



PARLIAMENT OF WESTERN AUSTRALIA

Parliamentary Library
Parliament House
Perth 6000
Western Australia

993

ACTS AMENDMENT AND REPEAL (FINANCIAL SECTOR REFORM) BILL 1999

Explanatory Note

This explanatory note relates to this Bill as introduced into Parliament.

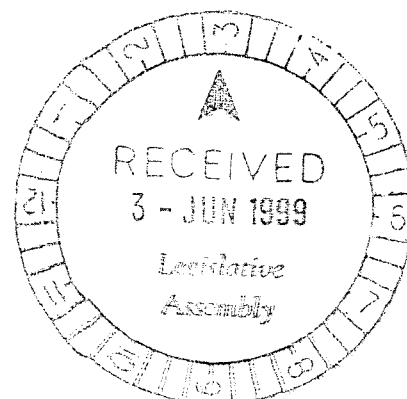
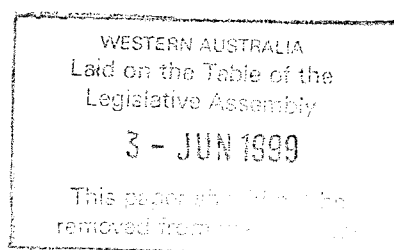
Overview of Bill

In 1997 the Financial System Inquiry recommended that the supervision of building societies, credit unions and friendly societies be transferred from the State Financial Institutions Scheme to Commonwealth regulators. Following agreement by State and Territory Governments with the Commonwealth Government to give effect to that recommendation, the Commonwealth developed the *Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 1) 1999*. That legislation is the primary vehicle effecting the transfer.

Additionally, the *Financial Sector (Transfers of Business) Bill 1999* of the Commonwealth was introduced to facilitate the transfer of businesses between certain kinds of financial institutions.

Each State and Territory is expected to pass legislation to support and complement the Commonwealth legislation where necessary to ensure the effectiveness of the transfers.

Some provisions of the Bill are in terms corresponding to provisions in the Corporations Law. The enactment of those provisions is intended to complement, and not limit or otherwise affect, the operation of the Corporations Law.



The objects of this Bill are:

- (a) to enact provisions to support and complement the Commonwealth legislation to ensure the effectiveness of the transfers with which that legislation is concerned, in relation to Western Australia; and
- (b) to wind up the Western Australian Financial Institutions Authority, the body that is the State Supervisory Authority for Western Australia under the existing legislation; and
- (c) to enact transitional and consequential provisions.

Outline of provisions

Part 1 Preliminary

Clause 1 set out the name (also called the short title) of the proposed Act and its main purposes.

Clause 2 provides for the commencement of the proposed Act by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. Definitions include *AFIC* (Australian Financial Institutions Commission, which is a State body established under Queensland legislation), *ASIC* (Australian Securities and Investments Commission, which is a Commonwealth body established under Commonwealth legislation), *APRA* (Australian Prudential Regulation Authority, which is a Commonwealth body established under Commonwealth legislation), *transfer date* (which is effectively the date the transfer of financial institutions to Commonwealth supervision takes effect), and *WAFIA* (Western Australian Financial Institutions Authority, which is a Western Australian body established under Western Australian legislation as the State Supervisory Authority).

Clause 4 provides that the Crown is bound by the proposed Act.

Part 2 Repeals and transitional provisions

Division 1 Repeals

Clause 5 repeals the *Financial Institutions (Western Australia) Act 1992*, the *Financial Institutions (Taxing) Act 1992*, the *Friendly Societies (Western Australia) Act 1999*, the *Friendly Societies (Taxing) Act 1999*, and the *Western Australian Financial Institutions Authority Act 1992*. The Financial Institutions Code, the Friendly Societies Code and the AFIC Code will consequently cease to be operative.

Division 2 Certain Financial Institutions to become companies

Clause 6 provides that each transferring financial institution is, on the transfer date, taken to be registered as a company under the Corporations Law. The clause complements clause 3 of Schedule 4 to the Corporations Law, as amended by Schedule 3 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Division 3 Transfers of business of Authorised Deposit-taking Institutions (ADIs) and Life Insurance companies

This Part complements provisions of the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth (*FS(TB) Act*).

Clause 7 provides that words defined in the *FS(TB) Act* have the same meanings in this Part.

Clause 8 provides that APRA may authorise members of its board or of its staff to perform or exercise powers or functions under particular provisions of this Part. This clause parallels section 4(2) of the *FS(TB) Act*.

Clause 9 facilitates voluntary transfers of business under Part 3 of the *FS(TB) Act*. The provisions of the clause are contemplated by sections 11 (1) (d) and 14 of the *FS(TB) Act*.

Clause 10 facilitates compulsory transfers of business under Part 4 of the *FS(TB) Act*. The provisions of the clause are contemplated by sections 25 (2) (e) and 28 of the *FS(TB) Act*.

Clause 11 provides for certificate evidence concerning transferred assets and liabilities. This clause parallels section 37 of the *FS(TB) Act*.

Clause 12 provides for certification of transfer of ownership in land and for the Registrar-General to register or record the transfer as certified. This clause parallels section 38 of the FS(TB) Act.

Clause 13 provides for certification of transfer of ownership of other assets and the responsible person or authority to register or record the transfer as certified. The clause parallels section 39 of the FS(TB) Act.

Clause 14 presumes, until the contrary is established, that a document purporting to be a certificate under this Part is such a certificate and to have been properly given. This clause parallels section 40 of the FS(TB) Act.

Clause 15 provides protections consequent on the operation of this Part. This clause parallels section 43 (1)-(3) of the FS(TB) Act.

Division 4 Provisions relating to uncompleted mergers and transfers of engagements

Clause 16 provides that mergers and transfers of engagements, commenced under the Financial Institutions Code before the transfer date and not completed before that date, may be completed before that date, may be completed under the Code or after the transfer date.

Clause 17 provides that mergers and transfers of engagements, commenced under the Friendly Societies Code before the transfer date and not completed before that date, may be completed under that Code or after the transfer date.

Division 5 Provisions relating to societies whose registration has been cancelled

Clause 18 is a definition clause

Clause 19 provides for building societies, credit unions and friendly societies dissolved or deregistered before the transfer date.

Clause 20, 21 and 22 provisions relating to the property of such entities and claims against their insurers, and permits ASIC to take action on their behalf and establish such an entity as a company in certain circumstances.

Division 6 Provisions relating to AFIC

Clause 23 recognises that the *Financial Sector Reform (Queensland) Act 1999* is repealing the Queensland legislation establishing AFIC but preserving the existence of AFIC for limited purposes and for a limited time. The clause empowers AFIC to exercise its continuing functions in connection with Western Australia.

Clause 24 authorises the board of AFIC to delegate its functions and powers.

Clause 25 is a definition clause.

Clause 26 empowers the Queensland Minister to enter into an agreement for the transfer of AFIC staff to APRA, as contemplated by Division 2 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 27 and 28 contain provisions relating to the transfer of AFIC staff to APRA or the Australian Public Service.

Clauses 29 enables employees of AFIC and other persons associated with AFIC to disclose information to APRA or ASIC.

Clauses 30 empowers the Queensland Minister to enter into an agreement for the transfer of AFIC assets or liabilities to APRA or ASIC, as contemplated by Division 3 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 31 and 32 set out how civil and criminal proceedings involving AFIC are to continue.

Division 7 Provisions relating to WAFIA

Clause 33 provides for the dissolution of WAFIA. This may occur on or after the transfer date.

Clause 34 provides for the continuation of contracts or other agreements between WAFIA and another person(s) despite the repeal of the WAFIA Act 1992.

Clause 35 enables regulations to be made to deal with arrangements for the final reports and auditing of WAFIA's affairs.

Clause 39 empowers the Minister to enter into an agreement for the transfer of WAFIA employees to APRA, as contemplated by Division 2 of Part 1 of

Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 40 and 41 contain provision relating to the transfer to WAFIA employees to APRA or the Australian Public Service.

Clause 42 enables employees of WAFIA and other persons associated with WAFIA to disclose information to APRA or ASIC.

Clause 43 empowers the Minister to enter into an agreement for the transfer of WAFIA assets or liabilities to APRA or ASIC, as contemplated by Division 3 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 44 and 45 set out how civil and criminal proceedings involving WAFIA are to continue.

Division 8 Provisions relating to Funds

Clause 46 requires WAFIA to distribute the money in the Supervision Fund established under the Financial Institutions Code to APRA and ASIC to cover liabilities of transferred employees and the remainder to be distributed to the industry in accordance with levies paid into the fund by the individual institutions.

Clause 47 requires WAFIA to distribute the money in the Credit Unions Contingency Fund to credit unions according to their entitlements.

Division 9 Conferral of functions and powers on APRA and ASIC

Clause 48 formally confers functions on APRA, which is a Commonwealth body with limited authorisation to exercise functions and powers under State law.

Clause 49 formally confers functions on ASIC, which is a Commonwealth body with limited authorisation to exercise functions and powers under State law.

Clause 50 provides that APRA and ASIC have the same enforcement powers relating to current matters as AFIC or WAFIA had.

Clause 51 provides that certain provisions of the AFIC Code continue to apply after the transfer date in relation to current matters.

Clause 52 provides that certain provision of the Financial Institutions Code continue to apply after the transfer date in relation to current matters.

Clause 53 provides that certain provisions of the Friendly Societies Code continue to apply after the transfer date in relation to current matters.

Division 10 Miscellaneous

Clause 54 deals with accounts with a building society or credit union that have been classified or closes as dormant accounts. These accounts will be treated as having been re-opened immediately before the transfer date and as not being dormant.

Clause 55 deals with withdrawable shares in building societies. A person with these shares will, on the transfer date, be treated as the holder of a deposit equal to the amount paid up on the shares.

Clause 56 refers to the dissolution of the Australian Financial Institutions Appeals Tribunal by the *Financial Sector Reform (Queensland) Act 1999* of Queensland, and provides that applications made to the Tribunal for review of a decision that have not been decided are taken to have been withdrawn.

Clause 57 provides that no State tax is chargeable in respect of anything effected by or done under the proposed Act, except in relation to Division 3 (which relates to the transfer of the business of authorised deposit-taking institutions and life insurance companies).

Clause 58 authorises the making of regulations for the purposes of the proposed Act.

Part 3 Consequential Amendments

Series of amendments to provide for references in Acts and statutory instruments to building societies and credit unions are to have effect as references to authorised deposit-taking institutions.

Series of amendments to provide for references in Acts and statutory instruments to friendly societies are to have effect as references to bodies that were societies under the Friendly Societies Code or are friendly societies for the purposes of the *Life Insurance Act 1995* of the Commonwealth.