

FINANCIAL SECTOR REFORM (QUEENSLAND) BILL 1999

EXPLANATORY NOTES

Short Title

The short title of the Bill is the Financial Sector Reform (Queensland) Bill 1999.

Policy Objectives of the Bill and the Reasons for them

This Bill forms part of the Financial Sector Reform process. It is a result of an agreement between Commonwealth, States and Territories to transfer regulatory responsibility for building societies, credit unions, friendly societies and the Cairns Cooperative Weekly Penny Savings Bank to the Commonwealth and to wind-up the current uniform system of State-based supervision.

This Bill, in conjunction with complementary Commonwealth legislation, will bring the regulation of building societies, credit unions and the Cairns Cooperative Weekly Penny Savings Bank into line with the regulation of other deposit-taking institutions (including banks) and establish a single regulatory framework for life insurance companies and friendly societies, while recognising the special features of friendly societies. The consequential amendments to the *Pharmacy Act 1976* are designed to preserve the status quo in respect of the rights of friendly societies under that Act.

The proposed reforms are designed to—

- (a) reduce the duplication inherent in the separate State/Territory and Commonwealth systems;
- (b) enhance competition in the retail financial sector by applying the same regulatory structure to all Australian deposit taking institutions; and

- (c) allow financial services providers flexibility in their choice of corporate structures.

The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate

The policy objectives mentioned above will largely be achieved through Commonwealth amendments to the *Banking Act 1959*, the Corporations Law, the *Life Insurance Act 1995* and the *Reserve Bank Act 1959*.

The amendments will provide that State based financial institutions such as building societies and credit unions will be deemed to be companies registered under the Corporations Law. These bodies will then receive a licence, from the Commonwealth supervisory body, to carry on business as approved deposit taking institutions.

State and Territory legislation is required to facilitate the transfer of state based financial institutions to the Commonwealth regime, to wind up the Financial Institutions Scheme and to ensure that the transition from one scheme to the other is as smooth as possible.

Alternative way of achieving the policy objective

There is no alternative way of achieving the policy objectives other than by means of the legislative initiatives and amendments contained in the Bill.

Administrative costs for Government implementation of the Bill

The transfer of regulation of State-based financial institutions to the Commonwealth is expected to entail minimal administrative costs for Government.

Ongoing costs directly attributable to the implementation of this legislation will be limited to the maintenance of records of the superseded Financial Institutions scheme. The State will also assume contingent liabilities of the Queensland Office of Financial Supervision (QOFS) and the Australian Financial Institutions Commission (AFIC) that are not transferred to the Commonwealth.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles, except for several provisions of the Financial Institutions legislation and the *Friendly Societies Act 1991* that will continue to apply in relation to offences that may have been committed under that legislation.

These provisions relate to the powers of investigators and inspectors to inquire into possible breaches committed by societies under the superseded legislation. The provisions were contained in the superseded legislation and will be preserved to apply only in respect of offences that may have occurred under those respective statutes.

The specific provisions that are identified for FLP purposes are—

AFIC Code

Section 52(8) – This section removes the privilege against self-incrimination. However, the Code provides that a person's answers are not admissible as evidence in a criminal proceeding against the person.

Section 61 – This section provides that a person can not, without reasonable excuse, obstruct an inspector in the exercise of a power under the Code. The effect of this provision is to reverse the criminal onus of proof.

Financial Institutions Code

Section 76(7) and section 81(2)—These sections provide that a person can not, without reasonable excuse, fail to comply with the requirements under these sections to produce to inspectors, or assist inspectors in obtaining, evidence of offences. The effect of these provisions is to reverse the criminal onus of proof.

Section 85—This section provides that a person can not, without reasonable excuse, obstruct an inspector in the exercise of a power under the Code. The effect of this provision is to reverse the criminal onus of proof.

Section 76(8), section 81(3), section 352(1) and section 397(8)—These sections remove the privilege against self-incrimination. However, the Code provides that a person's answers are not admissible as evidence in a criminal proceeding against the person.

Friendly Societies Code

Section 32(6) and section 37(2)—These sections provide that a person can not, without reasonable excuse, fail to comply with the requirements under these sections to produce to inspectors, or assist inspectors in obtaining, evidence of offences. The effect of these provisions is to reverse the criminal onus of proof.

Section 41—This section provides that a person can not, without reasonable excuse, obstruct an inspector in the exercise of a power under the Code. The effect of this provision is to reverse the criminal onus of proof.

Section 32(7), section 37(3), section 415(1) and section 465(8)—These sections remove the privilege against self-incrimination. However, the Code provides that a person's answers are not admissible as evidence in a criminal proceeding against the person.

Friendly Societies Act 1991

Section 8.17(2)—This section removes the privilege against self-incrimination. However, the Act provides that a person's answers are not admissible as evidence in any criminal proceedings.

Section 8.19(a) – This section provides that a person can not fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure to comply. The effect of this provision is to reverse the criminal onus of proof.

In those cases where it might be necessary to use the enforcement and investigatory powers to obtain evidence for the purposes set out in the legislation, an employee or officer of the society is frequently the only person having knowledge of the details of complex transactions by which an offence has been committed or concealed. The above mentioned provisions are therefore necessary to ensure that effective investigation and possible prosecution of corporate offences are not hampered.

Strong inspectorial powers such as those legislated are also necessary to discourage the type of fraud that has occurred in financial institutions from time to time in other countries, often with spectacular and disastrous consequences.

The above mentioned provisions are crucial to the efforts required to obtain evidence that an offence has been committed or to effectively conduct an investigation where it is necessary to protect the public, members or

creditors of a society. These provisions are however balanced by other provisions which provide avenues of protection for the persons involved. For example, the protection afforded in the legislation against admissibility in a criminal proceeding of answers, given by a person who before giving the answers claims that the answers may incriminate him or her, is preserved. Equally, the provisions which extend similar protection (in the relevant circumstances) to a document produced by a person are also preserved.

It is also reiterated that the above mentioned provisions will be of limited application, continuing to apply only in respect of offences and conduct that may have occurred under the respective statutes before their repeal.

Consultation

Consultation has taken place with AFIC, QOFS and other State Supervisory Authorities, the Commonwealth Government, State and Territory officers, the Department of Justice, The Department of Equity and Fair Trading, The Office of State Revenue, The Government Superannuation Office, The Queensland Office of Gaming Regulation, The Department of Health, building societies, credit unions, friendly societies and cooperative housing societies.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 provides for a dictionary of defined terms to be used in the Act.

Clause 4 provides that the Act binds all persons, including the States and Commonwealth.

PART 2—REGISTRATION OF CERTAIN ENTITIES AS COMPANIES

Clause 5 provides that a body transferred to the Corporations Law, pursuant to this Act, is taken to be registered as a company on the transfer date while maintaining its name. This process does not create a new legal entity.

The provision in this part is in terms corresponding to provisions in the Corporations Law. The enactment of this provision is intended to complement, and not limit or otherwise affect, the operation of the Corporations Law.

PART 3—CONFERRAL OF FUNCTIONS AND POWERS ON APRA AND ASIC

Clause 6 ensures that the Australian Prudential Regulation Authority (APRA) is empowered to carry out the functions and powers specified under this Act or by a similar Act of another jurisdiction.

Clause 7 ensures that the Australian Securities and Investments Commission (ASIC) is empowered to carry out the functions and powers specified under this Act or by a similar Act of another jurisdiction.

PART 4—AUSTRALIAN DEPOSIT-TAKING INSTITUTIONS AND LIFE INSURANCE COMPANIES—TRANSFER OF BUSINESS

Clause 8 provides that terms defined in the *Financial Sector (Transfers of Business) Act 1999* (Cwlth) have the same meaning in this Part, unless the contrary intention appears in the Act.

Clause 9 empowers APRA to authorise certain persons to exercise the powers or functions of an authorised APRA officer under this Part. An authorised APRA officer is defined in the Dictionary in Schedule 2.

Clause 10 facilitates voluntary transfers of business under Part 3 of the *Financial Sector (Transfers of Business) Act 1999* (Cwlth). This clause provides that the receiving body is the successor in law of the transferring body to the extent of the transfer and that any matters specified under a section 20 statement are effective. A section 20 statement is defined in the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

Clause 11 facilitates compulsory transfers under Part 4 of the *Financial Sector (Transfers of Business) Act 1999* (Cwlth). This clause provides that the receiving body is the successor in law of the transferring body to the extent of the transfer and that any matters specified under a section 30 statement are effective. The clause also deems that particulars included in the certificate of transfer of a kind referred to on s33(3) of the *Financial Sector (Transfers of Business) Act 1999* (Cwlth) are effective. A section 30 statement is defined in the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

Clause 12 provides that a signed certificate, issued by an authorised APRA officer, is evidence of certain occurrences under this Part.

Clause 13 provides that the Registrar of Titles may recognise and deal with a signed certificate from an authorised APRA officer evidencing a change in ownership or interest in land under this Part. This clause does not alter existing requirements of an instrument of transfer or the fees payable on lodging the instrument.

Clause 14 provides that a registering authority is entitled to recognise and deal with a signed certificate by an authorised APRA officer evidencing that an asset under this Part has become an asset of the receiving body.

Clause 15 provides that a document purporting to be a certificate in the previous two clauses is taken to be a certificate unless the contrary is established.

Clause 16 provides that this part has effect despite anything in another instrument and that nothing done under this part makes a party guilty of a civil wrong or in breach of a law of the State or certain contractual provisions. Nor does this part release a surety wholly or partly from all or any of the surety's obligations.

PART 5—REPEALS AND TRANSITIONAL

Division 1—Repeals

Clause 17 repeals several Acts which provided for the State-based financial institutions scheme.

Division 2—provisions relating to AFIC

Subdivision 1—AFIC to continue

Clause 18 provides that, despite the repeal of the AFIC Act, AFIC and its board will continue for a period of up twelve months to give effect to matters relating to the transfer and the winding-up of AFIC's affairs.

Clause 19 provides that a contract or other agreement between AFIC and another person is not terminated simply because of the repeal of the AFIC Act.

Clause 20 provides that certain provisions of the AFIC Code relating to AFIC's final report and financial statements, continue to apply, as amended by this Act, despite the repeal of the AFIC Act.

Clause 21 enables the AFIC board to delegate its powers to a suitably qualified employee.

Clause 22 requires that AFIC be dissolved no later than twelve months from the transfer date.

Subdivision 2—Provisions about AFIC's staff

Clause 23 provides that the executive director of AFIC is an employee for the purposes of the subdivision.

Clause 24 provides that a transfer agreement relating to the staff of AFIC, under the provisions of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* (Cwlth), is effective and that the agreement may be entered into by the Minister.

Clause 25 provides that a persons employment with AFIC ends if the person is appointed to APRA or the Australian Public Service and that a person is not entitled to receive any benefit due to such cessation of employment.

Clause 26 requires that AFIC provide a written statement of certain employment entitlements prior to its employees being employed by APRA or the Australian Public Service under clauses 24 or 25(2).

Subdivision 3—Information may be given to APRA or ASIC

Clause 27 enables certain persons to provide information to APRA or ASIC.

Subdivision 4—Transfer of AFIC's assets and liabilities

Clause 28 provides that a transfer agreement relating to the assets and liabilities of AFIC, under the provisions of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* (Cwlth), is effective and that the agreement may be entered into by the Minister.

Subdivision 5—Proceedings involving AFIC

Clause 29 provides that the State is substituted for AFIC in proceedings (but not a proceedings for an offence) that are not finalised by the transfer date. The clause goes on to provide that proceedings (but not proceedings for an offence) not started before the transfer date and that could have been brought against AFIC may, after the transfer date, be brought against the State.

In either case, evidence admissible for or against AFIC is admissible for or against the State.

Clause 30 provides that a proceeding for an offence under section 63 of the AFIC Code that was commenced before the transfer date may be continued after the transfer date by APRA, ASIC or an authorised person in place of AFIC.

Division 3—Provisions relating to QOFS

Subdivision 1—QOFS to continue

Clause 31 provides that, despite the repeal of the QOFS Act, QOFS and its board will continue for a period of up to twelve months to give effect to matters relating to the transfer and the winding-up of QOFS' affairs.

Clause 32 provides that a contract or other agreement between QOFS and another person is not terminated simply because of the repeal of the QOFS Act.

Clause 33 provides that the QOFS board must, before it is dissolved, prepare and provide a report and audited financial statements to the Minister.

Clause 34 enables the QOFS board to delegate its powers to a suitably qualified employee.

Clause 35 provides that QOFS be dissolved no later than twelve months from the transfer date.

Subdivision 2—Provisions about particular funds

Clause 36 provides for the continuation after the transfer date and subsequent abolition of several funds that are administered by QOFS

Clause 37 provides that the balance of the Building Societies Fund must be paid into the Consolidated Fund on the transfer date. These funds will then be dispersed as required by an Appropriation Bill.

Clause 38 provides for the distribution of amounts in the Credit Unions Contingency Fund.

Clause 39 provides that QOFS may pay from the Supervision Fund to APRA and ASIC certain employee entitlements and other liabilities relating to the transfer of staff and assets and liabilities to those bodies. QOFS may also pay amounts required to meet its obligations under this Division

Clause 40 provides for the continuation of the Supervision Fund until all necessary payments under section 39 have been made. Any balance will be paid to the Consolidated Fund and the Supervision Fund closed.

Clause 41 requires that QOFS prepare audited financial statements for the Credit Unions Contingency Fund and the Building Societies Fund.

Clause 42 requires the Auditor-General to provide a written report to the Minister concerning the distribution and closure of the Supervision Fund and the Credit Unions Contingency Fund.

Clause 43 requires QOFS to provide to the Minister a report on the operations of the Building Societies Fund. The report is to be tabled in the Legislative Assembly.

Subdivision 3—Provisions about QOFS's staff

Clause 44 provides that the executive director of QOFS is an employee for the purposes of the subdivision.

Clause 45 provides that a transfer agreement relating to the staff of QOFS, under the provisions of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No.1) 1999* (Cwlth), is effective and that the agreement may be entered into by the Minister.

Clause 46 provides that a person's employment with QOFS ends if the person is appointed to APRA or the Australian Public Service and that a person is not entitled to receive any benefit due to such cessation of employment

Clause 47 requires QOFS to provide a written statement of certain employment entitlements prior to its employees being employed by APRA or the Australian Public Service under clauses 45 or 46(2).

Subdivision 4—Information may be given to APRA or ASIC

Clause 48 enables certain persons to provide information to APRA or ASIC.

Subdivision 5—Transfer of QOFS's assets and liabilities

Clause 49 provides that a transfer agreement relating to the assets and liabilities of QOFS under the provisions of the *Financial Sector Reform*

(Amendments and Transitional Provisions) Act (No.1) 1999 (Cwlth) is effective and that the agreement may be entered into by the Minister.

Subdivision 6—Proceedings involving QOFS

Clause 50 provides that the State is substituted for QOFS in certain proceedings (but not proceedings for an offence or a proceeding under the *Financial Intermediaries Act 1996*) that are not finalised by the transfer date. The clause goes on to provide that proceedings (but not proceedings for an offence or a proceeding under the *Financial Intermediaries Act 1996*) that could have been brought against QOFS may, after the transfer date, be brought against the State.

In either case, evidence admissible for or against QOFS is admissible for or against the State.

Clause 51 provides that a proceeding for an offence under section 404 of the Financial Institutions Code or section 471 of the Friendly Societies Code that was commenced before the transfer date may be continued after the transfer date by APRA, ASIC or an authorised person in place of QOFS.

Division 4—APRA's and ASIC's functions and powers under codes

Clause 52 ensures that APRA and ASIC have the same enforcement powers, after the transfer date, as AFIC or an SSA had in relation to a repealed code.

Clause 53 provides that certain provisions of the AFIC Code relating to enforcement powers continue to apply, with all necessary modifications.

Clause 54 provides that certain provisions of the Financial Institutions Code relating to enforcement powers and special investigations continue to apply, with all necessary modifications.

Clause 55 provides that certain provisions of the Financial Institutions Code relating to enforcement powers and special investigations, as applied under section 40 of the AFIC Code, continue to apply, with all necessary modifications.

Clause 56 provides that certain provisions of the Friendly Societies Code relating to enforcement powers continue to apply with all necessary modifications.

Clause 57 requires that certain delegations or authorities conferred by this Act may only be applied to an appropriately qualified person.

Clause 58 confers the functions and powers necessary for the purposes of this Division on APRA and ASIC.

Division 5—Chief executive's functions and powers for Friendly Societies Act 1991

Clause 59 defines the term 'repealed Act' for the purposes of the division.

Clause 60 confers enforcement powers on the chief executive in relation to things done or omitted to be done under the *Friendly Societies Act 1991*.

Clause 61 provides that specified provisions of the *Friendly Societies Act 1991* continue to apply as if that Act had not been repealed.

Clause 62 provides that a proceeding for an offence, in relation to the *Friendly Societies Act 1991*, that was commenced by QOFS before the transfer date may continue to be prosecuted by the chief executive or a person authorised by the chief executive after the transfer date.

Clause 63 enables the chief executive to delegate certain powers to an appropriately qualified officer.

Division 6—Matters relating to deregistered societies

Clause 64 defines 'society' for the purposes of this division.

Clause 65 provides that this division applies to specified societies whose registration has been cancelled before the transfer date.

Clause 66 sets down how a society's property, that vested in ASIC under section 49 of this Act, may be dealt with.

Clause 67 provides that ASIC may act for a deregistered society in certain circumstances.

Clause 68 provides that a person may recover an amount from the insurer of a deregistered society in certain circumstances.

Clause 69 confers on ASIC the functions and powers necessary for the purposes of this division.

Division 7—Miscellaneous

Clause 70 provides that moneys from a person's dormant account, that have been placed in a pooled account, are deemed to be notionally transferred back to the person's deposit account.

Clause 71 provides that mergers or transfers of engagements that have commenced under the Financial Institutions Code may be continued in accordance with the Financial Institutions Code after the transfer date with APRA or ASIC standing in the place of the SSA.

Clause 72 provides that mergers or transfers of engagements that have commenced under the Friendly Societies (Queensland) Code may be continued in accordance with the Friendly Societies (Queensland) Code after the transfer date with APRA or ASIC standing in the place of the SSA.

Clause 73 provides that the Australian Financial Institutions Appeals Tribunal ceases to exist on the transfer date and all applications for review of a decision that have not been decided are taken to have been withdrawn. After the transfer date, the Commonwealth Administrative Appeals Tribunal will assume the role for administrative review of decisions.

PART 6—MISCELLANEOUS

Clause 74 enables the Governor in Council to make regulations under this Bill.

Clause 75 provides for an attachment containing relevant provisions from other legislation referred to in this Act

PART 6—AMENDMENT OF ACTS

Clause 76 provides for consequential amendments to several Acts as set out in Schedule 1.

SCHEDULE 1

AMENDMENTS

Part 1

Family Security Friendly Society (Distribution of Moneys) Act 1991

Consequential amendments to this Act provide that the registrar shall be QOFS before the transfer date and the chief executive after the transfer date. Other amendments provide for the finalisation of the administration of the society and the society's dissolution and deregistration.

Part 2

The Financial Intermediaries Act 1996

This Act requires significant consequential amendment as QOFS, which currently supervises cooperative housing societies, will be wound up under the proposed arrangements. It is necessary, therefore, to replace QOFS with a registrar. The registrar will be the chief executive of the Department responsible for the legislation.

The Act will provide that the State is the successor of QOFS in matters relating to the Act and that certain assets and documents of QOFS will accordingly vest in the State.

The Act also provides that the State may enter into an agreement with APRA for the Authority to provide prudential regulation of cooperative housing societies on behalf of the registrar.

Part 3**Amendment of other Acts****Acts Interpretation Act 1954****Associations Incorporation Act 1981****Collections Act 1966****Cooperatives Act 1997****Corporations (Queensland) Act 1990****Crimes (Confiscation) Act 1989****Farm Produce Marketing Act 1964****Financial Administration and Audit Act 1977****Funeral Benefit Business Act 1982****Gaming Machine Act 1991****Interactive Gambling (Player Protection) Act 1998****Pharmacy Act 1976**

Amendments to the Pharmacy Act have been drafted to define what is a friendly society for the purposes of that Act. There are two alternatives in the definition.

The first alternative provides that a friendly society is a corporation that was a friendly society under the Friendly Societies Code immediately before the transfer date. Section 41A(2) provides that the regulations may clarify which corporations were friendly societies prior to the transfer date. However, it is not mandatory that a regulation be made for a corporation to come within this alternative—the regulation is 'for information purposes only'. This clause in effect maintains the status quo.

The second alternative provides that a corporation will also satisfy the definition of friendly society if:

- the corporation is a company registered under the Corporations Law and authorised to use the words 'friendly society' in its name (friendly society is a restricted expression under the Corporations Law); and
- it is declared under a regulation to be a friendly society.

Under this second alternative, there must be a regulation in order for the corporation to be considered to be a friendly society for the purposes of the Pharmacy Act.

Stamp Act 1894

Statutory Bodies Financial Arrangements Act 1982

Superannuation (State Public Sector) Act 1990

Trusts Act 1973

SCHEDULE 2

DICTIONARY

This Schedule provides the dictionary, referred to in Clause 3 of the Bill, that defines particular words used in the Act.

ATTACHMENT

EXTRACTS FROM OTHER LEGISLATION REFERRED TO IN THE ACT

This Attachment contains relevant provisions, from the legislation listed below, that are referred to in this Act, as mentioned in Clause 501 of this Bill.

AFIC (Queensland) Code

Corporations Law

Financial Sector (Transfers of Business) Act 1999 (C'wlth)