

1992

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY
FINANCIAL INSTITUTIONS (CONSEQUENTIAL AMENDMENTS) BILL 1992
EXPLANATORY MEMORANDUM

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FINANCIAL INSTITUTIONS (CONSEQUENTIAL AMENDMENTS) BILL 1992

OUTLINE

This Bill changes existing legislation to make provision for the financial institutions scheme set up by the *Financial Institutions (Application of Laws) Bill 1992*. At present, credit unions and building societies are regulated by the *Co-operative Societies Act 1939*. When the *Financial Institutions (Application of Laws) Bill* commences on 1 July 1992, the *Co-operative Societies Act* will no longer apply to these bodies. It will, however, continue to regulate trading and services societies, and housing co-operatives. The *Co-operative Societies Act* has also been amended to remove sexist language, as well as references to the old *Companies Act*, which has now been replaced by the Corporations Law.

A number of other Acts require minor changes as a result of the financial institutions scheme, and they are also amended by this Bill.

This Bill is part of a package which contains the *Financial Institutions (Application of Laws) Bill 1992*, which applies the Financial Institutions Code and the AFIC Code in the ACT, and the *Financial Institutions (Supervisory Authority) Bill 1992*, which establishes the office of the Registrar of Financial Institutions.

FINANCIAL IMPACT STATEMENT

There are no financial considerations involved in this Bill.

NOTES ON CLAUSES

Formal Clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and its commencement. This Bill will commence at the same time as the whole financial institutions scheme.

Amendments

Clause 3 provides for amendments to the Acts set out in Schedule 1. Clause 4 provides for amendments to the Regulations set out in Schedule 2.

SCHEDULE 1: AMENDMENTS OF ACTS

Agents Act 1968

The Financial Institutions (ACT) Code is defined in s5(1) of the Act, and references to the *Co-operative Societies Act* in s5(1B)(c) and (d) are changed to the Financial Institutions (ACT) Code.

Co-operative Societies Act 1939

This Act has been amended to remove references to credit societies and building societies where necessary. Any sexist language has been removed, some sections have been amended to clarify their meaning, and references to the old *Companies Act* have been updated. The substantive changes will be dealt with first. The term 'the financial institutions legislation' refers to the *Financial Institutions (Application of Laws) Act* and Regulations, the *Australian Financial Institutions Commission (ACT) Act* ('the AFIC Act') and Regulations, and the prudential standards made under the AFIC Act.

The definitions of '*Companies Act*', 'credit society', 'Insurance Corporation', 'permanent building society', 'prescribed period', 'primary loan', 'primary object', 'relevant date', and 'secondary object' are removed from section 4(1).

A number of new definitions are added, including 'credit union' and 'building society'. These bodies are given the same meanings as they have under the

financial institutions legislation. Definitions of 'Corporations Law', 'Corporations Regulations', 'Financial Institutions (ACT) Code' and 'special resolution' are also inserted.

Section 5C, which allowed the National Deposit Insurance Corporation access to the records of the Registrar, is repealed. The Corporation is a body which holds the funds of building societies. It will be dealt with in future under the transitional provisions.

Section 7 is amended by the addition of a new sub-section (12), which helps to clarify its meaning. This section deals with special meetings and inquiries.

Parts IIIA, IIIB and IIID of the Act are repealed. Parts IIIA and IIIB outline the objects and operating requirements of building societies and credit societies. These matters are now dealt with under the financial institutions legislation. Part IIID (Loans to Aboriginals) has not been used for a number of years.

Section 16A is amended to delete references to building societies. This provision is no longer necessary, as the powers of building societies are now dealt with under the financial institutions legislation. Section 18 is also amended because amalgamations are now covered by the financial institutions legislation.

Section 22 is amended to delete references to building societies. The shares of building societies are regulated by the financial institutions legislation.

Section 23A is repealed. This dealt with the liquidity requirements of credit unions, which are now dealt with under the financial institutions legislation.

Section 29 has been amended by the addition of sub-section (7A), which clarifies its meaning. This section deals with the consequences of the death of a member of a society.

Section 32 has been amended to complement section 144 of the Financial Institutions Code. The redrafted section 32 sets out conditions under which certain bodies may include the word 'co-operative' in their names. Building societies, credit unions, services corporations or companies which have been exempted by the Minister may use 'co-operative' in their names. Companies or societies formed

or incorporated outside the Territory may apply to the Registrar of Co-operative Societies for approval to use 'co-operative' in their names.

References to building societies and credit unions are deleted from section 37. The investments of building societies and credit unions are now dealt with under the financial institutions legislation.

Sections 37A and 37B are repealed. Investments in corporations by credit unions, and investments by the Australian Federation of Credit Unions Limited will now be controlled by the financial institutions legislation.

Section 38, which dealt with transfers of engagements, is replaced with a new section 38, which does not refer to building societies and credit unions. The financial institutions legislation now regulates voluntary transfers of engagements from these bodies. The new section 38 provides for the transfer of engagements between trading societies.

Section 38AA(14) is amended to take account of the financial institutions legislation: building societies and credit unions are no longer registered under the *Co-operative Societies Act*.

Section 39A is repealed. The financial institutions legislation now grants power to building societies to act as agents.

Section 42(1A) is omitted. The financial institutions legislation now determines the records a building society must keep.

Section 48 is amended by the addition of a new sub-section (3A), which helps to clarify its meaning. This section deals with special resolutions.

Section 56(4)(d) is omitted, as the accounts and auditing of building societies are now dealt with under the financial institutions legislation.

Section 58(1)(j) is omitted. The suspension of operations of building societies or credit unions is now dealt with under the financial institutions legislation.

Section 59 is amended by the addition of a new sub-section (8), which helps to clarify its meaning. This section deals with the winding-up of societies.

Section 60 is amended by inserting a new subsection (1A), which will aid in enforcing the Corporations Law and Corporations Regulations in their application to societies, and will ensure that there are adequate measures to enforce the various winding-up procedures applied to societies.

Section 80A(1) is amended to omit references to sections which have been repealed in Parts IIIA and IIIB. Section 80B is also amended as a result of the changes to s80A.

Section 81 is amended to omit references to sections which have been repealed earlier. The power to make regulations with respect to building societies and credit unions is now in the financial institutions legislation.

The following sections have been amended to replace references to the old *Companies Act* with references to the Corporations Law:

Sections 4(1), 4(4), 16AA, 35(4), 38A(1), 38A(1A), 38A(2)(c), 38A(4)(a), 38A(5), 38A(5)(b), 38A(5)(b)(i), 38A(8)(a), 38A(8)(b)(i), 38A(10), 38A(17), 59(2), 60(1) and (2), 60A(c), 80E and 81(l).

The definition of 'Commission' in section 4(1) has been amended so that it now applies to the Australian Securities Commission instead of the Corporate Affairs Commission.

Section 60(2)(i) is omitted because there is no Corporations Law provision corresponding to the *Companies Act* provision it was based on.

The following sections have been amended to remove sexist language from the Act. Their effect remains unchanged:

Sections 6(1), 6(2), 9(c), 11(1) and (2), 12, 15(3), 16(7), 17(3), 18(3), 21(4), 22(7) and (8), 23(1), 24, 25(1), 29(1), (2), (5), (7) and (8), 35(4), 37(3), 38A(7), 38A(14), 38A(15), 45(1), 46(2), 47, 48(3), 49(1)(ix)(e), 49(2), 49(4), 51(7) and (11), 53(3), (5) and (6), 55(2), 56(3), 56(4)(a) and (b), 56(6), 57(1), 58(1), 58(4), 59(4), 76(2), 77(2).

The following sections have been re-worded to clarify their meaning. Their effect remains unchanged:

Sections 7(11), 9(c), 11(1) and (2), 14, 16AA, 21(4)(f), 22, 29(1), (2) and (8), 30(1), (2) and (4), 35(3), 37(1)(c), 38A(1), 38A(4)(c), 38A(8)(b)(ii), 38A(15), 38A(19), 41, 45, 46(2), 47(1), 49(2) and (4), 50(2), (3A), (3)(b) and (6), 51(6) and 51(7), 51(11)(d), (f), and (h), 51(12), 51(13), 53(1), (2) and (3), 56(5), 58(2) and (3), 59(1), 59(3)(a) and (b), 59(4), 59(6), 59(7), 60(2), 76(2), 77(2), 81(a).

Credit Act 1985

A definition of 'financial institution' is inserted into section 5(1). A financial institution is defined as a building society or credit union within the meaning of the Financial Institutions (ACT) Code, a society registered under the *Co-operative Societies Act 1939*, or a body registered under a State law which corresponds to the *Co-operative Societies Act*.

Sub-sections 18(1), 156(1)(g) and (ga), and 156(3)(l) and (m) are amended to refer to financial institutions, rather than to societies registered under the *Co-operative Societies Act* (or the equivalent legislation in another State).

Taxation (Administration) Act 1987

Section 3(g) is amended to overcome a technical error in the drafting of the *Liquor Tax (Consequential Provisions) Act 1991*.

The definition of 'building society' in section 4(1) is amended to refer to the Financial Institutions (ACT) Code rather than the *Co-operative Societies Act*.

Trustee Act, 1925 of the State of New South Wales in its application to the Territory

Section 14(1) is amended to remove sexist language.

Section 14(1)(g)(ii) is amended to refer to the *Land (Planning and Environment) Act 1991*. This is to rectify an omission in the *Land (Planning and Environment) (Consequential Provisions) Act 1991*.

Section 14(1) (h) is amended to refer to the Corporations Law rather than the *Companies Act*.

Sections 14(2A)(a)(ii) and (b)(i) are amended to refer to the 'building societies legislation' rather than the *Co-operative Societies Act*.

Sections 14(2A) and (2AA) are omitted, and are replaced by new sections outlining the criteria the Minister must apply in deciding whether or not to approve building societies as authorised investments for trustees. A local building society must have carried on business in the Territory for at least 10 years, must have withdrawable funds of at least \$50,000,000, and must have substantially complied with the building societies law in the last 5 years. The requirements for foreign building societies are similar.

Section 14(2B) is amended to refer to the Registrar of Financial Institutions rather than the Registrar of Co-operative Societies.

The definitions of 'building society' and 'withdrawable funds' in section 14(14) are amended, and new definitions of 'building societies law' (after 1 July 1992, this means the financial institutions legislation), 'building society', 'local building society', 'foreign building society' and 'Financial Institutions (ACT) Code' are inserted.

SCHEDULE 2: AMENDMENTS OF REGULATIONS

Co-operative Societies Regulations

Minor technical changes are made to Regulation 2.

Regulation 2AA(a) is omitted.

Regulation 2AB is amended to clarify its meaning. The effect of the regulation is the same.

Regulation 2ABA is amended to refer to the Corporations Law rather than the *Companies Act*, and to the Australian Securities Commission rather than the Corporate Affairs Commission.

Regulations 2AC to 2AF are repealed, as they apply to sections of the *Co-operative Societies Act* which are repealed by Schedule 1.

Regulations 26A and 26B are amended to refer to the regulations made under the Corporations Law rather than the *Companies Act*. The table under regulation 26A is also amended to refer to the Corporations Law.

Schedule 2 is omitted, as it relates to Regulation 2AE, which is repealed by this Act.

Schedule 1 is amended to refer to the Corporations Law rather than the *Companies Act*.

Financial Institutions Duty Regulations

Regulations 3(1)(a)(i) and (ii) are amended to refer to credit unions rather than credit societies.

Regulation 3(2) is amended. New definitions of 'credit union', 'building society' and 'Financial Institutions (ACT) Code' are added.