

1992

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY
FINANCIAL INSTITUTIONS (APPLICATION OF LAWS) BILL 1992
EXPLANATORY MEMORANDUM**

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FINANCIAL INSTITUTIONS (APPLICATION OF LAWS) BILL 1992

OUTLINE

This Bill establishes a new scheme for regulating building societies and credit unions in the ACT. The scheme is contained in the Financial Institutions Code, a Queensland Code which all the States and Territories have agreed to enact. The scheme will be administered nationally by the Australian Financial Institutions Commission (AFIC), a body which will be based in Queensland, and is established by the AFIC Code. This Bill applies the Financial Institutions Code and the AFIC Code in the ACT, and makes provision for offences, fees and charges, and appeals.

This Bill is part of a package of legislation which also includes the *Financial Institutions (Supervisory Authority) Bill 1992* and the *Financial Institutions (Consequential Amendments) Bill 1992*. Together, these Bills fulfil the ACT's obligations under the Heads of Agreement on Financial Institutions, which was signed by the Chief Minister in November 1991. The application of this legislation in the ACT will be slightly different from that in other States because the ACT cannot exclude the application of the Commonwealth Corporations Law or the *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth)*.

FINANCIAL IMPACT STATEMENT

The Financial Institutions Agreement provides that apart from the initial establishment costs of AFIC, the ongoing costs associated with supervision are to be borne primarily by financial bodies and not by Governments. The ACT's contribution to the initial establishment costs is \$0.028m in 1992-93 which will be absorbed within ACT Treasury's budget.

The AFIC Board is required to submit its annual budget to the Ministerial Council for determination. The AFIC Board will determine an annual administration levy to be paid by financial bodies. The levy will be collected by the Registrar of Financial Institutions and paid to AFIC.

The Financial Institutions Code provides that the supervisory authority may determine a supervision levy to be paid by financial bodies. The amount of the

levy will be determined by the Registrar of Financial Institutions in consultation with financial bodies. The levy will be collected by the Registrar.

Both the AFIC administration levy and the supervisory levy will be set after determination of the respective budgets.

NOTES ON CLAUSES

INTRODUCTORY

PART I

Formal Clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and its commencement. The Bill will commence when the whole financial institutions scheme becomes operational.

Interpretation

Clause 3 abbreviates various terms for convenience, such as Australian Financial Institutions Commission (abbreviated to "AFIC") and *Australian Financial Institutions Commission Act* (abbreviated to "AFIC Act").

References to Queensland Acts

If the AFIC Code or the Financial Institutions Code are amended in Queensland, those amendments apply automatically in the ACT: Clause 4.

AFIC (ACT) CODE AND AFIC (ACT) REGULATIONS

Part II applies the AFIC Code and the regulations made under that Code in the ACT, and interprets their provisions for ACT purposes. The Code sets up the Australian Financial Institutions Commission (AFIC), which will oversee the national financial institutions system, make and implement a system of prudential standards for financial institutions, register and supervise providers of services to

financial institutions, and ensure that the State supervisory authorities comply with the financial institutions legislation. The AFIC Code also provides for appeals from decisions of AFIC and the State supervisory authorities.

Clauses 5 and 6 apply the AFIC Code and the regulations made under that Code in the ACT. Where regulations made under the *AFIC Act* take effect in the ACT before they are notified in the *Queensland Government Gazette*, they must operate to the advantage of a person, by increasing their rights or by decreasing their liabilities. They must not operate to disadvantage a person. Clause 7 defines some words used in the AFIC Code and Regulations. These definitions are intended to adapt the Code to ACT purposes. 'Premier', for example, is defined as 'Chief Minister', and 'Legislature of this State' as 'the Legislative Assembly'.

FINANCIAL INSTITUTIONS (ACT) CODE AND FINANCIAL INSTITUTIONS (ACT) REGULATIONS

Part III applies the Financial Institutions Code and the regulations made under that Code in the ACT, and interprets their provisions for ACT purposes. The Financial Institutions Code regulates building societies and credit unions. It sets out their principles, objects and characteristics, the manner of their formation and registration, fundraising provisions, and contains sections governing mergers and transfers of engagements. It also establishes a supervisory authority in each State and Territory which will ensure that financial institutions comply with the Code.

Clauses 8 and 9 apply the Financial Institutions Code and the regulations made under that Code in the ACT. As with regulations made under the *AFIC Act*, if regulations made under the *Financial Institutions Act* take effect in the ACT before they are notified in the *Queensland Government Gazette*, they must operate to the advantage of a person, by increasing their rights or by decreasing their liabilities. They must not operate to the disadvantage of a person. Clause 10 gives the meanings of certain words used in the Financial Institutions Code and regulations, and adapts some terms in the Code for ACT purposes.

CONFERRAL OF FUNCTIONS AND POWERS

The clauses in Part IV restate some of the provisions of the AFIC Code, outlining the jurisdiction conferred on the national regulatory bodies under the Code, and the appellate jurisdiction of the Queensland Supreme Court.

Clause 11 confirms that AFIC has the powers given it by the financial institutions legislation of the ACT: this Bill, the *Financial Institutions (Supervisory Authority) Bill 1992*, and the *Financial Institutions (Consequential Amendments) Bill 1992*.

Clause 12 states that the Australian Financial Institutions Appeals Tribunal (which is established by the AFIC Act) has the powers conferred on it by the financial institutions legislation of the ACT.

Clause 13 gives the Queensland Supreme Court jurisdiction with respect to appeals from decisions of the Appeals Tribunal under the AFIC (ACT) Code.

STATE SUPERVISORY AUTHORITY

The State Supervisory Authority established by Part V is an important part of the financial institutions scheme. It registers, supervises, regulates, and enforces compliance with the Financial Institutions Code for financial institutions in each jurisdiction.

The Supervisory Authority for the ACT will be the Registrar of Financial Institutions: clause 14. The office of the Registrar and its powers and functions are detailed in the *Financial Institutions (Supervisory Authority) Bill 1992*.

APPLICATION TO THE CROWN

Under clause 15, the financial institutions legislation of the Territory is binding on the Crown, but the Crown is not liable to be prosecuted for any offence.

IMPOSITION OF FEES AND OTHER AMOUNTS

Part VII imposes the fees provided for by the financial institutions legislation.

Clause 16 imposes the fees prescribed by the Regulations made under the Financial Institutions (ACT) Code and the AFIC (ACT) Code. Clause 17 imposes levies, contributions and compulsory loans which are required to be paid under the AFIC (ACT) Code and the Financial Institutions (ACT) Code.

GENERAL

If AFIC sends the Chief Minister a report on the performance of the Registrar of Financial Institutions, he or she must respond within 14 days. If there is no response, or if AFIC thinks it is necessary, AFIC can send a written request to the Chief Minister to table a copy of the request and the report before the Legislative Assembly within 14 days of receipt of the request. The Chief Minister is obliged to comply with this request. If the Assembly is not sitting, the Chief Minister may give a copy of the report to the Clerk of the Assembly. The report will be taken to have been tabled when a copy of it is given to the Clerk: clause 18.

Under Clause 19, the ACT Executive can amend the Financial Institutions (ACT) Code and its regulations, and the AFIC (ACT) Code and its regulations, provided the Ministerial Council approves the amendment.

Fees, fines, penalties and other money are imposed under the financial institutions legislation are payable to the Territory unless a person is specified to receive payment for them: clause 20.

TRANSITIONAL

The financial institutions legislation will replace the old scheme regulating building societies and credit unions under the *Co-operative Societies Act 1939*. That Act will be amended by the *Financial Institutions (Consequential Amendments) Bill 1992* so that it no longer applies to building societies and credit unions. These provisions are intended to ease the transition between the old scheme and the new one.

Clause 21 has the effect that words and expressions have the same meaning in this Part as they do in the Financial Institutions (ACT) Code ('the Code'). One expression which is relevant in this Part is 'continuing society'. This refers to a building society or credit society which operated under the *Co-operative Societies Act*, and will continue to operate under the financial institutions legislation.

A continuing society which has resolved to merge with another continuing society under the *Co-operative Societies Act* will be treated as if it had made that resolution under the Code: clause 22. If the society has complied with the requirements of the *Co-operative Societies Act*, it should be taken to have complied with the requirements of the Code.

If a continuing society has resolved to transfer its engagements to another continuing society under the *Co-operative Societies Act*, but has not done so by the time the Code comes into effect, the society will be taken to have made the resolution under the Code, and the provisions of the Code will apply to the rest of the transfer: clause 23.

Clause 24 has the effect that where the Registrar of Co-operative Societies has directed a continuing building society or credit society to transfer its engagements to another continuing building or credit society, and the transfer has not taken place by 1 July 1992, the provisions of the Code apply to the transfer. In this case, the references in section 38AA of the *Co-operative Societies Act* to the Registrar of Co-operative Societies should be read as if they were references to the Registrar of Financial Institutions.

Where, however, the Registrar has directed that a trading society or a housing and services society transfer its engagements to a continuing building society or a credit society, and the transfer has not taken place by 1 July 1992, section 38AA of the *Co-operative Societies Act* continues to apply to the transfer.

Where the Registrar of Co-operative Societies has directed a continuing society to suspend its operations immediately before 1 July 1992, that direction is taken to have been made under the Code by the Registrar of Financial Institutions: clause 25.

Where an administrator was appointed to a continuing society by the Registrar of Co-operative Societies, under clause 26 the appointment is to continue as if it were an appointment of the Registrar of Financial Institutions. Directors of a continuing society appointed under the *Co-operative Societies Act* are taken to have been appointed under the Code.

All records and public files kept by the Registrar of Co-operative Societies which relate to continuing societies become the property of the Registrar of Financial Institutions on 1 July 1992: clause 27.

Clause 28 means that a special meeting or inquiry called or held in relation to a continuing society may continue under the financial institutions legislation, and will be treated as if it had been called or held under the Code.

Under clause 29, where an inspection is being carried out into the affairs of a building society under the *Co-operative Societies Act* on 1 July 1992, the inspection may continue as an investigation under the Financial Institutions (ACT) Code. The Registrar of Financial Institutions may appoint an inspector to continue the investigation under the Code, and any document or other information obtained before the commencement of the Code will be taken to have been properly obtained under the provisions of the Code.

The Registrar of Financial Institutions can institute proceedings under the *Co-operative Societies Act* in relation to a continuing society under clause 30. Where the *Co-operative Societies Act* refers to the Registrar of Co-operative Societies, this should be read as a reference to the Registrar of Financial Institutions.

Clause 31 allows the National Deposit Insurance Corporation continued access to the records of the Registrar of Co-operative Societies (which, at the commencement of this Act, become the records of the Registrar of Financial Institutions).

If a dispute between a member and a continuing society has been referred to the Registrar of Co-operative Societies or to arbitration under the *Co-operative Societies Act*, and the dispute has not been resolved by 1 July 1992, under clause 32 the Registrar may continue to hear the dispute as if the relevant sections of the *Co-operative Societies Act* were still in force.

The ACT Executive will have the power to make any regulations needed to make the financial institutions scheme operational, if the Ministerial Council approves of them: clause 33. These regulations will apply even if they conflict with any provision of the Financial Institutions (ACT) Code or the AFIC (ACT) Code. Where regulations made under these provisions take effect in the ACT before they are notified in the *Gazette*, they must operate to the advantage of a person, by increasing their rights or by decreasing their liabilities. Such regulations must not disadvantage a person.