

MISCELLANEOUS ACTS (NON-BANK FINANCIAL INSTITUTIONS) AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The purposes of this proposed Bill are to remove the legislative discrimination against and between non-bank financial institutions (namely building societies and credit unions) and to grant authorised trustee investment status to deposits and investments with credit unions and foreign societies.

This Bill provides for a number of minor or technical amendments to a range of statutes which require persons to do certain activities (eg open and maintain a trust account) or which affect the manner of making a financial transaction. This type of Bill is often referred to as an “omnibus Bill” and is directed at carrying out the objects of this Bill in one stand alone Bill.

These legislative amendments have several elements in common:

1. They relate primarily to statutes administered by the Treasurer and the Attorney-General and Minister for Justice;
2. They have the purpose of ensuring that persons such as public authorities, trustees and other persons can use financial services offered by building societies and credit unions ; ensuring that the principle of competitive neutrality applies between banks and non-bank financial institutions; and promoting a competitive financial system within this State.
3. They do not modify the major underlying philosophy or direction of the statutes that are being amended.

Reasons for the objectives and how they will be achieved

Representations from prominent bodies such as the Queensland Association of Permanent Building Societies and the Credit Union Services Corporation (Australia) Limited have been made to the Government on the need to redress existing discriminatory provisions in various pieces of State legislation. Similarly, the Australian Financial Institutions Commission (AFIC), the national co-ordinator for the supervision of building societies and credit unions, has indicated support for the redressing of these discriminatory provisions given the fact that the Financial Institutions Scheme (the scheme which establishes a national uniform scheme for the supervision of building societies and credit unions) has been operating since 1 July 1992.

Briefly, this new scheme regulates the incorporation and operation of building societies and credit unions throughout Australia. This new scheme also establishes new prudential standards which equal, and in some respects exceed, those applying to Australian banks and other financial market participants.

Several States and Territories have similarly taken initiatives, or announced their preparedness, to remove the legislative discrimination against non-bank financial institutions.

The removal of these discriminatory provisions from the statutes to be amended in this Bill will enhance the development towards a "level playing field" between banks and non-banks as well as enabling building societies and credit unions to operate more efficiently in a stronger market where there are not any legislative barriers to the provision of their financial services. It will therefore strengthen the regional and rural operation of these non-bank financial institutions and provide another alternative to banks in the regional and rural areas of Queensland.

The underlying policy in the proposed Bill will simplify the legislative burden, particularly on the financial system in this State. The bill will do this by creating more choices for consumers and organisations which are required to carry out financial transactions and keep financial records such as bank accounts.

Administrative cost to Government of implementation

The amendments to the various statutes in this Bill will not involve any significant additional governmental expenditure. More importantly, some

of the amendments will eventually provide future budgetary savings for public authorities, trustees and others whose financial arrangements or investment powers are regulated by Queensland legislation. However, it is impossible to quantify with any precision the extent of these particular savings.

Fundamental legislative principles

There are no fundamental legislative principle issues in the proposed Bill. Once again, this Bill is designed to achieve competitive neutrality between banks and non-banks.

Consultation

Consultation has taken place with the following organisations:

Queensland Association of Permanent Building Societies, Credit Union Services Corporation (Australia) Limited, National Credit Union Association Inc., Reserve Bank of Australia, Australian Financial Institutions Commission, the Queensland Office of Financial Supervision, the Queensland Law Society Inc. and the Australian Bankers' Association.

NOTES ON PROVISIONS

The format to this statute follows the same format for other omnibus Bills; that is:

- There is a long and short title; and
- The Act is divided into Parts, each Part containing within it all the matters (amendments) relevant to a Statute which require amendment to give effect to the objectives of this Bill.

Part 1 - Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision which provides that this Act commences on a date to be fixed by proclamation.

Clause 3 sets out the objects of this Act.

Clause 4 provides that this Act is an amending Act.

Part 2—Amendment of *Auctioneers and Agents Act 1971*

Clause 5 provides for this Bill to amend the *Auctioneers and Agents Act 1971*.

Clause 6 amends the definitions for “commercial agent”, “motor dealer” and “real estate agent”.

Part 3—Amendment of *Funeral Benefit Business Act 1982*

Clause 7 provides for the amendment of the *Funeral Benefit Business Act 1982*.

Clause 8 amends section 14 by omitting the term “bank” and inserting a new definition.

Clause 9 amends section 17 by deleting the activity of “banked” and inserting a redefined activity of “deposited in a financial institution”.

Clause 10 amends section 34 and is concerned with omitting the reference to “bank bond” and inserting a new reference which is a “bond with a financial institution”.

Clauses 11—16 inclusive amend sections 37, 38, 39, 50, 52 and 56 by omitting where necessary the old terminology and inserting the new definition.

Clause 17 amends section 64 by deleting the reference to “banker’s certificate” and inserting the new phrase of “certificate of a financial institution”.

Clauses 18 and 19 delete certain words and insert the new definition.

Part 4—Amendment of *Legal Practitioners Act 1995*

Clause 20 provides for the amendment of the *Legal Practitioners Act 1995*.

Clauses 21—22 amend section 51 and the Schedule by inserting the new definition and omitting old definitions.

Part 5—Amendment of *Property Law Act 1974*

Clause 23 provides for the amendment to this Act.

Clauses 24—26 inclusive omits old terminology and inserts the new term where appropriate.

Part 6—Amendment of *Public Trustee Act 1978*

Clause 27 provides for the amendment to the Act.

Clauses 28—30 inclusive omit the old terminology and inserts the new definitions.

Part 7—Amendment of *Queensland Investment Corporation Act 1991*

Clause 31 provides for the amendment to this Act.

Clauses 32—33 amend the Act in accordance with the objectives of this Bill.

Part 8—Amendment of *Queensland Law Society Act 1952*

Clause 34 provides for the amendment of the *Queensland Law Society Act 1952*.

Clauses 35—41 inclusive give effect to the objects of the Act.

Part 9—Amendment of *Queensland Performing Arts Trust 1977*

Clause 42 provides for the amendment of the *Queensland Performing Arts Trust 1977*.

Clause 43 omits the definition and inserts a new definition in accordance with the objects of the Act.

Part 10—Amendment of *Queensland Treasury Corporation Act 1988*

Clause 44 provides for the amendment of the *Queensland Treasury Corporation Act 1988*.

Clauses 45—47 inclusive omits definitions and inserts new definitions where appropriate.

Part 11—Amendment of *Trusts Accounts Act 1973*

Clause 48 provides for the amendment of the *Trusts Accounts Act 1973*.

Clause 49 omits the definition of “agent” and inserts a new definition in accordance with the objects of this Bill.

Clauses 50 and 51 omit the superseded definitions and inserts the new definitions.

Clause 52 omits a clause and inserts a new clause which recognises that building societies and credit unions may issue cheques either as a principal or through an agency arrangement with a bank.

Clauses 53—59 inclusive omit the superseded definitions and inserts new definitions.

Part 12—Amendment of *Trustee Companies Act 1968*

Clause 60 provides for the amendment of the *Trustee Companies Act 1968*.

Clause 61 omits the superseded definitions and inserts new definitions in accordance with the objects of this Act.

Clauses 62—65 inclusive amend sections 36, 36A, 64A and 66C by omitting where necessary the old terminology and inserting a new definition.

Part 13—Amendment of *Trusts Act 1973*

Clause 66 provides for the amendment of the *Trusts Act 1973*.

Clause 67 omits the old terminology and inserts the new definition.

Clause 68—73 inclusive amend sections 25, 49, 54, 55, 71 and 102 by omitting where necessary the old terminology and inserting the new definition.

Part 14—Other Acts Amended

Clause 74 is a formal provision giving effect to the Schedule. This Schedule amends various other Acts to give effect to the objects set out in Clause 3 of this Act.

SCHEDULE MINOR AMENDMENTS