

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Financial Institutions (Supervisory
Authority) Bill 1992**

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Crown

PART II—ESTABLISHMENT AND FUNCTIONS

5. Establishment of the office of Registrar
 6. Independence from the Crown
 7. Functions
 8. Delegations
-

82032 (T32/92)

TABLE OF PROVISIONS—continued**Section**

- 9. Budget
- 10. Application of *Audit Act 1989*

PART III—CONSTITUTION

- 11. Appointment of Registrar
- 12. Termination and suspension of appointment
- 13. Resignation
- 14. Acting appointments
- 15. Registrar's staff
- 16. Defective appointments
- 17. Liability of Registrar
- 18. Liability of Registrar's staff

PART IV—STANDARDS OF CONDUCT

- 19. Interpretation—performance of functions
- 20. Improper conduct
- 21. Registration of financial interests
- 22. Public access to Register
- 23. Disclosure of pecuniary conflicts of interest
- 24. Disclosure of employment relationships and associations

PART V—EVIDENCE

- 25. Registrar's seal
- 26. Registrar's signature
- 27. Directions and determinations
- 28. Levies, compulsory loans and funds

PART VI—MISCELLANEOUS

- 29. Regulations

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Financial Institutions (Supervisory
Authority) Bill 1992**

**A BILL
FOR**

**An Act to provide for the establishment of a
supervisory authority for the purposes of the uniform
financial institutions scheme, and for related
purposes**

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Financial Institutions (Supervisory Authority) Act 1992*.

Commencement

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

5 (2) The remaining provisions commence on the commencement day within the meaning of the *Financial Institutions (Application of Laws) Act 1992*.

Interpretation

3. In this Act, unless the contrary intention appears—

10 “AFIC” means the Australian Financial Institutions Commission established by the *Australian Financial Institutions Commission Act 1992* of the State of Queensland;

“AFIC (ACT) Code” means the provisions applying because of section 5 of the *Financial Institutions (Application of Laws) Act 1992*;

15 “AFIC (ACT) Regulations” means the provisions applying because of section 6 of the *Financial Institutions (Application of Laws) Act 1992*;

“defined person” means—

- (a) the Registrar;
- (b) a person appointed to act in the office of Registrar; or
- 20 (c) a public servant employed to assist the Registrar in the performance of the functions of the office.

“financial institution” has the meaning given by section 3 of the AFIC (ACT) Code;

25 “financial institutions agreement” has the meaning given by section 3 of the AFIC (ACT) Code;

“Financial Institutions (ACT) Code” means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*;

30 “Financial Institutions (ACT) Regulations” means the provisions applying because of section 9 of the *Financial Institutions (Application of Laws) Act 1992*;

“financial institutions legislation” means—

- (a) this Act and the regulations;
- 35 (b) the *Financial Institutions (Application of Laws) Act 1992* and any regulations made under that Act;

- (c) the AFIC (ACT) Code;
- (d) the AFIC (ACT) Regulations;
- (e) the Financial Institutions (ACT) Code; and
- (f) the Financial Institutions (ACT) Regulations;

5 “financial institutions scheme” has the meaning given by section 6 of the AFIC (ACT) Code;

“financial interest”, in relation to a financial institution, means—

- (a) a direct or indirect interest in the securities of a financial institution or a related body corporate;
- 10 (b) money deposited with a financial institution or a related body corporate;
- (c) money borrowed from a financial institution or a related body corporate; or
- 15 (d) membership of a financial institution or a related body corporate;

“foreign State supervisory authority” means an authority performing the functions of a State supervisory authority for the purposes of the provisions applying in a State or another Territory which correspond to the financial institutions legislation;

20 “pecuniary interest” includes a financial interest;

“Registrar” means—

- (a) the office of Registrar of Financial Institutions established under Part II; or
- (b) the person holding that office for the time being;

25 “related body corporate” has the meaning given by section 11 of the Financial Institutions (ACT) Code;

“securities” has the meaning given by section 92 of the Corporations Law.

Crown

30 4. (1) This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

PART II—ESTABLISHMENT AND FUNCTIONS**Establishment of the office of Registrar**

5. (1) The office of the Registrar of Financial Institutions is established.

5 (2) The Registrar—

- (a) is a corporation sole;
- (b) has perpetual succession; and
- (c) is to have an official seal.

Independence from the Crown

10 6. (1) The Registrar does not represent the Crown.

(2) Except as expressly provided in the financial institutions legislation, the Registrar is not subject to direction by or on behalf of a Minister, the Executive or the Ministerial Council.

Functions

15 7. (1) The Registrar shall perform the functions conferred on the State supervisory authority by the financial institutions legislation.

(2) The Registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of the duties of the office.

20 (3) The Registrar's power includes—

- (a) the power to enter into contracts;
- (b) the power to acquire, hold and dispose of property;
- (c) the power to appoint agents and attorneys;
- (d) the power to engage consultants; and

25 (e) any other power exercisable by a natural person.

(4) The Registrar shall, in performing the functions of the office—

- (a) comply with the financial institutions agreement; and
- (b) strive to ensure that the principal objects of the financial institutions scheme are achieved.

30 Delegations

8. (1) The Registrar may, by instrument, delegate any or all of the powers of the office—

- (a) to a public servant;
- (b) to the holder of an office established by or under an Act; or
- (c) with the written approval of the Minister—to a foreign State supervisory authority.

5 (2) The Registrar shall not delegate a power under section 95 of the Financial Institutions (ACT) Code.

(3) Where a foreign State supervisory authority delegates a power to the Registrar, the Registrar may exercise that power in accordance with the instrument of delegation.

10 **Budget**

9. (1) The Registrar shall authorise expenditure only in accordance with the budget for the financial year as determined under this section, unless the Minister directs otherwise.

15 (2) The Registrar shall submit a draft budget for each financial year to the Minister in such form, and at such time, as the Minister directs.

(3) The budget for the financial year is—

- (a) if the Minister determines the budget for the financial year within 60 days after the submission of the draft budget—the budget as determined by the Minister; or
- 20 (b) if the Minister does not determine the budget within that period—the draft budget submitted to the Minister.

Application of Audit Act 1989

10. The Registrar is a public authority to which Division 3 of Part IX of the *Audit Act 1989* applies.

25

PART III—CONSTITUTION

Appointment of Registrar

11. (1) The Minister shall appoint a public servant to the office of Registrar.

30 (2) Before making a decision to appoint a person to the office of Registrar, the Minister shall request the person to give the Minister a written assurance that he or she has no direct or indirect pecuniary interest which would be likely to conflict with the proper performance of the functions of the office.

(3) The Minister shall not appoint a person to the office of Registrar—

- (a) if the person holds an office or an appointment with a financial institution;
- 5 (b) if the person fails to provide the assurance requested under subsection (2);
- 10 (c) if, in the opinion of the Minister based on reasonable grounds (notwithstanding any assurance provided as requested under subsection (2)), the person has a direct or indirect pecuniary interest which would be likely to conflict with the proper performance of the functions of the office; or
- (d) if the person is otherwise not a fit and proper person to hold the office of Registrar, in the opinion of the Minister based on reasonable grounds.

Termination and suspension of appointment

15 **12. (1)** The Minister shall, by instrument, terminate the appointment of the Registrar if he or she—

- (a) is physically or mentally incapable of continuing in office, in the opinion of the Minister based on reasonable grounds;
- (b) accepts an office or appointment with a financial institution;
- 20 (c) acquires a direct or indirect pecuniary interest which, in the opinion of the Minister based on reasonable grounds, so seriously conflicts, or is likely so seriously to conflict, with the proper performance of the functions of the office as to require the termination of his or her appointment;
- 25 (d) contravenes the financial institutions legislation without reasonable excuse; or
- (e) is no longer a fit and proper person to hold the office, in the opinion of the Minister based on reasonable grounds.

30 (2) The Minister may, by instrument, suspend the appointment of the Registrar for a specified period if he or she acquires a direct or indirect pecuniary interest which, in the opinion of the Minister based on reasonable grounds, conflicts, or is likely to conflict, with the proper performance of the functions of that office.

Resignation

35 **13.** The Registrar may resign by written notice to the Minister.

Acting appointments

14. (1) The Minister may, by instrument, appoint a public servant to act in the office of Registrar—

- 5
- (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the person appointed to that office is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office.

10 (2) A person shall not be appointed to act in the office of Registrar for a continuous period of more than 12 months.

(3) Section 12 applies in relation to an appointment under this section as if it were an appointment of a person to the office of Registrar.

Registrar's staff

15 15. (1) The Registrar is to be assisted by public servants in the performance of the functions of the office.

(2) The Registrar is not to be assisted in the performance of the functions of the office by a public servant who holds an office or appointment with a financial institution.

20 **Defective appointments**

16. Anything done by (or in relation to) the Registrar or a person purporting to hold office as Registrar, or to act in that office, is not invalid merely because there is a defect or irregularity in connection with the appointment of a person to the office of Registrar, or to act in that office.

25 **Liability of Registrar**

17. (1) The Registrar incurs no personal liability for an honest act or omission occurring in the performance or purported performance of the functions of the office of Registrar under the financial institutions legislation.

30 (2) Subsection (1) does not apply in relation to an act or omission resulting from—

- 35
- (a) wilful misconduct by the Registrar;
 - (b) wilful neglect by the Registrar; or
 - (c) wilful failure by the Registrar to comply with the financial institutions legislation.

(3) A liability that would (but for this section) personally attach to the Registrar attaches to the office of Registrar.

Liability of Registrar's staff

5 18. (1) A public servant assisting the Registrar in the performance of the functions of the office incurs no personal liability for an honest act or omission occurring in the course of that assistance.

(2) Subsection (1) does not apply in relation to an act or omission resulting from—

- 10 (a) wilful misconduct by the public servant;
- (b) wilful neglect by the public servant; or
- (c) wilful failure by the public servant to comply with the financial institutions legislation.

(3) A liability that would (but for this section) personally attach to a public servant attaches to the office of Registrar.

15 PART IV—STANDARDS OF CONDUCT

Interpretation—performance of functions

19. In this Part, a reference to the performance of the functions of the Registrar includes a reference to the assistance of the Registrar in that performance.

20 Improper conduct

20. (1) In performing the functions of the Registrar, a defined person shall not act improperly—

- 25 (a) so as to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) so as to cause detriment to the office of Registrar or to a financial institution.

(2) A person who is, or who has been, a defined person shall not make improper use of information acquired in performing the functions of the Registrar—

- 30 (a) so as to gain, directly or indirectly, an advantage for himself or herself, or for any other person; or
- (b) so as to cause detriment to the office of Registrar or to a financial institution.

Penalty: \$20,000 or imprisonment for 2 years, or both.

Registration of financial interests

21. (1) The Registrar shall maintain a Register of Financial Interests.

5 (2) A defined person shall cause particulars of each of his or her financial interests to be entered on the Register within 7 days after becoming a defined person.

Penalty: \$2,000.

(3) A defined person shall cause particulars of—

- 10 (a) the acquisition of a financial interest;
- (b) a change in a financial interest, being a change of a type prescribed in the regulations; or
- (c) the termination of a financial interest;

to be entered on the Register within 7 days after that acquisition, change or termination.

Penalty: \$2,000.

15 (4) The particulars referred to in subsection (2) or (3) include—

- (a) the nature and extent of the relevant financial interest, or of the change in financial interest (as the case requires); and
- (b) the date on which the financial interest was acquired, changed, or terminated (as the case requires).

20 (5) It is a defence to a prosecution for an offence under subsection (2) or (3) if it is established that the relevant defined person was not aware—

- (a) in the case of a prosecution under subsection (2)—of the existence of the relevant financial interest; or
- 25 (b) in the case of a prosecution under subsection (3)—of the acquisition, change or termination of the relevant financial interest.

Public access to Register

22. The Registrar shall—

- (a) keep the Register of Financial Interests in the Registrar's principal office; and
- 30 (b) ensure that the Register is available for public inspection (without fee) during normal business hours.

Disclosure of pecuniary conflicts of interest

23. (1) If—

- 5
- (a) a defined person has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Registrar; and
 - (b) the interest could conflict with the proper performance of the Registrar's functions in relation to that matter;

the defined person shall immediately inform the Minister accordingly in writing.

10 Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the relevant defined person—

- 15
- (a) was not aware of the relevant interest; or
 - (b) could not reasonably have been aware of the relevant potential for conflict.

Disclosure of employment relationships and associations

20 24. (1) A defined person who (in the course of performing the functions of the Registrar) is required to consider any matter concerning a related employer or associate shall immediately inform the Minister accordingly in writing.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the relevant defined person was not aware that the relevant person or body was a related employer or associate.

25 (3) In this section—

“related employer or associate”, in relation to a defined person, means a person or body—

- 30
- (a) by whom the defined person—
 - (i) is employed; or
 - (ii) has been employed at any time during the previous 3 years;
 - (b) who—
 - (i) is a related body corporate in relation to an employer or former employer referred to in paragraph (a); or

- (ii) has at any time during the previous 3 years been such a related body; or
 - (c) with whom the defined person—
 - (i) has an association of a type prescribed in the regulations; or
 - (ii) has had such an association at any time during the previous 3 years;
- except where the person or body is the Territory, the Commonwealth, a State, another Territory, AFIC or a foreign State supervisory authority.

PART V—EVIDENCE

Registrar's seal

25. (1) The Registrar's seal is to be kept in such custody as the Registrar directs and used only as authorised by the Registrar.
- (2) Judicial notice shall be taken of the imprint of the Registrar's seal appearing on a document.
- (3) A document bearing the Registrar's seal is to be presumed to be properly sealed unless the contrary is proved.

Registrar's signature

26. Judicial notice shall be taken of—
- (a) the official signature of a person who holds, or who has held, office as Registrar; and
 - (b) the fact that that person holds, or has held, that office.

Directions and determinations

27. Evidence of a direction issued, or determination made, by the Registrar under the financial institutions legislation may be given by a copy of the direction or determination which is certified by the Registrar as being a true copy.

Levies, compulsory loans and funds

28. Evidence of any matter related to—
- (a) a supervision levy, the amount of a contribution, or a support levy, determined under Subdivision 6 of Division 2 of Part 2 of the Financial Institutions (ACT) Code; or

- (b) an amount ordered to be paid by way of compulsory loan under that Subdivision;

may be given by a certificate executed by the Registrar.

PART VI—MISCELLANEOUS

5 Regulations

29. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

10