

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Financial Sector Reform (ACT) Bill 1999

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1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Financial Sector Reform (ACT) Bill 1999

A BILL

FOR

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

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

PART 1—PRELIMINARY

1 Short title

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

2 Commencement

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

10 (2) The remaining provisions commence on the transfer date.

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.

5 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

10 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 Territory 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 Territory 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

Unless the contrary intention appears, 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 the purposes of this section are conferred on APRA.

9 Voluntary transfers

(1) The purpose of this section is to facilitate voluntary transfers of business under Part 3 of the FS(TB) Act for regulated bodies.

5 (2) This section applies when a certificate of transfer issued under section 18 of the FS(TB) Act comes into force under Division 3 of Part 3 of that Act.

(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—

10 (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

15 (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

20 (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—

25 (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.

30 **10 Compulsory transfers**

(1) The purpose of this section is to facilitate compulsory transfers of business under Part 4 of the FS(TB) Act for regulated bodies.

35 (2) This section applies when a certificate of transfer issued under section 33 of the FS(TB) Act comes into force under Division 3 of Part 4 of that Act.

(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—

- 5 (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 paragraph 33 (2) (c) of the FS(TB) Act, included in, or attached to, the certificate of transfer become assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
- 10 (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 subsection 33 (3) of the FS(TB) Act specifying—
- 15 (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.
- 20
- (6) If there is an approved section 30 statement in relation to the transfer that specifies—
- 25 (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.
- 30

11 Certificates evidencing operation of part

- (1) An authorised APRA officer may, by a certificate in writing signed by the officer, certify anything relating to the effect of this part, and, in particular may certify that—
- 35 (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.
- 40

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 Territory; and
 - 5 (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.
- 10 (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

15 (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—

20 (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.
- 25 (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 Law.

30 **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 part with other laws

- 35 (1) This part has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done under this part—

- 5 (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—
- 10 (i) a law of the Territory; 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.
- 15 (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—REPEALS AND TRANSITIONAL PROVISIONS

Division 1—Repeals

16 Repeals

The following Acts are repealed:

- 20 (a) the *Financial Institutions (Application of Laws) Act 1992*;
- (b) the *Financial Institutions (Supervisory Authority) Act 1992*.

Division 2—Provisions relating to AFIC

17 Continuation and preservation of civil proceedings involving AFIC

- 25 (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.
- 30 (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 section 63 of the AFIC Code 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 3—Provisions relating to the Registrar of Financial Institutions

Subdivision 1—Preliminary

19 Interpretation

In this division—

registrar means—

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

Subdivision 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 paragraph (2) (a), the registrar must comply with clause 4 of schedule 4 of the Corporations Law.
- 5 (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.
- 10 (5) To the extent it is necessary or desirable to allow the registrar to act under subsection (2), the provisions of 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.
- 15 (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—
- 20 (a) section 17 of the *Financial Institutions (Supervisory Authority) Act 1992* 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) section 18 of that Act applies to an honest act or omission of a public servant assisting the registrar in the course of that assistance.
- 25 (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.
- 30 **21 Registrar's final report and financial statements**
- (1) The registrar must, before his or her office is abolished—
- (a) provide a report under subsection 8 (1) of the *Annual Reports (Government Agencies) Act 1995*; and
- 35 (b) prepare statements relating to the office under section 59 of the *Financial Management Act 1996*.
- (2) The report mentioned in paragraph (1) (a) is to relate to such period as the Minister directs under section 10 of the *Annual Reports (Government Agencies) Act 1995*.

(3) The statements mentioned in paragraph (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 section 59 of the *Financial Management Act 1996* until a day fixed by the Minister in writing.

5 (4) The Minister must consult with the Auditor-General before fixing a day under subsection (3).

(5) Sections 60, 61 and 62 of the *Financial Management Act 1996* apply to financial statements mentioned in paragraph (1) (b).

10 (6) In its application under subsection (5), section 61 of the *Financial Management Act 1996* applies to the financial statements mentioned in paragraph (1) (b) as if the day fixed by the Minister under subsection (3) were the last day of a financial year.

22 Abolition of office of registrar

15 The office of registrar is abolished, and the registrar goes out of office, on the earlier of the following:

- (a) 12 months after the transfer date;
- (b) the day stated in a *Gazette* notice published by the Minister.

Subdivision 3—Provisions about particular funds

23 Continuation and abolition of particular funds

20 (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—

- 25 (a) when the payments mentioned in subsection 24 (3) have been received by each credit union, the Credit Unions Contingency Fund is abolished; and
- (b) when the payment mentioned in subsection 25 (1) has been made, the Supervision Fund is abolished.

30 24 Payments out of Credit Unions Contingency Fund

(1) On the day before the transfer date the registrar must, under section 99A of the Financial Institutions Code, distribute the whole of retained earnings to the contribution accounts of credit unions.

35 (2) For subsection (1), subsection 99A (3) of the Financial Institutions Code 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.

5 (4) Subsection (3) applies despite section 103 of the Financial Institutions Code.

(5) In this section—

10 *contribution accounts*, of credit unions, means the parts of the Credit Unions Contingency Fund that, under subsection 98 (10) of the Financial Institutions Code, are treated as a deferred asset in the accounts of the credit unions.

credit union means a credit union under the Financial Institutions Code.

15 *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.

20 (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

25 (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.

30 (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 paragraph 21 (1) (b).

27 Auditor-General to report on fund

35 The Auditor-General must include in his or her audit opinion concerning the financial statements referred to in paragraph 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 26.

Subdivision 4—Information may be given to APRA or ASIC

28 Giving of information

- (1) This section applies to—
- (a) the registrar; and
 - 5 (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.
- 10 (3) This section applies despite section 410 of the Financial Institutions Code.

Subdivision 5—Transfer of the registrar's assets and liabilities

29 Transfer of assets and liabilities

- 15 (1) The Minister may enter into a transfer agreement under Division 3 of Part 1 of schedule 8 of the FSR Act 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 6—Proceedings involving the registrar

20 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.
- 25 (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.
- 30 (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 section 404 of the Financial Institutions Code 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.

5 (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.

10 ***Division 4—APRA’s and ASIC’s functions and powers under codes***

32 Conferral of functions and powers relating to financial institutions

15 (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

20 (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.

25 (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)—

- 30 (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
- 35 (c) in subsection 52 (1) of the code, 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 paragraph 52 (1) (a) or (b) of the code 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
 - 5 (e) subsection 52 (5) of the code is taken to be omitted; and
 - (f) a reference in subsection 53 (1) or (2) of the code to the executive director is taken to be a reference to either relevant Commonwealth body; and
 - 10 (g) a reference in subsection 53 (5) of the code 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) subsections 63 (1A) and (1B) of the code are taken to be omitted; and
 - 15 (i) a reference in subsection 63 (2) of the code 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.

20 **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:
- 25 (a) Subdivision 1A of Division 2 of Part 2 (other than sections 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.
- 30 (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
 - 35 (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
 - 40 (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 subsection 76 (1) of the code, 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
- 5 (e) a reference in paragraph 76 (1) (a) or (b) of the code to an employee of the SSA is taken to be a reference to an employee of either relevant Commonwealth body; and
- (f) subsection 76 (5) of the code is taken to be omitted; and
- 10 (g) in the definition of *financial body to which this section applies* in subsection 397 (1) of the code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (h) subsection 397 (2) of the code is taken to be omitted; and
- 15 (i) in the definition of *financial body to which this section applies* in subsection 398 (1) of the code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (j) in the definition of *prescribed person* in subsection 398 (1) of the code, paragraphs (a) and (b) are taken to be omitted; and
- (k) subsection 398 (2) of the code is taken to be omitted; and
- 20 (l) a reference in subsection 404 (2) of the code 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 section 40 of AFIC Code

- 25 (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) section 40 of the AFIC Code to the extent it applies the relevant provisions; and
 - 30 (b) the relevant provisions as applied under section 40 of the AFIC Code; and
 - (c) the other provisions of the AFIC Code and the Financial Institutions Code relevant for section 40 of the AFIC Code and the relevant provisions.
- 35 (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)—
 - 40 (a) a reference in section 40 of the AFIC Code or in section 5 of the AFIC Regulations 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

- 5 (b) a reference in section 40 of the AFIC Code or in section 5 of the AFIC Regulations to AFIC is taken to be a reference to either relevant Commonwealth body; and
- (c) in subsection 76 (1) of the Financial Institutions Code, the words 'the financial institutions legislation' are taken to be omitted and the words 'investigating whether an offence against the financial
10 institutions legislation has been committed' are taken to be substituted; and
- (d) subsection 76 (5) of the Financial Institutions Code is taken to be omitted; and
- 15 (e) in the definition of *financial body to which this section applies* in subsection 397 (1) of the Financial Institutions Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (f) subsection 397 (2) of the Financial Institutions Code is taken to be omitted; and
- 20 (g) in the definition of *financial body to which this section applies* in subsection 398 (1) of the Financial Institutions Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
- (h) in the definition of *prescribed person* in subsection 398 (1) of the Financial Institutions Code, paragraphs (a) and (b) are taken to be omitted; and
- 25 (i) subsection 398 (2) of the Financial Institutions Code is taken to be omitted; and
- (j) a reference in subsection 404 (2) of the Financial Institutions Code to the Minister is taken to be a reference to the Minister administering this Act; and
- 30 (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—

35 *relevant provisions* means Subdivision 1A of Division 2 of Part 2 (other than sections 75, 79 and 82), Part 10 and sections 392, 397, 398 and 404 of the Financial Institutions Code.

36 Only appropriately qualified person may be authorised etc

- 40 (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) subsection 53 (1) of the AFIC Code;
- 5 (b) subsections 77 (1) and 356 (1) of the Financial Institutions Code.

37 Conferral of functions and powers

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

10 ***Division 5—Matters relating to deregistered societies***

38 Interpretation

In this division—

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

- (a) a society under the Financial Institutions Code; or
- 15 (b) a building society.

39 Application

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 under section 29

- 20 (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.

- 25 (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
- 30 (b) must deal with the balance on the property remaining after acting under paragraph (a) (if any) under Part 9.7 of the Corporations Law 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 (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
- 10 (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

15 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—

- 20 (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

25 The functions and powers necessary for the purposes of this division are conferred on ASIC.

Division 6—Miscellaneous

44 Dormant accounts

(1) This section applies if—

- 30 (a) before the transfer date a society transferred an amount from a person's deposit account with the society to another account under paragraph 138A (4) (c) of the Financial Institutions Code; and
- (b) immediately before the transfer date the amount has not been lawfully totally paid out as mentioned in paragraph 138A (6) (b) of that code.

35 (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 section 138A of the Financial Institutions Code.

45 Mergers and transfers of engagements started under Financial Institutions (ACT) Code

5 (1) This section applies if a transfer of engagements or merger started before the transfer date under Part 7 of the Financial Institutions (ACT) Code and immediately before that date has not been completed, or been given effect.

10 (2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Financial Institutions (ACT) Code 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)—

- 15 (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
- 20 (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 Part 7 of the Financial Institutions (ACT) Code if, before that date—

- 25 (a) one 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;
- 30 (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) in a case where each entity involved in the transfer is a society, the registrar gave a direction, under the Financial Institutions (ACT)
- 35 Code, requiring the transfer.

(5) For this section, a merger was started before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved:

- 40 (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.

5 (6) The functions and powers of the SSA that are necessary for the purposes of this section are conferred on each relevant Commonwealth body.

(7) In this section—

financial institutions agreement see section 3 of the AFIC Code.

10 *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 Part 11 of the Financial Institutions (ACT) Code.

15 *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—

- 20 (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—

- 25 (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.

30 **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—

35 *code* means—

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

PART 5—CONSEQUENTIAL AMENDMENTS

47 Consequential amendments of other Acts

The Acts specified in the schedule are amended as set out in the schedule.

5

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 upon the enactment of this Act.

10 (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.

15 (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
- 20 (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.

SCHEDULE

(See s 47)

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Agents Act 1968

5 **Subsection 5 (1) (definition of *Financial Institutions (ACT) Code*)—**

Omit the definition.

Paragraph 5 (1B) (c)—

Omit “, or a foreign building society, within the meaning of the Financial Institutions (ACT) Code”.

10 **Paragraph 5 (1B) (d)—**

Omit “, or a foreign credit union, within the meaning of the Financial Institutions (ACT) Code”.

Consumer Credit (Administration) Act 1996

Section 3 (definition of *financial institution*)—

15 Omit paragraphs (a) and (b), substitute the following paragraphs:

“(a) a building society;

(b) a credit union;”.

Section 3 (definition of *Financial Institutions (ACT) Code*)—

Omit the definition.

20 ***Co-operative Societies Act 1939***

Subsection 4 (1)—

Omit the definitions of *building society*, *credit union* and *Financial Institutions (ACT) Code*.

Subsection 32 (1) (definition of *exempt body*)—

25 (a) Add at the end of paragraph (c) “or”.

(b) Omit paragraphs (d) and (e).

Credit Act 1985

Subsection 5 (1) (definition of *financial institution*)—

Omit paragraphs (a) and (aa), substitute the following paragraph:

30 “(a) a building society or credit union;”.

SCHEDULE—continued

Subsection 5 (1) (definition of *Financial Institutions (ACT) Code*)—

Omit the definition.

Financial Management Act 1996

5 **Subsection 3 (1)—**

(a) Omit “a banking institution” from the definition of *banking account*, substitute “an authorised deposit-taking institution”.

(b) Omit the definitions of *bank* and *banking institution*.

Subsection 32 (1)—

10 Omit “a banking institution”, substitute “an authorised deposit-taking institution”.

Subsection 34 (3)—

Omit “banking institution” (twice occurring), substitute “authorised deposit-taking institution”.

15 **Subsection 35 (4)—**

Omit “bank”, substitute “banking”.

Paragraph 38 (1) (a) and (b)—

Omit “a banking institution”, substitute “an authorised deposit-taking institution”.

20 **Subsection 51 (3)—**

Omit “banking institution” (twice occurring), substitute “authorised deposit-taking institution”.

Paragraph 53A (3) (c)—

25 Omit “banking institution”, substitute “authorised deposit-taking institution”.

Subsection 55 (3)—

Omit “banking institution” (twice occurring), substitute “authorised deposit-taking institution”.

Paragraph 56 (1) (a)—

30 Omit “a banking institution”, substitute “an authorised deposit-taking institution”.

SCHEDULE—continued

Interpretation Act 1967

Subsection 14 (1)—

Insert the following definitions:

“*ADI* is short for authorised deposit-taking institution.

5 *authorised deposit-taking institution* means a body corporate that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* of the Commonwealth.

10 *bank* means an authorised deposit-taking institution that is permitted under the *Banking Act 1959* of the Commonwealth to assume or use—

- (a) the word ‘bank’, ‘banker’ or ‘banking’; or
- (b) any other word (whether or not in English) similar in meaning to a word referred to in paragraph (a).

15 *building society* means an authorised deposit-taking institution that is permitted under the *Banking Act 1959* of the Commonwealth to assume or use—

- (a) the expression ‘building society’; or
- (b) any other expression (whether or not in English) similar in meaning to the expression referred to in paragraph (a).

20 *credit union* means an authorised deposit-taking institution that is permitted under the *Banking Act 1959* of the Commonwealth to assume or use—

- (a) the expression ‘credit union’; or
- 25 (b) any other expression (whether or not in English) similar in meaning to the expression referred to in paragraph (a).”

Magistrates Court (Civil Jurisdiction) Act 1982

Subsection 287 (1)—

30 Omit the definitions of *bank*, *building society*, *credit union*, *deposit-taking institution* and *Financial Institutions (ACT) Code*.

Subparagraph 319 (1) (c) (ii)—

Omit “a deposit-taking institution”, substitute “an authorised deposit-taking institution”.

SCHEDULE—continued

Subsections 325 (1) and (3)—

Omit “a deposit-taking institution”, substitute “an authorised deposit-taking institution”.

Subsection 325 (4)—

5 Omit the subsection, substitute the following subsection:

“(4) A charge on an amount standing to the credit of a judgment debtor in an account in a building society or credit union, being a charge created by the rules of the building society or credit union, shall be disregarded for the purposes of a garnishee order.”.

10 **Paragraph 325 (6) (a)—**

Omit “a deposit-taking institution”, substitute “an authorised deposit-taking institution”.

Subparagraph 325 (9) (a) (i)—

Before “deposit-taking institution” insert “authorised”.

15 **Paragraph 326 (1) (a)—**

Omit “a deposit-taking institution”, substitute “an authorised deposit-taking institution”.

Proceeds of Crime Act 1991

Subsection 4 (1) (definition of *financial institution*)—

20 Omit paragraphs (a), (b), (c), (d) and (e), substitute the following paragraph:

“(a) an authorised deposit-taking institution;”.

Trustee Companies Act 1947

Section 3 (definition of *bank*)—

25 Omit the definition.

DICTIONARY

(See s 3)

AFIC means the Australian Financial Institutions Commission.

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

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

AFIC Code means the AFIC (ACT) Code.

10 **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.

15 **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.

20 **Credit Unions Contingency Fund** means the Credit Unions Contingency Fund established under subsection 97 (1) of the Financial Institutions Code.

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

25 **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.

30

Financial Institutions (ACT) Code means the provisions applying before the transfer date because of section 8 of the *Financial Institutions (Application of Laws) Act 1992* and includes the Financial Institutions (ACT) Regulations.

DICTIONARY—continued

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

5 ***Financial Institutions Code*** means the Financial Institutions (ACT) Code.

financial institutions legislation has the same meaning as in section 8 of the AFIC Code.

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

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

registrar means the Registrar of Financial Institutions established by subsection 5 (1) of the *Financial Institutions (Supervisory Authority) Act 1992*.

15 ***relevant Commonwealth body*** means APRA or ASIC.

SSA means State supervisory authority.

Supervision Fund means the Supervision Fund established under section 94 (1) of the Financial Institutions Code.

20 ***transfer date*** means the date that, under subsection 3 (16) of the FSR Act, is specified as the transfer date for the purposes of that Act.

NOTE ABOUT SECTION HEADING

On the day on which section 325 of the *Magistrates Court (Civil Jurisdiction) Act 1982* is amended by this Act, the heading of that section is omitted and the following heading substituted:

Accounts with authorised deposit-taking institutions