

Serial 161

Financial Sector Reform (Northern Territory) Act 1999

Mr Burke

**A BILL
for
AN ACT**

to make provision for the reform of the financial sector, to repeal the *Financial Institutions (NT) Act*, the *Friendly Societies (NT) Act* and the *Financial Institutions (Territory Supervisory Authority) Act* and for other purposes

NORTHERN TERRITORY OF AUSTRALIA
FINANCIAL SECTOR REFORM (NORTHERN TERRITORY) ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

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AN ACT

to make provision for the reform of the financial sector, to repeal the *Financial Institutions (NT) Act*, the *Friendly Societies (NT) Act* and the *Financial Institutions (Territory Supervisory Authority) Act* and for other purposes

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Financial Sector Reform (Northern Territory) Act 1999*.

2. Purpose

The main purposes of this Act are –

- (a) to facilitate the registration of building societies, credit unions and friendly societies and related bodies as companies under the Corporations Law in accordance with amendments made by the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth; and
- (b) to enact transitional and ancillary provisions.

3. Commencement

(1) Subject to subsection (2), this Act comes into operation on the day on which the Administrator's assent to the Act is declared.

(2) The following provisions come into operation on the transfer date:

- (a) section 6;
- (b) Parts 2, 3 and 4;
- (c) Divisions 1 and 5 of Part 5;
- (d) Divisions 1 and 3 of Part 6;
- (e) Parts 7 and 8.

4. Definitions

In this Act, unless the contrary intention appears —

"AFIC" means the Australian Financial Institutions Commission established by the AFIC Act;

"AFIC Act" means the *Australian Financial Institutions Commission Act 1992* of Queensland;

"AFIC Code" means the AFIC (NT) Code;

"AFIC (NT) Code" means the provisions applying before the transfer date because of section 5 of the *Financial Institutions (NT) Act* and includes the AFIC (NT) Regulations;

"AFIC (NT) Regulations" means the provisions applying before the transfer date because of section 6 of the *Financial Institutions (NT) Act*;

"AFIC Regulations" means the AFIC (NT) Regulations;

"APRA" means the Australian Prudential Regulation Authority;

"APRA Act" means the *Australian Prudential Regulation Authority Act 1998* of the Commonwealth;

"APRA employee" means a person appointed under section 45 of the APRA Act;

"ASIC" means the Australian Securities and Investments Commission;

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"authorised APRA officer", in a provision of Part 3, means a person authorised under section 9 to perform or exercise the functions or powers of an authorised APRA officer under that provision;

"employee", in relation to AFIC, includes a person engaged by AFIC on a contract for services;

"enforcement power" means a function or power relating to –

- (a) the investigation of an offence;
- (b) the institution and carrying on of a prosecution of an offence; or
- (c) matters relating to an investigation or prosecution of an offence;

"Financial Institutions Code" means the Financial Institutions (NT) Code;

"financial institutions legislation" has the same meaning as in section 8 of the AFIC Code;

"Financial Institutions (NT) Code" means the provisions applying before the transfer date because of section 8 of the *Financial Institutions (NT) Act* and includes the Financial Institutions (NT) Regulations;

"Financial Institutions (NT) Regulations" means the provisions applying before the transfer date because of section 9 of the *Financial Institutions (NT) Act*;

"Financial Institutions Regulations" means the Financial Institutions (NT) Regulations;

"fiscal bodies legislation" has the same meaning as in section 3 of the AFIC Code;

"Friendly Societies Code" means the Friendly Societies (NT) Code;

"Friendly Societies (NT) Code" means the provisions applying before the transfer date because of section 5 of the *Friendly Societies (NT) Act* and includes the Friendly Societies (NT) Regulations;

"Friendly Societies (NT) Regulations" means the provisions applying before the transfer date because of section 6 of the *Friendly Societies (NT) Act*;

"FSR Act" means the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth;

Financial Sector Reform (Northern Territory) Act 1999

"FS(TB) Act" means the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth;

"relevant Commonwealth body" means APRA or ASIC;

"society" means an entity that, before the transfer date, was a society under the Financial Institutions Code;

"State Supervisory Authority" has the same meaning as in the financial institutions legislation;

"SSA" means State Supervisory Authority;

"TSA" means the Territory Supervisory Authority established under the *Financial Institutions (Territory Supervisory Authority) Act*;

"transfer date" means the date that, under section 3(16) of the FSR Act, is specified as the transfer date for the purposes of that Act.

5. Crown is bound

(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 section permits the Crown in any of its capacities to be prosecuted for an offence.

6. Repeals

(1) The *Financial Institutions (NT) Act* is repealed.

(2) The *Friendly Societies (NT) Act* is repealed.

(3) The *Financial Institutions (Territory Supervisory Authority) Act* is repealed.

**PART 2 – REGISTRATION OF CERTAIN ENTITIES
AS COMPANIES**

7. Transferring financial institutions

(1) On the transfer date, each transferring financial institution of this jurisdiction is taken, in accordance with Schedule 4 to the Corporations Law, to become registered as a company under that Law under the name under which the institution was registered under the previous governing Code immediately before the transfer date.

(2) Subsection (1) applies even if the institution is an externally-administered body corporate immediately before the transfer date.

(3) Registration under the Corporations Law of a transferring financial institution of this jurisdiction as a company does not create a new legal entity.

(4) In this section, "previous governing code" and "transferring financial institution of this jurisdiction" have the same respective meanings as they have in Schedule 4 of the Corporations Law.

PART 3 – AUTHORISED DEPOSIT TAKING INSTITUTIONS AND LIFE INSURANCE COMPANIES: TRANSFER OF BUSINESS

8. Words defined in FS (TB) Act

Unless the contrary intention appears, words defined in the FS(TB) Act have the same respective meanings in this Part.

9. Authorised APRA officer

(1) APRA may, in writing, authorise a person who is an APRA board member, or an APRA staff member, to perform or exercise the functions or powers of an authorised APRA officer under a particular provision of this Part.

(2) The functions and powers necessary for the purposes of this section are conferred on APRA. /

10. Voluntary transfers

(1) The purpose of this section is to facilitate voluntary transfers of business under Part 3 of the FS(TB) Act for regulated bodies.

(2) This section applies when a certificate of transfer issued under section 18 of the FS(TB) Act comes into force under Division 3 of Part 3 of that Act.

(3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.

(4) In particular –

- (a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment;
- (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body included in the list of assets and liabilities specified in the statement of detail become respectively assets and

liabilities of the receiving body without any transfer, conveyance or assignment; and

- (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

(5) If there is an approved section 20 statement in relation to the transfer that specifies –

- (a) that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
- (b) a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

11. Compulsory transfers

(1) The purpose of this section is to facilitate compulsory transfers of business under Part 4 of the FS(TB) Act for regulated bodies.

(2) This section applies when a certificate of transfer issued under section 33 of the FS(TB) Act comes into force under Division 3 of Part 4 of that Act.

(3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.

- (4) In particular –
 - (a) if the transfer is a total transfer – all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment;
 - (b) if the transfer is a partial transfer – all the assets and liabilities of the transferring body that are included in the list, referred to in section 33(2)(c) of the FS(TB) Act, included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer – the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

(5) If the certificate of transfer includes provisions of a kind referred to in section 33(3) of the FS(TB) Act specifying –

- (a) that particular things are to happen or are taken to be the case, those things are taken to happen or to be the case, in accordance with those provisions; or
- (b) a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

(6) If there is an approved section 30 statement in relation to the transfer that specifies –

- (a) that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
- (b) a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

12. Certificates evidencing operation of Part /

(1) An authorised APRA officer may, by a certificate in writing signed by the officer, certify anything in relation to the effect of this Part, and, in particular may certify that –

- (a) a particular asset of a transferring body has become a transferred asset of a receiving body; or
- (b) a particular liability of a transferring body has become a transferred liability of a receiving body.

(2) For all purposes and in all proceedings, a certificate under subsection (1) is evidence of the matters certified.

13. Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the date on which an asset of a transferring body becomes a transferred asset of a receiving body, the transferring body is the registered proprietor of an interest in land under the *Real Property Act*, then on and after that date –

- (a) the receiving body is to be taken to be the registered proprietor of that interest in land; and
- (b) the receiving body has the same rights and remedies in respect of that interest as the transferring body had.

(2) The Registrar-General, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of an authorised APRA officer, must make any amendments in the Register that are necessary because of the operation of this Part.

14. Certificates in relation to other assets

- (1) This section applies if —
 - (a) an asset, other than land or an interest in land, becomes, under this Part, an asset of a receiving body; and
 - (b) there is lodged with the entity who has, under the law, responsibility for keeping a register or record relating to assets of that kind a certificate that —
 - (i) is signed by an authorised APRA officer;
 - (ii) identifies the asset; and
 - (iii) states the asset has, under this Part, become an asset of the receiving body.
- (2) The entity may —
 - (a) register or record the matter in the same manner as transactions in relation to assets of that kind are registered or recorded; and
 - (b) deal with, and give effect to, the certificate.
- (3) This section does not affect the operation of the Corporations Law.

15. Documents purporting to be certificates

A document purporting to be a certificate mentioned in section 13 or 14 is taken to be a certificate of that type unless the contrary is established.

16. Relationship of Part with other laws

- (1) This Part has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done under this Part —

- (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong;
- (b) places a receiving body, a transferring body or another person in breach of —
 - (i) a law of the Territory; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or
- (c) releases a surety, wholly or partly, from all or any of the surety's obligations.

(3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

PART 4 – CONFERRAL OF FUNCTIONS AND POWERS ON APRA AND ASIC

17. Conferral of functions and powers on APRA

(1) APRA has the functions and powers conferred or expressed to be conferred on it by or under this Act.

(2) APRA has power to do acts in the Territory in the performance or exercise of any function or power conferred or expressed to be conferred on APRA by or under a law of another jurisdiction corresponding to this Act.

18. Conferral of functions and powers on ASIC

(1) ASIC has the functions and powers conferred or expressed to be conferred on it by or under this Act.

(2) ASIC has power to do acts in the Territory in the performance or exercise of any function or power conferred or expressed to be conferred on ASIC by or under a law of another jurisdiction corresponding to this Act.

PART 5 – PROVISIONS RELATING TO AFIC

Division 1 – AFIC to continue

19. Continuation of AFIC for certain purposes

(1) This section applies despite —

- (a) the repeal of the AFIC Act by the *Financial Sector Reform (Queensland) Act 1999* of Queensland; and
- (b) the repeal of the *Financial Institutions (NT) Act*.

(2) AFIC and its board continue in existence, but only for the following purposes –

- (a) to give effect to matters relating to the transfer, under a law of the Commonwealth or of a State or another Territory or this Act, of any of its functions under the fiscal bodies legislation to APRA or ASIC;
- (b) to prepare reports and financial statements.

20. Delegation of AFIC's powers

(1) AFIC's board may delegate AFIC's powers to an appropriately qualified employee of AFIC.

(2) In subsection (1), "appropriately qualified" includes having the qualifications, experience or standing appropriate to exercise the power.

Division 2 – Provisions about AFIC's staff

21. Definition

In this Subdivision, "employees", of AFIC, includes the executive director of AFIC.

22. Transfer of staff to APRA under transfer agreement

(1) The Queensland Minister administering the *Financial Sector Reform (Queensland) Act 1999* of Queensland may enter into a transfer agreement under Division 2 of Part 1 of Schedule 8 of the FSR Act, that determines, or provides for determining, that particular employees of AFIC become APRA employees on a particular date, not being a date before the transfer date.

(2) The transfer agreement has effect according to its terms.

23. Effect of transfer under section 22 or of employees of AFIC becoming appointed to the Australian Public Service

(1) This section applies if a person becomes an APRA employee under section 22.

(2) This section also applies if –

- (a) a person is appointed to the Australian Public Service under section 81B(1) of the *Public Service Act 1922* of the Commonwealth on or after the transfer date; and
- (b) immediately before the appointment, the person was an employee of AFIC.

(3) If the person is the executive director of AFIC, the executive director's appointment under the AFIC Code immediately ends.

(4) If the person is another employee of AFIC, the employee's employment with AFIC immediately ends.

(5) A person is not entitled to receive any payment or other benefit, whether under a contract or otherwise, because the person's appointment or employment ends under this section.

24. Statement of accrued benefits etc.

Before an employee of AFIC becomes an APRA employee under section 22 or is appointed to the Australian Public Service as mentioned in section 23(2), AFIC must give the person, and APRA or the Commonwealth Public Service Commissioner, a written statement stating particulars of the benefits to which the person has an accrued entitlement, the person's remuneration and the person's length of service with AFIC.

Division 3 – Information may be given to APRA or ASIC

25. Giving of information

- (1) This section applies to –
 - (a) a director of AFIC's board;
 - (b) an employee of AFIC;
 - (c) a person appointed by AFIC to carry out duties under the fiscal bodies legislation; and
 - (d) a person who has been a person mentioned in paragraph (a), (b) or (c).

(2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation.

(3) This section applies despite section 155 of the AFIC Code and section 477 of the Friendly Societies Code.

Division 4 – Transfer of AFIC's assets and liabilities

26. Transfer of assets and liabilities

(1) The Queensland Minister administering the *Financial Sector Reform (Queensland) Act 1999* of Queensland may enter into a transfer agreement under Division 3 of Part 1 of Schedule 8 of the FSR Act connected with the transfer of AFIC's assets or liabilities to APRA or ASIC.

(2) The transfer agreement has effect according to its terms.

Division 5 – Proceedings involving AFIC

27. Continuation and preservation of certain civil proceedings involving AFIC

(1) This section applies to a proceeding –

(a) whether or not it arose or arises under the fiscal bodies legislation; and

(b) regardless of where it arose or arises.

(2) For the purposes of a proceeding commenced before the transfer date to which AFIC was a party immediately before that date, the State of Queensland is substituted for AFIC as a party to the proceeding.

(3) For the purposes of a proceeding not commenced before the transfer date and which could if commenced after the date be brought against AFIC, or but for the commencement of section 6 and the dissolution of AFIC, could have been brought against AFIC, the proceeding may instead be brought against the State of Queensland.

(4) For the purposes of this section, evidence that would have been admissible for or against AFIC is admissible for or against the State of Queensland.

(5) This section does not apply to a proceeding for an offence.

28. Continuation of certain offence proceedings

(1) This section applies to a proceeding for an offence brought under section 63 of the AFIC Code by AFIC, or a person authorised in writing by AFIC, that commenced before the transfer date but was not completed before the date.

(2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of AFIC or the person authorised by AFIC and APRA or ASIC may be substituted in the proceeding for AFIC or the person.

(3) The functions and powers necessary for this section are conferred on APRA and ASIC.

PART 6 – PROVISIONS RELATING TO TSA

Division 1 – TSA to continue

29. Continuation of TSA for certain purposes

(1) This section applies despite the repeal of the *Financial Institutions (Territory Supervisory Authority) Act*.

(2) TSA continues in existence and the appointment of the Registrar of Financial Institutions as the person constituting the TSA continues in force, but only for the following purposes –

- (a) to give effect to anything relating to the transfer, under a law of the Commonwealth or this Act, of any of its functions as an SSA under the fiscal bodies legislation to APRA or ASIC.
- (b) to prepare a final winding up report and final financial statements;
- (c) to do other things under this Part;
- (d) winding-up itself as soon as practicable but, in any case, within 12 months after the transfer date.

(3) Without limiting subsection (2)(a), TSA must comply with Schedule 4, clause 4 of the Corporations Law.

(4) TSA has the powers necessary or desirable for it to act under subsection (2) or (3) including the powers –

- (a) to engage employees; and
- (b) to execute a contract, deed or other document necessary for its winding-up.

(5) Also, to the extent it is necessary or desirable to allow TSA to act under subsection (2), the provisions of the fiscal bodies legislation and the TSA Act continue to apply despite the repeal of all or any of the legislation or of the Act.

(6) In this section, "winding-up", in relation to TSA, includes TSA realising its assets and discharging its liabilities.

30. Contracts and agreements with TSA continue

The repeal of the TSA Act does not of itself terminate a contract or other agreement between TSA and another person.

31. Dissolution of TSA

(1) TSA is dissolved on the earlier of the following:

- (a) 12 months after the transfer date;
- (b) the day stated in a notice published in the *Gazette* by the Minister.

(2) TSA must, before TSA is dissolved, prepare and give to the Minister a written final winding-up report and final financial statements on TSA's operations since the transfer date.

Division 2 – Information may be given to APRA and ASIC

32. Giving of information

(1) This section applies to –

- (a) the Registrar of Financial Institutions as the person constituting TSA;
- (b) an employee of TSA;
- (c) a person appointed by TSA for the purpose of carrying out duties under the fiscal bodies legislation; and
- (d) a person who has been a person mentioned in paragraph (a), (b) or (c).

(2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation.

(3) This section applies despite section 410 of the Financial Institutions Code or section 477 of the Friendly Societies Code.

Division 3 – Proceedings involving TSA

33. Continuation and preservation of civil proceedings involving TSA

(1) For the purposes of a proceeding commenced before the transfer date to which TSA was a party immediately before that date, the Territory is substituted for TSA as a party to the proceeding.

(2) For the purposes of a proceeding not commenced before the transfer date and which could, if commenced after the date, be brought against TSA, or but for the commencement of section 6, could have been brought against TSA, the proceeding may instead be brought against the Territory.

(3) For the purposes of this section, evidence that would have been admissible for or against TSA is admissible for or against the Territory.

(4) This section does not apply to a proceeding for an offence.

34. Continuation of certain offence proceedings

(1) This section applies to a proceeding for an offence brought under section 404 of the Financial Institutions Code or section 471 of the Friendly Societies Code by TSA, or a person authorised in writing by TSA, that commenced before the transfer date but that was not completed before the date.

(2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of TSA or the person authorised by TSA and APRA or ASIC may be substituted for TSA or the person.

(3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Division 4 – Winding up of certain funds

35. Supervision Fund

(1) Despite the repeal of the *Financial Institutions (NT) Act*, the Supervision fund continues in existence until TSA fulfils its obligations under this section.

(2) TSA must pay out of the Supervision Fund at such time or times as TSA determines –

- (a) to APRA – such amount in respect of any other liabilities of TSA that, by reason of this Act, become liabilities of APRA, as is determined by TSA;

- (b) to ASIC – such amount in respect of any other liabilities of TSA that, by reason of this Act, become liabilities of ASIC, as is determined by TSA; and
- (c) to each building society, credit union and friendly society – an amount determined by TSA as representing the amount of supervision levy paid by the building society, credit union or friendly society into the supervision fund and unexpended.

36. Credit Unions Contingency Fund

(1) On the day before the transfer date, TSA must, under section 99A of the Financial Institutions Code, distribute the whole of retained earnings to the contribution accounts of credit unions.

(2) For the purposes of subsection (1), section 99A(3) of the Financial Institutions Code does not apply.

(3) Immediately after TSA complies with subsection (1) it must pay from the Credit Unions Contingency Fund to each credit union the amount standing to the credit union's credit in the fund.

(4) Subsection (3) applies despite section 103 of the Financial Institutions Code.

(5) In this section –

"contribution accounts", of credit unions, means the parts of the Credit Unions Contingency Fund that, under section 98(10) of the Financial Institutions Code, are treated as a deferred asset in the accounts of the credit unions;

"credit union" means a credit union under the Financial Institutions Code;

"retained earnings" has the same meaning as in section 99A of the Financial Institutions Code.

PART 7 – ENFORCEMENT BY APRA AND ASIC OF REPEALED CODES

37. Conferral of functions and powers relating to financial institutions and friendly societies

(1) Either relevant Commonwealth body has the same enforcement powers relating to anything done or omitted to be done under a Code before the transfer date as AFIC or TSA had immediately before that date.

(2) For the purposes of subsection (1), a Code applies with all necessary changes.

(3) In this section, "Code" means –

- (a) the AFIC Code;
- (b) the Financial Institutions Code; or
- (c) the Friendly Societies Code.

38. AFIC Code provisions

(1) Part 8 of the AFIC Code, other than sections 50, 51, 55 and 58, and the other provisions of the Code relevant to the Part, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 6 had not commenced.

(2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

(3) For the purposes of the application mentioned in subsection (1) –

- (a) a reference in the Code to AFIC is taken to be a reference to either relevant Commonwealth body;
- (b) a reference in the Code to a financial institution is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial institution under the Code;
- (c) in section 52(1) of the Code, the words "the financial institutions scheme" are taken to be omitted and the words "investigating whether an offence against the fiscal bodies legislation has been committed" are taken to be substituted; and (d) a reference in section 52(1)(a) or (b) of the Code to an employee of AFIC or of a State supervisory authority is taken to be a reference to an employee of either relevant Commonwealth body;
- (e) section 52(5) of the Code is taken to be omitted;
- (f) a reference in section 53(1) or (2) of the Code to the executive director is taken to be a reference to either relevant Commonwealth body;

- (g) a reference in section 53(5) of the Code to officers and employees of the State supervisory authorities is taken to be a reference to officers and employees of either relevant Commonwealth body;
 - (h) section 63(1A) and (1B) of the Code are taken to be omitted;
 - (i) a reference in section 63(2) of the Code to the Ministerial Council is taken to be a reference to the Minister administering this Act; and
 - (j) the Code applies with all other necessary changes.
- (4) This section does not limit section 37.

39. Financial Institutions Code provisions

(1) Subdivision 1A of Division 2 of Part 2 (other than sections 75, 79 and 82), Part 10 and sections 392, 397, 398 and 404 of the Financial Institutions Code, and the other provisions of the Code relevant for that Subdivision and those Parts and sections, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 6 had not commenced.

(2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

- (3) For the purposes of the application mentioned in subsection (1) –
- (a) a reference in the Code to the SSA is taken to be a reference to either relevant Commonwealth body;
 - (b) a reference in the Code to a financial body is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial body under the Code;
 - (c) a reference in the Code to a society is taken to be reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a society under the Code;
 - (d) in section 76(1) of the Code, the words "the financial institutions legislation" are taken to be omitted and the words "investigating whether an offence against the financial institutions legislation has been committed" are taken to be substituted; and

- (e) a reference in section 76(1)(a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of either relevant Commonwealth body;
 - (f) section 76(5) of the Code is taken to be omitted;
 - (g) in the definition of "financial body to which this section applies" in section 397(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted;
 - (h) section 397(2) of the Code is taken to be omitted;
 - (i) in the definition of "financial body to which this section applies" in section 398(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted;
 - (j) in the definition of "prescribed person" in section 398(1) of the Code, paragraphs (a) and (b) are taken to be omitted;
 - (k) section 398(2) of the Code is taken to be omitted;
 - (l) a reference in section 404(2) of the Code to the Minister is taken to be a reference to the Minister administering this Act; and
 - (m) the Code applies with all other necessary changes.
- (4) This section does not limit section 37.

40. Friendly Societies Code provisions

(1) Subdivision 2 of Division 2 of Part 2 (other than sections 31, 35 and 38), Divisions 3 and 4 of Part 4A, Part 10 and sections 460, 465, 466 and 471 of the Friendly Societies Code, and the other provisions of the Code relevant to that Subdivision, Division or Part or those sections, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 6 had not commenced.

(2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

(3) For the purposes of the application mentioned in subsection (1) —

- (a) a reference in the Code to the SSA is taken to be a reference to either relevant Commonwealth body;

- (b) a reference in the Code to a society is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a society under the Code;
 - (c) in section 32(1) of the Code, the words "the friendly societies legislation" are taken to be omitted and the words "investigating whether an offence against the friendly societies legislation has been committed" are taken to be substituted;
 - (d) a reference in section 32(1)(a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of either relevant Commonwealth body;
 - (e) section 32(4) of the Code is taken to be omitted;
 - (f) in the definition of "society to which this section applies" in section 465(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted;
 - (g) section 465(2) of the Code is taken to be omitted; and (h) in the definition of "society to which this section applies" in section 466(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted;
 - (i) in the definition of "prescribed person" in section 466(1) of the Code, paragraphs (a) and (b) are taken to be omitted;
 - (j) section 466(2) of the Code is taken to be omitted;
 - (k) a reference in section 471(2) of the Code to the Minister is taken to be a reference to the Minister administering this Act; and
 - (l) the Code applies with all other necessary changes.
- (4) This section does not limit section 37.

41. Conferral of functions and powers

The functions and powers necessary for the purposes of this Division are conferred on APRA and ASIC.

PART 8 – OTHER TRANSITIONAL

42. Dormant accounts

- (1) This section applies if –
 - (a) before the transfer date a society transferred an amount from a person's deposit account with a society to another account under section 138A(4)(c) of the Financial Institutions Code; and
 - (b) immediately before the transfer date the amount has not been lawfully totally paid out as mentioned in section 138A(6)(b) of that Code.
- (2) Immediately before the transfer date the amount remaining in the other account for the person is taken to have been transferred back to the person's deposit account as if it had never been classified as a dormant account or closed under section 138A of the Financial Institutions Code.

43. Withdrawable shares in building societies

(1) A person who, immediately before the transfer date, was entitled to a withdrawable share of a building society, is deemed to have become on that date the holder of a deposit with the building society of an amount equal to the amount paid up on the share.

(2) The holder of the deposit continues to have the same voting or other rights (if any) as the holder of the withdrawable share had.

(3) Any withdrawable shares of a building society on issue immediately before the transfer date and converted to deposits under subsection (1) are deemed to have been cancelled.

(4) This section applies subject to such standards or rules about the conversion of withdrawable shares to deposits as are determined by TSA.

(5) In this section –

"building society" means a transferring financial institution of this jurisdiction (within the meaning of Part 1 of Schedule 4 to the Corporations Law) authorised under the Financial Institutions Code to operate as a building society immediately before the transfer date;

"withdrawable share" means a withdrawable share within the meaning of the Financial Institutions Code.

44. Mergers and transfers of engagements commenced under Financial Institutions (NT) Code

(1) This section applies if a transfer of engagements or merger commenced before the transfer date under Part 7 of the Financial Institutions (NT) Code and immediately before that date has not been completed, or been given effect.

(2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Financial Institutions (NT) Code on or after the transfer date and, for that purpose, that Part, and other provisions of the Code relevant to that Part, continue to apply as if section 6 had not commenced.

(3) For the purpose of the application mentioned in subsection (2) –

(a) a reference in the Financial Institutions (NT) Code to the TSA is taken to be a reference to either relevant Commonwealth body; and

(b) a reference in the Financial Institutions (NT) Code to the SSA of a participating State is taken to be a reference to either relevant Commonwealth body; and

(c) the Financial Institutions (NT) Code applies with all other necessary changes.

(4) For the purposes of this section a transfer of engagements was commenced before the transfer date under Part 7 of the Financial Institutions (NT) Code if, before that date –

(a) one of the following conditions was satisfied in relation to each society or foreign society involved –

(i) the transfer was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code;

(ii) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the transfer may be approved by the board of the society or foreign society; or

(b) in a case where each entity involved in the transfer is a society, TSA gave a direction, under the Financial Institutions (NT) Code, requiring the transfer.

(5) For the purposes of this section, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved –

- (a) the merger was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code;
- (b) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the merger may be approved by the board of the society or foreign society.

(6) The functions and powers of the SSA that are necessary for the purposes of this section are conferred on each relevant Commonwealth body.

(7) In this section —

"financial institutions agreement" has the same meaning as in section 3 of the AFIC Code;

"foreign society" means a body corporate that, before the transfer date, was a society under the financial institutions legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Financial Institutions (NT) Code;

"participating State" means a State that, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated;

"relevant Financial Institutions Code" means —

- (a) in relation to a society, the Financial Institutions (NT) Code;
or
- (b) in relation to a foreign society, the law of another participating State corresponding to the Financial Institutions (NT) Code;

"relevant SSA" means —

- (a) in relation to a society, TSA; or
- (b) in relation to a foreign society, the State supervisory authority under the financial institutions legislation of the other participating State;

"society" means an entity that, immediately before the transfer date, was a society under the Financial Institutions (NT) Code.

45. Mergers and transfers of engagements commenced under Friendly Societies (NT) Code

(1) This section applies if a transfer of engagements or merger commenced before the transfer date under Part 7 of the Friendly Societies (NT) Code and immediately before that date has not been completed, or been given effect.

(2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Friendly Societies (NT) Code on or after the transfer date and, for that purpose, that Part, and other provisions of the Code relevant to that Part, continue to apply as if section 6 had not commenced.

(3) For the purposes of the application mentioned in subsection (2) —

- (a) a reference in the Friendly Societies (NT) Code to the SSA is taken to be a reference to either relevant Commonwealth body; and
- (b) a reference in the Friendly Societies (NT) Code to the SSA of a participating State is taken to be a reference to either relevant Commonwealth body; and
- (c) the Friendly Societies (NT) Code applies with all other necessary changes.

(4) For the purposes of this section a transfer of engagements was commenced before the transfer date under Part 7 of the Friendly Societies (NT) Code if, before that date —

- (a) one of the following conditions was satisfied in relation to each society or foreign society involved —
 - (i) the transfer was approved by a special resolution of the society or foreign society, in accordance with the relevant Friendly Societies Code;
 - (ii) the relevant SSA made a determination, under the relevant Friendly Societies Code, that the transfer may be approved by the board of the society or foreign society; or
- (b) in a case where each entity involved in the transfer is a society, TSA gave a direction, under the Friendly Societies (NT) Code, requiring the transfer.

(5) For the purposes of this section, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved —

- (a) the merger was approved by a special resolution of the society or foreign society in accordance with the relevant Friendly Societies Code;
 - (b) the relevant SSA made a determination, under the relevant Friendly Societies Code, that the merger may be approved by the board of the society or foreign society.
- (6) The functions and powers of the SSA that are necessary for the purposes of this section are conferred on each relevant Commonwealth body.

(7) In this section —

"financial institutions agreement" has the same meaning as in section 3 of the AFIC Code;

"foreign society" means a body corporate that, before the transfer date, was a society under the friendly societies legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Friendly Societies (NT) Code;

"friendly societies legislation" has the same meaning as in section 8A of the AFIC Code;

"participating State" means a State which, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated;

"relevant Friendly Societies Code" means —

- (a) in relation to a society, the Friendly Societies (NT) Code; or
- (b) in relation to a foreign society, the law of another participating State corresponding to the Friendly Societies (NT) Code;

"relevant SSA" means —

- (a) in relation to a society, TSA; or
- (b) in relation to a foreign society, the State supervisory authority under the friendly societies legislation of the other participating State;

"society" means an entity that, immediately before the transfer date, was a society under the Friendly Societies (NT) Code.

46. Australian Financial Institutions Appeals Tribunal

- (1) This section applies on the transfer date.
- (2) The Australian Financial Institutions Appeals Tribunal established under section 8 of the AFIC Act ceases to exist by reason of the *Financial Sector Reform (Queensland) Act 1999* of Queensland.
- (3) All applications made to the Australian Financial Institutions Appeal Tribunal under a Code for review of a decision that have not been decided are taken to have been withdrawn.
- (4) In this section, "Code" means the AFIC Code, Financial Institutions Code or Friendly Societies Code.

PART 9 – MISCELLANEOUS

47. Building societies and credit unions

Unless the contrary intention appears, a reference in an Act (other than this Act) or an instrument of a legislative or administrative character to a building society or credit union has effect on and after the transfer date as a reference to an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

48. Friendly societies

Unless the contrary intention appears, a reference in an Act (other than this Act) or an instrument of a legislative or administrative character to a friendly society has effect on and after the transfer date as a reference to a body –

- (a) that, immediately before the transfer date, was a society within the meaning of the Friendly Societies Code; or
- (b) a body that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth.

49. Exemption from taxes

- (1) No stamp duty or any other duty or tax is chargeable under any Act in respect of anything effected by or done under this Act.
- (2) Subsection (1) does not apply to Part 3.

50. Regulations

The Administrator 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.
