

1999

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

FINANCIAL SECTOR REFORM (ACT) BILL 1999

Explanatory Memorandum

Circulated by the authority of
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EXPLANATORY NOTES

Short Title

The short title of the Bill is *The Financial Sector Reform (ACT) Bill 1999*.

Policy Objectives of the Bill and the Reasons for them

This Bill forms part of the Financial Sector Reform process. It is a result of an agreement between Commonwealth, States and Territories to transfer regulatory responsibility for building societies, credit unions and friendly societies to the Commonwealth and to wind-up the current uniform system of State and Territory-based supervision.

This Bill, in conjunction with complementary Commonwealth and State legislation, will bring the regulation of building societies, credit unions and friendly societies into line with the regulation of other deposit-taking institutions (including banks) and establish a single regulatory framework for the supervision of all forms of financial institutions.

The proposed reforms are designed to:

- (a) reduce the duplication inherent in the separate State, Territory and Commonwealth systems,
- (b) enhance competition in the retail financial sector by applying the same regulatory structure to all Australian deposit taking institutions;
- (c) allow financial services providers flexibility in their choice of corporate structures.

Each State and Territory is enacting similar legislation to the ACT Bill. The ACT Bill is largely based on model legislation prepared by Queensland with the noted difference that there is no reference to friendly societies in the ACT Bill. Unlike Queensland and other jurisdictions, there is no ACT legislation which permits the establishment of friendly societies.

The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate

The policy objectives mentioned above will largely be achieved through Commonwealth amendments to the *Banking Act 1959*, the Corporations Law, the *Life Insurance Act 1995* and the *Reserve Bank Act 1959*.

The amendments will provide that State and Territory based financial institutions such as building societies and credit unions be deemed to be companies registered under the Corporations Law. These bodies will then receive a licence, from the Commonwealth supervisory body, to carry on business as authorised deposit taking institutions.

The State and Territory legislation will wind up the Financial Institutions Scheme and ensure that the transition to Commonwealth regulation is as smooth as possible. Specifically, the Financial Sector Reform (ACT) Bill 1999 will wind up the office of the ACT Registrar of Financial Institutions, the Supervision Fund and the Credit Unions Contingency Fund. All remaining moneys in these funds will be repaid to the ACT credit unions.

Alternative way of achieving the policy objective

The Commonwealth, States and Territories have agreed to achieve the policy objectives by means of the legislative initiatives and amendments contained in the Bill.

Revenue Cost Implications

The Bill has no impact on the 1999-2000 Budget and its outcome.

Administrative costs for Government implementation of the Bill

The transfer of regulation of State-based financial institutions to the Commonwealth is expected to entail minimal administrative costs for Government.

Ongoing costs directly attributable to the implementation of this legislation will be limited to the maintenance of records of the superseded Financial Institutions scheme. The States and Territories will, collectively, assume those contingent liabilities of the Australian Financial Institutions Commission that are not transferred to the Commonwealth.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

The national reform process has involved consultation between Commonwealth, State and Territory Governments, as well as the Ministerial Council for Financial Institutions, the Australian Financial Institutions Commission, the Australian Capital Territory Registrar of Financial Institutions and other State Supervisory Authorities, and peak financial sector groups including building societies, credit unions and friendly societies.

DETAILS OF THE BILL

PART 1-PRELIMINARY

Clause 1 specifies the short title of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 provides for a dictionary of defined terms to be used in the Act.

Clause 4 provides that the Act binds all persons, as far as the legislative power of the Territory permits.

PART 2-CONFERRAL OF FUNCTIONS AND POWERS ON APRA AND ASIC

Clause 5 ensures that the Australian Prudential Regulation Authority (APRA) is empowered to carry out the functions and powers specified under this Act or by a similar Act of another jurisdiction.

Clause 6 ensures that the Australian Securities and Investments Commission (ASIC) is empowered to carry out the functions and powers specified under this Act or by a similar Act of another jurisdiction.

PART 3-AUTHORISED DEPOSIT-TAKING INSTITUTIONS - TRANSFERS OF BUSINESS

Clause 7 provides that terms defined in the *Financial Sector (Transfers of Business) Act 1999* have the same meaning in this Part, unless the contrary intention is stated.

Clause 8 empowers APRA to authorise certain persons to exercise the powers or functions of an authorised APRA officer under this Part. An authorised APRA officer is defined in the Commonwealth *Financial Sector (Transfers of Business) Act 1999*.

Clause 9 facilitates voluntary transfers of business under Part 3 of the *Financial Sector (Transfers of Business) Act 1999*. This clause provides that the receiving body is the successor in law of the transferring body to the extent of the transfer and that any matters specified under a section 20 statement are effective.

Clause 10 facilitates compulsory transfers under Part 4 of the *Financial Sector (Transfers of Business) Act 1999*. This clause provides that the receiving body is the successor in law of the transferring body to the extent of the transfer and that any matters specified under a section 30 statement are effective. The clause also deems that particulars included in the certificate of transfer of a kind referred to in s33(3) of the *Financial Sector (Transfers of Business) Act 1999* are effective.

Clause 11 provides that a signed certificate, issued by an authorised APRA officer, is evidence of certain occurrences under this Part.

Clause 12 provides that the Registrar-General may recognise and deal with a signed certificate from an authorised APRA officer evidencing a change in ownership or interest in land, situated in the Territory, under this Part.

Clause 13 provides that a registering authority is entitled to recognise and deal with a signed certificate by an authorised APRA officer evidencing that an asset, other than land, under this Part has become an asset of the receiving body.

Clause 14 provides that a document purporting to be a certificate is taken to be a certificate unless the contrary is established.

Clause 15 provides that this part has effect despite anything in another instrument and that nothing done under this part makes a party guilty of a civil wrong or in breach of a law of the Territory or certain contractual provisions. Nor does this part release a surety wholly or partly from all or any of the surety's obligations.

PART 4-REPEALS AND TRANSITIONAL

Division 1 - Repeals

Clause 16 repeals two Acts that are no longer relevant.

Division 2 - Provisions relating to AFIC

Clause 17 provides that the State of Queensland, as the jurisdiction which hosted the template legislation for the Financial Institutions Scheme in operation since 1992, is substituted for AFIC in certain proceedings (but not a proceeding for an offence) that are not finalised by the transfer date. The clause goes on to provide that certain proceedings (but not a proceedings for an offence) that may have been brought against AFIC may, after the transfer date, be brought against the State of Queensland.

Clause 18 provides that a proceeding for an offence under the AFIC Code that was commenced before the transfer date may be continued after the transfer date by APRA or ASIC in place of AFIC.

Division 3-Provisions relating to the Registrar of Financial Institutions

Subdivision 1 - Preliminary

Clause 19 defines the office of "Registrar".

Subdivision 2 - Office of Register to continue

Clause 20 provides that, despite the repeal of the Financial Institutions (Supervisory Authority) Act 1992, the office of Registrar of Financial Institutions will continue for a period of up to twelve months to give effect to matters relating to the transfer and the winding-up of the affairs of the office of Registrar of Financial Institutions.

Clause 21 provides that the Registrar prepare an annual report and financial statements prior to the abolition of the office.

Clause 22 provides that the office of Registrar be abolished no later than twelve months from the transfer date.

Subdivision 3 - Provisions about particular funds

Clause 23 provides for the continuation and abolition of the Credit Unions Contingency Fund and the Supervision Fund.

Clause 24 provides for payments out of Credit Unions Contingency Fund and the distribution of the retained earnings of the contribution accounts of credit unions according to section 99A of the Financial Institutions Code.

Clause 25 states that the registrar must pay into the Credit Unions Contingency Fund the amount standing to the credit of the Supervision Fund. This amount is to be treated as retained earnings.

Clause 26 provides that as soon as practicable after the transfer date the Registrar must prepare financial statements for the Contingency Fund and that these statements be audited by the Auditor-General.

Clause 27 requires that the Auditor-General include in his or her report a statement concerning 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

Clause 28 enables the Registrar or an officer or past officer of the Registrar of Financial Institutions to provide certain information to APRA or ASIC.

Subdivision 5 - Transfer of the Registrar's assets and liabilities

Clause 29 provides that the Minister may enter into a transfer agreement relating to the assets and liabilities of the Registrar to APRA or ASIC under the provisions of the Financial Sector Reform Act.

Subdivision 6 - Proceedings involving the Registrar

Clause 30 provides that the Territory is substituted for the Registrar in certain proceedings (but not a proceeding for an offence) that are not finalised by the transfer date. The clause goes on to provide that certain proceedings (but not a proceeding for an offence) that may have been brought against AFIC may, after the transfer date, be brought against the Territory. In either case, evidence admissible for or against the Registrar is admissible for or against the Territory.

Clause 31 provides that a proceeding for an offence under the section 404 of the Financial Institutions Code that was commenced before the transfer date may be continued after the transfer date by APRA or ASIC in place of the Registrar.

Division 4 - APRA's and ASIC's functions and powers under codes

Clause 32 ensures that APRA and ASIC have the same enforcement powers, after the transfer date, as AFIC or the Registrar had in relation to the repealed code.

Clause 33 provides that certain provisions of the AFIC Code relating to enforcement powers continue to apply, with all necessary modifications, in relation to anything done or omitted to be done before the transfer date.

Clause 34 provides that certain provisions of the Financial Institutions Code relating to enforcement powers and special investigations continue to apply, with all necessary modifications, in relation to anything done or omitted to be done before the transfer date.

Clause 35 provides that certain provisions of the Financial Institutions Code relating to enforcement powers and special investigations, as applied under section 40 of the AFIC Code, continue to apply, with all necessary modifications, in relation to anything done or omitted to be done before the transfer date.

Clause 36 provides that under an applied provision only appropriately qualified person may authorise or delegate power to a person.

Clause 37 confers functions and powers on APRA and ASIC for the purposes of this division.

Division 5 - Matters relating to deregistered societies

Clause 38 defines the term "society" as before the transfer date.

Clause 39 applies this division to a society whose registration has been cancelled before the transfer date.

Clause 40 is concerned with the vesting in ASIC of property held by a society and the functions of ASIC in dealing with such property.

Clause 41 allows ASIC to act for a society provided that ASIC is satisfied that the society or liquidator would be bound to act if the society still existed.

Clause 42 allows a person to recover from a society's insurer an amount that was payable to the society under the insurance contract provided that the society had a liability to the person and the insurance contract covered the liability immediately prior to the cancellation of the registration.

Clause 43 confers functions and powers on ASIC for the purposes of this division.

Division 6 - Miscellaneous

Clause 44 provides that moneys from a person's dormant accounts that have been placed in a pooled account are deemed to be notionally transferred back to the person's deposit account.

Clause 45 provides that mergers or transfers of engagements that have commenced under the Financial Institutions Code may be continued in accordance with the Financial Institutions Code after the transfer date with APRA or ASIC standing in the place of the SSA.

Clause 46 provides that appeals to the Financial Institutions Appeals Tribunal not heard at the transfer date will be taken to be withdrawn.

PART 5 - MISCELLANEOUS

Clause 47 enables the Executive to make regulations amending the provisions of this Act or any other Act in relation to any matter arising out of the enactment of this Act. Such regulations can only be made during the twelve months commencing on the transfer date.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Schedule 1 provides for consequential amendments to other ACT statutes, to omit references to the Financial Institutions (ACT) Code 1992. The amendments substitute the term "authorised deposit-taking institution" for "banking institution" for reasons of consistency with amendments to Commonwealth legislation, specifically the *Banking Act 1959*.

SCHEDULE 2 DICTIONARY

Schedule 2 is the dictionary for the interpretation of the Act.