial institutions code provisions	18
35 Provisions for financial institutions code as applied under AFIC code s 40	20
36 Only appropriately qualified person may be authorised etc	22
37 Conferral of functions and powers	22
Division 4.5 Matters relating to deregistered societies	
38 Meaning of <i>society</i> in div 4.5	22
39 Application of div 4.5	23
40 Society's property vested in ASIC s 29	23
41 ASIC may act for society	24
42 Recovery from society's insurer	24
43 Conferral of functions and powers	24
Division 4.6 Miscellaneous	
44 Dormant accounts	24
45 Mergers and transfers of engagements started under financial institutions (ACT) code	25
46 Australian financial institutions appeals tribunal	27
Part 6 Miscellaneous	
48 Consequential and transitional regulations	28
Dictionary	29
Endnotes	
1 About the endnotes	31
2 Abbreviation key	31

Contents

		Page
3	Legislation history	32
4	Amendment history	32

Provisions effective to
1 July 1999



Australian Capital Territory

Financial Sector Reform (ACT) Act 1999

An Act to make provision for the reform of the financial sector, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Financial Sector Reform (ACT) Act 1999*.

3 Dictionary

- (1) The dictionary at the end of this Act defines certain words and expressions used in the Act.
- (2) The dictionary is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

For example, the signpost definition '*financial institutions legislation*—see the AFIC code, section 8.' means that the expression 'financial institutions legislation' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Act binds all persons

This Act binds all persons so far as the legislative power of the Territory permits.

Part 2

Conferral of functions and powers on APRA and ASIC

5 Conferral of functions and powers on APRA

- (1) APRA has the functions and powers conferred or expressed to be conferred on it under this Act.
- (2) APRA has power to do acts in the ACT in the performance or exercise of a function or power conferred or expressed to be conferred on APRA by or under a law of another jurisdiction corresponding to this Act.

6 Conferral of functions and powers on ASIC

- (1) ASIC has the functions and powers conferred or expressed to be conferred on it under this Act.
- (2) ASIC has power to do acts in the ACT in the performance or exercise of a function or power conferred or expressed to be conferred on ASIC by or under a law of another jurisdiction corresponding to this Act.

Part 3

Authorised deposit-taking institutions—transfer of business

7 Words defined in FS(TB) Act

Words defined in the FS(TB) Act have the same respective meanings in this part.

8 Authorised APRA officer

- (1) APRA may, in writing, authorise a person who is an APRA board member, or an APRA staff member, to perform or exercise the functions or powers of an authorised APRA officer under a particular provision of this part.
- (2) The functions and powers necessary for this section are conferred on APRA.

9 Voluntary transfers

- (1) The purpose of this section is to facilitate voluntary transfers of business under the FS(TB) Act, part 3 for regulated bodies.
- (2) This section applies when a certificate of transfer issued under the FS(TB) Act, section 18 comes into force under that Act, part 3, division 3.
- (3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.
- (4) In particular—
 - (a) if the transfer is a total transfer—all the assets and liabilities of the transferring body become the assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

- (b) if the transfer is a partial transfer—all the assets and liabilities of the transferring body included in the list of assets and liabilities specified in the statement of detail become assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.
- (5) If there is an approved section 20 statement in relation to the transfer that specifies—
- (a) that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
 - (b) a mechanism for deciding things that are to happen or are taken to be the case, things decided in accordance with that mechanism are taken to happen, or to be the case, as decided in accordance with that mechanism.

10 Compulsory transfers

- (1) The purpose of this section is to facilitate compulsory transfers of business under the FS(TB) Act, part 4 for regulated bodies.
- (2) This section applies when a certificate of transfer issued under the FS(TB) Act, section 33 comes into force under that Act, part 4, division 3.
- (3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.
- (4) In particular—
 - (a) if the transfer is a total transfer—all the assets and liabilities of the transferring body become assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

- (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body that are included in the list, referred to in the FS(TB) Act, section 33 (2) (c), included in, or attached to, the certificate of transfer become assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.
- (5) If the certificate of transfer includes provisions of a kind referred to in the FS(TB) Act, section 33 (3) specifying—
- (a) that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with those provisions; or
 - (b) a mechanism for deciding things that are to happen or are taken to be the case, things decided in accordance with that mechanism are taken to happen, or to be the case, as decided in accordance with that mechanism.
- (6) If there is an approved section 30 statement in relation to the transfer that specifies—
- (a) that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
 - (b) a mechanism for deciding things that are to happen or are taken to be the case, things decided in accordance with that mechanism are taken to happen, or to be the case, as decided in accordance with that mechanism.

11 Certificates evidencing operation of pt 3

- (1) An authorised APRA officer may, by a written certificate signed by the officer, certify anything relating to the effect of this part, and, in particular may certify that—

- (a) a particular asset of a transferring body has become a transferred asset of a receiving body; or
 - (b) a particular liability of a transferring body has become a transferred liability of a receiving body.
- (2) For all purposes and in all proceedings, a certificate under subsection (1) is evidence of the matters certified.

12 Certificates about land and interests in land

- (1) This section applies if—
- (a) a receiving body becomes, under this part, the owner of land, or an interest in land, situated in the ACT; and
 - (b) there is lodged with the registrar-general a certificate that—
 - (i) is signed by an authorised APRA officer; and
 - (ii) identifies the land or interest; and
 - (iii) states the receiving body has, under this part, become the owner of that land or interest.
- (2) The registrar general may—
- (a) register or record the matter in the same way as dealings in land or interests in land of that kind are registered or recorded; and
 - (b) deal with, and give effect to, the certificate.

13 Certificates about other assets

- (1) This section applies if—
- (a) an asset, other than land or an interest in land, becomes, under this part, an asset of a receiving body; and
 - (b) there is lodged with the entity who has, under the law, responsibility for keeping a register or record relating to assets of that kind a certificate that—
 - (i) is signed by an authorised APRA officer; and

- (ii) identifies the asset; and
 - (iii) states the asset has, under this part, become an asset of the receiving body.
- (2) The entity may—
 - (a) register or record the matter in the same way as transactions relating to assets of that kind are registered or recorded; and
 - (b) deal with, and give effect to, the certificate.
- (3) This section does not affect the operation of the Corporations Act.

14 Documents purporting to be certificates

A document purporting to be a certificate mentioned in section 12 or 13 is taken to be a certificate of that type unless the contrary is established.

15 Relationship of pt 3 with other laws

- (1) This part has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done under this part—
 - (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a receiving body, a transferring body or another person in breach of—
 - (i) a Territory law; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or
 - (c) releases a surety, wholly or partly, from all or any of the surety's obligations.

- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary for a particular purpose, the advice is taken to have been obtained or the consent is taken to have been given.

Part 4 Transitional provisions

Division 4.2 Provisions relating to AFIC

17 Continuation and preservation of civil proceedings involving AFIC

- (1) If a proceeding to which AFIC is a party was pending in a court of the Territory immediately before the transfer date, the State of Queensland may be substituted for AFIC as a party to the proceeding.
- (2) Where, but for the repeal of the fiscal bodies legislation and the dissolution of AFIC, a proceeding could have been brought against AFIC in a court of the Territory, the proceeding may instead be brought in that court against the State of Queensland.
- (3) For this section evidence that would have been admissible for or against AFIC is admissible for or against the State of Queensland.
- (4) This section does not apply to a proceeding for an offence.

18 Continuation of offence proceedings

- (1) This section applies to a proceeding in a court of the Territory for an offence brought under the AFIC code, section 63 by AFIC, or a person authorised in writing by AFIC, that started before the transfer date but was not completed before that date.
- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of AFIC or the person authorised by AFIC, and APRA or ASIC may be substituted in the proceeding for AFIC or the person.
- (3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Division 4.3 Provisions relating to the registrar of financial institutions

Subdivision 4.3.1 Preliminary

19 Meaning of registrar for div 4.3

In this division:

registrar means—

- (a) the office of registrar of financial institutions established by the *Financial Institutions (Supervisory Authority) Act 1992*, section 5 and continued in existence by this division; or
- (b) the person holding that office for the time being.

Subdivision 4.3.2 Office of registrar to continue

20 Continuation of office of registrar for certain purposes

- (1) This section applies despite the repeal of the *Financial Institutions (Supervisory Authority) Act 1992*.
- (2) The office of the registrar of financial institutions continues in existence but only for the purposes of enabling the person holding the office to—
 - (a) give effect to anything relating to the transfer, under a law of the Commonwealth or this Act, of any of the functions of the registrar as an SSA under the fiscal bodies legislation to APRA or ASIC; and
 - (b) prepare his or her final report and financial statements under section 21; and
 - (c) do other things under this division; and
 - (d) wind up the affairs of the office as soon as practicable but, in any case, within 12 months after the transfer date.

- (3) Without limiting subsection (2) (a), the registrar must comply with the Corporations Act, schedule 4, clause 4.
- (4) The registrar has the powers necessary or desirable for him or her to act under subsection (2) or (3) including the powers to execute a contract, deed or other document necessary for the winding-up of the affairs of his or her office.
- (5) To the extent it is necessary or desirable to allow the registrar to act under subsection (2), the fiscal bodies legislation and the *Financial Institutions (Supervisory Authority) Act 1992*, including the provisions of the Act about the registrar, continue to apply despite the repeal of all or any of the legislation or of the Act.
- (6) The person who immediately before the transfer date was the registrar under the *Financial Institutions (Supervisory Authority) Act 1992* continues in office.
- (7) For the purposes of the registrar exercising a power under this section—
 - (a) the *Financial Institutions (Supervisory Authority) Act 1992*, section 17 applies to an honest act or omission of the registrar as if a reference in that section to the financial institutions legislation were a reference to this section; and
 - (b) that Act, section 18 applies to an honest act or omission of a public servant assisting the registrar in the course of that assistance.
- (8) In this section:

winding-up, in relation to the affairs of the office of the registrar, includes realising the assets of the office and discharging its liabilities.

21 Registrar's final report and financial statements

- (1) The registrar must, before his or her office is abolished—
 - (a) provide a report under the *Annual Reports (Government Agencies) Act 1995*, section 8 (1); and

-
- (b) prepare statements relating to the office under the *Financial Management Act 1996*, section 59.
- (2) The report mentioned in subsection (1) (a) is to relate to such period as the Minister directs under the *Annual Reports (Government Agencies) Act 1995*, section 10.
- (3) The statements mentioned in subsection (1) (b) are to be prepared in respect of the period from the end of the period for which the registrar last prepared annual financial statements under the *Financial Management Act 1996*, section 59 until a day fixed by the Minister in writing.
- (4) The Minister must consult with the auditor-general before fixing a day under subsection (3).
- (5) The *Financial Management Act 1996*, section 60, 61 and 62 apply to financial statements mentioned in subsection (1) (b).
- (6) In its application under the *Financial Management Act 1996*, section 61, subsection (5) applies to the financial statements mentioned in subsection (1) (b) as if the day fixed by the Minister under subsection (3) were the last day of a financial year.

Subdivision 4.3.3 Provisions about particular funds

23 Continuation and abolition of particular funds

- (1) The following funds continue in existence on and after the transfer date despite the commencement of section 16:
- (a) the credit unions contingency fund;
 - (b) the supervision fund.
- (2) However—
- (a) when the payments mentioned in section 24 (3) have been received by each credit union, the credit unions contingency fund is abolished; and

- (b) when the payment mentioned in section 25 (1) has been made, the supervision fund is abolished.

24 Payments out of credit unions contingency fund

- (1) On the day before the transfer date the registrar must, under the financial institutions code, section 99A, distribute the whole of retained earnings to the contribution accounts of credit unions.
- (2) For the financial institutions code, section 99A (3), subsection (1) does not apply.
- (3) Immediately after the registrar complies with subsection (1) he or she must pay from the credit unions contingency fund to each credit union the amount standing to the credit union's credit in the fund.
- (4) Subsection (3) applies despite the financial institutions code, section 103.
- (5) In this section:

contribution accounts, of credit unions, means the parts of the credit unions contingency fund that, under the financial institutions code, section 98 (10), are treated as a deferred asset in the accounts of the credit unions.

credit union means a credit union under the financial institutions code.

retained earnings means all amounts standing to the credit of the credit unions contingency fund, other than amounts in the contribution accounts of credit unions.

25 Winding-up of supervision fund

- (1) Immediately before the credit unions contingency fund is wound up under section 24, the registrar must pay into that fund the amount standing to the credit of the supervision fund.
- (2) The amount paid into the credit unions contingency fund under subsection (1) is to be taken to be retained earnings within the meaning of section 24.

26 Financial statements for credit unions contingency fund

- (1) As soon as practicable after the transfer date, the registrar must prepare financial statements for the credit unions contingency fund.
- (2) The financial statements must cover the period from the end of the period for which financial statements audited by the auditor-general were last prepared by the registrar for the fund until the day the fund is abolished.
- (3) The financial statements are to be audited by the auditor-general.
- (4) For the audit, the financial statements are to form part of the statements referred to in section 21 (1) (b).

27 Auditor-general to report on fund

The auditor-general must include in his or her audit opinion concerning the financial statements referred to in section 21 (1) (b) an opinion about whether the credit unions contingency fund was applied for the purposes for which it was established and under section 24.

Subdivision 4.3.4 Information may be given to APRA or ASIC

28 Giving of information

- (1) This section applies to—
 - (a) the registrar; and
 - (b) a member of the staff assisting the registrar; and
 - (c) a person who has been a person mentioned in paragraph (a) or (b).
- (2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation.

- (3) This section applies despite the financial institutions code, section 410.

Subdivision 4.3.5 Transfer of registrar's assets and liabilities

29 Transfer of assets and liabilities

- (1) The Minister may enter into a transfer agreement under the FSR Act, schedule 8, part 1, division 3 connected with the transfer of the registrar's assets or liabilities to APRA or ASIC.
- (2) The transfer agreement has effect according to its terms.

Subdivision 4.3.6 Proceedings involving the registrar

30 Continuation and preservation of civil proceedings involving the registrar

- (1) For a proceeding started before the transfer date to which the registrar was a party immediately before that date, the Territory is substituted as a party to the proceeding.
- (2) For a proceeding not started before the transfer date and that could if started after that date be brought against the registrar, or apart from the commencement of section 16 and the abolition of the office of the registrar, could have been brought against the registrar, the proceeding may instead be brought against the Territory.
- (3) For this section evidence that would have been admissible for or against the registrar is admissible for or against the Territory.
- (4) This section does not apply to a proceeding for an offence.

31 Continuation of certain offence proceedings

- (1) This section applies to a proceeding for an offence brought under the financial institutions code, section 404 by the registrar, or a person authorised in writing by the registrar, that started before the transfer date but was not completed before that date.

- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of the registrar or the person authorised by the registrar, and APRA or ASIC may be substituted for the registrar or that person.
- (3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Division 4.4 APRA's and ASIC's functions and powers under codes

32 Conferral of functions and powers relating to financial institutions

- (1) Either relevant Commonwealth body has the same enforcement powers relating to anything done or omitted to be done under the financial institutions code before the transfer date as AFIC or the registrar had immediately before that date.
- (2) For subsection (1), the financial institutions code applies with all necessary changes.

33 AFIC code provisions

- (1) The following provisions of the AFIC code continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 16 had not commenced:
 - (a) part 8, other than sections 50, 51, 55 and 58;
 - (b) the other provisions of the code relevant to the part.
- (2) Despite subsection (1), a provision, or part of a provision, applying under the subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.
- (3) For the application mentioned in subsection (1)—
 - (a) a reference in the code to *AFIC* is taken to be a reference to either relevant Commonwealth body; and

- (b) a reference in the code to *a financial institution* is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial institution under the code; and
 - (c) in the code, section 52 (1), the words the 'financial institutions scheme' are taken to be omitted and the words 'investigating whether an offence against the fiscal bodies legislation has been committed' are taken to be substituted; and
 - (d) a reference in the code, section 52 (1) (a) or (b) to *an employee of AFIC or of a State supervisory authority* is taken to be a reference to an employee of either relevant Commonwealth body; and
 - (e) the code, section 52 (5) is taken to be omitted; and
 - (f) a reference in the code, section 53 (1) or (2) to *the executive director* is taken to be a reference to either relevant Commonwealth body; and
 - (g) a reference in the code, section 53 (5) to *officers and employees of the State supervisory authorities* is taken to be a reference to officers and employees of either relevant Commonwealth body; and
 - (h) the code, section 63 (1A) and (1B) is taken to be omitted; and
 - (i) a reference in the code, section 63 (2) to *the Ministerial Council* is taken to be a reference to the Minister administering this Act; and
 - (j) the code applies with all other necessary changes.
- (4) This section does not limit section 32.

34 Financial institutions code provisions

- (1) The following provisions of the financial institutions code continue to apply on and after the transfer date in relation to anything done or omitted to be done before the date as if section 16 had not commenced:

- (a) part 2, division 2, subdivision 1A (other than section 75, 79 and 82), part 10 and sections 392, 397, 398 and 404;
 - (b) the other provisions of the code relevant to the provisions mentioned in paragraph (a).
- (2) Despite subsection (1), a provision, or part of a provision, applying under the subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.
- (3) For the application mentioned in subsection (1)—
- (a) a reference in the code to *the SSA* is taken to be a reference to either relevant Commonwealth body; and
 - (b) a reference in the code to *a financial body* is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial body under the code; and
 - (c) a reference in the code to *a society* is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a society under the code; and
 - (d) in the code, section 76 (1), the words the ‘financial institutions legislation’ are taken to be omitted and the words ‘investigating whether an offence against the financial institutions legislation has been committed’ are taken to be substituted; and
 - (e) a reference in the code, section 76 (1) (a) or (b) to *an employee of the SSA* is taken to be a reference to an employee of either relevant Commonwealth body; and
 - (f) the code, section 76 (5) is taken to be omitted; and
 - (g) in the code, section 397 (1), definition of *financial body to which this section applies*, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and

- (h) the code, section 397 (2) is taken to be omitted; and
 - (i) in the code, section 398 (1), definition of *financial body to which this section applies*, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
 - (j) in the code, section 398 (1), definition of *prescribed person*, paragraphs (a) and (b) are taken to be omitted; and
 - (k) the code, section 398 (2) is taken to be omitted; and
 - (l) a reference in the code, section 404 (2) to *the Minister* is taken to be a reference to the Minister administering this Act; and
 - (m) the code applies with all other necessary changes.
- (4) This section does not limit section 32.

35 Provisions for financial institutions code as applied under AFIC code s 40

- (1) The following provisions continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 16 had not commenced—
- (a) the AFIC code, section 40 to the extent it applies the relevant provisions; and
 - (b) the relevant provisions as applied under the AFIC code, section 40; and
 - (c) the other provisions of the AFIC code and the financial institutions code relevant for the AFIC code, section 40 and the relevant provisions.
- (2) Despite subsection (1), a provision, or part of a provision, applying under the subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.
- (3) For the application mentioned in subsection (1)—

- (a) a reference in the AFIC code, section 40 or in the AFIC regulations, section 5 to *a special services provider* is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a special services provider under that code; and
- (b) a reference in the AFIC code, section 40 or in the AFIC regulations, section 5 to *AFIC* is taken to be a reference to either relevant Commonwealth body; and
- (c) in the financial institutions code, section 76 (1), the words the 'financial institutions legislation' are taken to be omitted and the words 'investigating whether an offence against the financial institutions legislation has been committed' are taken to be substituted; and
- (d) the financial institutions code, section 76 (5) is taken to be omitted; and
- (e) in the financial institutions code, section 397 (1), definition of *financial body to which this section applies*, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (f) the financial institutions code, section 397 (2) is taken to be omitted; and
- (g) in the financial institutions code, section 398 (1), definition of *financial body to which this section applies*, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (h) in the financial institutions code, section 398 (1), definition of *prescribed person*, paragraphs (a) and (b) are taken to be omitted; and
- (i) the financial institutions code, section 398 (2) is taken to be omitted; and
- (j) a reference in the financial institutions code, section 404 (2) to *the Minister* is taken to be a reference to the Minister administering this Act; and

- (k) the AFIC code and the financial institutions code apply with all other necessary changes.
- (4) This section does not limit section 32.
- (5) In this section:

relevant provisions means the financial institutions code, part 2, division 2, subdivision 1A (other than sections 75, 79 and 82), part 10 and sections 392, 397, 398 and 404.

36 Only appropriately qualified person may be authorised etc

- (1) The power to authorise a person, or to delegate a power to a person, under an applied provision is a power only to authorise, or delegate the power to, an appropriately qualified person.
- (2) In this section:

applied provision means any of the following provisions applied under this division:

- (a) the AFIC code, section 53 (1);
- (b) the financial institutions code, sections 77 (1) and 356 (1).

37 Conferral of functions and powers

The functions and powers necessary for this division are conferred on APRA and ASIC.

Division 4.5 Matters relating to deregistered societies

38 Meaning of *society* in div 4.5

In this division:

society means an entity that, before the transfer date, was—

- (a) a society under the financial institutions code; or
- (b) a building society.

39 Application of div 4.5

This division applies to a society whose registration has been cancelled, before the transfer date, under the financial institutions code.

40 Society's property vested in ASIC s 29

- (1) This section applies to property vested in ASIC under section 29 that was held by the society.
- (2) If the property was held by the society on trust, ASIC may—
 - (a) continue to act as trustee; or
 - (b) apply to a court for the appointment of a new trustee.
- (3) If the property was not held by the society on trust, ASIC—
 - (a) may—
 - (i) dispose of or deal with the property as it sees fit; and
 - (ii) apply any money it receives to defray expenses incurred by ASIC in exercising its powers in relation to the society and to make payments authorised by subsection (4); and
 - (b) must deal with the balance on the property remaining after acting under paragraph (a) (if any) under the Corporations Act, part 9.7, which is taken to apply as if the society had been a company.
- (4) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in ASIC.
- (5) ASIC's obligation under subsection (4) is limited to satisfying the liabilities out of the society's property to the extent that the property is properly available to satisfy those liabilities.
- (6) ASIC must keep—

- (a) a record of the property that it knows this section applies to; and
- (b) a record of its dealings with that property; and
- (c) accounts of all money received from those dealings; and
- (d) all accounts, vouchers, receipts and papers relating to the property and that money.

41 ASIC may act for society

ASIC may do an act on behalf of the society or the society's liquidator if ASIC is satisfied the society or liquidator would be bound to do the act if the society still existed.

42 Recovery from society's insurer

A person may recover from an insurer of the society an amount that was payable to the society under the insurance contract if—

- (a) the society had a liability to the person; and
- (b) the insurance contract covered the liability immediately before the cancellation of the registration.

43 Conferral of functions and powers

The functions and powers necessary for this division are conferred on ASIC.

Division 4.6 Miscellaneous

44 Dormant accounts

- (1) This section applies if—
 - (a) before the transfer date a society transferred an amount from a person's deposit account with the society to another account under the financial institutions code, section 138A (4) (c); and

- (b) immediately before the transfer date the amount has not been lawfully totally paid out as mentioned in that code, section 138A (6) (b).
- (2) Immediately before the transfer date the amount remaining in the other account for the person is taken to have been transferred back to the person's deposit account as if it had never been classified as a dormant account or closed under the financial institutions code, section 138A.

45 Mergers and transfers of engagements started under financial institutions (ACT) code

- (1) This section applies if a transfer of engagements or merger started before the transfer date under the financial institutions (ACT) code, part 7 and immediately before that date has not been completed, or been given effect.
- (2) The transfer of engagements or merger may be completed, or be given effect, under the financial institutions (ACT) code, part 7 on or after the transfer date and, for that purpose, the part, and other provisions of the code relevant to the part, continue to apply as if section 16 had not commenced.
- (3) For the application mentioned in subsection (2)—
 - (a) a reference in the financial institutions (ACT) code to *the SSA* is taken to be a reference to either relevant Commonwealth body; and
 - (b) a reference in the financial institutions (ACT) code to *the SSA of a participating State* is taken to be a reference to either relevant Commonwealth body; and
 - (c) the financial institutions (ACT) code applies with all other necessary changes.
- (4) For this section, a transfer of engagements was started before the transfer date under the financial institutions (ACT) code, part 7 if, before that date—

- (a) 1 of the following conditions was satisfied in relation to each society or foreign society involved:
- (i) the transfer was approved by a special resolution of the society or foreign society, as required by the relevant financial institutions code;
 - (ii) the relevant SSA made a determination, under the relevant financial institutions code, that the transfer may be approved by the board of the society or foreign society; or
- (b) if each entity involved in the transfer is a society—the registrar gave a direction, under the financial institutions (ACT) code, requiring the transfer.
- (5) For this section, a merger was started before the transfer date if, before that date, 1 of the following conditions was satisfied in relation to each society or foreign society involved:
- (a) the merger was approved by a special resolution of the society or foreign society, as required by the relevant financial institutions code;
 - (b) the relevant SSA made a determination, under the relevant financial institutions code, that the merger may be approved by the board of the society or foreign society.
- (6) The functions and powers of the SSA that are necessary for this section are conferred on each relevant Commonwealth body.
- (7) In this section:

financial institutions agreement—see the AFIC code, section 3.

foreign society means a body corporate that before the transfer date, was a society under the financial institutions legislation of another participating State, whether or not it was registered as a foreign society under the financial institutions (ACT) code, part 11.

participating State means a State or Territory that, immediately before the transfer date, was a party to the financial institutions

agreement and in which, immediately before that date, the foreign society was incorporated.

relevant financial institutions code means—

- (a) in relation to a society—the financial institutions (ACT) code; or
- (b) in relation to a foreign society—the law of another participating State corresponding to the financial institutions (ACT) code.

relevant SSA means—

- (a) in relation to a society—the registrar; or
- (b) in relation to a foreign society—the State supervisory authority under the financial institutions legislation of the other participating State.

society means an entity that, immediately before the transfer date, was a society under the financial institutions (ACT) code.

46 Australian financial institutions appeals tribunal

- (1) All applications made to the Australian financial institutions appeal tribunal under a code for review of a decision that have not been decided are taken to have been withdrawn on the transfer date.
- (2) In this section:

code means—

- (a) the AFIC Code; or
- (b) the Financial Institutions Code.

Part 6 Miscellaneous

48 Consequential and transitional regulations

- (1) The Executive may make regulations amending the provisions of this Act (other than this section) or any other Act in relation to any matter arising from, connected with or consequential on the enactment of this Act.
- (2) Regulations made under subsection (1) may be expressed to have taken effect on a day earlier than the day on which they are notified in the Gazette, not being a day earlier than the transfer date.
- (3) If regulations made under subsection (1) are expressed to take effect on a day earlier than the day on which they are notified in the Gazette, they do not operate so as to—
 - (a) affect, in a manner prejudicial to any person (other than the Territory or a Territory authority), the rights of that person existing at the day of notification; or
 - (b) impose liabilities on any person (other than the Territory or a Territory authority) in respect of any act or omission before the day of notification.
- (4) The Executive may only make regulations under subsection (1) during the period of 12 months commencing on the transfer date.

Dictionary

(see s 3)

AFIC means the Australian Financial Institutions Commission.

AFIC (ACT) code means the provisions applying before the transfer date because of the *Financial Institutions (Application of Laws) Act 1992*, section 5, and includes the AFIC (ACT) regulations.

AFIC (ACT) regulations means the provisions applying before the transfer date because of the *Financial Institutions (Application of Laws) Act 1992*, section 6.

AFIC code means the AFIC (ACT) code.

AFIC regulations means the AFIC (ACT) regulations.

appropriately qualified for the authorisation of, or the delegation of a power to, a person includes having qualifications, experience or standing appropriate having regard to the reason for the authorisation or to the power to be delegated.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

authorised APRA officer, in a provision of part 3, means a person authorised under section 8 to perform or exercise the functions or powers of an authorised APRA officer under the provision.

credit unions contingency fund means the credit unions contingency fund established under the financial institutions code, section 97 (1).

employee, of AFIC, includes a person engaged by AFIC on a contract for services.

enforcement power means a function or power relating to—

- (a) the investigation of an offence; or

- (b) the institution and carrying on of a prosecution of an offence;
or
- (c) matters relating to an investigation or prosecution of an offence.

financial institutions (ACT) code means the provisions applying before the transfer date because of the *Financial Institutions (Application of Laws) Act 1992*, section 8, and includes the financial institutions (ACT) regulations.

financial institutions (ACT) regulations means the provisions applying before the transfer date because of the *Financial Institutions (Application of Laws) Act 1992*, section 9.

financial institutions code means the Financial Institutions (ACT) Code.

financial institutions legislation—see the AFIC code, section 8.

FS(TB) Act means the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

FSR Act means the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No 1) 1999* (Cwlth).

registrar means the registrar of financial institutions established by the *Financial Institutions (Supervisory Authority) Act 1992*, section 5 (1).

relevant Commonwealth body means APRA or ASIC.

SSA means State supervisory authority.

supervision fund means the supervision fund established under the financial institutions code, section 94 (1).

transfer date means the date that, under the FSR Act, section 3 (16), is specified as the transfer date for that Act.

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
num = numbered	sdiv = subdivision
No = number	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced

Endnotes

3 Legislation history

3 Legislation history

Financial Sector Reform (ACT) Act 1999 No 33

notified 25 June 1999 (Gaz 1999 S34)

s 1, s 2 commenced 25 June 1999 (s 2 (1))

remainder commenced 1 July 1999 (s 2 (2) and see Cwlth Gaz 1999 No S283)

4 Amendment history

Commencement

s 2 om R1 LA

Transitional provisions

pt 4 hdg om R1 LA

Repeals

div 1 hdg om R1 LA

Repeals

s 16 om R1 LA

Provisions relating to AFIC

div 4.2 hdg (prev pt 4 div 2 hdg) renum R1 LA

Provisions relating to registrar of financial institutions

div 4.3 hdg (prev pt 4 div 3 hdg) renum R1 LA

Preliminary

sdiv 4.3.1 hdg (prev pt 4 div 3 sdiv 1 hdg) renum R1 LA

Office of registrar to continue

sdiv 4.3.2 hdg (prev pt 4 div 3 sdiv 2 hdg) renum R1 LA

Abolition of office or registrar

s 22 om R1 LA

Provisions about particular funds

sdiv 4.3.3 hdg (prev pt 4 div 3 sdiv 3 hdg) renum R1 LA

Information may be given to APRA or ASIC

sdiv 4.3.4 hdg (prev pt 4 div 3 sdiv 4 hdg) renum R1 LA

Transfer of registrar's assets and liabilities

sdiv 4.3.5 hdg (prev pt 4 div 3 sdiv 5 hdg) renum R1 LA

Proceedings involving registrar

sdiv 4.3.6 hdg (prev pt 4 div 3 sdiv 6 hdg) renum R1 LA

APRA's and ASIC's functions and powers under codes

div 4.4 hdg (prev pt 4 div 4 hdg) renum R1 LA

Matters relating to deregistered societies

div 4.5 hdg (prev pt 4 div 5 hdg) renum R1 LA

Miscellaneous

div 4.6 hdg (prev pt 4 div 6 hdg) renum R1 LA

Consequential amendments

pt 5 hdg om R1 LA

Consequential amendments of other Acts

s 47 om R1 LA

Consequential amendments of other Acts

sch om R1 LA

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

© Australian Capital Territory 2002