

1992

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

FINANCIAL INSTITUTIONS (SUPERVISORY AUTHORITY) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by authority of the Treasurer

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OUTLINE

This Bill establishes the office of the Registrar of Financial Institutions. The ACT is a party to the Financial Institutions Agreement, which sets up a scheme to regulate building societies and credit unions nationally. Under the Agreement, the laws regulating these bodies will be uniform throughout Australia, and a national body, the Australian Financial Institutions Commission (AFIC), will supervise the scheme, determine prudential standards, and register and oversee special services providers. There will also be a supervisory authority set up in each State, which will register and supervise financial bodies, administer and enforce the financial institutions scheme, and protect the interests of depositors and members of societies.

The supervisory authority for the ACT is the Registrar of Financial Institutions. This Bill sets out the functions of the Registrar, the arrangements for the appointment of the Registrar, and the standards of conduct expected of the Registrar and his or her staff.

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 (Consequential Provisions) Bill 1992*, which amends the existing legislation regulating building societies and credit unions.

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 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

PRELIMINARY MATTERS

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 at the same time as the national financial institutions scheme.

Interpretation

Clause 3 defines a number of the words and phrases used in this Bill, for example, the 'financial institutions legislation' includes this Bill and its regulations, the *Financial Institutions (Application of Laws) Act 1992* and its regulations, the AFIC Code and its regulations, and the *Financial Institutions (ACT) Code* and its regulations.

Crown

The Crown is bound by this Act, although it is not liable to be prosecuted for any offence: clause 4.

ESTABLISHMENT AND FUNCTIONS

Part II sets up the office of Registrar, makes provision for the functions of the office, and outlines the powers of the Registrar. It also provides for matters relevant to the running of the office, such as independence from Ministerial direction, the budget of the office, the keeping of accounts, and the delegation of functions.

Clause 5 establishes the office of the Registrar of Financial Institutions . The Registrar is a corporation sole - that is, a company constituted by one person. The Registrar does not represent the Crown, and is not subject to direction by the Minister, the ACT Executive, or the Ministerial Council: clause 6.

As noted above, the Registrar of Financial Institutions is the State Supervisory Authority for the Territory. Clause 7 makes it clear that the Registrar will perform all the duties of the State Supervisory Authority under the Financial Institutions (ACT) Code, and lists some of the powers of the Registrar. In performing these duties, the Registrar must comply with the Financial Institutions Agreement (Clause 7(4)). The Registrar also has the power to enter into contracts, to buy, hold and sell property, and to do anything necessary to carry out the duties of the office.

The Registrar can delegate all or any of the powers of the office to a public servant, an office-holder established by an Act, or, if the Minister approves, to a foreign State supervisory authority: clause 8. It is intended that in the future the ACT will delegate its supervisory authority functions to another State to perform on an agency basis, although this has not yet been arranged. The Registrar cannot delegate the power to set the level of the supervision levy under section 95 of the Financial Institutions Code. The Registrar can accept delegations of power from the supervisory authorities of other States.

Under clause 9, the Registrar must submit a draft budget to the Minister when the Minister directs, and in a form that the Minister directs. If the Minister wishes to change the draft budget, he or she must do so within 60 days. If this is not done, the draft budget becomes the actual budget, and the Registrar can authorise spending accordingly.

The Registrar must comply with Division III, Part IX of the *Audit Act* : clause 10. The Registrar can open bank accounts, must keep accounts, is subject to audit by the

Auditor-General, and must submit an annual report and financial statements, but does not need to keep accounts in accordance with commercial practice.

CONSTITUTION

Part III outlines the qualifications a person must have to be the Registrar, allows for the termination and suspension of appointments and acting appointments, or for the resignation of the Registrar. It also exempts the Registrar from personal liability for actions done honestly in the course of his or her duties as Registrar.

The Registrar of Financial Institutions must be a public servant (clause 11). Only a person who has no financial interests which could prejudice his or her performance of the duties of Registrar is to be appointed to the position.

A person may not be appointed as Registrar if:-

- he or she has a pecuniary interest (whether direct or indirect) which could conflict with the functions of the office. This could include holding a substantial parcel of permanent shares in a building society;
- he or she holds an office or appointment with a financial institution;
- he or she refuses to assure the Minister that they have no conflict of interest, or if the Minister believes on reasonable grounds that they do have a conflict of interest, even if they have assured him otherwise; or
- he or she is not a fit and proper person to hold the office.

If the Registrar cannot perform his or her duties because of some incapacity, accepts an office or appointment with a financial institution, or acquires some financial interest that conflicts with his or her duties, the Minister must end his or her appointment: clause 12. The Registrar's appointment may also be terminated if he or she contravenes the financial institutions legislation, or the Minister thinks he or she is no longer a fit and proper person to hold office. Under clause 13, the Registrar may resign by written notice to the Minister.

Clause 14 allows for acting arrangements for the office of Registrar. A public servant may be appointed to act as Registrar if the Registrar is absent or cannot perform the duties of the office, or during a vacancy in that office. Acting

appointments are limited to a continuous period of no more than 12 months. The acting Registrar is subject to the same conflict of interest tests as the Registrar.

The office of the Registrar will be staffed by public servants. A public servant who holds an office or appointment with a financial institution may not be on that staff. (Clause 15).

Clause 16 saves any actions of the Registrar even though the appointment of that person was defective.

The Registrar cannot be personally sued for anything he or she does honestly in the course of his or her duties as Registrar: clause 17. If, however, the Registrar is deliberately neglectful, fails to comply with the financial institutions legislation, or otherwise engages in misconduct, he or she may be liable. If a person has a right of action against the Registrar, it is against the office of Registrar, not the Registrar personally. Clause 18 makes similar provision for the Registrar's staff.

STANDARDS OF CONDUCT

Part IV is designed to safeguard against the Registrar or the staff of the Registrar having any financial interest in the financial institutions they supervise. It sets out minimum standards of conduct (and provides for penalties where these are not adhered to), and establishes a register of the financial interests of the Registrar and his or her staff.

Clause 19 has the effect that the standards of conduct applied to the Registrar apply equally to anyone assisting the Registrar in the performance of his or her duties. They also apply to anyone acting in the position of Registrar, or to any of his or her staff. These people may not act improperly, or use any information acquired in the course of their duties to gain an advantage for themselves or any other person, or so as to cause detriment to the Registrar or to a financial institution (clause 20).

The Registrar must maintain a Register of Financial Interests under clause 21. The Registrar, any person acting as Registrar, and the staff of the Registrar must enter particulars of their financial interests on the Register within 7 days of commencing work in any of those positions. If their financial interests change, they end existing ones or acquire new ones, they must enter details of the acquisition, change or termination on the Register within 7 days.

Details of changes on the Register must include the nature and extent of the relevant financial interest, or of the change in financial interest, and the date on which the interest was acquired, changed or terminated.

A person may claim in their own defence that they were not aware of the existence of a financial interest, or not aware of the acquisition, change to or termination of that financial interest.

The Registrar must keep the Register in his or her principal office, and ensure that it is freely available for public inspection in business hours: clause 22.

Under clause 23, if the Registrar, the acting Registrar, or any member of the Registrar's staff has a direct or indirect pecuniary interest in a matter being considered by the Registrar which could conflict with the proper performance of the Registrar's functions in that matter, they must immediately inform the Minister of this in writing. If a person is prosecuted for not doing so, they can claim that they were not aware of the relevant interest, or could not reasonably have been aware of the relevant potential for conflict.

Clause 24 means that the Registrar, the acting Registrar, or any member of the Registrar's staff must inform the Minister in writing if they are required to consider a matter concerning:-

- any person or body by whom the Registrar, the acting Registrar, or the staff member is employed, or was employed during the last three years;
- a body corporate which is related to any such person or body, or has been at any time during the last three years; or
- a person or body which has an association of a prescribed type with such a person or body, or which has had such an association during the last three years, except where the person or body is the Territory, the Commonwealth, a State, another Territory, AFIC or a foreign State supervisory authority.

If a person is prosecuted for an offence under this section, they can claim in their own defence that the Registrar, the acting Registrar, or the staff member was not aware that the person or body was a related employer or associate.

EVIDENCE

Part IV makes provision for documents which may be used in evidence in judicial proceedings instituted under this Act.

The Registrar will have a seal, which will be used only as the Registrar directs. It is intended that the Registrar's seal will be accepted by a court without further proof that a document has been sealed by the Registrar: clause 25. This will be subject to evidence that it is not the Registrar's seal or that the Registrar did not authorise the use of the seal.

Clause 26 has the effect that a court will accept without further proof the official signature of a person who has held office as Registrar and the fact that they hold, or held that office.

A copy of a direction issued or a determination given by the Registrar will be received into evidence if the Registrar certifies that it is a true copy: clause 27.

Under clause 28, a certificate executed by the Registrar will be accepted as evidence in any matter related to a supervision levy, the amount of a contribution, a support levy determined under the Financial Institutions (ACT) Code, or an amount ordered to be paid by way of compulsory loan.

MISCELLANEOUS

The ACT Executive has power under clause 29 to make regulations setting out matters which need to be prescribed under this Act, or which are needed to put the Act into effect.