



Australian Capital Territory

Financial Sector Reform (ACT) Act 1999

A1999-33

Republication No 3

Effective: 12 December 2011 – 4 June 2012

Republication date: 12 December 2011

Last amendment made by A2011-52

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Financial Sector Reform (ACT) Act 1999* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 December 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 12 December 2011.

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 does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

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 the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Financial Sector Reform (ACT) Act 1999

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R3
12/12/11

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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.

- (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 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 (Business Transfer and Group Restructure) 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 not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Financial Sector Reform (ACT) Act 1999 A1999-33

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)

as repealed by

Statute Law Amendment Act 2002 A2002-30 pt 4.3

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 4.3 commenced 17 September 2002 (s 2 (1))

as revived by

Statute Law Amendment Act 2011 (No 3) A2011-52 amdt 3.94

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

amdt 3.94 commenced 12 December 2011 (s 2)

Note The revival took effect from the beginning of 18 September 2002.

as amended by

Statute Law Amendment Act 2011 (No 3) A2011-52 amdt 3.95, amdt 3.96

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

amdt 3.95, amdt 3.96 commenced 12 December 2011 (s 2)

4 Amendment history

Commencement

s 2 om R1 LA

Transitional provisions

pt 4 hdg om A2011-52 amd 3.95

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
om A2011-52 amd 3.95

Continuation and preservation of civil proceedings involving AFIC

s 17 om A2011-52 amd 3.95

Continuation of offence proceedings

s 18 om A2011-52 amd 3.95

Provisions relating to registrar of financial institutions

div 4.3 hdg (prev pt 4 div 3 hdg) renum R1 LA
om A2011-52 amd 3.95

Preliminary

sdiv 4.3.1 hdg (prev pt 4 div 3 sdiv 1 hdg) renum R1 LA
om A2011-52 amd 3.95

Meaning of *registrar* for div 4.3

s 19 om A2011-52 amd 3.95

Office of registrar to continue

sdiv 4.3.2 hdg (prev pt 4 div 3 sdiv 2 hdg) renum R1 LA
om A2011-52 amd 3.95

Continuation of office of registrar for certain purposes

s 20 om A2011-52 amd 3.95

Registrar's final report and financial statements

s 21 om A2011-52 amd 3.95

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
om A2011-52 amd 3.95

Continuation and abolition of particular funds

s 23 om A2011-52 amd 3.95

Endnotes

4 Amendment history

Payments out of credit unions contingency fund

s 24 om A2011-52 amdt 3.95

Winding-up of supervision fund

s 25 om A2011-52 amdt 3.95

Financial statements for credit unions contingency fund

s 26 om A2011-52 amdt 3.95

Auditor-general to report on fund

s 27 om A2011-52 amdt 3.95

Information may be given to APRA or ASIC

sdiv 4.3.4 hdg (prev pt 4 div 3 sdiv 4 hdg) renum R1 LA
om A2011-52 amdt 3.95

Giving of information

s 28 om A2011-52 amdt 3.95

Transfer of registrar's assets and liabilities

sdiv 4.3.5 hdg (prev pt 4 div 3 sdiv 5 hdg) renum R1 LA
om A2011-52 amdt 3.95

Transfer of assets and liabilities

s 29 om A2011-52 amdt 3.95

Proceedings involving registrar

sdiv 4.3.6 hdg (prev pt 4 div 3 sdiv 6 hdg) renum R1 LA
om A2011-52 amdt 3.95

Continuation and preservation of civil proceedings involving the registrar

s 30 om A2011-52 amdt 3.95

Continuation of certain offence proceedings

s 31 om A2011-52 amdt 3.95

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

div 4.4 hdg (prev pt 4 div 4 hdg) renum R1 LA
om A2011-52 amdt 3.95

Conferral of functions and powers relating to financial institutions

s 32 om A2011-52 amdt 3.95

AFIC code provisions

s 33 om A2011-52 amdt 3.95

Financial institutions code provisions

s 34 om A2011-52 amdt 3.95

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

s 35 om A2011-52 amdt 3.95

Only appropriately qualified person may be authorised etc

s 36 om A2011-52 amdt 3.95

Conferral of functions and powers

s 37 om A2011-52 amdt 3.95

Matters relating to deregistered societiesdiv 4.5 hdg (prev pt 4 div 5 hdg) renum R1 LA
om A2011-52 amdt 3.95**Meaning of *society* in div 4.5**

s 38 om A2011-52 amdt 3.95

Application of div 4.5

s 39 om A2011-52 amdt 3.95

Society's property vested in ASIC s 29

s 40 om A2011-52 amdt 3.95

ASIC may act for society

s 41 om A2011-52 amdt 3.95

Recovery from society's insurer

s 42 om A2011-52 amdt 3.95

Conferral of functions and powers

s 43 om A2011-52 amdt 3.95

Miscellaneousdiv 4.6 hdg (prev pt 4 div 6 hdg) renum R1 LA
om A2011-52 amdt 3.95**Dormant accounts**

s 44 om A2011-52 amdt 3.95

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

s 45 om A2011-52 amdt 3.95

Australian financial institutions appeals tribunal

s 46 om A2011-52 amdt 3.95

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

Dictionarydict def *FS(TB) Act* sub A2011-52 amdt 3.96

Endnotes

5 Earlier republications

5 Earlier republications

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

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 25 Feb 2002	1 July 1999- 17 Sept 2002	not amended	new Act
R2 12 Dec 2011	18 Sept 2002- 11 Dec 2011	not amended	revival of Act by A2011-52 amdt 3.94

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