

Queensland



**AUSTRALIAN FINANCIAL
INSTITUTIONS
COMMISSION ACT 1992**

Act No. 8 of 1992

Queensland



AUSTRALIAN FINANCIAL INSTITUTIONS COMMISSION ACT 1992

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Queensland



**Australian Financial Institutions Commission
Act 1992**

Act No. 8 of 1992

**An Act to make provision for a uniform legislative scheme for certain
financial institutions and, in particular, to establish the Australian
Financial Institutions Commission**

[Assented to 27 March 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Division 1—Introductory

Short title

1. This Act may be cited as the *Australian Financial Institutions Commission Act 1992*.

Commencement

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

Division 2—Interpretation

Definitions

3. In this Act—

“**AFIC**” means the Australian Financial Institutions Commission;

“**AFIC (Queensland) Code**” means the provisions applying because of section 9;

“**AFIC (Queensland) Regulations**” means the provisions applying because of section 10;

“**Appeals Tribunal**” means the Australian Financial Institutions Appeals Tribunal;

“**financial institutions legislation**” has the meaning given by section 8 of the AFIC (Queensland) Code;

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

“**Ministerial Council**” has the meaning given by section 3 of the AFIC (Queensland) Code.

PART 2—ESTABLISHMENT OF AFIC AND ITS BOARD

Establishment of AFIC

4. A commission called the Australian Financial Institutions Commission is established.

AFIC is a body corporate etc.

5. The Australian Financial Institutions Commission—
- (a) is a body corporate; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.

AFIC exempt public authority under Corporations Law of Queensland

6. AFIC is an exempt public authority for the purposes of the Corporations Law of Queensland.

The Board

7. There is a board of directors of AFIC.

PART 3—ESTABLISHMENT OF APPEALS TRIBUNAL

Establishment

8. A tribunal called the Australian Financial Institutions Appeals

Tribunal is established.

PART 4—AFIC (QUEENSLAND) CODE AND AFIC (QUEENSLAND) REGULATIONS

Application in Queensland of the AFIC Code

9. The AFIC Code set out in section 21 as in force for the time being—
- (a) applies as part of the law of Queensland; and
 - (b) as so applying may be referred to as the AFIC (Queensland) Code.

Application of regulations in force under Part 5

10. The regulations in force for the time being under Part 5—
- (a) apply as regulations in force for the purposes of the AFIC (Queensland) Code; and
 - (b) as so applying may be referred to as the AFIC (Queensland) Regulations.

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

11.(1) In the AFIC (Queensland) Code and the AFIC (Queensland) Regulations—

“**Corporations Law**” and “**Corporations Regulations**” have the meaning given by Part 3 of the *Corporations (Queensland) Act 1990*;

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

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

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

“**the Code**” means the AFIC (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 39(2) of the AFIC (Queensland) Code.

PART 5—POWER TO MAKE REGULATIONS FOR PURPOSES OF AFIC CODE

Interpretation

12.(1) In this Part—

“**the Code**” means the AFIC Code set out in section 21 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

13.(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

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

- (a) the keeping of registers and records by AFIC; 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 AFIC 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 AFIC or the Appeals Tribunal or for any act or service required or authorised to be performed by AFIC or the Appeals Tribunal; 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 permitted 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 special services provider; 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 AFIC of notices of meetings and of resolutions passed at meetings; and
- (h) the proof of debts of a special services provider, 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; and
- (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, AFIC 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) 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.

(5) 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.

Saving and transitional regulation-making power

15.(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 6—MISCELLANEOUS

Action to be taken by Premier if provided with a report under section 49(6) of AFIC (Queensland) Code

16.(1) If the Premier is provided with a report under section 49(6) of the AFIC (Queensland) 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 the Legislative Assembly within 14 days of receipt of the request.

(3) The Premier must comply with the request.

(4) If, at the time the Premier would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not sitting, the Premier must give a copy of the report to the Clerk of the Parliament.

(5) The Clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

(6) For the purposes of its printing and publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the Clerk.

Jurisdiction conferred on Supreme Court

17. If the financial institutions legislation of another participating State authorises—

- (a) a party to a proceeding before the Appeals Tribunal to appeal to the Supreme Court of Queensland, on a question of law, from a decision of the Tribunal in the proceeding; or
- (b) the Appeals Tribunal, at the request of a party or of its own initiative, to refer a question of law arising in a proceeding before the Tribunal to the Supreme Court of Queensland for decision;

jurisdiction in the matter is conferred on the Supreme Court of Queensland.

Statutory Bodies Financial Arrangements Act does not apply

18. The *Statutory Bodies Financial Arrangements Act 1982* does not apply to AFIC or to any body or fund established under or for the purposes of the financial institutions legislation.

Penalty Units Act does not apply

19. Sections 4, 5, 6 and 7 of the *Penalty Units Act 1985* do not apply to a monetary penalty for which provision is made in the AFIC (Queensland) Code or the AFIC (Queensland) Regulations.

Standards

20.(1) In this section—

“**prescribed day**” means—

- (a) 1 July 1992; or
- (b) a later day fixed by order in council made on the recommendation of the Ministerial Council.

(2) For the purposes of the Board of AFIC making any standard under Part 4 of the AFIC (Queensland) Code before the prescribed day, the provisions of the Part that require—

- (a) the Board or AFIC to do anything in relation to a State supervisory authority; or
- (b) a State supervisory authority to do anything in relation to a resolution of the Board;

do not apply.

PART 7—AFIC CODE**AFIC Code**

21. The AFIC Code is as follows—

PART 1—PRELIMINARY

Division 1—Introductory

Citation

1. This Code may be referred to as the AFIC Code.

Commencement

2. This Code commences as provided under section 2 of the *Australian Financial Institutions Commission Act 1992* of Queensland.

Division 2—Interpretation

Definitions

3. In this Code—
 - “**affairs**”, in relation to a body, has the meaning given by section 53 of the Corporations Law;
 - “**AFIC**” means the Australian Financial Institutions Commission;
 - “**AFIC Act**” means the *Australian Financial Institutions Commission Act 1992* of Queensland;
 - “**Appeals Tribunal**” means the Australian Financial Institutions Appeals Tribunal;
 - “**association**” means a body registered under the financial institutions legislation as an association;
 - “**Board**” means the board of directors of AFIC;
 - “**body**” includes an entity;
 - “**building society**” means a body that is—
 - (a) registered under the financial institutions legislation as a society; and
 - (b) authorised under that legislation to operate as a building society;

“chairperson” means—

- (a) in relation to the Board—the chairperson of the Board; or
- (b) in relation to the Appeals Tribunal—the chairperson of the Appeals Tribunal;

“credit union” means a body that is—

- (a) registered under the financial institutions legislation as a society; and
- (b) authorised under that legislation to operate as a credit union;

“deputy chairperson” means—

- (a) in relation to the Board—the deputy chairperson of the Board; or
- (b) in relation to the Appeals Tribunal—a deputy chairperson of the Appeals Tribunal;

“director” means a director of the Board, and includes the chairperson, the deputy chairperson and the executive director;

“economic entity” means an economic entity for the purposes of Part 3.6 of the Corporations Law;

“employee”, in relation to AFIC, includes—

- (a) a person whose services are made available to AFIC; and
- (b) a person engaged by AFIC on a contract for services;

“entity” means an entity for the purposes of Part 3.6 of the Corporations Law;

“executive director” means the executive director of AFIC;

“financial body” means—

- (a) a society; or
- (b) an association;

“financial institution” means—

- (a) a society; or
- (b) an association; or
- (c) a special services provider;

“financial institutions agreement” means the initial financial institutions agreement or, if that agreement is amended or affected by another agreement, that agreement as so amended or affected;

“financial institutions legislation” has the meaning given by section 8;

“financial institutions scheme” has the meaning given by section 6;

“group” means an economic entity of which a financial institution is a part;

“initial financial institutions agreement” has the meaning given by section 7;

“inspector” means a person authorised under section 53 (Inspectors);

“Interstate Consultative Committee” means the Interstate Consultative Committee established under the financial institutions agreement;

“Ministerial Council” means the Ministerial Council established under the financial institutions agreement;

“non-presiding member”, in relation to the Appeals Tribunal, means a member of the Appeals Tribunal other than the chairperson or a deputy chairperson;

“participating State” means a State that is a party to the financial institutions agreement;

“presiding member”, in relation to the Appeals Tribunal, means the chairperson or a deputy chairperson of the Appeals Tribunal;

“prudential standard” includes—

- (a) a standard relating to all or any of the following matters in relation to financial institutions—
 - (i) capital adequacy;
 - (ii) liquidity;
 - (iii) large exposures;
 - (iv) doubtful and non-performing debts;
 - (v) guarantees;
 - (vi) borrowings;
 - (vii) charges and securities;
 - (viii) ownership and control;

- (ix) prohibited investments;
 - (x) risk management systems;
 - (xi) obligations of directors in relation to financial affairs;
 - (xii) representation of bodies that are part of the same group on boards of directors;
 - (xiii) management contracts;
 - (xiv) the structure of, and relationship between, bodies that are part of groups;
 - (xv) transactions and agreements between bodies that are part of groups; or
- (b) any standard relating to the financial stability of financial institutions; or
 - (c) a standard relating to the interpretation, administration, enforcement or supervision of a standard mentioned in paragraph (a) or (b);

“society” means—

- (a) a building society; or
- (b) a credit union; or
- (c) any other body registered under the financial institutions legislation as a society;

“special services provider” means a body that is registered under the financial institutions legislation as a special services provider;

“standard” means a standard in force under section 28 (Making etc. of standards);

“State” includes a Territory;

“State supervisory authority”, in relation to a State, means the person or body declared by the financial institutions legislation of the State to be the State supervisory authority for the State;

“Tribunal” means the Australian Financial Institutions Appeals Tribunal.

Interpretation—words etc. used in Financial Institutions Code

4. Unless the contrary intention appears, words and expressions used in the *Financial Institutions Code* have the same respective meanings in this Code.

Interpretation—meaning of making a decision

5. A reference in this Code to the making of a decision includes a reference to—

- (a) making, suspending, revoking or refusing to make an order or determination; or
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or
- (d) imposing a condition or restriction; or
- (e) making a declaration, demand or requirement; or
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do anything else.

**PART 2—THE FINANCIAL INSTITUTIONS SCHEME
AND ITS MAIN ELEMENTS***Division 1—General***The financial institutions scheme**

6.(1) There is to be a financial institutions scheme for financial institutions.

(2) The financial institutions scheme is the scheme established and implemented by the financial institutions agreement and the financial institutions legislation.

Initial financial institutions agreement

7.(1) The initial financial institutions agreement is the financial institutions agreement made on 22 November 1991 between the States and Territories.

(2) A copy of the provisions of the initial financial institutions agreement is set out in the Schedule.

Financial institutions legislation

8. The financial institutions legislation consists of—

- (a) the financial institutions legislation of Queensland, namely—
 - (i) the AFIC Act, and the AFIC Code set out in section 21 of the Act; and
 - (ii) the *Financial Institutions (Queensland) Act 1992* of Queensland, and the Financial Institutions Code set out in section 30 of the Act; and
 - (iii) regulations made under either of those Acts; and
- (b) the financial institutions legislation of the other participating States, namely—
 - (i) the Acts and regulations of the other participating States that apply, complement or otherwise give effect to any part of the financial institutions legislation of Queensland; and
 - (ii) the financial institutions legislation of Queensland as applying in those States.

Principal object of financial institutions scheme and its achievement

9.(1) The principal objects of the financial institutions scheme are—

- (a) to protect and promote the financial integrity and the efficiency of the State-based financial institutions system; and
- (b) to protect the interests of depositors.

(2) It is the intention of the participating States that the principal objects should be achieved principally by—

- (a) establishing a system of prudential and other standards for, and for the supervision of, financial institutions that is uniform throughout Australia; and
- (b) maintaining confidence in financial institutions; and
- (c) encouraging strong, stable and competitive financial institutions; and
- (d) enabling financial institutions to operate efficiently on an Australia-wide basis; and
- (e) approving and supervising special services providers; and
- (f) supervising and controlling industry funded liquidity support arrangements for societies; and
- (g) establishing a Ministerial Council to oversight generally the operation of the financial institutions legislation; and
- (h) establishing the Australian Financial Institutions Commission to institute, develop and ensure the effective and efficient implementation of, the uniform system of prudential and other standards for, and for the supervision of, financial institutions; and
- (i) establishing independent State supervisory authorities to undertake day-to-day supervision, administration and enforcement of that uniform system; and
- (j) establishing the Interstate Consultative Committee to ensure effective liaison between State supervisory authorities; and
- (k) ensuring that AFIC and State supervisory authorities are adequately and appropriately funded to achieve the principal objects of the financial institutions scheme; and
- (l) obtaining the cooperation of the Commonwealth and the Reserve Bank of Australia for, and for the ongoing implementation of, the financial institutions scheme.

Principles of supervision

10.(1) It is the intention of the Legislature of this State that the following principles should be applied in the supervision of financial institutions—

(a) **Recognition of role of financial institutions**

- Financial institutions have an important, on-going role in the Australian financial system that needs to be recognised and fostered.

(b) **Management responsibility**

- Responsibility for the financial success and viability of financial institutions rests with their boards and management, not with governments or supervisors.

(c) **Effective supervision**

- There is a need for prudential supervision of financial institutions that is effective.

(d) **Approach to supervision**

- Supervision should be aimed at the prevention of problems.
- Supervision should be based on prudential standards and reporting and disclosure requirements.
- Reliable monitoring of the practices and procedures of financial institutions, use of external auditors, regular review of overall policy and performance with boards of directors of financial institutions, and on-site inspections, should form the key features of supervision arrangements.
- As a general rule, supervision arrangements should not shift responsibility from the boards and management of financial institutions.

(e) **Uniform standards**

- Supervisory arrangements should be uniform across States.

(f) **Flexibility**

- Supervisory arrangements should be flexible in order to adapt to changes in the financial system and to experience acquired in the conduct of supervision.

(g) **Competition**

- Competition should be fostered by ensuring that, to the maximum extent possible, all financial institutions compete

on an equitable basis with each other and with other bodies in the financial system.

- Financial institutions that meet the requirements of the financial institutions scheme should be enabled to operate on a national basis.

(h) **Funding**

- For prudential supervision to be effective, supervisory authorities need to be adequately resourced.
- The on-going cost of supervision should primarily be borne by financial institutions and not governments.
- Funding should be determined on an equitable basis, both between types of financial institutions and between individual financial institutions.
- Funding arrangements should be determined in consultation with industry bodies.

(2) The principles do not have the force of law and are subject to the other provisions of the financial institutions legislation.

Role of State supervisory authorities

11. It is the role of State supervisory authorities to—

- (a) register and supervise financial bodies; and
- (b) undertake the administration and enforcement of the financial institutions scheme except so far as it relates to special services providers; and
- (c) assist AFIC to monitor the compliance of financial institutions with the requirements of, and standards relating to, industry funded liquidity support arrangements for societies; and
- (d) protect the interests of depositors and members of societies.

Division 2—Operation of financial institutions legislation**Extraterritorial operation of legislation**

- 12.** The financial institutions legislation applies—
- (a) throughout Australia; and
 - (b) both within and outside Australia.

Financial institutions legislation binds the Crown

13.(1) The financial institutions legislation binds the Crown in right of this State and, so far as the legislative power of the Legislature of this State 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 3—AFIC AND ITS BOARD***Division 1—Establishment and general functions and powers of AFIC*****Establishment of AFIC**

14. The Australian Financial Institutions Commission is the commission established by section 4 of the AFIC Act.

Functions

- 15.** The functions of AFIC are to—
- (a) promote on a national basis the financial integrity and the efficiency of the State-based financial institutions system; and
 - (b) institute, develop, and ensure the effective and efficient implementation of, a system of prudential and other standards for, and for the supervision of, financial institutions that is

- uniform throughout Australia; and
- (c) collect information and statistics, publish reports, and disseminate information relating to—
 - (i) financial institutions; and
 - (ii) the operation, administration and enforcement of the financial institutions scheme; and
 - (d) register and supervise special services providers; and
 - (e) supervise and control industry funded liquidity support arrangements for societies; and
 - (f) undertake the administration and enforcement of the financial institutions scheme so far as it relates to special services providers and industry funded liquidity support arrangements for societies; and
 - (g) advise, and make recommendations to, the Ministerial Council in relation to—
 - (i) changes to the financial institutions legislation; or
 - (ii) new laws, and changes to other existing laws, relating to or affecting financial institutions; and
 - (h) institute, administer and develop a system for the reservation and allocation on a national basis of names of financial institutions; and
 - (i) carry out such other functions as are conferred on it by or under the financial institutions legislation.

General powers

16.(1) AFIC has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), AFIC has such powers as are conferred on it by or under the financial institutions legislation.

(3) Without limiting subsection (1), AFIC has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) make charges, and fix terms and conditions, for services and information supplied by it; and
- (e) engage consultants.

(4) Without limiting subsection (1), AFIC may give indemnities to its directors and employees.

AFIC is body corporate etc.

17. Under section 5 of the AFIC Act, the Australian Financial Institutions Commission—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

AFIC independent body

18. Except as expressly provided in the financial institutions legislation, AFIC is not subject to direction by or on behalf of the Ministerial Council or any government.

AFIC to comply with financial institutions agreement etc.

19. In performing its functions and exercising its powers, AFIC must—

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

Place of principal office

20. The principal office of AFIC is to be in Brisbane.

AFIC does not represent Crown

21. AFIC does not represent the Crown.

AFIC exempt public authority under Corporations Law

22. Under section 6 of the AFIC Act, AFIC is an exempt public authority for the purposes of the Corporations Law of Queensland.

Consultation

23. In performing its functions and exercising its powers, AFIC must, where it is appropriate and practicable to do so, consult with the State supervisory authorities, the Reserve Bank of Australia, industry bodies and financial institutions.

*Division 2—Establishment and composition of AFIC's Board***The Board**

24. Under section 7 of the AFIC Act, there is a board of directors of AFIC.

Composition of the Board

25. The Board consists of the following 8 directors—

- (a) the chairperson;
- (b) the deputy chairperson;
- (c) the executive director;
- (d) 5 other directors.

Role of the Board

26. It is the role of the Board—

- (a) to decide the objectives, strategies and policies to be followed by AFIC; and

- (b) to ensure that AFIC performs its functions in a proper and efficient way.

Duties of executive director

27.(1) The executive director is, under the Board, to manage AFIC.

(2) Anything done in the name of, or on behalf of, AFIC by the executive director is taken to have been done by AFIC.

PART 4—STANDARDS

Making etc. of standards

28.(1) The Board may, by resolution, make standards (whether prudential or otherwise) with respect to—

- (a) the business and affairs of financial institutions; and
- (b) industry funded liquidity support arrangements for societies; and
- (c) the supervision of financial institutions by State supervisory authorities, including the practices and procedures to be adopted in carrying out that supervision; and
- (d) the administration and enforcement by State supervisory authorities of the financial institutions scheme so far as it relates to financial institutions; and
- (e) the administration and enforcement by AFIC of the financial institutions scheme so far as it relates to special services providers and industry funded liquidity support arrangements for societies; and
- (f) any other matters in relation to which the financial institutions legislation authorises or requires (whether expressly or by implication) standards to be made; and
- (g) any other matters in relation to financial institutions that the Board considers necessary or desirable for the achievement of the principal objects of the financial institutions scheme.

(2) The Board may, by resolution, amend or repeal a standard made under this section.

(3) A resolution under this section takes effect from—

- (a) the day a copy of the resolution is published in the Queensland Government Gazette; or
- (b) such later day as is specified in the resolution.

Procedures before making of standards

29.(1) A standard must not be made, amended or repealed under section 28 (Making etc. of standards) unless this section or section 30 (Urgent standards) is complied with in relation to the resolution by which the standard is to be made, amended or repealed.

(2) The Board must, not later than 60 days before the passing of the resolution—

- (a) give each State supervisory authority a notice explaining succinctly the purpose, and intended operation, of the resolution; and
- (b) publish a notice in the Queensland Government Gazette, and in a newspaper circulating generally in each of the participating States, explaining succinctly the purpose, and intended operation, of the resolution.

(3) A notice under subsection (2) is to invite—

- (a) written suggestions on the proposed resolution to be given to AFIC within 30 days after publication of the Queensland Government Gazette notice; and
- (b) written comments on those suggestions to be given to AFIC within 21 days after the end of that period of 30 days.

(4) AFIC must—

- (a) make copies of each suggestion and comment given to it available for inspection and purchase at its principal office; and
- (b) take reasonable steps to ensure that copies of each suggestion and comment given to it are available for inspection and purchase at all offices of State supervisory authorities.

(5) AFIC must comply with subsection (4) in relation to a suggestion or comment as soon as practicable after the suggestion or comment is given to it.

(6) The Board must consider all suggestions and comments given to it under this section before passing the resolution, and may alter the terms of the proposed resolution to take account of suggestions and comments.

(7) Contravention of this section in relation to a resolution does not affect the validity of the resolution.

Urgent standards

30.(1) If the Board determines that it is necessary, because of urgent circumstances, for a resolution making, amending or repealing a standard to be passed without complying with section 29 (Procedures before making of standards), the Board may pass that resolution.

(2) When the Board makes a determination under subsection (1), it must immediately publish a copy of the determination in the Queensland Government Gazette, together with a succinct statement of its reasons for making the determination.

(3) A resolution made by virtue of a determination under subsection (1) has effect for only 120 days or, if a lesser period is specified in the resolution, that period.

Application of changed requirements

31.(1) A standard may provide that its operation in relation to a particular financial institution may be varied by a State supervisory authority by temporarily changing a requirement of the standard as allowed under the standard.

(2) This section does not limit by implication section 28 (Making etc. of standards).

Transitional arrangements

32.(1) A standard that imposes requirements, or increases the requirements already imposed by a standard, may make transitional provision for the purpose of allowing additional time to comply with the

requirements.

(2) This section does not limit by implication section 28 (Making etc. of standards).

Matters for which standards may make provision

33.(1) A standard may make provision with respect to a matter by applying, adopting or incorporating (with or without modification) provisions of—

- (a) any law of the Commonwealth, a State or a foreign country; or
- (b) any document.

(2) If a standard makes provision with respect to a matter by applying, adopting or incorporating provisions of a law or document, the provisions as in force at that time are to be attached to the resolution by which the standard is made, and are taken to be incorporated in the standard.

(3) A standard may—

- (a) apply generally to all persons, matters and things or be limited in its application to particular persons, matters and things; and
- (b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A standard may—

- (a) apply differently according to different specified factors; or
- (b) otherwise make different provision in relation to different persons, matters or things.

(5) A standard may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(6) A standard may make provision with respect to a particular aspect of a matter despite the fact that provision is made by the financial institutions legislation in relation to another aspect of the matter or in relation to another matter.

Publication of standards

34.(1) When the Board makes a resolution for the purposes of section 28 (Making etc. of standards), it must immediately—

- (a) publish a copy of the resolution in the Queensland Government Gazette; and
- (b) notify each State supervisory authority of the making of the resolution and give each State supervisory authority a copy of the resolution and a summary of its terms; and
- (c) publish a notice—
 - (i) notifying the making of the resolution; and
 - (ii) explaining succinctly the purpose, and intended operation, of the resolution;

in a newspaper circulating generally in each of the participating States; and

- (d) if the resolution affects a special services provider or industry funded liquidity support arrangements for societies—give a copy of the summary to the financial institutions affected.

(2) When a State supervisory authority receives the summary under subsection (1), it must immediately give a copy of it to each financial institution affected by the resolution for whose supervision it is responsible under the financial institutions scheme.

(3) AFIC must take reasonable steps to ensure that copies of the resolution are available for inspection and purchase at all offices of AFIC and State supervisory authorities.

(4) Contravention of this section in relation to a resolution does not affect the validity of the resolution.

No discrimination on ground of connection with particular States

35. A standard must not discriminate between financial institutions on the ground of their connection with particular States.

PART 5—SPECIAL SERVICES PROVIDERS

Registration of special services providers

36.(1) A body may apply to AFIC, in accordance with the regulations, to be registered under this Code as a special services provider.

(2) A body is eligible for registration as a special services provider only if—

- (a) the application for registration complies with this Code; and
- (b) the body will, after registration, provide only services of the following kinds—
 - (i) providing treasury management services to societies;
 - (ii) receiving deposits from societies;
 - (iii) investing funds of societies in liquid assets;
 - (iv) providing loans or financial accommodation to societies;
 - (v) establishing lines of credit or obtaining financial accommodation;

and such other services as are approved, in writing, by AFIC; and

- (c) 2 or more societies, between them, will, after registration—
 - (i) control the composition of the board of directors of the body; or
 - (ii) be in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the body; or
 - (iii) hold more than 50% of the issued share capital of the body (other than any part of the issued share capital that carries no right to participate beyond a specified amount in the distribution of either profits or capital).

(3) The application must be accompanied by—

- (a) the body's rules; and
- (b) such documents as are prescribed; and
- (c) such evidence as AFIC requires—

- (i) that the body is eligible for registration as a special services provider; and
- (ii) that the body, if registered, will be able to carry out its objects and to comply with all applicable standards.

(4) AFIC may, for the purposes of this section, accept a statutory declaration as sufficient evidence of matters mentioned in the declaration.

(5) AFIC must register the body as a special services provider, and register its proposed rules, if AFIC is satisfied that—

- (a) the body is eligible for registration; and
- (b) its proposed rules are not contrary to the financial institutions legislation; and
- (c) the body will, if registered, be able to comply with all applicable standards; and
- (d) the body will, if registered, be able to carry out its objects successfully.

Certificate of incorporation

37.(1) On registering a special services provider under this Part, AFIC must—

- (a) if the special services provider is a company within the meaning of the Corporations Law—
 - (i) issue a certificate that the special services provider is incorporated under this Code; and
 - (ii) give notice of the issuing of the certificate to the Australian Securities Commission; and
 - (iii) give notice of the issuing of the certificate in the *Gazette*; or
- (c) in any other case—issue a certificate of incorporation to the special services provider.

(2) A certificate of incorporation is conclusive evidence that all requirements of this Code in relation to registration and matters precedent or incidental to registration have been complied with.

Effect of incorporation

38. On the issue under this Part of a certificate of incorporation to a special services provider, the special services provider is a body corporate with perpetual succession and—

- (a) has, subject to this Code and its rules, the legal capacity of a natural person; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

Effect of incorporation on certain bodies

39.(1) On notice of the issuing of a certificate of incorporation being given under section 37(1)(a) (Certificate of incorporation)—

- (a) the company is taken to be incorporated under this Code instead of the Corporations Law and its registration as a company under that law is cancelled; and
- (b) the property of the company vests in the new body incorporated under this Code without any conveyance, transfer or assignment but subject to any debt or liability affecting the property; and
- (c) the debts and liabilities of the company become the debts and liabilities of the new body.

(2) This section has effect despite any law of this State prescribed for the purpose of this subsection.

Application of Financial Institutions Code

40. The prescribed provisions of the Financial Institutions Code apply, with all necessary modifications and any prescribed modifications, to a special services provider as if—

- (a) the special services provider were a society; and
- (b) AFIC were the State supervisory authority.

Special services providers to comply with standards

41. A special services provider must comply with all applicable standards.

Maximum penalty—\$25 000.

**PART 6—INDUSTRY FUNDED LIQUIDITY SUPPORT
ARRANGEMENTS FOR SOCIETIES****Object of Part**

42. The object of this Part is to empower AFIC to cause—

- (a) building societies to provide liquidity support, on a pro rata basis, to a building society in an emergency situation; and
- (b) credit unions to provide liquidity support, on a pro rata basis, to a credit union in an emergency situation.

Definition

43. In this Part—

“**eligible society**” means—

- (a) if the society in relation to which the relevant determination under section 44 (Determination that liquidity support necessary) applies is a building society—a building society; or
- (b) if the society in relation to which the relevant determination under section 44 applies is a credit union—a credit union;

but does not include—

- (c) a society under external administration under Part 9 of the Financial Institutions Code; or
- (d) a society in relation to which a determination under section 44 has been made if any loan to which section 46 (Provision of liquidity support) applies has not been repaid; or

- (e) a society that does not comply with a prime liquid assets ratio requirement that applies to it under a standard;

unless AFIC determines, by written notice given to the society, that the society is an eligible society.

Determination that liquidity support necessary

44. Subject to section 45 (Restrictions on making determination), the Board may, by resolution, determine that liquidity support is necessary for a building society or credit union (in this Part called the “**borrowing society**”).

Restrictions on making determination

45.(1) The Board must not make a determination under section 44 (Determination that liquidity support necessary) unless it is of the opinion, after making such investigations and taking into account such matters as it considers appropriate, that the borrowing society is able to provide adequate security for any loan to be made to it for the purposes of liquidity support.

(2) The Board must not make a determination under section 44 unless it is of the opinion, after consultation with the relevant State supervisory authority and after making such investigations and taking into account such matters as, subject to subsection (3), it considers appropriate, that the borrowing society is solvent.

(3) In forming an opinion as to whether the borrowing society is solvent, the Board must take into account—

- (a) the net value of the borrowing society’s assets as disclosed by the borrowing society’s most recent balance sheet; and
- (b) whether the borrowing society has a reasonable prospect of repaying any loan made for the purposes of liquidity support.

(4) The Board must not make a determination under section 44 unless the Board has made a standard that makes provision in relation to—

- (a) the maximum aggregate amount of all payments that a society may at any given time be required to make for the purposes of liquidity support (not being an amount of more than 50% of the difference between the value of the assets that satisfy the prime

liquid assets requirement for the society (as defined by a standard) and any payments previously made by the society for the purposes of liquidity support and not repaid to the society); and

- (b) the calculation of that maximum aggregate amount; and
- (c) the way of determining the respective amounts eligible societies are required to provide in relation to a society for the purposes of liquidity support (being a way that is based on the value of the total assets (as defined by a standard) of each eligible society); and
- (d) the obligation of each society to identify assets that are to be retained unencumbered for the purpose of providing security if liquidity support is provided to the society (other than by security in favour of a special services provider, of which the society is a member, to facilitate the provision of liquidity support by the special services provider); and
- (e) the arrangements under which security taken from a society will be held for the benefit of societies that provide liquidity support to the society; and
- (f) what constitutes adequate security for the purposes of this section; and
- (g) the valuation of assets for the purposes of liquidity support.

Provision of liquidity support

46.(1) If the Board makes a determination under section 44 (Determination that liquidity support necessary), AFIC may, by written notice given to each eligible society, direct the society to make loans, on a pro rata basis with other eligible societies, to the borrowing society, on adequate security and otherwise on such terms and conditions as are specified in the notice.

(2) If—

- (a) the Board makes a determination under section 44; and
- (b) a society (the “**lending society**”) has provided liquidity support otherwise than on a pro rata basis with other eligible societies by

making a loan to the borrowing society on adequate security and otherwise on terms and conditions that AFIC regards as appropriate;

AFIC may, by written notice given to each eligible society (other than the lending society), require the eligible society to reimburse the lending society, on a pro rata basis with other eligible societies and within a specified time, any amount by which the amount of the loan made by the lending society exceeds the amount of the loan that the lending society would have been required to make to the borrowing society if AFIC had directed all eligible societies (including the lending society) to make loans under subsection (1).

(3) If—

- (a) the Board makes a determination under section 44; and
- (b) a special services provider provides liquidity support by making a loan to the borrowing society on adequate security and otherwise on terms and conditions that AFIC regards as appropriate;

AFIC may, by written notice given to each eligible society, require the eligible society to reimburse the special services provider, on a pro rata basis with other eligible societies and within a specified time, the amount of the loan made by the special services provider to the borrowing society.

(4) An eligible society that complies with subsection (2) or (3) is entitled to the benefit of any relevant loan agreement with the borrowing society, and to the benefit of all security provided by the borrowing society for the loan concerned, in the proportion that the eligible society's payment bears to the total amount of the loans made to the borrowing society for the purposes of liquidity support, as if the eligible society were an equitable assignee in that proportion of the rights and interest of the lenders to the borrowing society.

(5) AFIC may, by written notice given to each eligible society (other than a society (a “**defaulting society**”) that has failed to comply with a direction under subsection (1) or a requirement under subsection (2) or (3) in relation to the borrowing society), require the eligible society to perform, on a pro rata basis with other eligible societies that are not defaulting societies and within a specified time, the obligation of a defaulting society under this section.

(6) A society that makes a loan to the borrowing society for the purposes

of liquidity support otherwise than on a pro rata basis under subsection (2), a special services provider that makes a loan to the borrowing society as mentioned in subsection (3), and an eligible society that makes a payment under subsection (5) in relation to the borrowing society, has a right of contribution against a defaulting society for a part of the amount, determined on a pro rata basis with other eligible societies that are not defaulting societies, that the defaulting society failed to pay.

(7) A society that fails to comply with a requirement under this section commits an offence.

Maximum penalty—\$75 000.

AFIC to encourage special services providers to facilitate liquidity support

47. AFIC must, unless it would be inappropriate to do so, encourage special services providers to assist it in the exercise of its powers under this Part, and otherwise to facilitate the provision of liquidity support to societies.

PART 7—PROVISIONS RELATING TO STATE SUPERVISORY AUTHORITIES

Obtaining information from State supervisory authorities

48.(1) AFIC may, by written notice given to a State supervisory authority, require the authority—

- (a) to give to it, within the time and in the way specified in the notice, specified information and reports; and
- (b) to give to it, at the times and in the way specified in the notice, periodic reports on specified matters; and
- (c) to notify it, within the time and in the way specified in the notice, if—
 - (i) a specified event or change of circumstances happens; or

- (ii) the State supervisory authority becomes aware that a specified event or change of circumstances is likely to happen.

(2) The State supervisory authority must ensure that a notice under subsection (1) is fully complied with, whether by, for example, requiring a financial body—

- (a) to give it information or reports; or
- (b) to notify it of or in relation to events or changes of circumstances.

Reports to Ministerial Council etc. concerning State supervisory authorities

49.(1) If—

- (a) a State supervisory authority fails to supply information to AFIC that it is required to supply or, in AFIC's opinion, otherwise contravenes the financial institutions legislation; or
- (b) a State supervisory authority, in AFIC's opinion, contravenes or fails to give effect to a standard; or
- (c) a State supervisory authority fails to take action in relation to any matter that is, in AFIC's opinion, adequate and appropriate in the circumstances;

AFIC may inform the relevant Minister of the participating State concerned in writing of the matter.

(2) Before deciding to inform that Minister, AFIC must—

- (a) consult with the State supervisory authority; and
- (b) take into account the views of the State supervisory authority in relation to the matter.

(3) If AFIC provides information to a Minister of a State under subsection (1), AFIC must provide with the information any comments provided to AFIC by the State supervisory authority in relation to the matter.

(4) If—

- (a) AFIC provides information to a Minister of the State under subsection (1); and

- (b) the State supervisory authority fails to take action in relation to the matter that is, in AFIC's opinion, adequate and appropriate in the circumstances;

AFIC may inform the Ministerial Council in writing of the matter.

(5) If AFIC provides information to the Ministerial Council under subsection (4), AFIC must provide with the information any comments provided to AFIC by the State supervisory authority in relation to the matter.

(6) If—

- (a) AFIC provides information to the Ministerial Council under subsection (4); and
- (b) the State supervisory authority fails to take action in relation to the matter that is, in AFIC's opinion, adequate and appropriate in the circumstances;

AFIC may provide a report on the matter to the Premier of the participating State concerned.

PART 8—ENFORCEMENT POWERS

Injunctions

50.(1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Code; or
- (b) attempting to contravene this Code; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Code; or
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene this Code; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Code; or

(f) conspiring with others to contravene this Code;

the Supreme Court may, on the application of AFIC, a State supervisory authority or a person whose interests have been, are or would be affected by the conduct, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring the person to do anything.

(2) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Code, the Supreme Court may, on the application of AFIC, a State supervisory authority or a person whose interests have been, are or would be affected by the failure to do the thing, grant an injunction requiring the person to do the thing.

(3) If an application is made for an injunction under subsection (1) or (2), the Supreme Court may grant an injunction with the consent of all the parties to the proceeding, whether or not the Court is satisfied that the subsection applies.

(4) The Supreme Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Supreme Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.

(6) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(7) The power of the Supreme Court to grant an injunction requiring a person to do a thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do a thing of that kind; and

- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(8) If AFIC or a State supervisory authority applies to the Supreme Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of the granting of an interim injunction, to give an undertaking as to damages.

(9) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

(10) The Supreme Court's powers under this section are in addition to its other powers.

Obtaining information etc. from financial institutions

51.(1) AFIC may, if it is reasonably necessary for the purposes of—

- (a) in the case of a special services provider—the financial institutions legislation; or
- (b) in the case of any other financial institution—its function in relation to the supervision and control of industry funded liquidity support arrangements for societies;

by written notice given to a financial institution, or a body corporate related to a financial institution, require the financial institution or body corporate—

- (c) to give to it, within a reasonable period and in a reasonable way specified in the notice, specified information and reports; and
- (d) to give to it, at the reasonable times and in a reasonable way specified in the notice, periodic reports on specific matters; and
- (e) to notify it, within the reasonable time and in a reasonable way specified in the notice, if—
 - (i) a specified event or change of circumstances happens; or
 - (ii) the financial institution or body corporate becomes aware that a specified event or change of circumstances is likely to

happen.

(2) A financial institution or body corporate that, without reasonable excuse, fails to comply with a requirement under subsection (1) to the extent that the financial institution or body corporate is capable of doing so commits an offence.

Maximum penalty—\$25 000.

(3) It is not a reasonable excuse for a financial institution or body corporate to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the financial institution or body corporate.

(4) The fact that information or a report or notification was given by a financial institution or body corporate under subsection (1) is not admissible in evidence against the financial institution or body corporate in a criminal proceeding (other than a proceeding in relation to the falsity of the information, report or notification) if—

- (a) the financial institution or body corporate before giving the information, report or notification (the “**relevant action**”) claimed that the relevant action might tend to incriminate the financial institution or body corporate; and
- (b) the relevant action might in fact tend to incriminate the financial institution or body corporate.

Obtaining evidence

52.(1) AFIC may, if it is reasonably necessary for the purposes of the financial institutions scheme, by written notice given to a person, require the person—

- (a) to attend before an employee of AFIC, or a State supervisory authority, authorised for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (b) to produce to an employee of AFIC, or a State supervisory authority, authorised for the purpose, at a reasonable time and place specified in the notice, documents in the custody or under the person’s control.

(2) An employee before whom a person attends under subsection (1)(a) may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the employee may administer an oath or affirmation.

(3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

(4) An employee to whom a document is produced under subsection (1)—

(a) may keep the document for 60 days or, if a prosecution for an offence against the financial institutions legislation of which the document may afford evidence is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding; and

(b) while the employee has possession of the document, may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the employee's possession.

(5) The regulations must prescribe scales of allowances and expenses to be allowed to persons required to attend under this section.

(6) AFIC must not authorise an employee for the purposes of section (1)(a) unless—

(a) the employee is a duly qualified legal practitioner; or

(b) the employee is—

(i) a duly qualified accountant; and

(ii) is, in AFIC's opinion, appropriately experienced (whether because of training or otherwise) to be authorised for that purpose.

(7) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) to the extent that the person is capable of doing so commits an offence.

Maximum penalty—\$25 000.

(8) It is not a reasonable excuse for a person to fail to comply with a

requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

(9) Neither an answer given by a person under subsection (1), nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(10) The fact that a document was produced by a person under subsection (1) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

Inspectors

53.(1) The executive director may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Code on an inspector; or
- (b) any powers conferred by this Code on an inspector.

(2) The executive director may cause an identity card to be issued to an inspector.

(3) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the executive director.

(4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the executive director.

Maximum penalty—\$ 5000.

(5) AFIC must, to the greatest extent practicable, use officers and employees of the State supervisory authorities as inspectors.

Inspector to produce identity card

54. An inspector is not entitled to exercise powers under this Part in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

Entry and search—monitoring compliance

55.(1) An inspector may, for the purpose of finding out whether the requirements of this Code are being complied with—

- (a) enter any place; and
- (b) exercise the powers set out in section 57 (General powers of inspector in relation to places).

(2) An inspector must not enter a place, or exercise a power under subsection (1), unless—

- (a) the place is premises occupied by a financial institution, or a body corporate related to a financial institution, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (b) the place is premises occupied by a banker or liquidator of a financial institution, or a body corporate related to a financial institution, and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (c) the place is premises that are not occupied for residential purposes, the inspector believes on reasonable grounds that accounting records or other prescribed documents of, or any auditor's working papers relating to, a financial institution, or a body corporate related to a financial institution, are kept or are to be found on the premises and the entry is made when the premises are open for conduct of business or otherwise open for entry; or
- (d) the occupier of the place consents to the entry or exercise of the power; or

- (e) a warrant under section 58 (Monitoring warrants) authorises the entry or exercise of the power.

Entry and search—evidence of offences

56.(1) Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Code, the inspector may—

- (a) enter the place; and
- (b) exercise the powers set out in section 57 (General powers of inspector in relation to places).

(2) If an inspector enters the place and finds the evidence, the following provisions have effect—

- (a) the inspector may seize the evidence;
- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Code in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding;
- (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector’s possession.

(3) An inspector must not enter the place or exercise a power under subsection (1) unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 59 (Offence related warrants) that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, while searching the place under subsection (1) under a warrant under section 59 (Offence related warrants)—

- (a) an inspector finds a thing that the inspector believes, on reasonable grounds, to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Code; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) An inspector who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

- (6)** The notice must be given to—
- (a) if anything is seized—the person from whom the thing was seized; or
 - (b) if damage is caused to anything—the person who appears to the inspector to be the owner.

General powers of inspector in relation to places

57.(1) The powers an inspector may exercise under section 55(1)(b) (Entry and search—monitoring compliance) or 56(1)(b) (Entry and search—evidence of offences) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;
- (c) to take extracts from, and make copies of, any documents in the place;
- (d) to take into the place such equipment and materials as the inspector requires for the purpose of exercising any powers in

relation to the place;

- (e) to require the occupier or any person in the place to give to the inspector reasonable assistance in relation to the exercise of an inspector's powers mentioned in paragraphs (a) to (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1)(e).

Maximum penalty—\$5 000.

(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1)(e) on the ground of the privilege against self-incrimination.

(4) If, under a requirement under subsection (1)(e), a person is required to answer a question or produce a document, the contents of the answer, or the fact of production of the document, is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer or document).

(5) For the purposes of the application of subsection (4) to the production of a document, the contents of the document are to be disregarded.

Monitoring warrants

58.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Code are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—

- (i) to enter the place; and
- (ii) to exercise the powers set out in section 57 (General powers of inspector in relation to places); and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrants

59.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Code.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 57 (General powers of inspector in relation to places); and
 - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and

- (d) state the purposes for which the warrant is issued.

Offence related warrant may be granted by telephone

60.(1) If, because of urgent circumstances, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 59 (Offence related warrants).

(2) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 59(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, the inspector may apply for the warrant before the information has been sworn.

(4) If a Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 59 (Offence related warrants), complete and sign such a warrant as the Magistrate would issue under that section if the application had been made under that section.

(5) If the Magistrate completes and signs the warrant—

- (a) the Magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the inspector must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
 - (ii) write on the form of warrant the name of the Magistrate and the date on which and the time at which the Magistrate signed the warrant.

(6) The inspector must also, not later than the day after the day of expiry

or execution of the warrant (whichever is the earlier), send to the Magistrate—

- (a) the form of warrant completed by the inspector; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 59 (Offence related warrants).

(8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

Obstruction etc. of inspectors

61. A person must not, without reasonable excuse, assault, obstruct, hinder or resist an inspector in the exercise of a power under this Code.

Maximum penalty—\$50 000, imprisonment for 7 years or both.

False or misleading statements

62.(1) In this section—

“**relevant person**” means a person exercising powers under this Code, and

includes an inspector.

(2) A person must not—

- (a) make a statement to AFIC or a relevant person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to AFIC or a relevant person any thing without which the statement is, to the person's knowledge, misleading in a material particular; or
- (c) give to AFIC or a relevant person a document containing information that the person knows is false, misleading or incomplete in a material particular without, at the same time—
 - (i) indicating that the document is false, misleading or incomplete and the respect in which it is false, misleading or incomplete; and
 - (ii) giving correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—\$100 000, imprisonment for 15 years or both.

Proceedings for offences

63.(1) A proceeding for an offence against this Code may be brought by—

- (a) AFIC; or
- (b) a person authorised in writing by AFIC.

(2) A proceeding may be started within—

- (a) for an alleged offence not punishable by imprisonment—2 years; and
- (b) for an offence punishable by imprisonment—5 years;

after the alleged offence is committed or, with the consent of the Ministerial Council, at any later time.

PART 9—REVIEW OF DECISIONS

Division 1—Appeals Tribunal

Appeals Tribunal

64. The Appeals Tribunal is the Australian Financial Institutions Appeals Tribunal established under section 8 of the AFIC Act.

Division 2—Review of decisions

Reviewable decisions

65.(1) Every decision of AFIC made under the financial institutions legislation is a reviewable decision.

(2) Subsection (1) does not apply to—

(a) a decision under—

- (i) Part 4 (STANDARDS); or
- (ii) Part 6 (INDUSTRY FUNDED LIQUIDITY SUPPORT ARRANGEMENTS FOR SOCIETIES); or
- (iii) Part 7 (PROVISIONS RELATING TO STATE SUPERVISORY AUTHORITIES); or
- (iv) Part 8 (ENFORCEMENT POWERS); or
- (v) section 118 (Determination of AFIC's budget); or
- (vi) section 119 (Administration levy); or

(b) a decision prescribed by a regulation made for the purposes of this subsection.

Application for review of decisions

66.(1) A person whose interests are affected by a reviewable decision may apply to the Appeals Tribunal for review of the decision.

(2) The Appeals Tribunal has power to review any decision in relation to

which application is duly made to it for review of the decision.

Way of applying for review

67.(1) An application to the Appeals Tribunal for a review of a decision must be made to the Tribunal—

- (a) in writing; and
- (b) within 28 days after the making of the decision.

(2) The Appeals Tribunal may, on written application by a person, extend the time for the making by the person of an application to the Tribunal for a review of the decision.

(3) The time for making an application to the Appeals Tribunal for a review of a decision may be extended even though the time has ended.

(4) The Appeals Tribunal must cause written notice of an application under subsection (1) or (2) in relation to a reviewable decision to be given to the person who made the decision.

Division 3—Membership of Appeals Tribunal

Composition of Appeals Tribunal

68. The Appeals Tribunal consists of the chairperson and such number of deputy chairpersons and other members as are appointed under this Code.

Appointment of members

69.(1) The members of the Appeals Tribunal are to be appointed by the Governor in Council of Queensland on the recommendation of the Ministerial Council.

(2) The members of the Appeals Tribunal are to be appointed on a part-time basis.

(3) The *Public Service Management and Employment Act 1988* of Queensland does not apply to the appointment of a member of the Tribunal.

(4) Nothing in this Code prevents a member of the Appeals Tribunal

holding any office or appointment approved by the Governor in Council of Queensland on the recommendation of the Ministerial Council.

Qualifications for appointment

70.(1) A person is not eligible for appointment as chairperson or deputy chairperson of the Appeals Tribunal unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State of not less than 5 years standing.

(2) A person is not eligible for appointment as a non-presiding member of the Appeals Tribunal unless the person has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.

Term of appointment

71. A member of the Appeals Tribunal is appointed for such term (not longer than 7 years) as is specified by the Governor in Council of Queensland in the instrument of appointment on the recommendation of the Ministerial Council.

Terms and conditions of appointment

72.(1) A member of the Appeals Tribunal is to be paid such remuneration and allowances as are determined by the Ministerial Council.

(2) A member of the Appeals Tribunal holds office on such terms and conditions not provided for by this Code (including terms and conditions relating to superannuation) as are determined by the Ministerial Council.

Resignation

73. A member of the Appeals Tribunal may resign by signed notice given to the Governor of Queensland.

Disclosure of interests

74.(1) If a member of the Appeals Tribunal is, or is to be, a member of the Appeals Tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) If the chairperson of the Appeals Tribunal becomes aware that a member of the Tribunal who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding, has, in relation to the proceeding, an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding—the chairperson must direct the member accordingly; or
- (b) in any other case—the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

Termination of appointment

75. The Governor in Council of Queensland may, on the recommendation of the Ministerial Council, terminate the appointment of a member of the Appeals Tribunal if the member—

- (a) becomes mentally or physically incapable of performing satisfactorily the duties of office; or
- (b) is convicted of an indictable offence (whether in this State or elsewhere); or
- (c) is guilty of misconduct; or
- (d) contravenes section 74 (Disclosure of interests) or a direction given under that section.

Acting chairperson

76. The Governor in Council of Queensland may, on the recommendation of the Ministerial Council, appoint a person to act as chairperson of the Appeals Tribunal—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

Division 4—Organisation of Appeals Tribunal**Arrangement of business**

77.(1) Subject to section 78 (Constitution of Appeals Tribunal), the chairperson of the Appeals Tribunal may give directions as to the arrangement of the business of the Tribunal and as to the members who are to constitute the Tribunal for the purposes of particular proceedings.

(2) If the chairperson gives a direction as to the members who are to constitute the Tribunal for the purposes of a particular proceeding, the chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by 3 members, one of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

(3) In giving a direction under this section as to the members who are to constitute the Tribunal for the purposes of a particular proceeding, the chairperson must have regard—

- (a) to the degree of public importance or complexity of the matters to which the proceeding relates; and
- (b) the need for the Tribunal's affairs to be conducted expeditiously and efficiently; and
- (c) the nature of the issues likely to be involved in the proceeding.

Constitution of Appeals Tribunal

78.(1) Subject to section 80 (Member ceasing to be available), the Appeals Tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—

- (a) a presiding member; or
- (b) a non-presiding member; or
- (c) subject to subsection (2), a presiding member and 2 non-presiding members.

(2) The Tribunal may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for the purposes other than the hearing and determination of a proceeding, by a presiding member or a non-presiding member.

Member presiding

79. At the hearing of a proceeding before the Appeals Tribunal at which the Tribunal is constituted for the purposes of the proceeding by more than one member, the presiding member is to preside unless another member is directed under section 80 (Member ceasing to be available) to preside.

Member ceasing to be available

80.(1) If the hearing of a proceeding has been started or completed by the Appeals Tribunal constituted by 3 members but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the Tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 77 (Arrangement of business)—the hearing and

determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining members or member; or

- (b) in any other case—the proceeding is to be reheard by the Tribunal as reconstituted under section 78 (Constitution of Appeals Tribunal).

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the member who is, but for this subsection, to preside, the chairperson may, in writing, appoint 1 of the remaining members, or the remaining member, to preside.

(3) If a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including any evidence taken in the proceeding.

Sitting places

81. Sittings of the Appeals Tribunal may be held from time to time as required at any place in Australia.

Division 5—Conduct of proceedings before Appeals Tribunal

Parties to proceeding before Appeals Tribunal

82.(1) Subject to section 92 (Power of Appeals Tribunal to dismiss claim or strike out party), the parties to a proceeding for review of a decision are—

- (a) any person who has duly applied to the Tribunal for a review of the decision; and
- (b) the person who made the decision; and
- (c) any other person who has been made a party to the proceeding by the Tribunal on application by the person under subsection (2).

(2) If an application has been made by a person for review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding and the

Tribunal may, by order, make the person a party to the proceeding.

(3) A party to a proceeding may be described by an official name.

Appeals Tribunal to determine who are interested persons

83.(1) If it is necessary for the purposes of this Code to decide whether the interests of a person are affected by a decision, the matter is to be decided by the Appeals Tribunal.

(2) If the Tribunal decides that a person's interests are not affected by a decision, the Tribunal must give the person written reasons for its decision.

Representation before Appeals Tribunal

84. At the hearing of a proceeding before the Appeals Tribunal, a party to the proceeding may appear in person or be represented by some other person (whether or not the person is enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State).

Procedure of Appeals Tribunal

85.(1) In a proceeding before the Appeals Tribunal—

- (a) the procedure of the Tribunal is, subject to the financial institutions legislation, within the discretion of the Tribunal; and
- (b) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the financial institutions legislation and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate; and
- (d) the Tribunal must observe the rules of natural justice.

(2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given—

- (a) if the hearing of the proceeding has not started—by the chairperson or by a presiding member authorised by the chairperson to give procedural directions; and
- (b) if the hearing of the proceeding has started—by the member presiding at the hearing or by another member authorised by the member presiding to give procedural directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The chairperson may vary or revoke an authorisation.

Conferences

86.(1) If an application is made to the Appeals Tribunal for review of a decision, the chairperson may direct the holding of a conference of the parties presided over by a presiding member.

(2) If a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties; and
- (b) the terms of the agreement are reduced to writing, signed by the parties and given to the Tribunal; and
- (c) the Tribunal is satisfied that—
 - (i) a decision in those terms would be within the powers of the Tribunal; and
 - (ii) that it would be appropriate to make a decision in those terms;

the Tribunal may, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.

(4) If—

- (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the Tribunal; and
- (b) a party to the proceeding who was present at the conference notifies the Tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing;

the member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

Hearings to be in private unless all parties agree etc.

87.(1) The hearing of a proceeding before the Appeals Tribunal is to be in private unless all the parties agree to the hearing being held in public.

(2) The Tribunal may, by order, give direction as to the persons who may be present at a hearing held in private.

(3) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) give directions prohibiting or restricting the publication of evidence given before the Tribunal (whether in public or private), or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal; or
- (b) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal.

(3) In considering whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted, the Tribunal is to take as the basis of its consideration the principle that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to all the parties, but must pay due regard to any reasons given to the Tribunal why publication or disclosure of the evidence or matter should be prohibited or restricted.

Opportunity to make submissions

88. Subject to section 87 (Hearings to be held in private unless all parties agree etc.), the Appeals Tribunal must ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

Particular powers of Appeals Tribunal

89.(1) For the purpose of a proceeding, the Appeals Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding, a presiding member may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are specified in the summons.

(3) The member who presides at the hearing of a proceeding—

- (a) may require a person appearing before the Tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(5) The Tribunal may permit a person appearing as a witness before the Tribunal to give evidence by tendering a written statement, verified, if the Tribunal directs, by oath or affirmation.

Operation and implementation of a decision that is subject to review

90.(1) Subject to subsection (2), the making of an application to the Appeals Tribunal for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Appeals Tribunal may, on written application by a party to a proceeding, make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision to which the proceeding relates if the Tribunal—

- (a) is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review; and
- (b) considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application for review.

(3) An order under this section—

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and
- (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the decision of the Appeals Tribunal on the application for review comes into operation;

whichever is the earlier.

(4) The Appeals Tribunal must not make an order under this section unless each party to the proceeding has been given a reasonable opportunity to make submissions in relation to the matter.

Way in which questions to be decided

91.(1) A question of law arising in a proceeding before the Appeals Tribunal at which a presiding member is presiding (including the question whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.

(2) If a question of law arises in a proceeding before the Appeals

Tribunal constituted by a non-presiding member, the non-presiding member may refer the question to the chairperson and, if the non-presiding member does so, the non-presiding member must decide the question in accordance with the opinion of the chairperson.

(3) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion—the question is to be decided according to the opinion of the majority; or
- (b) in any other case—the question is to be decided according to the opinion of the member presiding.

Power of Appeals Tribunal to dismiss claim or strike out party

92. If a party to a proceeding before the Appeals Tribunal who has had reasonable notice of the proceeding fails either to appear at a conference under section 86(1) or at the hearing of the proceeding, the Tribunal may—

- (a) if the only other party to the proceeding is the person who made the decision—dismiss the application concerned; or
- (b) in any other case—direct that the person who failed to appear is to cease to be a party to the proceeding.

General powers

93. For the purpose of a proceeding, the Appeals Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the proceeding.

Review by Tribunal

94.(1) For the purpose of reviewing a decision, the Appeals Tribunal may exercise all the powers that are conferred by the financial institutions legislation on the person who made the decision.

- (2) The Appeals Tribunal must make a decision in writing—
 - (a) affirming the decision under review; or

- (b) varying the decision under review; or
- (c) setting aside the decision under review and—
 - (i) making a decision in substitution for the decision set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

(3) A decision of the Appeals Tribunal comes into effect when it is made or, if a later day is specified in the decision, that day.

Reasons to be given by Appeals Tribunal

95.(1) Subject to this section and to section 87 (Hearings to be in private unless all parties agree etc.), the Appeals Tribunal must give written reasons for its decision on a review.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Tribunal must cause a written copy of its reasons to be given to each party to the proceeding.

Appeals to Supreme Court of Queensland from decisions of Appeals Tribunal

96.(1) A party to a proceeding before the Appeals Tribunal may appeal to the Supreme Court of Queensland, on a question of law, from any decision of the Tribunal in the proceeding.

(2) If—

- (a) a person has applied to the Appeals Tribunal—
 - (i) for review of a decision; or
 - (ii) to be made a party to a proceeding before the Tribunal; and
- (b) the Tribunal decides that the interests of the person are not affected by the decision;

the person may appeal to the Supreme Court of Queensland from the decision of the Tribunal.

(3) An appeal from a decision of the Appeals Tribunal must be made to the Supreme Court of Queensland—

- (a) within 28 days after the making of the decision; and
- (b) in accordance with any applicable Rules of Court made by the Supreme Court of Queensland and any regulations made for the purposes of this section.

(4) The Supreme Court of Queensland may extend the time for instituting the appeal.

(5) The time for instituting the appeal may be extended even though the time has ended.

(6) The Supreme Court of Queensland must hear and determine an appeal duly made under this section, and may make such orders as it considers appropriate.

(7) Without limiting subsection (6), the orders that may be made by the Supreme Court of Queensland on an appeal include—

- (a) an order affirming a decision of the Appeals Tribunal; and
- (b) an order setting aside a decision of the Appeals Tribunal and—
 - (i) making a decision in substitution for the decision set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions of the Supreme Court of Queensland.

Operation and implementation of a decision subject to appeal

97.(1) Subject to subsection (2), the institution of an appeal to the Supreme Court of Queensland from a decision of the Appeals Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Supreme Court of Queensland may make an order staying or otherwise affecting the operation or implementation of—

- (a) the whole or a part of the decision of the Appeals Tribunal; or
- (b) the whole or a part of the decision to which the proceeding before the Appeals Tribunal related;

if the Court considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) An order under this section—

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and
- (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the giving of the decision of the Court on the appeal;whichever is the earlier.

Reference of questions of law to Supreme Court of Queensland

98.(1) The Appeals Tribunal may, at the request of a party or of its own own initiative, refer a question of law arising in a proceeding before the Tribunal to the Supreme Court of Queensland for decision.

(2) A question is not to be referred without the agreement of the presiding member (if any) who is presiding or the chairperson of the Tribunal.

(3) If a question arising in a proceeding before the Appeals Tribunal has been referred to the Supreme Court of Queensland, the Tribunal must not, in the proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the decision of the Supreme Court of Queensland on the question.

Costs

99.(1) Each party to a proceeding is to bear the party's own costs of the proceeding unless the Appeals Tribunal otherwise directs.

(2) A direction under subsection (1) may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the direction.

(3) Proceedings for the enforcement of a direction under subsection (1) may be taken as if the direction were a judgment of the court in which the direction is registered.

Protection of members etc.

100.(1) A member of the Appeals Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a Judge of the Supreme Court of Queensland.

(2) A person representing a party before the Appeals Tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court of Queensland.

(3) A person summoned to attend or appearing before the Appeals Tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court of Queensland.

Failure of witness to attend

101. A person served, as prescribed, with a summons to appear as a witness before the Appeals Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceeding as required by the presiding member.

Maximum penalty—\$25 000.

Refusal of witness to be sworn or answer questions etc.

102.(1) A person appearing as a witness at a hearing of the Appeals Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the presiding member; or
- (c) fail to produce a document that the person was required to produce by a summons served on the person as prescribed.

Maximum penalty—\$25 000.

(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

(3) It is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

False or misleading evidence

103. A person appearing as a witness before the Appeals Tribunal must not knowingly give evidence that is false or misleading.

Maximum penalty—\$25 000.

Contempt of Tribunal

104. A person must not—

- (a) insult a member of the Appeals Tribunal in relation to the performance of his or her functions as a member; or
- (b) interrupt a proceeding of the Appeals Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Appeals Tribunal is sitting; or
- (d) do anything that would, if the Appeals Tribunal were a court of record, constitute a contempt of that court.

Maximum penalty—\$25 000.

Obstructing Tribunal

105. A person must not obstruct or improperly influence the conduct of a hearing of the Appeals Tribunal or attempt to do so.

Maximum penalty—\$25 000.

Person not to contravene order

106. A person must not contravene an order under section 87(2) (Hearings to be in private unless all parties agree etc.).

Maximum penalty—\$25 000.

Confidential information not to be disclosed

107.(1) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been—

- (a) a member of the Appeals Tribunal; or
- (b) a member of the staff of the Appeals Tribunal;

“produce” includes permit access to.

(2) A person to whom this section applies is not required to give evidence to a court relating to a matter if—

- (a) the giving of the evidence would be contrary to an order of the Appeals Tribunal in force under section 87(2) (Hearings to be in private unless all parties agree etc.); or
- (b) an application has been made to the Appeals Tribunal for an order under that subsection concerning the matter to which the evidence would relate and the Tribunal has not determined the application.

(3) A person to whom this section applies is not required to produce in court a document given to the Appeals Tribunal in connection with a proceeding if—

- (a) the production of the document would be contrary to an order of the Tribunal in force under section 87(2) (Hearings to be in private unless all parties agree etc.); or
- (b) an application has been made to the Tribunal for an order under that subsection in relation to the document and the Tribunal has not determined the application.

(4) A person to whom this section applies is not required to give evidence to a court in relation to a proceeding before the Appeals Tribunal.

Allowances for witnesses

108. A witness summoned to appear at a hearing of the Appeals Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed; or
- (b) in the absence of regulations, as the chairperson of the Tribunal determines.

Division 6—Miscellaneous

Management of administrative affairs of Tribunal

109. The chairperson of the Appeals Tribunal is responsible for managing the administrative affairs of the Tribunal.

Appeals Tribunal's employees

110. The chairperson of the Appeals Tribunal may, on behalf of the State of Queensland, engage such employees as the chairperson considers necessary for the performance of the Tribunal's functions.

Terms and conditions of employment

111.(1) Subject to any relevant award or industrial agreement, the terms and conditions of employment of the Appeals Tribunal's employees engaged under section 110 (Appeals Tribunal's employees) are as determined by the chairperson of the Appeals Tribunal.

(2) The *Public Service Management and Employment Act 1988* of Queensland and the *Public Sector Management Commission Act 1990* of Queensland do not apply to the Appeals Tribunal or its employees.

(3) In this section—

“terms and conditions of employment” includes terms and conditions relating to duration of employment and termination of employment.

Arrangements relating to staff

112.(1) The chairperson of the Appeals Tribunal may arrange with the chief executive of a department of government in this State, or with an authority of this State, for the services of officers or employees of the department or authority to be made available to the Appeals Tribunal.

(2) The chairperson of the Appeals Tribunal may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to the Appeals Tribunal.

(3) The chairperson of the Appeals Tribunal may arrange for the services of an employee of the Appeals Tribunal to be made available to the Commonwealth or a State or to an authority of the Commonwealth or a State.

Consultants to Tribunal

113. The Appeals Tribunal may, on behalf of the State of Queensland, engage persons having suitable qualifications and experience as consultants to the Tribunal.

Annual report

114. The chairperson of the Appeals Tribunal must, not later than 4 months after the end of each financial year, prepare and give to the Ministerial Council a report on the operations of the Tribunal during the year.

Delegation of powers by chairperson

115. The chairperson of the Appeals Tribunal may delegate his or her powers under the financial institutions legislation to another presiding member of the Tribunal.

PART 10—ACCOUNTABILITY AND FINANCIAL MATTERS

Annual reports and financial statements

116.(1) In this section—

“Legislative Assembly” means the Legislative Assembly of Queensland;

“Premier” means the Premier of Queensland.

(2) The Board must, as soon as practicable after the end of each financial year, but not later than 4 months after the end of that year, prepare and give to the Ministerial Council a written report on the operations of AFIC during the year, together with financial statements for the year.

(3) The financial statements are to be in a form approved by the Ministerial Council.

(4) Before submitting the financial statements to the Ministerial Council, the Board must submit them to the Auditor-General of Queensland, who must report to the Ministerial Council and the Board—

- (a) whether the Auditor-General has received all the information and explanations that AFIC was required to provide; and
- (b) whether, in the Auditor-General’s opinion, the statements are based on proper accounts and records; and
- (c) whether the statements are in agreement with the accounts and records and, in the Auditor-General’s opinion, show fairly the financial transactions and state of affairs of AFIC; and
- (d) as to any other matters arising out of the statements the Auditor-General considers should be reported to the Ministerial Council.

(5) The Premier must cause a copy of the report and financial statements, together with a copy of the Auditor-General’s report, to be laid before the Legislative Assembly within 14 days after their receipt by the Ministerial Council.

(6) If, at the time the Premier would otherwise be required to lay a copy of those documents before the Legislative Assembly, the Legislative Assembly is not sitting, the Premier must give a copy of the documents to the Clerk of the Parliament of Queensland.

(7) The Clerk must cause a copy of the documents to be laid before the Legislative Assembly on its next sitting day.

(8) For the purposes of their printing and publication, the documents are taken to have been laid before the Legislative Assembly, and to have been ordered printed by the Legislative Assembly, when they are given to the Clerk.

Board to keep Ministerial Council informed

117. (1) The Board must keep the Ministerial Council informed of—

- (a) the operations of AFIC; and
- (b) the operation, administration and enforcement of the financial institutions scheme.

(2) The Board must give the Ministerial Council such reports and information in relation to those matters as the Ministerial Council requires.

Determination of AFIC's budget

118.(1) AFIC must prepare and submit to the Ministerial Council a draft budget for each financial year in such form, and at such time, as the Ministerial Council directs.

(2) The Ministerial Council must determine AFIC's budget for the financial year within 60 days after the draft budget is submitted to it.

(3) If the Ministerial Council does not determine AFIC's budget within that period, the Ministerial Council is taken to have determined that AFIC's budget for the financial year is to be the draft budget submitted to it.

(4) AFIC must authorise expenditure only in accordance with the budget determined by the Ministerial Council unless the Ministerial Council otherwise directs.

Administration levy

119.(1) When AFIC's budget for a financial year has been determined, the Board must, by resolution, determine the administration levy that is to be paid by financial institutions to fund its budget.

(2) The amount of the levy may be fixed by the Board as—

- (a) a specified amount; or
- (b) a specified percentage of an amount to be determined, on a specified day, by reference to specified factors relating to financial institutions (including, for example, factors such as paid-up capital, reserves, obligations and debts and total assets); or
- (c) both a specified amount and such a specified percentage.

(3) If the levy is fixed, wholly or partly, as mentioned in subsection (2)(b), the Board may include in the resolution directions as to the way in which the levy is to be determined.

(4) The Board may—

- (a) fix the amount of the levy differently for different financial institutions; and
- (b) determine that the levy is not payable by specified financial institutions.

(5) The Board may, in the resolution, require the levy to be paid in 1 amount by a specified time or permit the levy to be paid by specified instalments.

(6) If the Board permits the levy to be paid by instalments, it may, in the resolution, allow a discount for payment in 1 amount by a specified time or require payment of an additional amount or percentage, by way of interest, in the instalments.

(7) The Board may, in the resolution, require the payment of amounts, by way of late payment charge, interest or both, in relation to amounts of levy that are not paid as required by the resolution.

(8) The Board may include in the resolution directions as to the way in which amounts of late payment charge and interest are to be determined.

Collection of administration levy

120.(1) When the Board makes a resolution for the purposes of section 119 (Administration levy), it must immediately notify each State supervisory authority of the making of the resolution and give each State supervisory authority a copy of the resolution.

(2) Each State supervisory authority must immediately—

- (a) determine the amount of the levy payable by each financial institution for whose supervision it is responsible; and
- (b) notify each of those financial institutions of the amount of the levy payable by it and of the terms of the Board’s resolution so far as they are applicable to the financial institution.

(3) It is the duty of each State supervisory authority to collect amounts of levy payable by financial institutions for whose supervision it is responsible, and to remit the amounts promptly to AFIC.

(4) Amounts of levy that it is the duty of a State supervisory authority to collect are, when they are due and payable, debts due and payable by the financial institution concerned to the State supervisory authority, and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

(5) A State supervisory authority may, on the application of a financial institution and subject to any guidelines given to it by the Board, vary—

- (a) an amount of levy payable by the financial institution; or
- (b) the time within which an amount of levy is payable by the financial institution.

(6) An amount paid by a financial institution as levy is treated as an expense in the accounts of the society.

(7) In subsections (3) to (6)—

“levy” includes late payment charge and interest in relation to levy.

PART 11—THE BOARD OF AFIC

Division 1—Meetings of the Board

Interpretation—meaning of “required minimum number of directors”

121. In this Division—

“required minimum number of directors” means—

- (a) if there are 8 directors—5 directors; and
- (b) in any other case—4 directors.

Times and places of meetings

122.(1) Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by the required minimum number of directors.

Presiding at meetings

123.(1) The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, but the deputy chairperson is present, the deputy chairperson is to preside.

(3) If the chairperson and deputy chairperson are not present at a meeting, the directors present are to appoint one of them to preside.

Quorum and voting at meetings

124.(1) At a meeting of the Board—

- (a) subject to subsection (2), the required minimum number of directors constitutes a quorum; and
- (b) a question is to be decided by a majority of votes of the directors present and voting; and
- (c) the director presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(2) If, because of section 128(2) (Disclosure of interests), a director is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the director were

present, the remaining directors present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.

Conduct of meetings

125.(1) The Board may, subject to this Division, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A director who participates in a meeting of the Board under a permission under subsection (2) is taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

126.(1) If at least the required minimum number of directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the required minimum number of directors signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the Board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, is taken to constitute 1 document.

Minutes

127. The Board must keep minutes of its proceedings.

Disclosure of interests

128.(1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the director's duties in relation to consideration of the matter;

the director must, as soon as practicable after the relevant facts come to the director's knowledge, disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Board otherwise determines, the director must not—

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a director who has made a disclosure under subsection (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

Exclusion of executive director from certain deliberations

129.(1) The executive director must not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to—

- (a) the appointment of a person as executive director; or
- (b) the determination or application of any terms or conditions on

which the executive director holds office; or

- (c) the termination of the appointment of the executive director.

(2) A person appointed to act as executive director must not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to—

- (a) the appointment of a person to act as executive director; or
- (b) the determination or application of any terms or conditions on which a person appointed to act as executive director holds office; or
- (c) the termination of the appointment of the person.

Division 2—Provisions relating to directors other than the executive director

Division applies to directors other than executive director

130. This Division applies to the directors other than the executive director.

Appointments made by Governor in Council of Queensland on nomination

131. The directors are to be appointed by the Governor in Council of Queensland on the nomination of the Ministerial Council.

Restriction on appointments

132. A person who holds an office or appointment with a financial institution must not be appointed as a director.

Public Service Management and Employment Act of Queensland not to apply

133. The *Public Service Management and Employment Act 1988* of Queensland does not apply to the appointment of a director.

Appointment not invalid because of appointment defect etc.

134. The appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

Term of appointment

135. A director holds office, subject to this Code, for such term (not longer than 5 years) as is specified by the Governor in Council of Queensland in the instrument of appointment on the recommendation of the Ministerial Council.

Terms and conditions of appointment

136.(1) A director is to be paid such remuneration and allowances as are determined by the Ministerial Council.

(2) A director holds office on such terms and conditions not provided for by this Code (including terms and conditions relating to superannuation) as are determined by the Ministerial Council.

Leave of absence

137. The Board may grant leave of absence to a director on such terms and conditions as the Board, subject to any determination of the Ministerial Council, considers appropriate.

Resignation

138. A director may resign by signed notice given to the Governor of Queensland.

Termination of appointment

139. The Governor in Council of Queensland may, on the recommendation of the Ministerial Council, terminate the appointment of a director if the director—

- (a) is guilty of misbehaviour; or
- (b) is, in the opinion of the Governor in Council, physically or

mentally incapable of continuing as a director; or

- (c) becomes bankrupt, applies to take the benefit of any 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
- (d) contravenes this Code without reasonable excuse; or
- (e) is absent, without the Board's leave and without reasonable excuse, from 3 consecutive meetings of the Board; or
- (f) accepts an office or appointment with a financial institution.

Deputy chairperson

140.(1) When—

- (a) the office of chairperson is vacant; or
- (b) the chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office;

then, subject to section 141 (Acting appointments), the deputy chairperson is to act as chairperson.

(2) While the deputy chairperson is acting as chairperson—

- (a) the deputy chairperson has all the powers and functions of the chairperson; and
- (b) the financial institutions legislation applies to the deputy chairperson as if the deputy chairperson were the chairperson.

(3) Anything done by or in relation to the deputy chairperson while the deputy chairperson is purporting to act as chairperson is not invalid merely because the occasion for the deputy chairperson to act had not arisen or had ceased.

Acting appointments

141. The Governor in Council of Queensland may, on the recommendation of the Ministerial Council, appoint a person to act as chairperson, deputy chairperson or other director—

- (a) during a vacancy in the office; or

- (b) during any period, or all periods, when the director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

Division 3—Provisions relating to the executive director**Appointment**

142. The executive director is to be appointed by the Governor in Council of Queensland on the nomination of the Board.

Restriction on appointment

143.(1) The chairperson, deputy chairperson or other director mentioned in section 25(d) (Composition of Board) must not be appointed as executive director.

(2) A person who holds an office or appointment with a financial institution must not be appointed as executive director.

Public Service Management and Employment Act of Queensland not to apply

144. The *Public Service Management and Employment Act 1988* of Queensland does not apply to the appointment of the executive director.

Appointment not invalid because of appointment defect etc.

145. The appointment of a person as executive director is not invalid merely because of a defect or irregularity in relation to the appointment.

Term of appointment etc.

146.(1) The executive director holds office, subject to subsection (2), for such term (not longer than 5 years) as is specified by the Governor in Council of Queensland in the instrument of appointment on the recommendation of the Board.

(2) The executive director holds office during the Board's pleasure.

Executive director not to engage in other paid employment

147. The executive director must not engage in paid employment outside the duties of the office except with the approval of the Board.

Disclosure of interests by executive director

148.(1) The executive director must give written notice to the chairperson of all direct or indirect pecuniary interests that the director has or acquires in any business or in any body corporate carrying on any business.

(2) The obligations of the executive director under this section are in addition to obligations that the executive director has under other provisions of this Code.

Terms and conditions of appointment not provided by Code

149. The executive director holds office on such terms and conditions in relation to matters not provided for by this Code (including terms and conditions relating to remuneration, allowances, superannuation and remuneration on termination of employment) as are determined by the Board.

Acting executive director

150. The Governor in Council of Queensland may, on the recommendation of the Board, appoint a director or another person to act as executive director—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the executive director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

Division 4—Miscellaneous**Committees**

151.(1) The Board may establish committees to assist it in the performance of its role.

(2) A committee may be constituted wholly by directors or partly by directors and partly by other persons, but the majority of members constituting the committee must be directors.

(3) The Board may fix —

- (a) the number of members of a committee required to constitute a quorum at a meeting of the committee; and
- (b) remuneration and allowances of members of a committee who are not directors.

(4) Section 128 (Disclosure of interests) applies to a member of a committee as if—

- (a) a reference to the Board were a reference to the committee; and
- (b) a reference to a director were a reference to a member of the committee (whether or not the member is also a director).

PART 12—THE STAFF OF AFIC

AFIC's employees

152. AFIC may engage such employees as it considers necessary for the performance of its functions.

Terms and conditions of employment

153.(1) Subject to any relevant award or industrial agreement, the terms and conditions of employment of AFIC's employees engaged under section 152 (AFIC's employees) are as determined by AFIC.

(2) The *Public Service Management and Employment Act 1988* of Queensland and the *Public Sector Management Commission Act 1990* of Queensland do not apply to AFIC or its employees.

(3) In this section—

“terms and conditions of employment” includes terms and conditions relating to duration of employment and termination of employment.

Arrangements relating to staff

154.(1) AFIC may arrange with the chief executive of a department of government in this State, or with an authority of this State, for the services

of officers or employees of the department or authority to be made available to it.

(2) AFIC may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) AFIC may arrange for the services of an employee of AFIC to be made available to the Commonwealth or a State or to an authority of the Commonwealth or a State.

PART 13—MISCELLANEOUS

Secrecy

155.(1) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been—

- (a) a director; or
- (b) an employee of AFIC;

“produce” includes permit access to;

“protected document” means a document that—

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duty under or in relation to the financial institutions legislation;

“protected information” means information that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section

applies in the course of, or because of, the person's duties under or in relation to the financial institutions legislation.

(2) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made, or the information divulged or communicated—

- (c) under or for the purposes of the financial institutions legislation; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the financial institutions legislation.

Maximum penalty—\$25 000.

(3) Subsection (2) does not prevent a person from divulging or communicating information to a State supervisory authority, or a director, member, officer or employee of a State supervisory authority, for the purpose of the administration of the financial institutions legislation.

(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court;

unless it is necessary to do so for the purpose of carrying into effect the financial institutions legislation.

Register of financial interests of directors and employees

156.(1) In this section—

“prescribed person” means a director or an employee of AFIC;

“Register” means the Register of Financial Interests maintained under subsection (3);

“responsible employee” means the person appointed under subsection (4).

(2) For the purposes of this section—

- (a) a person has a financial interest only if the person—

- (i) has a relevant interest in securities of a financial institution; or
 - (ii) has money deposited with a financial institution; or
 - (iii) is in receipt of a loan from a financial institution; or
 - (iv) is a member of a financial institution; and
- (b) the question whether a person has a relevant interest in securities is to be determined as prescribed.

(3) AFIC must maintain a Register of Financial Interests.

(4) AFIC must appoint one of its employees to be the person responsible for making entries in the Register in accordance with this section.

(5) If a person who has a financial interest becomes a prescribed person, the person must, within 7 days after the day on which he or she becomes a prescribed person, if he or she has not already done so, cause written particulars of the interest to be delivered to the responsible employee.

Maximum penalty—\$5 000.

(6) If there is a change in a financial interest of a prescribed person, he or she must, within 7 days after the day on which the change happens, cause written particulars of the change to be delivered to the responsible employee.

Maximum penalty—\$5 000.

(7) For the purposes of subsection (6), if a prescribed person ceases to have a financial interest, there is taken to be a change in that financial interest of the person.

(8) A person is taken not to have contravened subsection (5) or (6) if the person establishes that—

- (a) at the time when the person became a prescribed person, the person was not aware that he or she had a financial interest or the person was not, at the time when the change happened, aware of the change; and
- (b) the person caused written particulars of the financial interest or of the change to be delivered to the responsible employee within 7 days after the day on which the person became aware that he or she had the financial interest or that the change had happened.

(9) Particulars to be delivered under subsection (5) or (6) include—

- (a) the day on which the prescribed person started or ceased to have the financial interest or on which the change happened; and
- (b) particulars of the nature of the financial interest and, if the financial interest is a relevant interest in securities, particulars of the extent of that interest.

(10) If particulars of a financial interest, or of a change in a financial interest, of a prescribed person are delivered to the responsible employee, the employee must cause the particulars, or such of the particulars as are appropriate having regard to the form of the Register, to be entered in the Register as particulars of a financial interest, or of a change in a financial interest, of the person.

(11) AFIC must keep the Register at its principal office and ensure that the Register is open for public inspection during normal business hours without fee.

Directors and employees to act honestly etc.

157.(1) In this section—

“prescribed person” means a director or an employee of AFIC.

(2) A prescribed person who, in the course of his or her official duties, is required to consider any matter concerning—

- (a) a person or body—
 - (i) by whom the prescribed person is employed or has been employed at any time during the previous 3 years; or
 - (ii) with whom the prescribed person is associated; or
- (b) a related body in relation to a financial body by whom the prescribed person is employed or has been employed at any time during the previous 3 years;

must immediately inform AFIC of that fact in writing.

Maximum penalty—\$25 000.

(3) A prescribed person must at all times act honestly in the exercise of the powers and the performance of the functions that the person has by virtue of being a prescribed person.

Maximum penalty—\$25 000.

(4) A prescribed person must not make improper use of an office held for the purposes of this Code—

- (a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) to cause detriment to AFIC.

Maximum penalty—\$100 000, imprisonment for 15 years or both.

(5) A prescribed person, or a person who has at any time been a prescribed person, must not make improper use of information acquired by virtue of an office held for the purposes of this Code—

- (a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) to cause detriment to AFIC.

Maximum penalty—\$100 000, imprisonment for 15 years or both.

(6) It is a defence to a contravention of subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, he or she was not aware of the fact the existence of which obliged him or her to inform AFIC.

(7) The question whether a prescribed person is associated with a person or body for the purposes of this section is to be determined as prescribed.

Liability of directors

158.(1) A director incurs no liability for an honest act or omission in the performance or purported performance of functions, or exercise of powers, under this Code.

(2) A liability that would, but for this section, attach to a director attaches to AFIC.

(3) This section does not apply to—

- (a) wilful misconduct; or
- (b) wilful neglect; or
- (c) wilful failure to comply with this Code.

Liability of employees

159.(1) An employee of AFIC incurs no liability for an honest act or omission in the course of the employee's employment.

(2) A liability that would, but for this section, attach to an employee of AFIC attaches to AFIC.

(3) This section does not apply to—

- (a) wilful misconduct; or
- (b) wilful neglect; or
- (c) wilful failure to comply with this Code.

AFIC's seal

160.(1) AFIC's seal is to be kept in such custody as the Board directs and may be used only as authorised by the Board.

(2) Judicial notice must be taken of the imprint of AFIC's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

Judicial notice of certain signatures

161. Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson, deputy chairperson, executive director or another director of the Board; and
- (b) the fact that person holds or has held the office concerned.

Evidentiary provisions

162.(1) A certificate signed by the chairperson or executive director stating that any standard has been made, amended or repealed is evidence of the matter.

(2) Evidence of a standard may be given by the production of a copy certified as a true copy by the chairperson or executive director.

(3) Evidence of a direction issued, or determination made, by AFIC

under this Code may be given by the production of a copy of the direction or determination certified as a true copy by the chairperson or executive director.

(4) A certificate signed by the chairperson or executive director stating any matter in relation to an administration levy determined under section 119 (Administration levy) is evidence of the matter.

(5) In this section—

“**chairperson**” means the chairperson of the Board.

Delegation of AFIC’s powers

163. The executive director may delegate AFIC’s powers to an employee of AFIC.

Delegation of Board’s powers

164.(1) Subject to subsection (2), the Board may, by resolution, delegate its powers under or in relation to the financial institutions legislation to—

- (a) a committee of the Board; or
- (b) a director; or
- (c) an employee of AFIC; or
- (d) a State supervisory authority or an officer or employee of a State supervisory authority.

(2) The following powers may not be delegated—

- (a) powers under section 28 (Making etc. of standards);
- (b) the making of determinations under section 30 (Urgent standards);
- (c) powers under Part 6 (INDUSTRY FUNDED LIQUIDITY SUPPORT ARRANGEMENTS FOR SOCIETIES);
- (d) powers under section 119 (Administration levy).

(3) The delegation—

- (a) may be revoked by resolution of the Board (whether or not constituted by the persons who constituted the Board when the

power was delegated); and

- (b) continues in force despite a change in the membership of the Board.

(4) A certificate signed by the chairperson stating any matter in relation to a delegation of a power under subsection (1) is evidence of the matter.

(5) A document purporting to be a certificate under subsection (4) is, unless the contrary is established, taken to be such a certificate and to have been properly given.

Application of Financial Administration and Audit Act

165. The *Financial Administration and Audit Act 1977* of Queensland applies to AFIC and the Appeals Tribunal with such modifications as are prescribed.

SCHEDULE

section 7

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FINANCIAL INSTITUTIONS AGREEMENT

AGREEMENT dated Twenty-Second November 1991

BETWEEN THE STATE OF NEW SOUTH WALES
AND THE STATE OF VICTORIA
AND THE STATE OF QUEENSLAND
AND THE STATE OF SOUTH AUSTRALIA
AND THE STATE OF WESTERN AUSTRALIA
AND THE STATE OF TASMANIA
AND THE NORTHERN TERRITORY OF AUSTRALIA
AND THE AUSTRALIAN CAPITAL TERRITORY

RECITALS

- A. At the Special Premiers' Conference held in Brisbane on 30-31 October 1990 Heads of Government in the interests of the public agreed upon the need for reform of current State legislation for the supervision of State-based financial institutions in the context of the stability of the financial system as a whole.
- B. A Working Group was formed comprising officials from the Governments of the Commonwealth and the States and from the Reserve Bank of Australia to prepare a report on specific proposals for a supervisory structure for State-based financial institutions.
- C. The Working Group produced in April 1991 a document entitled 'Proposals for Reform of the Supervisory Structure for Non-bank

Financial Institutions' which incorporated Heads of Agreement on these matters.

- D. These Heads of Agreement were endorsed by the Governments of the Commonwealth and the States at the Premiers Conference held in Canberra on 31 May 1991.
- E. Under the Heads of Agreement it was agreed that uniformity and stability will be achieved by the establishment and implementation of a co-operative scheme the objectives of which are to ensure that—
- (a) there is a system of State-based prudential supervision of permanent building societies and credit unions with national co-ordination of high uniform standards and practices;
 - (b) the legislation relating to the scheme is, and continues to be, uniform throughout Australia at all times;
 - (c) the legislation is administered on a uniform basis;
 - (d) there are suitable industry-funded national liquidity support mechanisms;
 - (e) the States will co-operate with each other in regard to the matters to be provided in the legislation and the way in which the legislation is administered;
 - (f) the legislation is capable of effective administration throughout Australia with a minimum of procedural requirements and is so administered; and
 - (g) changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises.
- F. The Government of the Commonwealth supports the establishment and implementation of the scheme evidenced by this Agreement, subject to the scheme complying fully with the obligations of the States and the Northern Territory under the Heads of Agreement on

future Corporations Regulation agreed between all States, the Northern Territory and the Commonwealth in 1990.

- G. The Governments of the Commonwealth and the States are continuing discussions regarding other State-based financial institutions and practices which may become subject to the Scheme by unanimous agreement of the Ministerial Council.
- H. The Governments of the States wish to incorporate their arrangements in this agreement.

AGREEMENT

PART 1—PRELIMINARY

Citation

101. This Agreement may be referred to as the Financial Institutions Agreement.

Definitions

102.

- (1) In this Agreement, unless the contrary intention appears—

- ‘AFIC’ means the Australian Financial Institutions Commission to be established by and referred to in the Initial Legislation;
- ‘Amending Legislation’ means legislation amending previous

Financial Institutions Legislation and legislation bringing State-based financial institutions (other than permanent building societies and credit unions) under the Financial Institutions Scheme;

- ‘Appeals Tribunal’ means the Australian Financial Institutions Appeals Tribunal to be established by and referred to in the Initial Legislation;
- ‘Application of Laws Legislation’ means the legislation referred to in Part 4 and regulations thereunder;
- ‘Commonwealth’ means the Commonwealth of Australia;
- ‘Financial Institutions’ means permanent building societies, credit unions and such other State-based financial institutions as may from time to time become subject to the Financial Institutions Legislation;
- ‘Financial Institutions Legislation’ includes the Initial Legislation, Application of Laws Legislation and Amending Legislation and regulations made under any of them;
- ‘Financial Institutions Scheme’ means the scheme of legislative and administrative acts and procedures that is contemplated by this Agreement and specified in Part 4;
- ‘Initial Legislation’ means the Australian Financial Institutions Commission Bill 1991 annexed hereto marked ‘A’ and the Financial Institutions (Queensland) Bill 1991 annexed hereto marked ‘B’ subject only to alterations of a drafting nature;
- ‘Interstate Consultative Committee’ or ‘Committee’ means the committee established by Part 6;
- ‘Ministerial Council’ or ‘Council’ means the Ministerial Council for Financial Institutions established by Part 5;
- ‘Parliament’ includes the Legislative Assembly of each of the Northern Territory and the Australian Capital Territory;
- ‘SSA’ means a State supervisory authority to be established by

each of the States and referred to in the Initial Legislation;

- ‘State’ means a State of the Commonwealth of Australia and includes the Northern Territory of Australia and the Australian Capital Territory;
- ‘States’ means all the States that are for the time being parties to this Agreement;
- ‘Transitional Legislation’ means saving and transitional legislation of a State dealing with the introduction of the Financial Institutions Scheme and incorporating the matters referred to in Schedule 2.

(3) In this Agreement, unless a contrary intention appears—

- (a) a reference to an Act (whether of the Commonwealth or a State) includes a reference to—
 - (i) that Act as amended and in force for the time being; and
 - (ii) an Act passed in substitution for that Act;
- (b) a reference to a Part is a reference to the relevant Part of this agreement;
- (c) a reference to a clause is a reference to the relevant clause of this agreement; and
- (d) a reference to a sub-clause is a reference to the relevant sub-clause of the clause in which the reference appears or of such other clause as the reference indicates.

PART 2—OPERATION OF AGREEMENT**Commencement**

201. This Agreement comes into operation when it has been executed by or on behalf of all of the parties named above.

Amendment

202. This Agreement may be amended only by the parties to it for the time being only in accordance with a resolution of the Ministerial Council passed by a unanimous vote of all the members of that Council with a right to vote in its proceedings.

Cessation

203. In the event that a State ceases to be a party this Agreement shall nevertheless continue in force with respect to the States which are parties when the cessation takes effect.
204. A State shall cease to be a party to this Agreement if -
- (a) on the State of Queensland having passed the Initial Legislation by 31 March 1992 it fails by 30 June 1992 (or such later date as may be unanimously approved by the States) to secure the passing and proclamation (or in the case of the Australian Capital Territory the commencement) of the Application of Laws Legislation; or
 - (b) it withdraws from this Agreement pursuant to Part 8.

PART 3—ESTABLISHMENT OF FINANCIAL INSTITUTIONS SCHEME

301. The States will take such action as is provided for by this Agreement and is otherwise requisite on their respective parts to achieve the objectives set out in the Recitals by initiating and operating the Financial Institutions Scheme.
302. It is the objective of the States that the scheme should at a minimum maintain the overall level of depositor security reflected in the prudential standards and practices for building societies and credit unions recommended by the Working Group referred to in the Recitals and subsequently amended (a copy of which amended recommendations are contained in Schedule 1).

PART 4—THE FINANCIAL INSTITUTIONS SCHEME

Division 1—General

Purpose of this Part

401. The purpose of this Part is to specify establish and preserve the Financial Institutions Scheme which the parties have agreed upon for the supervision and administration of Financial Institutions. This Part incorporates commitments to the passing and proclamation (or in the case of the Australian Capital Territory the commencement) of legislation and establishes procedures involving a commitment not to promote certain kinds of legislation without the approval of the Ministerial Council.

Basic Nature of the Financial Institutions Scheme

- 402.
- (1) The Financial Institutions Scheme is designed to ensure the introduction and passage—
- (a) by the Parliament of the State of Queensland of the Initial

Legislation dealing with the establishment of AFIC and administration and prudential supervision of Financial Institutions;

- (b) by the Parliaments of each of the other States of Application of Laws Legislation complementing adopting or applying the Initial Legislation in their respective States;
 - (c) by the Parliament of the State of Queensland of any Amending Legislation approved by the Ministerial Council pursuant to this Agreement.
- (2) The enactment of the Financial Institutions Legislation referred to in sub-clause (1) will achieve a uniform State-based system of prudential standards and practices for and supervision of Financial Institutions.

Division 2—Legislation

Introduction and passage of Initial Legislation

403. The State of Queensland will as soon as practicable—
- (a) submit to its Parliament the Initial Legislation and shall take such steps as are appropriate to secure the passing thereof by 31 March 1992;
 - (b) submit to its Executive Council for making by it regulations under the Initial Legislation when they have been unanimously approved by the Ministerial Council.

Introduction Passage and Content of Application of Laws Legislation

404. Each State (other than Queensland) will as soon as practicable after unanimous approval of it by the States—
- (a) submit to the Parliament of that State:
 - (i) its Application of Laws Legislation; and

- (ii) its Transitional Legislation;
- (b) submit to its Executive Council (or the in the case of the Australian Capital Territory its Executive) for making by it regulations under the Application of Laws or Transitional Legislation,

and shall take such steps as are appropriate to secure the passing and making thereof.

405. Each State will ensure that its Application of Laws Legislation—

- (a) authorises its SSA to delegate to the SSA of any other State any powers granted to it under the Initial Legislation;
- (b) authorises its SSA to accept any delegation of powers pursuant to sub-clause (a);
- (c) will allow AFIC to utilise industry liquidity support arrangements established under its legislation;

on such terms and conditions as may from time to time be agreed.

It is the prerogative of each State Government to determine the structure and composition of its SSA consistent with the objectives of the Financial Institutions Scheme and subject to the overall principle that the SSA should have operational independence from industry and Government.

Introduction and Passage of Amending Legislation

406. The State of Queensland will as soon as practicable after approval of it by the Ministerial Council—

- (a) submit to its Parliament any Amending Legislation;
- (b) submit to its Executive Council for making by it regulations under the Amending Legislation;

and shall take such steps as are appropriate to secure the passing and making thereof.

Division 3—Miscellaneous

Appointment of AFIC Board

407. The States will as soon as practicable appoint the initial members of the Board of AFIC.

Amendment to Financial Institutions Legislation

408.

- (1) The purpose of this clause is to make provision in regard to amendments made to the Financial Institutions Legislation or regulations thereunder before such Financial Institutions Legislation is introduced or such regulations are made.
- (2) Any Financial Institutions Legislation must not be introduced nor regulations made thereunder unless the Ministerial Council has approved the Financial Institutions Legislation or regulations (as the case may be) in the form in which they are introduced or made.
- (3) Notwithstanding subclause (2) the approval of the Ministerial Council to such Financial Institutions Legislation or regulations may be given so as to permit the making of alterations of a drafting nature or alterations of other kinds or for other purposes as specified in the approval, without the need for further approval.

Prohibition on Conflicting Legislation

409. A State will not submit legislation to its Parliament nor take action for the making of regulations which will, upon coming into force, conflict with or negate the operation of the Financial Institutions Legislation.

Meaning of amendment

410. In this Part 'amend' means directly amend Financial Institutions Legislation by the insertion or omission (or both) of matter or indirectly amend Financial Institutions Legislation by making provisions that would significantly alter its effect, scope or operation.

PART 5—MINISTERIAL COUNCIL**Establishment**

501. A Council of State Ministers is established by this Agreement, to be known as the Ministerial Council for Financial Institutions.

Membership

502. The Council consists of one member representing each State which is for the time being a party to the Agreement who (subject to clause 503) is the Minister for the time being responsible for administering the law relating to supervision of financial institutions in that State.

Acting Member

- 503.
- (1) A Minister who is acting for a Minister who is a member of the Council may act as a member of the Council in place of the member.
 - (2) A member of the Council may appoint a delegate to act as a member of the Council in place of the member. Such an appointment may be limited to a particular meeting or particular meetings or to a particular period or particular periods, and may be revoked at any time.

- (3) References in this Agreement (other than in this clause) to a member of the Council extend to an acting member.
- (4) Without limitation, an acting member may in that capacity:
 - (a) attend and participate in meetings of the Ministerial Council in place of the member concerned (including meetings referred to in clause 506(3); and
 - (b) exercise the voting rights of the member concerned (including voting rights under clause 511).

Observer Status

504.

- (1) The Council may, by unanimous resolution, and on such terms as it thinks fit, confer non-voting observer status on a representative of a government that is not a party to this Agreement.
- (2) The representative's observer status ceases when a member of the Council notifies the Chairperson or Secretary of the Council that the member does not support continuation of that status.

Functions

505. The Council has the functions conferred on it by this Agreement and by the Financial Institutions Legislation which shall include—
- (a) the approval until 31 December 1992 of regulations under the Initial Legislation by unanimous vote and thereafter by majority vote;
 - (b) the approval of Amending Legislation bringing State-based financial institutions (other than permanent building societies and credit unions) under the Financial Institutions Scheme by unanimous vote;
 - (c) the approval of Amending Legislation (other than that specified in sub-clause (b) by majority vote;

- (d) the appointment of the members of the board of AFIC (other than the initial members) and the members of the Appeals Tribunal by majority vote;
- (e) the exercise of general oversight over AFIC.

Meetings

506.

- (1) Meetings of the Council shall be held at such times and at such places as are from time to time decided by the Council and at least one meeting shall be held in each financial year.
- (2) A meeting of the Council may be convened by any three (3) members by notice of fourteen (14) days or of such other period as may be accepted by all members for the purpose of the meeting.
- (3) A meeting of the Council may be held wholly or partly if all members so agree, by means of telephone, television or some other mode of communication approved for the purposes of this subclause by the Council.
- (4) Members of the Council who take part in a meeting specified in sub-clause (3) are taken to have been present at the meeting although they were not all present at the same place at the time when the meeting was so held.
- (5) Clause 503 extends to meetings referred to in subclause (3) of this clause, and references in clause 503 to attending a meeting of the Council extend to joining in the meeting in whatever way the meeting is held.
- (6) To the extent that this Agreement does not prescribe with respect to the following matters the Council may determine—
 - (a) the notice of meeting to be given to its members and the manner of giving notice; and

- (b) the procedure at its meetings; and
- (c) the manner in which and by whom its decisions are recorded and the procedure for confirmation of the correctness of the record.

Quorum

507. The quorum for a meeting of the Council shall be five (5) members but no matter requiring unanimous resolution may be voted on unless all the members of that Council with a right to vote in its proceedings are present or vote.

Chairperson

508. The Chairperson of a meeting of the Council shall be decided by the Council prior to or, if not previously decided, at the meeting.

Voting

509. Each member of the Council has one vote and the Chairperson does not have a casting vote.
510. Except in respect of the matters provided in Clauses 202, 504(1), 505(a) and (b) a resolution will be carried by the Council by a majority of votes of all members cast on the resolution.

Voting out of meetings

- 511.
- (1) Members of the Council may cast votes for a resolution referred to all members of the Council, even though the Council is not then in session, and whether or not the resolution has been considered at a meeting of the Council.
 - (2) For the purposes of subclause (1), a vote may be cast by communicating by facsimile transmission or teleprinter, or by any

other mode of communication approved by the Ministerial Council, to the Secretary of the Council or other recipient approved by the Council.

- (3) Clause 503 extends to voting referred to in this clause, and references in clause 503 to attending a meeting of the Council extend to joining in the business of the Council in whatever way it is conducted.

Secretariat

512.

- (1) The secretariat functions for the Council will be carried out by such person or persons as the Council may from time to time determine.
- (2) The Secretary of the Council will be the person for the time being designated as such by the Council.

PART 6—INTERSTATE CONSULTATIVE COMMITTEE

601.

- (1) An Interstate Consultative Committee shall be established comprising one representative of each SSA.
- (2) The Committee shall meet on a regular basis as a forum for the exchange of information and ideas with respect to the Financial Institutions Scheme and its operation and shall make such recommendations or representations to AFIC as it sees fit.
- (3) The Committee may nominate two candidates for appointment to the board of AFIC and the Ministerial Council shall consider such nominations in appointing the members of the board of AFIC pursuant to Clause 505(d).

PART 7—FUNDING

Initial Funding

701.

- (1) This clause applies to the period to 31 December 1992 or such other period as the Ministerial Council may determine.
- (2) The funds required for the establishment and functioning of AFIC upon approval by the Ministerial Council of the relevant budget shall be provided by the States severally in accordance with the same proportions as the estimated population of each State on 31 December 1989 as determined by the Australian Statistician under the provisions of the States Grants (General Purposes) Act 1989 of the Commonwealth Parliament bears to the total of the estimated populations of all the States on that date.

Subsequent Funding

702.

- (1) This clause applies to any financial period subsequent to that specified in Clause 701.
- (2) The funds required for the functioning of AFIC upon approval by the Ministerial Council of the relevant budget shall be provided and collected (on a pro rata basis if appropriate) as specified in the Initial Legislation.

PART 8—WITHDRAWAL OF PARTY

Right of Withdrawal

801.

- (1) A party to this agreement may at any time by notice in writing to the Ministerial Council withdraw from this agreement and shall cease to be a party when the notice of withdrawal takes effect.

- (2) A notice of withdrawal under this clause shall take effect on a date to be specified in the notice which is not earlier than 30 June in the financial year next following the financial year in which the notice is given.

SCHEDULE**BUILDING SOCIETIES****Prudential Standards and Practices**

Recommendation

Entry Requirements

1. Character
 - . A primary objects test specifically related to purpose should apply: At all times not less than 50 per cent of group assets must be comprised of loans or investments made for residential buildings or residential development. Exemptions may be permitted on a case-by-case basis in accordance with standards.
 - . Mutual Control: One member, one vote; members being those persons who hold membership in accordance with the rules. Exemptions allowing up to one vote to be exercised for each permanent share held by a member to be considered on a case-by-case basis in accordance with standards.

Prudential Standards & Practices

2. Capital Adequacy
 - . Adoption of the Reserve Bank's (RBA) Group risk-weighted approach to capital adequacy.
 - . Minimum 8 per cent risk-weighted capital comprising core and supplementary capital where supplementary must not exceed core.
 - . Capital definition per RBA with appropriate

modifications.

- . Risk weightings per RBA with appropriate modifications including the 50 per cent weighting for residential housing loans, secured by registered mortgage over one unit of residence (eg. one house, one unit in a block), owner occupied or tenanted.
 - . Capital requirement may be increased if a society or subsidiary has undertaken abnormal risks or a society has failed to develop and apply adequate systems to monitor or manage risks.
3. Provision for Doubtful Debts
- . Provision for doubtful debts for both secured and unsecured loans in accordance with a formula determined by AFIC.
4. Liquidity
- . Adoption of a minimum prime liquid assets requirement to be met at all times. The ratio to be 10 per cent of all liabilities (other than the amount of defined capital held).
 - . The numerator of the ratio to comprise prime liquefiable assets similar to the prime assets in the RBA PAR ratio broadened to include bank deposits and bills and State or Territory Government issued or guaranteed securities. Forward loan commitments are to be deducted from the numerator unless the State Supervisory Authority is satisfied that appropriate cash flow management systems are in place.
 - . Comprehensive liquidity management systems (to the State Supervisory Authority's satisfaction) to monitor and manage operational liquidity and liquidity risk to prudent levels based on the RBA approach. While the State Supervisory Authority will review building societies on a case-by-case basis, it is generally recommended that operational liquidity to be 10 per cent of liabilities (other than the amount of defined capital held) and would

normally include:

- prime liquid assets in excess of set minimum;
- undrawn standby and overdraft facilities;
- funds securing settlement accounts;
- and
- funds available through securitization of mortgages.

5. Risk Management
 - . Management systems to control exposures and limit risks associated with financial activities based on the RBA approach and in particular:
 - credit risk;
 - liquidity risk;
 - interest rate risk; and
 - foreign currency risk.
 - . Written descriptions of the systems to be supplied to the State Supervisory Authority.
6. Large Exposures
 - . A similar approach to that adopted by the RBA including prior notification and subsequent reporting of large exposures to individuals or associated persons above 10 per cent of defined capital held.
 - . Building Societies may be prohibited from entering into a large exposure if the State Supervisory Authority considers it would constitute an excessive risk.
 - . State Supervisory Authority may require a society to maintain a higher capital ratio to support the exposure. A society wishing to maintain a high volume of large exposures may be required to maintain a higher capital ratio.
7. Subsidiaries
 - . Financial intermediation to be conducted through the holding entity unless there is a sustainable argument to the State Supervisory Authority's

satisfaction. In any event the size of subsidiaries should not become unduly large relative to the holding entity and there should not be a proliferation of subsidiaries.

- . In relation to any activity of a subsidiary, the State Supervisory Authority may direct a holding society to comply with any guidelines in the same manner as if that activity was being carried out by the society. State Supervisory Authority may direct a merger of a holding building society.
 - . State Supervisory Authority may inspect a subsidiary with which a society has invested funds and may require a society to furnish information relating to the subsidiary.
 - . Subsidiaries' activities should generally not be guaranteed and then only subject to full consolidation for prudential purposes. The State Supervisory Authority may restrict or prohibit guarantees.
 - . Consolidated capital adequacy and primary objects tests apply. State Supervisory Authority may require a society to maintain a higher capital ratio if a subsidiary has undertaken abnormal risks.
8. Guarantees . Guarantees of managed funds permitted subject to off-balance sheet weighting but restricted to those where the trust investments are limited to those placed with the society.
9. Ownership . Limit of 10 per cent on holding of permanent or withdrawable shares (or other securities as determined) in a society by a person or their associates and this includes directors. Ongoing exemptions renewable on a periodic basis to be considered by the SSA on a case-by-case basis in accordance with standards.
10. Directors . Obligations imposed upon directors and other

officers responsible for management, to follow Corporations Law provisions and to include restrictions on loans to directors.

- . Where persons and/or corporations are associated with one another, AFIC will develop guidelines to ensure that independence of the Board of directors is maintained.

Compliance

11. Reporting
- . By the external auditor to the Board of directors and in turn to the State Supervisory Authority to follow the RBA style, reporting on the adequacy of the management systems adopted to control exposures and limit risks and compliance with prudential standards.
 - . By the society to the State Supervisory Authority on a comprehensive range of financial information.
 - . By the society to members and other investors (in addition to and more frequent than annual audited accounts) to include risk ratios, capital to support transactions and details of management contracts.

NOTE: All reporting on a group basis as applicable.

12. Inspection
- . Verification of compliance by regular on-site inspection by the State Supervisory Authority.
13. Formal Discussions
- . Formal discussions between the State Supervisory Authority and directors and senior management to review overall performance.

Other Issues

14. Interstate Trading
- . Foreign registration by host State/Territory subject to society gaining compliance certificate from supervising SSA. Compliance certificate to be

- issued on the basis of society meeting applicable standards.
 - . Subject to the society not continuing to meet the standards the host State/Territory may withdraw registration.
 - . Home State/Territory supervises with supervision powers available to host State/Territory.
 - . Interstate and cross industry mergers provided for.
15. Management Contracts . To be considered on a case-by-case basis to ensure arm's length dealings with management and directors and their associations.
16. Liquidity Support Schemes . Mandatory participation in an AFIC approved liquidity support scheme.
17. Additional Standards . AFIC may change, increase or issue new prudential and other standards from time to time, in accordance with legislative provisions.

CREDIT UNIONS**Prudential Standards and Practices**

Recommendation

Entry Requirements

1. Character
 - . National uniformity of objects in rules being:
 - to operate as a financial co-operative;
 - to raise funds by deposit, or otherwise from members, as authorised by the legislation;
 - to apply those funds, subject to the legislation and the rules of the credit union, in giving financial accommodation to members of the credit union;
 - to provide such other services to its members as the credit union believes would be of benefit to the members.
 - . 60 per cent of group assets held in loans advanced to members.
 - . Commercial lending restricted to a maximum of 10 per cent of group assets where commercial loans are advanced in accordance with prudential standards and the rules of the credit union.
 - . Mutual control: One member, one vote; Members being those persons who are admitted to membership in accordance with the rules.

Prudential Standards & Practices

2. Capital Adequacy
 - . Adoption of the Reserve Bank's (RBA) Group risk-assessed approach to capital adequacy.
 - . Minimum 8 per cent risk-assessed capital with a minimum 6 per cent core capital.
 - . Capital definition per RBA with appropriate modifications to suit.
 - . Risk weightings per RBA with appropriate modifications including 50 per cent for residential housing loans secured by registered mortgage over one unit of residence (eg. one house, one unit in a block), owner occupied or tenanted.
 - . Capital requirements may be increased if a credit union or subsidiary has undertaken abnormal risks or a credit union has failed to develop and apply adequate systems to monitor or manage risks.
3. Provision for Doubtful Debts
 - . Provision for doubtful debts for both secured and unsecured loans in accordance with a formula determined by AFIC.
4. Liquidity
 - . Adoption of a minimum prime liquid assets requirement to be met at all times. The ratio to be 7 per cent of all liabilities (other than the amount of defined capital held).
 - . The numerator of the ratio to comprise prime liquefiable assets similar to the prime assets in the RBA PAR ratio broadened to include bank deposits and bills, State or Territory Government issued or guaranteed securities and deposits held by approved special service providers. Forward loan commitments are to be deducted from the numerator unless the State Supervisory Authority

considers appropriate cash flow management systems are in place.

- . Comprehensive liquidity management systems (to the State Supervisory Authority's satisfaction) to monitor and manage operational liquidity and liquidity risk to prudent levels based on the RBA approach. While the State Supervisory Authority will review credit unions on a case-by-case basis, it is generally recommended that operational liquidity be maintained at 8 per cent of liabilities (other than the amount of defined capital required) to include:
 - prime liquid assets in excess of set minimum;
 - funds securing settlement accounts
 - operational funds held by approved special service providers;
 - undrawn standby and overdraft facilities; and
 - funds available through the securitization of loans.

- 5. Risk Management
 - . Management systems to control and limit risks associated with financial activities based on the RBA approach and in particular:
 - credit risk;
 - liquidity risk; and
 - interest rate risk.

 - . Written descriptions of the systems to be supplied to the State Supervisory Authority.

- 6. Large Exposures
 - . A similar approach to that adopted by the RBA including prior notification and subsequent reporting of large exposures to individuals or associated persons above 10 per cent of defined capital held.

 - . Credit unions may be prohibited from entering into a large exposure if State Supervisory

Authority considers it would constitute an excessive risk.

- . State Supervisory Authority may require a credit union to maintain a higher capital ratio to support the exposure. A credit union wishing to maintain a high volume of large exposures may be required to maintain a higher capital ratio.
 - . A sectional limit of 10 per cent of assets to apply to commercial lending. Also commercial loans to a member or group of associated members are not to exceed in aggregate 1 per cent of all loans outstanding.
7. Subsidiaries
- . Financial intermediation to be conducted through the holding entity unless there is a sustainable argument to the State Supervisory Authority's satisfaction. In any event the size of subsidiaries should not become unduly large relative to the holding entity and there should not be a proliferation of subsidiaries.
 - . In relation to any activity of a subsidiary, State Supervisory Authority may direct a holding credit union to comply with any guidelines in the same manner as if that activity was being carried out by the credit union. State Supervisory Authority may direct a merger of a holding credit union.
 - . State Supervisory Authority may inspect a subsidiary with which a credit union has invested funds and may require a credit union to furnish information relating to the subsidiary.
 - . Subsidiaries' activities should generally not be guaranteed and then only subject to full consolidation for prudential purposes. The State Supervisory Authority may restrict or prohibit guarantees.
 - . Consolidated capital adequacy applies. State

Supervisory Authority may require a credit union to maintain a higher capital ratio if a subsidiary has undertaken abnormal risks.

- 8. Guarantees . General prohibition of guarantees to third parties.
- 9. Ownership . Limit of 10 per cent on holding of withdrawable shares in a credit union by a person or their associates and this includes directors.
 - . One member, one vote.
- 10. Directors . Obligations imposed upon directors and other officers responsible for management, to follow Corporations Law provisions and include restrictions on loans to directors.
 - . Where persons and/or corporations are associated with one another, AFIC will develop guidelines to ensure the independence of the Board of directors is maintained.
- 11. Managed Funds . Credit unions should generally not be involved with managed funds (ADF's, superannuation). State Supervisory Authority may permit where risk is minimal and maybe appropriately undertaken at national industry level.

Compliance

- 12. Reporting . By the external auditor to the Board of Directors and in turn to the State Supervisory Authority to follow the RBA style, reporting on the adequacy of the management systems adopted to control exposures and limit risks and compliance with prudential standards.
 - . By the credit union to the State Supervisory Authority on a comprehensive range of financial information.
 - . By the credit union to members (in addition to and

more frequent than annual audited accounts) to include risk ratios and capital to support transactions.

NOTE: All reporting on a group basis as applicable.

13. Inspection . Verification of compliance by regular on site inspection by the State Supervisory Authority.
14. Formal Discussions . Formal discussions between the State Supervisory Authority and directors and senior management to review overall performance.

Other Issues

15. Interstate Trading . Foreign registration by host State/Territory subject to society gaining compliance certificate from supervising SSA. Compliance certificate to be issued on the basis of society meeting applicable standards.
- . Subject to the credit union not continuing to meet the standards the host State/Territory may withdraw registration.
- . Home State/Territory supervises with supervision powers available to host State/Territory.
- . Interstate and cross industry mergers provided for.
16. Management Contracts . To be reviewed on a case-by-case basis to ensure arm's length dealings with management and directors and their associates.
17. Liquidity Support Schemes . Mandatory participation in an AFIC approved liquidity support scheme.
18. Additional Standards . AFIC may change, increase or issue new prudential and other standards from time to time, in accordance with legislative provisions.

SCHEDULE 2**Transitional Legislation**

Transitional Legislation shall include provisions in respect of associations of credit unions formed or incorporated prior to the commencement of the Financial Institutions Legislation—

- (a) to permit them to transfer their engagements and membership to a special services provider incorporated under the Financial Institutions Legislation;
- (b) where any member of any such association elects not to transfer its membership to a special services provider to require that special services provider to pay to that credit union (by such instalments and at such time as AFIC may approve) the share of surplus to which it would otherwise be entitled had the association been wound up;
- (c) to permit such associations to transfer to a special services provider of treasury services to credit unions such equitable mortgages or charges as they hold over the assets of credit unions.