

Queensland



Australian Financial Institutions Commission Act 1992

AUSTRALIAN FINANCIAL INSTITUTIONS COMMISSION REGULATIONS 1992

**Reprinted as in force on 4 September 1998
(includes amendments up to SL No. 319 of 1997)**

Reprint No. 4

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This regulation is reprinted as at 4 September 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

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

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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AUSTRALIAN FINANCIAL INSTITUTIONS COMMISSION REGULATIONS 1992

[as amended by all amendments that commenced on or before 4 September 1998]

Short title

1. These regulations may be cited as the *Australian Financial Institutions Commission Regulations 1992*.

Commencement

2. These regulations commence on 1 July 1992.

Application for registration as special services provider—s 36

3.(1) An application to be registered as a special services provider under section 36 of the code—

- (a) must be addressed to the executive director; and
- (b) must state the name under which the applicant body seeks to be registered; and
- (c) must state the address at which the principal office (place of administration) of the applicant body is, or is to be, situated; and
- (d) must state the names, addresses and occupations of the directors of the applicant body or, if it is not yet incorporated, the names, addresses and occupations of those who are to be its first directors on its incorporation; and
- (e) must state the names of the controlling societies and the ways by which they exercise control.¹

(2) The application must be accompanied by—

¹ See section 36(2)(c) of the code.

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- (a) the applicant body's rules;² and
- (b) a statement of any trusts administered by the applicant body or of which the applicant body is a beneficiary, together with copies of the relevant instruments of trust; and
- (c) written estimates of income and expenditure of the applicant body for the first 3 years after registration (including income and expenditure of a capital nature); and
- (d) if the applicant body is already incorporated under some other law—the accounts of the applicant body (including balance sheets and profit and loss statements) for the last 3 years before the making of the application or, if the applicant body has been incorporated for less than 3 years, for the period of incorporation; and
- (e) a statutory declaration made by 1 of the directors or proposed directors of the applicant body stating—
 - (i) that the applicant body is eligible for registration as a special services provider; and
 - (ii) that the applicant body will, if registered, be able to carry out its objects and comply with all applicable standards; and
 - (iii) that the applicant body will, after registration, provide services only of the kinds referred to in section 36(2)(b) of the code; and
 - (iv) that the particulars contained in the application and in accompanying statements are true and the copies of documents accompanying the application are true copies of the documents.

(3) A fee of \$5 000 is payable on lodgment of an application for registration as a special services provider.

² See section 36(3)(a) of the code.

Certificate of incorporation—s 37

4. A certificate of incorporation under section 37 of the code—

- (a) must be issued under the signature of the executive director; and
- (b) must state the date of registration.

Application of Financial Institutions Code—s 40

5.(1) The following provisions of the Financial Institutions Code apply to a special services provider and to AFIC as if the special services provider were a building society and AFIC were the State Supervisory Authority—

- (a) part 2 (Functions and powers of the SSA), except subdivisions 6, 6A and 7 of division 2;
- (b) part 4, division 2 (Legal capacity and powers);
- (c) part 4, division 3 (Rules);
- (d) sections 131 (except subsection (2)), 134, 135 and 136 (Membership);
- (e) part 4, division 5 (Name and office);
- (f) part 5, division 1 (except section 148), division 3 (except section 168), division 4, division 8 (except section 221) and division 9 (Shares, securities and charges);
- (g) subject to subsections (2) and (3)—part 6, division 1 (except section 238(b)), division 2 (except sections 252(3), 253 and 254), division 3 (except section 263(2)), division 4 (except section 266(2)), division 5 (except section 278(4)(e) and (5)(d) and (e)) and division 6 (Management);
- (h) part 7, divisions 1A, 1 and 3 (Merger and transfers of engagements);
- (ha) part 8, divisions 1, 3 and 4 (Conversions) in so far as the divisions relate to the conversion of a building society to a company;
- (i) part 9, division 4 (Winding-up), except section 341(1)(a);
- (j) part 10 (Special investigations);

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- (k) part 13 (Review of decisions);
- (l) part 14 (Miscellaneous);
- (m) part 15 (Transitional).

(2) Section 234(5) of the Financial Institutions Code applies to a special services provider as if the words ‘or appointed’ were inserted after the word ‘elected’.

(3) Section 239(2) and (3) of the Financial Institutions Code do not apply to a special services provider in relation to a director who was not elected.

Payment to persons required to attend or produce documents—s 52

5A.(1) This section specifies the allowances and expenses to be allowed to a person required to attend under section 52 of the code.

(2) The person must be paid—

- (a) if the person is remunerated in the person’s occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of the person’s attendance; or
- (b) in any other case—an amount, of not less than \$46 or more than \$76 for each day of attendance, that AFIC considers to be reasonable compensation for the person’s loss of income because of the person’s attendance.

(3) The person must also be reimbursed for any amount incurred by the person, of not more than an amount AFIC considers to be reasonable in each case—

- (a) for transport between the person’s usual place of residence and the place of attendance; and
- (b) if the person is required to be absent overnight from the person’s usual place of residence because of the attendance—for meals and accommodation.

Application for review—s 67

6.(1) An application to the Appeals Tribunal for a review of a decision must be made in a form approved by the chairperson of the tribunal.

(2) An application for an extension of time for the making of an application to the Appeals Tribunal must be made in a form approved by the chairperson of the tribunal.

(3) The notice to be given by the Appeals Tribunal of an application under section 67(1) or (2) of the code must be in a form approved by the chairperson of the tribunal.

(4) Within 28 days after notice is given of an application to the Appeals Tribunal for the review of a decision, or within such shorter period as the Appeals Tribunal may determine in a particular case, the person whose decision is subject to review must lodge with the tribunal—

- (a) a statement of the reasons for the decision together with a statement of any evidence or findings on which the decision was based; and
- (b) any document in the possession or under the control of the person that is material to the review.

Parties to proceeding before Appeals Tribunal—s 82

7.(1) An application under section 82(2) of the code to be made by a party to a proceeding before the Appeals Tribunal must be in a form approved by the chairperson of the tribunal.

(2) If a person applies to be made a party to a proceeding, a copy of the application must be served on all other parties to the proceeding.

Particular powers of Appeals Tribunal—s 89

8.(1) A summons under section 89(1) of the code must be in a form approved by the chairperson of the tribunal.

(2) A summons under section 89(1) of the code must be served on a person—

- (a) by delivering the summons to the person personally; or

- (b) by showing the original summons to the person and giving the person a copy.

Operation and implementation of a decision that is subject to review—s 90

9.(1) An application for an order under section 90(2) of the code, or for an order varying or revoking such an order, must be in a form approved by the chairperson of the tribunal or some other form determined or permitted by the tribunal.

(2) A copy of an application to which subsection (1) relates must be served on other parties to the proceedings.

Secrecy provisions—s 155

9A.(1) This section prescribes persons and bodies for definitions in section 155 of the code.

(2) For the definition “financial sector supervisory agency”, each of the following is a financial sector supervisory agency—

- ASC
- ISC
- PHIAC
- RBA.

(3) For the definition “law enforcement agency”, each of the following is a law enforcement agency—

- Australian Bureau of Criminal Intelligence
- Australian Competition and Consumer Commission
- Australian Federal Police
- Australian Transaction Reports and Analysis Centre (also known as AUSTRAC)
- Commonwealth Law Enforcement Board
- Criminal Justice Commission of Queensland

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- Director of Public Prosecutions (however named) of the Commonwealth and of each State
- Independent Commission Against Corruption of New South Wales
- National Crime Authority
- New South Wales Crime Commission
- Police Service (however named) of each State.

Register of financial interests—s 156(3)

10.(1) A person has a relevant interest in securities if the person has a relevant interest in the securities for the purposes of the Corporations Law.

(2) The Register of Financial Interests must, so far as it relates to relevant interests in securities, contain the following information—

- (a) the name of the person who has the relevant interest and whether that person is a director or employee of AFIC;
- (b) the name of the body corporate to which the securities relate;
- (c) the nature of the relevant interest and the nature and number of the securities to which the relevant interest relates;
- (d) the date of the acquisition of the relevant interest and, if applicable—
 - (i) the date of any change in the nature of the relevant interest;
 - (ii) the date of disposal of the relevant interest;
- (e) if the securities are not registered in the name of the person who has the relevant interest—the name of the person who is registered as the holder of the securities.

Prescribed changes in financial interests—s 156(6)

10A. The following changes are prescribed for the purposes of section 156(6) of the code—

- (a) in the case of a change in a financial interest consisting of

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withdrawable shares or the deposit of money—a change that is a non-reportable cash transaction, or a non-reportable currency transfer, within the meaning of the *Cash Transaction Reports Act 1988* (Cwlth);³

- (b) in the case of a change in a financial interest consisting of a current account or of an overdraft or credit card arrangement—a change given on the financial institution’s usual commercial terms.

Meaning of “associate”—s 157(7)

10B. For the purposes of section 157(7) of the code, the question whether a prescribed person is associated with a person or body is to be determined under section 4 of the Financial Institutions Code.

Application of Financial Administration and Audit Act—s 165

11.(1) The *Financial Administration and Audit Act 1977* applies to AFIC with the following modifications—

- (a) the following provisions do not apply—
 - (i) section 46C(ha) (internal audit);
 - (ii) section 46F(2) (extension of time for furnishing financial statements);
 - (iii) section 46J (annual report);
 - (iv) section 46N (tabling reports);
 - (v) sections 98 and 99 (auditor-general’s reports);
- (b) section 103 (obtaining comments on proposed audit reports)—applies as if the references to the Treasurer were omitted.

(2) The *Financial Administration and Audit Act 1977* applies to the Appeals Tribunal with the following modifications—

³ Now see *Acts Interpretation Act 1954*, s 14I and *Cash Transaction Reports Amendment Act 1991* (Cwlth), s 5.

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- (a) the following provisions do not apply—
 - (i) section 46C(h) (financial management practice manual);
 - (ii) section 46C(ha) (internal audit);
 - (iii) section 46M (financial management practice manuals);
- (b) section 103 (obtaining comments on proposed audit reports)—applies as if the references to the Treasurer were omitted.

Forms—s 14(1) and (2) of the Act

12.(1) A form prescribed or approved for the purposes of the code must be completed in accordance with any directions and instructions contained in the form.

(2) The name of a person who signs a form must be written legibly under or alongside the signature of the person.

(3) If the space provided in a form is insufficient to contain all the required information—

- (a) the information must be set out in an annexure to the form; and
- (b) the annexure must have a distinguishing mark such as a letter or numeral; and
- (c) the space provided in the form must contain the statement ‘see annexure’, together with the distinguishing mark for the annexure, or words to similar effect.

(4) If a document is to be lodged by a financial body, the document must be signed by 2 directors or a director and the secretary of the financial body unless some other provision is made by the code or these regulations.

(5) If a document that is required by or under the code to be lodged with, or given to, AFIC is signed, lodged or given on behalf of a person by the person’s agent, the original or verified copy of the agent’s authority must be lodged with, endorsed on, or annexed to, the document.

Fees—s 14(1) of the Act

13. The following fees are prescribed—

- (a) on lodging an application with the Appeals Tribunal for the review of a reviewable decision—\$300;
- (b) for inspection of documents—\$10;
- (c) for a certified copy of, or extract from, a document—\$5 for the first page and \$0.50 for each additional page;
- (d) for an uncertified copy of any document that may be inspected—\$3 for the first page and \$0.30 for each additional page;
- (e) on lodging an application to AFIC to exercise any power conferred on the SSA because of the financial institutions legislation application of the Corporations Law—the corresponding fee specified under the Corporations Law;
- (f) on application to register an alteration of rules under section 126 or 127 of the Financial Institutions Code—\$26;
- (g) on lodging an application for merger or transfer of engagement under section 293, 302 or 311 of the Financial Institutions Code—\$132;
- (h) on lodgment of documents by or on behalf of a special services provider relating to the registration of charges—
 - (i) on lodging a notice of charge or acquisition of property subject to a charge—\$53;
 - (ii) on lodging a notice of assignment or variation of registered charge—\$26;
 - (iii) on lodging a notice of satisfaction of, or release of property from, a registered charge—\$26;
- (i) on application under section 47D of the code for the extension of the period of reservation of a name—\$100;
- (j) on the late lodgment of a document (in addition to any lodgment fee provided for the lodging of the document)—
 - (i) if lodged within 1 month after the prescribed time—\$20;

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- (ii) if lodged more than 1 month, but less than 3 months, after the prescribed time—\$50;
- (iii) if lodged more than 3 months after the prescribed time—\$90;
- (k) for the production by AFIC, under a subpoena, of a document held by it in relation to a special services provider—\$30;
- (l) on lodging an application (not including an application for registration of a special resolution) or request to AFIC to exercise any power, or to do any act, that AFIC is authorised or required to do on application or request, and for which no other fee is prescribed—\$20;
- (m) for a certificate issued by AFIC other than a certificate of incorporation—\$10;
- (n) for an application to reserve a name under section 47C of the code—\$100.

Transitional provision—name of friendly society

14.(1) If, immediately before the commencement of this section, a continuing society did not include the words ‘friendly society’ as part of its name, the continuing society is not required to include the words ‘friendly society’ as part of its name for 1 year after the commencement.

(2) If, immediately before the commencement of this section, a continuing society did not include the word ‘Limited’ or the abbreviation ‘Ltd’ at the end of its name, the continuing society is not required to include the word ‘Limited’ or the abbreviation ‘Ltd’ at the end of its name for 1 year after the commencement.

(3) This section has effect despite any provision of the code.

(4) In this section—

“continuing society” means a continuing society within the meaning of the Friendly Societies Code set out in the *Friendly Societies (Victoria) Act 1996* of Victoria, schedule 1, as applying as a law of this State.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 September 1998. Future amendments of the Australian Financial Institutions Commission Regulations 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 1992
2	to SL No. 232 of 1993	27 July 1993
3	to SL No. 303 of 1994	19 September 1994
3A	to SL No. 123 of 1997	28 July 1997
3B	to SL No. 319 of 1997	18 November 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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6 List of legislation

Australian Financial Institutions Commission Regulations 1992 SL No. 67

made by the Governor in Council on 9 April 1992
pubd gaz 10 April 1992 pp 2122–30
commenced 1 July 1992 (see s 2)
exp 9 April 2002 (see SIA s 54)

as amended by—

Australian Financial Institutions Commission Amendment Regulation (No. 1) 1993 SL No. 232

notfd gaz 25 June 1993 pp 1094–9
ss 1–2 commenced on date of notification
remaining provisions commenced 1 July 1993 (see s 2)

Australian Financial Institutions Commission Amendment Regulation (No. 1) 1994 SL No. 303

notfd gaz 19 August 1994 pp 1829–31
commenced on date of notification

Australian Financial Institutions Commission Amendment Regulation (No. 1) 1997 SL No. 123

notfd gaz 23 May 1997 pp 357–8
commenced on date of notification

Financial Institutions Legislation Amendment Regulation (No. 1) 1997 SL No. 319 pts 1–2

notfd gaz 26 September 1997 pp 354–6
ss 1–2 commenced on date of notification
remaining provisions commenced 1 October 1997 (see s 2 and 1997 SL No. 318)

7 List of annotations

Application of Financial Institutions Code—s 40

s 5 amd 1993 SL No. 232 s 4; 1994 SL No. 303 s 3; 1997 SL No. 123 s 3;
1997 SL No. 319 s 4

Payment to persons required to attend or produce documents—s 52

s 5A ins 1994 SL No. 303 s 4

Application for review—s 67

s 6 amd 1993 SL No. 232 s 5

Secrecy provisions—s 155

s 9A ins 1997 SL No. 319 s 5

Register of financial interests—s 156(3)

s 10 amd 1993 SL No. 232 s 6

Prescribed changes in financial interests—s 156(6)

s 10A ins 1993 SL No. 232 s 7

Meaning of “associate”—s 157(7)

s 10B ins 1993 SL No. 232 s 7

Application of Financial Administration and Audit Act—s 165

s 11 amd 1993 SL No. 232 s 8

Fees—s 14(1) of the Act

s 13 amd 1994 SL No. 303 s 5; 1997 SL No. 319 s 6

Transitional provision—name of friendly society

s 14 ins 1997 SL No. 319 s 7