

NORTHERN TERRITORY OF AUSTRALIA
FINANCIAL INSTITUTIONS (TERRITORY
SUPERVISORY AUTHORITY) BILL 1992

TABLE OF PROVISIONS

Clause

PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Crown is bound

PART 2 - ESTABLISHMENT AND FUNCTIONS OF AUTHORITY

5. Establishment of authority
6. Independence of authority
7. Powers and functions of authority
8. Composition of authority
9. Budget for authority
10. Delegations

PART 3 - REGISTRAR OF FINANCIAL INSTITUTIONS

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

PART 4 - STANDARDS OF CONDUCT

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

PART 5 - EVIDENCE

26. Authority seal, &c.
27. Directions and determinations
28. Levies, compulsory loans and funds

PART 6 - MISCELLANEOUS

29. Annual report
30. Regulations

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1

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to establish the Territory Supervisory Authority for
the purposes of the financial institutions
legislation and for related purposes

BE it enacted by the Legislative Assembly of the Northern Territory of
Australia, with the assent as provided by the *Northern Territory
(Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

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

2. COMMENCEMENT

This Act shall come into operation on a date fixed by
the Administrator by notice in the *Gazette*.

3. DEFINITIONS

In this Act, unless the contrary intention appears -

"Authority" means the Territory Supervisory Authority
established under section 5;

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

"defined person" means -

- (a) a person appointed to the office of
Registrar of Financial Institutions;

*Financial Institutions (Territory
Supervisory Authority)*

- (b) a person appointed to act in the office of Registrar of Financial Institutions; and
- (c) a person employed to assist the Registrar of Financial Institutions in the performance of the functions of the office;

"financial institution" has the same meaning as in the financial institutions legislation;

"financial institutions agreement" means the financial institutions agreement made on 22 November 1991 between the Northern Territory, the Australian Capital Territory and the States, as amended or affected by any other agreement;

"financial institutions legislation" means -

- (a) this Act and the regulations made under this Act;
- (b) the AFIC (NT) Code;
- (c) the AFIC (NT) Regulations;
- (d) the Financial Institutions (NT) Code; and
- (e) the *Financial Institutions (NT) Act* and the regulations made under that Act;

"financial interest" means -

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

"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 that correspond within the meaning of the financial institutions legislation;

"Ministerial Council" means the Ministerial Council established under the financial institutions agreement;

*Financial Institutions (Territory
Supervisory Authority)*

"pecuniary interest" includes a financial interest;

"Registrar" means the person appointed under section 11 to be the Registrar of Financial Institutions and includes a person appointed to act as Registrar under section 14;

"State supervisory authority" has the same meaning as in the financial institutions legislation.

4. 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 Act renders the Crown liable to be prosecuted for an offence.

PART 2 - ESTABLISHMENT AND FUNCTIONS OF AUTHORITY

5. ESTABLISHMENT OF AUTHORITY

(1) There is established by this Act an authority by the name of the Territory Supervisory Authority.

(2) The Authority -

- (a) is a corporation sole with perpetual succession;
- (b) shall have a common seal; and
- (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

6. INDEPENDENCE OF AUTHORITY

(1) The Authority does not represent the Crown.

(2) Except as expressly provided in the financial institutions legislation, the Authority, in the exercise of its powers or the performance of its functions, is not subject to direction by or on behalf of a Minister or the Ministerial Council.

7. POWERS AND FUNCTIONS OF AUTHORITY

(1) The Authority shall perform the functions conferred on the State Supervisory Authority by the financial institutions legislation.

*Financial Institutions (Territory
Supervisory Authority)*

(2) The Authority 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.

(3) Without limiting the generality of subsection (2), the powers of the Authority include -

- (a) a power exercisable by a natural person;
- (b) power to enter into contracts;
- (c) power to appoint agents and attorneys; and
- (d) power to engage consultants.

(4) The Authority shall, in the performance of its functions and the exercise of its powers -

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

8. COMPOSITION OF AUTHORITY

(1) The Authority shall be constituted by the Registrar of Financial Institutions.

(2) The establishment of the Authority is not affected by reason only of there being a vacancy in the office of the Registrar.

(3) The validity of a decision or action of the Authority shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under section 11 or 14 had not arisen or that an appointment made under those sections had ceased to have effect.

9. BUDGET FOR AUTHORITY

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

(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.

*Financial Institutions (Territory
Supervisory Authority)*

- (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
 - (b) if the Minister does not determine the budget within that period - the draft budget submitted to the Minister.

10. DELEGATIONS

(1) Subject to subsection (2), the Registrar may, by instrument in writing, delegate -

- (a) to a person who is an employee within the meaning of the *Public Service Act*;
- (b) to the holder of an office established under this Act; or
- (c) with the authority, in writing, of the Minister, to a foreign State supervisory authority,

any of the Registrar's powers and functions under this Act, other than this power of delegation or a power under section 95 of the Financial Institutions (NT) Code.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Registrar.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Registrar.

PART 3 - REGISTRAR OF FINANCIAL INSTITUTIONS

11. APPOINTMENT OF REGISTRAR

(1) The Minister shall appoint a person to be the Registrar of Financial Institutions, who shall be appointed and hold office under the *Public Service Act*.

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

*Financial Institutions (Territory
Supervisory Authority)*

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

(4) The Registrar shall, in performing the functions of the Authority -

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

(5) The Registrar may, with the prior approval of the Minister, accept a delegation from a foreign State supervisory authority.

(6) The Registrar may exercise a power under a delegation referred to in subsection (5) in accordance with the instrument of delegation.

12. TERMINATION AND SUSPENSION OF APPOINTMENT

(1) The Minister shall, by instrument in writing, terminate the appointment of a person as Registrar if he or she -

- (a) is, in the opinion of the Minister based on reasonable grounds, physically or mentally incapable of continuing in the office;
- (b) accepts an office or appointment with a financial institution;

*Financial Institutions (Territory
Supervisory Authority)*

- (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 to so seriously conflict, with the proper performance of the functions of the Authority as to require the termination of his or her appointment;
- (d) contravenes the financial institutions legislation, or this Act, without reasonable excuse;
- (e) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) is no longer, in the opinion of the Minister based on reasonable grounds, a fit and proper person to hold the office.

(2) The Minister may, by instrument in writing, suspend the appointment of a person to the office of 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 the office.

13. RESIGNATION

A person appointed to the office of Registrar may resign by notice in writing given to the Minister.

14. ACTING APPOINTMENTS

(1) The Minister may appoint a person to act as Registrar -

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

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

*Financial Institutions (Territory
Supervisory Authority)*

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Where a person is acting as Registrar in accordance with this section and the office of Registrar becomes vacant while that person is so acting, then, subject to subsection(2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The Minister may at any time terminate the appointment of a person appointed to act in accordance with this section.

(5) The appointment of a person under this section ceases to have effect if the person resigns the appointment by writing signed by the person and given to the Minister.

(6) While a person is acting as Registrar in accordance with this section, the person shall perform all the functions, and may exercise all the powers, of the Registrar.

15. STAFF OF AUTHORITY

(1) The Registrar may be assisted in the performance of the functions of the office by persons who are employees within the meaning of the *Public Service Act*.

(2) A person referred to in subsection (1) shall not assist the Registrar if the person holds an office or appointment with a financial institution.

16. DEFECTIVE APPOINTMENTS

The validity of anything done by a person purporting to act in accordance with section 14 shall not be called in question on the ground that the occasion for the appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

17. LIABILITY OF REGISTRAR

(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 under this Act or the financial institutions legislation.

*Financial Institutions (Territory
Supervisory Authority)*

(2) Subsection (1) does not apply in relation to an act or omission characterised by -

- (a) wilful misconduct by the person holding the office of Registrar;
- (b) wilful neglect by the person; or
- (c) wilful failure by the person to comply with this Act or the financial institutions legislation.

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

18. LIABILITY OF AUTHORITY STAFF

(1) A person assisting the Registrar in the performance of the functions of the office incurs no liability for an honest act or omission occurring in the course of the assistance.

(2) Subsection (1) does not apply in relation to an act or omission characterised by -

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

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

PART 4 - STANDARDS OF CONDUCT

19. INTERPRETATION - PERFORMANCE OF FUNCTIONS

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

20. DUTY TO ACT HONESTLY

A defined person shall at all times act honestly in performing the functions of the Authority.

Penalty: \$5,000 or imprisonment for 12 months.

*Financial Institutions (Territory
Supervisory Authority)*

21. IMPROPER CONDUCT

(1) In performing the functions of the Authority, a defined person shall not act improperly -

- (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 Authority or to a financial institution.

Penalty: \$5,000 or imprisonment for 12 months.

(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 Authority -

- (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 Authority or to a financial institution.

Penalty: \$5,000 or imprisonment for 12 months.

22. REGISTRATION OF FINANCIAL INTERESTS

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

(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 or imprisonment for 6 months.

(3) A defined person shall cause particulars of -

- (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: \$5,000 or imprisonment for 12 months.

*Financial Institutions (Territory
Supervisory Authority)*

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

- (a) the nature and extent of the relevant financial interest, or of a significant 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).

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

23. PUBLIC ACCESS TO REGISTER

The Registrar shall -

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

24. DISCLOSURE OF PECUNIARY CONFLICTS OF INTEREST

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

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

Penalty: \$5,000 or imprisonment for 2 years.

*Financial Institutions (Territory
Supervisory Authority)*

25. DISCLOSURE OF EMPLOYMENT RELATIONSHIPS AND ASSOCIATIONS

(1) In this section, "related employer or associate", in relation to a defined person, means a person or body -

- (a) by whom the defined person was employed at any time during the previous 3 years; or
- (b) 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.

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

Penalty: \$10,000 or imprisonment for 2 years.

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

PART 5 - EVIDENCE

26. AUTHORITY SEAL, &c.

(1) The Authority seal is to be kept in such custody as the Registrar directs and shall be used only as authorised by the Registrar.

(2) All courts, judges and persons acting judicially shall take judicial notice of -

- (a) the common seal of the Authority affixed to a document and shall assume that it was duly affixed;
- (b) the official signature of a person who holds, or has held, office as Registrar; and
- (c) the fact that that person holds, or has held, the office.

*Financial Institutions (Territory
Supervisory Authority)*

27. DIRECTIONS AND DETERMINATIONS

Evidence of a direction issued, or determination made, by the Authority 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.

28. LEVIES, COMPULSORY LOANS AND FUNDS

Evidence of a 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 (Northern Territory) 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 6 - MISCELLANEOUS

29. ANNUAL REPORT

(1) The Registrar shall, on or before 31 October in each year, prepare and submit to the Minister a report of the operations of the Authority during the year ending on the preceding 30 June.

(2) The Minister shall cause the report submitted under subsection (1) to be laid before the Legislative Assembly within 6 sitting days after its submission.

30. 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.
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