

SOUTH AUSTRALIA

FINANCIAL INSTITUTIONS (APPLICATION OF LAWS) ACT 1992

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 October 1997.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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FINANCIAL INSTITUTIONS (APPLICATION OF LAWS) ACT 1992

being

Financial Institutions (Application of Laws) Act 1992
No. 33 of 1992 [Assented to 21 May 1992]¹

as amended by

Friendly Societies (South Australia) Act 1997 No. 36 of 1997 [Assented to 26 June 1997]²

¹ Came into operation 1 July 1992: *Gaz.* 25 June 1992, p. 1883.

² Came into operation 1 October 1997: *Gaz.* 18 September 1997, p. 826.

N.B. The amendments effected to this Act by the *Financial Institutions (Application of Laws) (Court Jurisdiction) Amendment Act 1996* had not been brought into operation at the date of, and have not been included in, this reprint.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

An Act to make provision for a uniform legislative scheme for certain financial institutions; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Financial Institutions (Application of Laws) Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions

3. In this Act—

"**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 (South Australia) Code**" means the provisions applying because of section 5;

"**AFIC (South Australia) Regulations**" means the provisions applying because of section 6;

"**Appeals Tribunal**" means the Australian Financial Institutions Appeals Tribunal established under the AFIC Act;

"**Financial Institutions Act**" means the *Financial Institutions (Queensland) Act 1992* of Queensland;

"**financial institutions agreement**" has the same meaning as in the AFIC (South Australia) Code;

"**Financial Institutions (South Australia) Code**" means the provisions applying because of section 8;

"**Financial Institutions (South Australia) Regulations**" means the provisions applying because of section 9;

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

"**scheme legislation of South Australia**" means—

- (a) this Act and the regulations under this Act; and
- (b) the AFIC (South Australia) Code; and
- (c) the AFIC (South Australia) Regulations; and
- (d) the Financial Institutions (South Australia) Code; and
- (e) the Financial Institutions (South Australia) Regulations.

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References to Queensland Acts

4. In this Act, a reference to a Queensland Act includes a reference to—

- (a) that Queensland Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

PART 2
THE AFIC (SOUTH AUSTRALIA) CODE AND
THE AFIC (SOUTH AUSTRALIA) REGULATIONS

Application in South Australia of the AFIC Code

5. The AFIC Code set out in section 21 of the AFIC Act as in force for the time being—

- (a) applies as a law of South Australia; and
- (b) as so applying, may be referred to as the AFIC (South Australia) Code.

Application of regulations

6. (1) The regulations in force for the time being under Part 5 of the AFIC Act—

- (a) apply as regulations in force for the purposes of the AFIC (South Australia) Code; and
- (b) as so applying, may be referred to as the AFIC (South Australia) Regulations.

(2) Subject to subsection (3) of this section, where regulations under Part 5 of the AFIC Act take effect from a specified day that is earlier than the day when they are notified in the *Queensland Government Gazette* under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the AFIC Act from the specified day.

(3) To the extent that a provision of the AFIC (South Australia) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

- (a) operates to the advantage of a person (other than South Australia or an authority of South Australia) by—
 - (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
- (b) does not operate to the disadvantage of another person (other than South Australia or an authority of South Australia) by—
 - (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in Code and Regulations

7. (1) In the AFIC (South Australia) Code and the AFIC (South Australia) Regulations—

"Corporations Law" and "Corporations Regulations" have the meaning provided for by Part 3 of the *Corporations (South Australia) Act 1990*;

"Financial Institutions Code" means the Financial Institutions (South Australia) Code;

"Friendly Societies Code" means the Friendly Societies (South Australia) Code;

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"**Legislature of this State**" means the House of Assembly and the Legislative Council;

"**Magistrate**" means a person holding office as a Magistrate under the *Magistrates Act 1983*;

"**the Code**" means the AFIC (South Australia) Code;

"**this State**" means South Australia.

(2) The *Corporations (South Australia) Act 1990* and the applicable provisions of South Australia within the meaning of that Act, are prescribed for the purposes of section 39(2) of the AFIC (South Australia) Code.

PART 3
FINANCIAL INSTITUTIONS (SOUTH AUSTRALIA) CODE AND
FINANCIAL INSTITUTIONS (SOUTH AUSTRALIA) REGULATIONS

Application in South Australia of the Financial Institutions Code

8. The Financial Institutions Code set out in section 30 of the *Financial Institutions Act* as in force for the time being—

- (a) applies as a law of South Australia; and
- (b) as so applying, may be referred to as the Financial Institutions (South Australia) Code.

Application of regulations

9. (1) The regulations in force for the time being under Part 3 of the *Financial Institutions Act*—

- (a) apply as regulations in force for the purposes of the Financial Institutions (South Australia) Code; and
- (b) as so applying, may be referred to as the Financial Institutions (South Australia) Regulations.

(2) Subject to subsection (3) of this section, where regulations under Part 3 of the *Financial Institutions Act* take effect from a specified day that is earlier than the day when they are notified in the *Queensland Government Gazette* under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the *Financial Institutions Act* from the specified day.

(3) To the extent that a provision of the Financial Institutions (South Australia) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

- (a) operates to the advantage of a person (other than South Australia or an authority of South Australia) by—
 - (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
- (b) does not operate to the disadvantage of another person (other than South Australia or an authority of South Australia) by—
 - (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in the Code and Regulations

10. (1) In the Financial Institutions (South Australia) Code and the Financial Institutions (South Australia) Regulations—

"AFIC Code" means the AFIC (South Australia) Code;

"continuing association" means—

- (a) an association of building societies registered under the *Building Societies Act 1975* immediately before the commencement of the Financial Institutions (South Australia) Code; or
- (b) an association of credit unions registered under the *Credit Unions Act 1989* immediately before the commencement of the Financial Institutions (South Australia) Code;

"continuing association of credit unions" means an association of credit unions registered under the *Credit Unions Act 1989* immediately before the commencement of the Financial Institutions (South Australia) Code;

"continuing building society" means a building society (except a Starr-Bowkett building society) registered under the *Building Societies Act 1975* immediately before the commencement of the Financial Institutions (South Australia) Code;

"continuing credit union" means a credit union registered under the *Credit Unions Act 1989* immediately before the commencement of the Financial Institutions (South Australia) Code;

"continuing foreign society" means—

- (a) a body registered as a foreign credit union under the *Credit Unions Act 1989* immediately before the commencement of the Financial Institutions (South Australia) Code; or
- (b) a body that is—
 - (i) a credit union, credit society or credit co-operative under the law of a participating State; and
 - (ii) in relation to which an exemption is in force under section 9(4) of the *Credit Unions Act 1989*,

immediately before the commencement of the Financial Institutions (South Australia) Code;

"continuing society" means a continuing building society or continuing credit union;

"Corporations Law" and **"Corporations Regulations"** have the meaning provided for by Part 3 of the *Corporations (South Australia) Act 1990*;

"Friendly Societies Code" means the Friendly Societies (South Australia) Code;

"Legislature of this State" means the House of Assembly and the Legislative Council;

"Magistrate" means a person holding office as a Magistrate under the *Magistrates Act 1983*;

"previous law" means the *Building Societies Act 1975* and the *Credit Unions Act 1989*;

"the Code" means the Financial Institutions (South Australia) Code;

"this State" means South Australia.

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PART 3

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(2) The *Corporations (South Australia) Act 1990*, and the applicable provisions of South Australia within the meaning of that Act, are prescribed for the purposes of section 65(4) of the Financial Institutions (South Australia) Code.

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**PART 4
CONFERRAL OF FUNCTIONS AND POWERS**

Conferral of functions and powers on AFIC

11. AFIC has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of South Australia.

Conferral of functions and powers on Tribunal

12. The Australian Financial Institutions Appeals Tribunal established under the AFIC Act has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of South Australia.

Conferral of jurisdiction on Queensland Supreme Court

13. (1) Jurisdiction is conferred on the Supreme Court of Queensland in the matter of—

- (a) an appeal under the scheme legislation of South Australia by a party to a proceeding before the Appeals Tribunal on a question of law from a decision of the Tribunal in the proceeding; or
- (b) a reference under the scheme legislation of South Australia at the request of a party or by the Appeals Tribunal of its own initiative of a question of law arising in a proceeding before the Tribunal for decision.

(2) Nothing in subsection (1) affects any other jurisdiction of any court or the operation of the *Jurisdiction of Courts (Cross-Vesting) Act 1987*.

**PART 5
STATE SUPERVISORY AUTHORITY**

State Supervisory Authority

14. The South Australian Office of Financial Supervision is the State Supervisory Authority for the purposes of the scheme legislation of South Australia.

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**PART 6
APPLICATION TO THE CROWN**

Crown is bound

15. (1) The scheme legislation of South Australia binds the Crown in right of South Australia and, so far as the legislative power of the Parliament 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.

**PART 7
IMPOSITION OF FEES AND OTHER AMOUNTS**

Fees for chargeable matters

16. This section imposes the fees that the Financial Institutions (South Australia) Regulations or the AFIC (South Australia) Regulations prescribe.

Levies, contributions and loans

17. (1) This section imposes—

- (a) the levy payable under section 119 of the AFIC (South Australia) Code by a financial institution; and
- (b) the levy payable under section 95 of the Financial Institutions (South Australia) Code by a financial body; and
- (c) the contributions payable under section 98 of the Financial Institutions (South Australia) Code by a credit union; and
- (d) the support levy payable under section 99 of the Financial Institutions (South Australia) Code by a credit union; and
- (e) the compulsory loans payable under section 100 of the Financial Institutions (South Australia) Code by a credit union.

(2) An expression has in subsection (1) the meaning it would have if this section were in the AFIC (South Australia) Code or the Financial Institutions (South Australia) Code, as the case requires.

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**PART 8
GENERAL****Action to be taken by Premier under certain report**

18. (1) If the Premier is provided with a report under section 49(6) of the AFIC (South Australia) Code, the Premier must provide AFIC with a response to the report within 14 days of its receipt by the Premier.

(2) If—

(a) the Premier does not provide AFIC with a response to the report within 14 days of receipt of the report; or

(b) AFIC is of the opinion that it is necessary to do so,

AFIC may, by written notice given to the Premier, request the Premier to cause a copy of the report provided with the request to be laid before each House of Parliament within 14 sitting days of receipt of the request.

(3) The Premier must comply with the request.

(4) If Parliament is not sitting, the Premier must give a copy of the report to the Speaker of the House of Assembly and the President of the Legislative Council and they must cause the copies to be laid before their respective Houses on the next sitting day.

Premier to lay copy of AFIC's Annual Report, etc., before Parliament

19. As soon as practicable after the Board of Directors of AFIC submits its report on the operations of AFIC during a particular financial year, together with financial statements for that financial year, to the Ministerial Council under section 116(2) of the AFIC Code, the Premier must cause to be laid before the House of Assembly and the Legislative Council—

(a) copies of the report and financial statements; and

(b) a copy of the report by the Auditor-General of Queensland, in relation to the financial statements, made under section 116(4) of the AFIC Code.

Amendment of certain provisions

20. (1) If, under the Financial Institutions Agreement, the Ministerial Council—

(a) approves—

(i) a proposed amendment of the AFIC Act or the *Financial Institutions Act*; or

(ii) regulations proposed to be made under the AFIC Act or the *Financial Institutions Act* (whether or not amending other regulations); and

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations in accordance with that approval varying the effect in South Australia of that Act or those regulations.

(2) If regulations are made under subsection (1), the AFIC Act or the *Financial Institutions Act* or regulations in force under either of those Acts have effect in South Australia (as the case requires) as if varied in accordance with the regulations made under subsection (1).

Fees, fines and penalties

21. All fees, fines, penalties and other money which, under or by virtue of the scheme legislation of South Australia are authorised or directed to be imposed on any person and are not, under that legislation, fees, levies, contributions, loans or other amounts payable to a specified person must be paid to South Australia.

Differentiation between summary and indictable offences

22. Insofar as the principles for differentiating between summary and indictable offences laid down by section 59 of the Financial Institutions Code differ from the principles laid down for that purpose by the *Summary Procedure Act 1926*, the latter principles prevail.

Financial Institutions (Application of Laws) Act 1992

**PART 9
REPEAL AND TRANSITIONAL PROVISIONS**

Interpretation

23. Words and expressions used in the Financial Institutions (South Australia) Code have the same respective meanings in this Part.

Repeal and amendment

24. (1) The following Acts are repealed:

(a) the *Building Societies Act 1990*;

(b) the *Credit Unions Act 1989*.

(2) The *Building Societies Act 1975*—

(a) ceases to apply to—

(i) societies as defined in that Act except Starr-Bowkett societies; and

(ii) associations as defined in that Act; and

(b) is amended by changing its short title to "*Starr-Bowkett Societies Act 1975*".

Mergers

25. (1) A special resolution of a continuing society approving an amalgamation under—

(a) section 22 or 23 of the *Building Societies Act 1975*; or

(b) section 32 of the *Credit Unions Act 1989*,

that has not been registered under the Act before the commencement of this section is taken, for the purpose of section 293(2) of the Financial Institutions (South Australia) Code, to be a special resolution approving a proposed merger.

(2) Compliance by a continuing society with—

(a) section 22(3) to (4) of the *Building Societies Act 1975*; or

(b) section 32(5) to (7) of the *Credit Unions Act 1989*,

in relation to an amalgamation is taken to be compliance by the society with section 293(3) and (4) of the Financial Institutions (South Australia) Code in relation to a proposed merger.

(3) An application by two or more continuing societies to be registered as an amalgamated building society or credit society under—

(a) section 22 of the *Building Societies Act 1975*; or

(b) section 32 of the *Credit Unions Act 1989*,

that has not been determined under the Act before the commencement of this section is taken to be an application for the registration of a merger made under section 293 of the Financial Institutions (South Australia) Code.

(4) An authorisation under section 23(6) of the *Building Societies Act 1975* or an exemption under section 36(1) is taken to be an exemption granted by the SSA on corresponding terms and conditions from the corresponding requirements of the Financial Institutions (South Australia) Code.

Directed transfer of engagements

26. A direction to a continuing society under—

- (a) section 23 of the *Building Societies Act 1975*; or
- (b) section 121 of the *Credit Unions Act 1989*,

that it amalgamate with another continuing society and that is in force immediately before the commencement of this section is taken to be a direction to the society given by the SSA under section 296 of the Financial Institutions (South Australia) Code to transfer its engagements to that other society.

Suspension of operations

27. A direction given to a continuing society under—

- (a) section 38 of the *Building Societies Act 1975*; or
- (b) section 121 of the *Credit Unions Act 1989*,

that is in force immediately before the commencement of this section is taken to be a direction given to the society by the SSA under section 89 of the Financial Institutions (South Australia) Code.

Administrator, etc.

28. (1) An administrator of a continuing society appointed under section 121 of the *Credit Unions Act 1989* is taken to have been appointed by the SSA under section 90 of the Financial Institutions (South Australia) Code.

(2) Directors of a continuing society appointed under section 122(6) of the *Credit Unions Act 1989*, are taken to have been appointed under section 90(9)(d) of the Financial Institutions (South Australia) Code.

Proceedings under Building Societies Act 1975 or Credit Unions Act 1989

29. (1) The SSA may institute proceedings under the *Building Societies Act 1975* or the *Credit Unions Act 1989*, in relation to a continuing society.

(2) For the purpose of subsection (1), a reference in either Act to the Commission is taken to be a reference to the SSA.

Investigations

30. (1) If, immediately before the commencement of this section, an investigation is being conducted into the affairs of a continuing society under Division 1 of Part 2 of the Companies (South Australia) Code as applied to building societies and credit unions, the investigation may continue under Part 10 of the Financial Institutions (South Australia) Code.

(2) For the purpose of continuing the investigation, the SSA may appoint an investigator under section 348 of the Financial Institutions (South Australia) Code.

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(3) Any document or other information properly obtained by the person conducting the investigation before the commencement of this section may be had regard to by the person continuing the investigation.

Special meeting or inquiry

31. (1) A special meeting or inquiry called or started in relation to a continuing society under—

- (a) section 86 of the *Building Societies Act 1975*; or
- (b) section 151 of the *Credit Unions Act 1989*,

may continue under the Financial Institutions (South Australia) Code.

(2) The meeting is taken to have been called or started under section 87 of the Financial Institutions (South Australia) Code.

Miscellaneous transitional provisions

32. The following transitional provisions have effect for the purposes of the financial institutions legislation:

- (a) an exemption granted under section 9(4) of the *Credit Unions Act 1989* from section 9(1)(b) continues to have effect after the commencement of the Financial Institutions (South Australia) Code as if it were an exemption under section 144(4) of that Code;
- (b) despite the Financial Institutions (South Australia) Code, rules made by a continuing society before the commencement of the *Credit Unions Act 1989* continue to operate in relation to shares issued under those rules before the commencement of that Act;
- (c) an approval in force under—
 - (i) section 20(2) of the *Building Societies Act 1975*; or
 - (ii) section 28(5) of the *Credit Unions Act 1989*,immediately before the commencement of the Financial Institutions (South Australia) Code continues in force as an approval under section 139(5) of that Code;
- (d) where a continuing society issued a disclosure statement under section 39 of the *Credit Unions Act 1989*, the disclosure statement is taken to be a disclosure statement registered under Part 5, Division 6 of the Financial Institutions (South Australia) Code;
- (e) an application or order made under section 79 or 99 of the *Credit Unions Act 1989* is taken to be an application or order under section 291 of the Financial Institutions (South Australia) Code;
- (f) a direction under section 82 of the *Building Societies Act 1975* or section 141 of the *Credit Unions Act 1989* is taken to be a direction under section 107 of the Financial Institutions (South Australia) Code;
- (g) a continuing society need not comply with section 140(2) of the Financial Institutions (South Australia) Code until six months after the date of its commencement;

- (h) charges of which copies were lodged with the Registrar under section 34(4a) of the *Credit Unions Act 1976* are taken to be registered under the Financial Institutions (South Australia) Code and rank in priority according to the time of lodgment of the copy with the Registrar;
- (i) charges registered under the *Credit Unions Act 1989* are taken to be registered under the Financial Institutions (South Australia) Code and rank in priority according to the time of registration;
- (j) if a continuing society has been declared to be subject to supervision under section 118 of the *Credit Unions Act 1989* the declaration has effect as if it were a notice placing it under direction under section 88 of the Financial Institutions (South Australia) Code;
- (k) anything done under section 121 of the *Credit Unions Act 1989* continues to have effect as if done under section 88(3) of the Financial Institutions (South Australia) Code;
- (l) a consent under section 60(4) of the *Building Societies Act 1975*, or section 76(3) of the *Credit Unions Act 1989* continues in force as a consent under section 257(3) of the Financial Institutions (South Australia) Code;
- (m) where approval has been given under section 64A of the *Building Societies Act 1975* for a continuing society to enter into a management contract, the approval continues in force as if given under section 245(2) of the Financial Institutions (South Australia) Code;
- (n) the amount standing to the credit of the Credit Union Deposit Insurance Fund under section 110 of the *Credit Unions Act 1989* immediately before the commencement of the Financial Institutions (South Australia) Code is transferred to the Credit Unions Contingency Fund under section 97 of that Code (and the transfer is exempt from stamp duty and other taxes and charges under the law of the State);
- (o) subsections (3) and (6) of section 110 of the *Credit Unions Act 1989* apply in relation to the Credit Unions Contingency Fund for a period of two years after the commencement of the Financial Institutions (South Australia) Code as if references in those subsections to the Fund were references to the Credit Unions Contingency Fund and references to the Board were references to the SSA.

Savings and transitional

33. (1) The Governor, on the recommendation of the Minister made with the approval of the Ministerial Council, may make regulations of a saving or transitional nature consequent on the enactment or commencement of this Act.

(2) If the regulations so provide, they have effect despite any provision of the Financial Institutions (South Australia) Code or the AFIC (South Australia) Code.

(3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

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APPENDIX

LEGISLATIVE HISTORY

- Section 7(1): definition of "Friendly Societies Code" inserted by 36, 1997,
Sched. cl. 2(a)
- Section 10(1): definition of "Friendly Societies Code" inserted by 36, 1997,
Sched. cl. 2(b)