

Queensland



FINANCIAL INSTITUTIONS (QUEENSLAND) ACT 1992

**Reprinted as in force on 20 July 1994
(includes amendments up to Act No. 27 of 1994)**

Reprint No. 2

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 20 July 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use expressions consistent with current legislative drafting practice (s 29).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



**FINANCIAL INSTITUTIONS
(QUEENSLAND) ACT 1992**

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FINANCIAL INSTITUTIONS (QUEENSLAND) ACT 1992

[as amended by all amendments that commenced on or before 20 July 19942]

An Act to provide for the formulation, registration, management and regulation of certain financial institutions, and for other purposes

PART 1—PRELIMINARY

Division 1—Introductory

Short title

1. This Act may be cited as the *Financial Institutions (Queensland) Act 1992*³⁻⁵.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Division 2—Interpretation

Definitions

3. In this Act—

“**AFIC (Queensland) Code**” has the same meaning as in the *Australian Financial Institutions Commission Act 1992*;

“**building society**” has the meaning given by section 3 (Definitions) of the *Financial Institutions (Queensland) Code*;

“Financial Institutions (Queensland) Code” means the provisions applying because of section 4;

“Financial Institutions (Queensland) Regulations” means the provisions applying because of section 5;

“Ministerial Council” has the meaning given by section 3 (Definitions) of the Financial Institutions (Queensland) Code;

“SSA” means the Queensland Office of Financial Supervision.

PART 2—FINANCIAL INSTITUTIONS (QUEENSLAND) CODE AND FINANCIAL INSTITUTIONS (QUEENSLAND) REGULATIONS

Application in Queensland of the Financial Institutions Code

4. The Financial Institutions Code set out in section 30 as in force for the time being—

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

Application of regulations in force under Pt 3

5. The regulations in force for the time being under Part 3—

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

Interpretation of some expressions in the Financial Institutions (Queensland) Code and the Financial Institutions (Queensland) Regulations

6.(1) In the Financial Institutions (Queensland) Code and the Financial Institutions (Queensland) Regulations—

“AFIC Code” means the AFIC (Queensland) Code;

“continuing association” means—

- (a) an association of credit societies; or
- (b) a union of associations of credit societies;

registered under the Credit Societies Act 1986 immediately before the commencement of this section;

“continuing association of credit unions” means an association of credit societies registered under the *Credit Societies Act 1986* immediately before the commencement of this section;

“continuing building society” means a permanent building society registered under the *Building Societies Act 1985* immediately before the commencement of this section;

“continuing credit union” means a credit society registered under the *Credit Societies Act 1986* immediately before the commencement of this section;

“continuing foreign society” means—

- (a) a foreign credit society registered under Part 10 of the *Credit Societies Act 1986*; or
- (b) a body that is—
 - (i) a credit union or credit cooperative under the law of a participating State; and
 - (ii) in relation to which an exemption is in force for the purpose of section 25(3) of the *Credit Societies Act 1986*;

immediately before the commencement of this section;

“continuing society” means a continuing building society or continuing credit union;

“Corporations Law” and **“Corporations Regulations”** have the meaning

given by Part 3 of the *Corporations (Queensland) Act 1990*;

“Legislature of this State” means the Legislative Assembly of Queensland;

“Magistrate” means a Stipendiary Magistrate appointed under the *Stipendiary Magistrates Act 1991*;

“previous law” means the *Building Societies Act 1985* or the *Credit Societies Act 1986*;

“Registrar” means the Registrar of Commercial Acts, Brisbane;

“the Code” means the Financial Institutions (Queensland) Code;

“this State” means the State of Queensland.

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

PART 3—POWER TO MAKE REGULATIONS FOR PURPOSES OF FINANCIAL INSTITUTIONS CODE

Interpretation

7.(1) In this Part—

“the Code” means the Financial Institutions Code set out in section 30 as in force for the time being.

(2) Words and expressions used in the Code have the same respective meanings in this Part.

General regulation-making power

8.(1) The Governor in Council may make regulations for the purposes of the Code.

(2) A regulation may be made only on the recommendation of the Ministerial Council.

Specific regulation-making powers

9.(1) A regulation may make provision with respect to—

- (a) the keeping of registers and records by the SSA; and
- (b) the lodging or registration of documents, the time and way of submitting documents for lodgment or registration and the requirements with which documents lodged with the SSA must comply; and
- (c) prescribing or approving forms for the purposes of the Code, the method of verifying any information required by or in forms and the completion or preparation of forms in accordance with the directions contained in forms; and
- (d) prescribing fees for the registration or exemption of financial bodies and fees to be paid in relation to any document lodged, filed, registered with or issued by the SSA under the Code or for any act or service required or authorised to be performed by the SSA; and
- (e) prescribing the way in which, the persons by whom, and the directions or requirements in accordance with which, forms used for the purposes of the Code are required or authorised to be signed, prepared or completed and generally regulating the signing, preparation and completion of forms; and
- (f) the matters to be contained in the rules of a financial body other than a building society or a credit union; and
- (g) the summoning of, conduct of, and procedure and voting at meetings required or authorised under the Code to be held, the number of persons constituting a quorum at a meeting, the sending of notices of meetings to persons entitled to attend meetings, the lodging with the SSA of notices of meetings and of resolutions passed at meetings; and
- (h) the proof of debts of a financial body, the time within which debts can or may be proved and generally regulating the proving of

debts for the purposes of the Code.

(2) A regulation may require—

- (a) if a document required by or under the Code to be lodged or given under the Code is required to be verified or certified and no way of verification or certification is prescribed by the Code—that the documents must be verified or certified by statutory declaration or affidavit made by such persons as are prescribed; or
- (b) if no express provision is made in the Code for verification or certification of a document—that the documents must be verified or certified by statutory declaration or affidavit made by such persons as are prescribed.

(3) A regulation may provide that, if a document that is required by or under the Code to be lodged with, or given to, the SSA is signed or so lodged or given on behalf of a person by the person's agent duly authorised in writing, there must be—

- (a) lodged or given with; or
- (b) endorsed on; or
- (c) annexed to;

the document, the original or a verified copy of the authority.

(4) For the purpose of section 408 (Penalty notices) of the Code—

- (a) a regulation must not prescribe an offence for which the penalty at the time the regulation is made exceeds \$25 000; and
- (b) the maximum prescribed penalty must not exceed 50% of the maximum pecuniary penalty applicable to the offence at the time the regulation is made.

(5) A regulation may be made—

- (a) creating offences against the regulation; and
- (b) fixing a maximum penalty of a fine of \$25 000 for a contravention of the regulation.

(6) A power conferred by this section to make a regulation providing for the imposition of fees may be exercised by providing for all or any of the following matters—

- (a) specific fees;
- (b) maximum or minimum fees;
- (c) scales of fees;
- (d) the reduction, waiver or refund of fees.

Further specific regulation-making powers

10.(1) A regulation may make provision with respect to—

- (a) the objects of societies and, in particular, may—
 - (i) restrict the application or scope of objects by the imposition of conditions or otherwise; and
 - (ii) make provision of a savings or transitional nature in relation to any such restriction; and
- (b) the powers of societies and, in particular, may—
 - (i) withdraw powers of a specified kind conferred by the financial institutions legislation or the rules of a society; and
 - (ii) restrict the scope of powers of a specified kind conferred by the financial institutions legislation or the rules of a society; and
 - (iii) make provision of a savings or transitional nature in relation to any such withdrawal or restriction; and
- (c) the information to be contained in returns to the SSA; and
- (d) the circumstances in which, and the period within which, returns must be lodged with the SSA; and
- (e) any documents that must be incorporated in or be given with the returns; and
- (f) permitting a society subject to any specified conditions, exceptions or qualifications, to insert in an account or report under the Code, in substitution for an amount that the society would be required or permitted to be set out in the accounts or report, an amount ascertained under the regulations (not being an amount that is more than \$500 more or less than the first amount); and

- (g) securities the subject of any offer, invitation or issue to the public by a society and the making of any such offer, invitation or issue, including—
 - (i) the form and contents of disclosure statements; and
 - (ii) the publication and contents of notices, advertisements and reports relating to such securities; and
 - (iii) trust deeds relating to or securing such securities; and
 - (iv) information, records or returns to be kept or given in relation to such securities and the holders of such securities; and
- (h) allowing financial institutions included in a specified class to issue permanent shares and redeemable preference shares.

(2) Subsection (1)(a) does not apply in relation to a primary object of a building society mentioned in section 110 (Primary objects of building societies) of the Code.

(3) Without limiting subsection (1)(c), the information that may be required in a return may comprise or include information relating to—

- (a) a subsidiary of the society; or
- (b) a body corporate or other entity formed or acquired outside Australia by a subsidiary; or
- (c) a body corporate or other entity (whether within or outside Australia) with which—
 - (i) the society; or
 - (ii) a subsidiary of the society; or
 - (iii) a body corporate or other entity mentioned in paragraph (b);has invested funds.

(4) For the purposes of subsection (1)(f), the insertion of zero is taken to be the insertion of an amount.

Savings and transitional regulation-making power

11.(1) A regulation may make provision of a saving or transitional nature consequent on the commencement of the Code or a provision of the Code.

(2) If the regulation so provides, it has effect despite any provision of the Code.

PART 4—STATE SUPERVISORY AUTHORITY

QOFS is State Supervisory Authority

12. The Queensland Office of Financial Supervision is the State Supervisory Authority for Queensland.

PART 5—SPECIAL QUEENSLAND PROVISIONS OF A SAVINGS OR TRANSITIONAL NATURE

Interpretation—words etc. used in Financial Institutions (Queensland) Code

13. Words and expressions used in the Financial Institutions (Queensland) Code have the same respective meanings in this Part.

Mergers

14.(1) A special resolution of a continuing society approving an amalgamation and its terms under—

- (a) section 118 of the *Building Societies Act 1985*; or
- (b) section 122 of the *Credit Societies Act 1986*;

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 (Queensland) Code, to be a special resolution approving a proposed merger.

(2) Compliance by a continuing society with—

- (a) section 121(1) to (3) of the *Building Societies Act 1985*; or

(b) section 125(1) to (3) of the *Credit Societies Act 1986*;

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

(3) An application by 2 or more continuing societies to be registered as an amalgamated building society or credit society under—

(a) section 118 of the *Building Societies Act 1985*; or

(b) section 122 of the *Credit Societies Act 1986*;

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 (Queensland) Code.

Transfer of engagements

15.(1) A special resolution of a continuing society—

(a) transferring its engagements to another continuing society under section 119(1) of the *Building Societies Act 1985*, or section 123(1) of the *Credit Societies Act 1986*; or

(b) undertaking to fulfil the engagements of another continuing society under section 119(2)(a) of the *Building Societies Act 1985*, or section 123(2)(a) of the *Credit Societies Act 1986*;

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 (Queensland) Code, to be a special resolution approving a proposed transfer of engagements.

(2) A resolution of a general meeting of a continuing society, or of its board, undertaking to fulfil the engagements of another continuing society under—

(a) section 119(2)(b) of the *Building Societies Act 1985*; or

(b) section 123(2)(b) of the *Credit Societies Act 1986*;

is taken to be an approval, with the consent of the SSA, of a proposed transfer of engagements by the society's board under section 293(2) of the Financial Institutions (Queensland) Code.

(3) Compliance by a continuing society with—

- (a) section 121(1) to (3) of the *Building Societies Act 1985*; or
- (b) section 125(1) to (3) of the *Credit Societies Act 1986*;

in relation to a transfer of engagements is taken to be compliance by the society with section 293(3) and (4) of the Financial Institutions (Queensland) Code.

Directed transfer of engagements

16. A direction to a continuing society under—

- (a) section 120 of the *Building Societies Act 1985*; or
- (b) section 124 of the *Credit Societies Act 1986*;

that it transfer its engagements to 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 (Queensland) Code.

Suspension of operations

17. A direction given to a continuing society under—

- (a) section 123 of the *Building Societies Act 1985*; or
- (b) section 128 of the *Credit Societies Act 1986*;

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 (Queensland) Code.

Administrator etc.

18.(1) An administrator of a continuing society appointed under—

- (a) section 124 of the *Building Societies Act 1985*; or
- (b) section 129 of the *Credit Societies Act 1986*;

is taken to be appointed by the SSA under section 90 of the Financial Institutions (Queensland) Code.

(2) Directors of a continuing society appointed under—

- (a) section 124(10) of the *Building Societies Act 1985*; or
- (b) section 129(11) of the *Credit Societies Act 1986*;

are taken to have been appointed under section 90(9)(d) of the Financial Institutions (Queensland) Code.

(3) Action taken in relation to a continuing society under—

- (a) section 125 of the *Building Societies Act 1985*; or
- (b) section 130 of the *Credit Societies Act 1986*;

is taken to have been taken by the SSA under section 91 of the Financial Institutions (Queensland) Code.

Proceedings under Building Societies Act 1985 or Credit Societies Act 1986

19.(1) The SSA may institute proceedings under the *Building Societies Act 1985*, or the *Credit Societies Act 1986*, in relation to a continuing society.

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

Investigations

20.(1) If, immediately before the commencement of this section, an investigation is being conducted into the affairs of a continuing society under—

- (a) Division 3 of Part 10 of the *Building Societies Act 1985*; or
- (b) Division 3 of Part 11 of the *Credit Societies Act 1986*;

the investigation may continue under Part 10 of the Financial Institutions (Queensland) Code.

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

(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

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

- (a) section 179 of the *Building Societies Act 1985*; or
- (b) section 196 of the *Credit Societies Act 1986*;

may continue under the Financial Institutions (Queensland) Code.

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

Amount credited to Credit Societies Guarantee Fund

22.(1) In this section—

“**Credit Societies Guarantee Fund**” means the fund of that name established under the *Credit Societies Act 1986*.

(2) The amount standing to the credit of the Credit Societies Guarantee Fund immediately before the commencement of this section, is credit to the Credit Unions Contingency Fund.

Regulations

23.(1) The Governor in Council may make regulations of a savings or transitional nature consequent on the enactment of this Act or the *Australian Financial Institutions Commission Act 1992*.

(2) A regulation may provide for the continuance, winding-up or distribution of the Permanent Building Societies Contingency Fund established under the *Building Societies Act 1985* and has effect despite any provision of that Act.

(3) If a regulation so provides, it has effect despite any provision of this Act, the Financial Institutions (Queensland) Code, the *Australian Financial Institutions Commission Act 1992* or the AFIC (Queensland) Code.

(4) A regulation may be made only on the recommendation of the

Ministerial Council.

PART 6—MISCELLANEOUS

Division 3—Other matters

Investment of trust funds

27.(1) On application made by a building society to the SSA for the purpose, the Governor in Council may, by order in council, approve the society for the purposes of section 21(1)(k) of the *Trusts Act 1973*.

(2) The Governor in Council may make regulations for the purposes of this section.

(3) A regulation may be made only on the recommendation of the Ministerial Council.

(4) A regulation may prescribe—

- (a) guidelines for the determination of applications; and
- (b) requirements with which a building society approved under subsection (1) must comply; and
- (c) offences punishable on conviction by a maximum penalty of a fine of 200 penalty units for contravention of the requirements.

(5) An approval in force under section 227 of the *Building Societies Act 1985* immediately before the commencement of this section is taken to be an approval given under subsection (1).

(6) A regulation made for the purposes of section 227 of the *Building Societies Act 1985* that is in force immediately before the commencement of this section—

- (a) remains in force for 1 year after the commencement; and
- (b) is taken to have been made for the purposes of subsection (2) of this section; and
- (c) applies with any necessary modifications; and

(d) may be amended by regulation made under subsection (2).

Building society may be registered issuer or packager

28. A building society may, despite its rules, become a registered issuer or a registered packager under the *Mortgages (Secondary Market) Act 1984* and carry on business as such under that Act.

PART 7—FINANCIAL INSTITUTIONS CODE

Financial Institutions Code

30. The Financial Institutions Code is as follows—

[The Financial Institutions (Queensland) Code is reprinted as a separate reprint.]

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 July 1994. Future amendments of the Financial Institutions (Queensland) Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Table of previous reprints

Reprint No.	Amendments included	Reprint date
1	none	1 July 1992

4 List of legislation

Financial Institutions (Queensland) Act 1992 No. 7

date of assent 27 March 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (SL No. 168 Gaz 26 June 1992 p 2045)

as amended by—

Financial Institutions Legislation Amendment Act 1994 No. 27 Pts 1–2

date of assent 28 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (1994 SL No. 222)

5 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
R1	=	Reprint No. 1
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Division 1—Repeal of Credit Societies Act

Div 1 (s 24) om R1 (see RA s 40)

Division 2—Amendment of Building Societies Act

Div 2 (s 25) om R1 (see RA s 40)

Replacement of s 3 (Arrangement of Act)

s 26 om R1 (see RA s 40)

Penalty Units Act does not apply

s 29 om 1994 No. 27 s 4