

South Australia

Financial Sector (Transfer of Business) Act 1999

An Act to provide for transfers of business between authorised deposit-taking institutions and between life insurance companies; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Financial Sector (Transfer of Business) Act 1999*.

3—Interpretation

- (1) In this Act—

APRA means the Australian Prudential Regulation Authority;

authorised APRA officer means a person authorised under section 6 to issue certificates under that section;

Commonwealth Act means the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth, as amended from time to time.

- (3) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.

4—Voluntary transfers

- (1) The purpose of this section is to facilitate voluntary transfers of business under Part 3 of the Commonwealth Act for regulated bodies.
- (2) This section applies when a certificate of transfer issued under section 18 of the Commonwealth Act comes into force under Division 3 of Part 3 of that Act.

- (3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.
- (4) In particular—
 - (a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body included in the list of assets and liabilities specified in the statement of detail become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.
- (5) If there is an approved section 20 statement in relation to the transfer—
 - (a) that specifies that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
 - (b) that specifies a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

5—Compulsory transfers

- (1) The purpose of this section is to facilitate compulsory transfers of business under Part 4 of the Commonwealth Act for regulated bodies.
- (2) This section applies when a certificate of transfer issued under section 33 of the Commonwealth Act comes into force under Division 3 of Part 4 of that Act.
- (3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.
- (4) In particular—
 - (a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body that are included in the list (referred to in section 33(2)(c) of the Commonwealth Act) included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

- (5) If the certificate of transfer includes provisions of a kind referred to in section 33(3) of the Commonwealth Act—
 - (a) specifying that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with those provisions; or
 - (b) specifying a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.
- (6) If there is an approved section 30 statement in relation to the transfer—
 - (a) that specifies that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
 - (b) that specifies a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

6—Certificates evidencing operation of Act

- (1) An authorised APRA officer may, by a certificate in writing signed by the officer, certify anything in relation to the effect of this Act and, in particular, may certify that—
 - (a) a particular asset of a transferring body has become a transferred asset of a receiving body; or
 - (b) a particular liability of a transferring body has become a transferred liability of a receiving body.
- (2) For all purposes and in all proceedings, a certificate purporting to be issued under subsection (1) is evidence of the matters certified.
- (3) APRA is empowered to authorise, in writing, an APRA board member or an APRA staff member to issue certificates under this section.

7—Registration or record of transfer

The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this section accompanied by a certificate issued under section 6, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

8—Exemption from State taxes

- (1) No State taxes are chargeable under any Act in respect of a compulsory transfer of business facilitated under this Act.
- (2) The Treasurer may, by agreement with a receiving body in a voluntary transfer of business, grant an exemption from a State tax or State taxes in relation to a transaction facilitated under this Act.

- (3) An exemption under subsection (2) may be conditional on payment to the Treasurer of an amount determined by the Treasurer.
- (4) The receiving body must pay the amount determined by the Treasurer in accordance with the agreement.
- (5) In this section—
State tax means—
 - (a) stamp duty; or
 - (b) any other tax, duty or impost that would, apart from an exemption under this section, be payable in respect of the transaction under the law of the State.

9—Relationship of Act with other laws

- (1) This Act has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by or under this Act—
 - (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a receiving body, a transferring body or another person in breach of—
 - (i) a law of the State; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or
 - (c) releases a surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

10—Regulations

The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	32	<i>Financial Sector (Transfer of Business) Act 1999</i>	17.6.1999	1.7.1999 being the date specified under section 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2
2002	35	<i>Statutes Amendment (Stamp Duties and Other Measures) Act 2002</i>	28.11.2002	Pt 2 (s 4)—28.11.2002: s 2(1)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 8	substituted by 35/2002 s 4	28.11.2002