

South Australia

Financial Sector Reform (South Australia) Act 1999

An Act to facilitate the transfer to the Commonwealth of responsibility for regulating building societies, credit unions and friendly societies as companies under the *Corporations Law*; to provide for transitional matters; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Financial Sector Reform (South Australia) Act 1999*.

4—Interpretation

(1) In this Act—

AFIC means the Australian Financial Institutions Commission established by the AFIC Act;

AFIC Act means the *Australian Financial Institutions Commission Act 1992* of Queensland;

AFIC Code means—

- (a) the AFIC (South Australia) Code; and
- (b) the AFIC (South Australia) Regulations,

as in force immediately before the transfer date;

APRA means the Australian Prudential Regulation Authority;

APRA Act means the *Australian Prudential Regulation Authority Act 1998* of the Commonwealth;

APRA employee means a person appointed under section 45 of the APRA Act;

ASIC means the Australian Securities and Investments Commission;

Commonwealth Reform Act means the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth;

Credit Unions Contingency Fund means the fund of that name established under the Financial Institutions Code;

employee, in relation to AFIC, includes a person engaged by AFIC on a contract for services;

enforcement power means a function or power relating to—

- (a) the investigation of an offence; or
- (b) the institution and carrying on of a prosecution of an offence; or
- (c) matters relating to an investigation or prosecution of an offence;

Financial Institutions Code or **Financial Institutions (South Australia) Code** means—

- (a) the Financial Institutions (South Australia) Code; and
- (b) the Financial Institutions (South Australia) Regulations,

as in force immediately before the transfer date;

financial institutions legislation has the same meaning as in section 8 of the AFIC Code;

fiscal bodies legislation has the same meaning as in section 3 of the AFIC Code;

Friendly Societies Code or *Friendly Societies (South Australia) Code* means—

- (a) the Friendly Societies (South Australia) Code; and
- (b) the Friendly Societies (South Australia) Regulations,

as in force immediately before the transfer date;

relevant Commonwealth body means APRA or ASIC;

SAOFS means the South Australian Office of Financial Supervision;

SSA means State Supervisory Authority;

Supervision Fund means the fund of that name established under the Financial Institutions Code;

transfer date means the date that, under section 3(16) of the Commonwealth Reform Act, is specified as the transfer date for the purposes of that Act.

- (2) In this Act, a reference to a Commonwealth Act includes a reference to—
 - (a) that Commonwealth Act as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act.

Part 2—Conferral of functions and powers on APRA and ASIC

5—Conferral of functions and powers on APRA

- (1) APRA has the functions and powers conferred or expressed to be conferred on it by or under this Act.
- (2) APRA has power to do acts in South Australia in the performance or exercise of any function or power conferred or expressed to be conferred on APRA by or under a law of another jurisdiction corresponding to this Act.

6—Conferral of functions and powers on ASIC

- (1) ASIC has the functions and powers conferred or expressed to be conferred on it by or under this Act.
- (2) ASIC has power to do acts in South Australia in the performance or exercise of any function or power conferred or expressed to be conferred on ASIC by or under a law of another jurisdiction corresponding to this Act.

6A—Administrative functions and powers conferred on relevant Commonwealth bodies

- (1) In this section—

administrative action has the same meaning as it has in the *Corporations (Administrative Actions) Act 2001*;

APRA or ASIC action means an administrative action taken, or purportedly taken, by APRA or ASIC pursuant to a function or power conferred, or purportedly conferred, by or under this Act;

confer includes impose.

- (2) The *Corporations (Administrative Actions) Act 2001* applies in relation to an APRA or ASIC action as if this Act were a relevant State Act within the meaning of that Act.
- (3) This Act does not purport to confer any duty on APRA or ASIC to perform a function, or to exercise a power, conferred, or purportedly conferred, by or under this Act if the conferral of the duty would be beyond the legislative power of the Parliament of the State.
- (4) Subsection (3) does not limit the operation of section 22A of the *Acts Interpretation Act 1915*.

Part 3—Provisions relating to AFIC

Division 1—AFIC to continue

7—Continuation of AFIC for certain purposes

- (1) This section applies despite—
 - (a) the repeal of the AFIC Act by the *Financial Sector Reform (Queensland) Act 1999* of Queensland; and
 - (b) the repeal of the *Financial Institutions (Applications of Laws) Act 1992* by this Act.
- (2) AFIC and its board continue in existence, but only for the following purposes:
 - (a) to give effect to matters relating to the transfer, under a law of the Commonwealth or of another State or a Territory or this Act, of any of its functions under the fiscal bodies legislation to APRA or ASIC;
 - (b) to prepare reports and financial statements.

8—Delegation of AFIC's powers

- (1) AFIC's board may delegate AFIC's powers to an appropriately qualified employee of AFIC.
- (2) In subsection (1)—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Division 2—Provisions about AFIC's staff

9—Interpretation

In this Division—

employee of AFIC includes the executive director of AFIC.

10—Transfer of staff to APRA under transfer agreement

- (1) The Queensland Minister administering the *Financial Sector Reform (Queensland) Act 1999* of Queensland may enter into a transfer agreement under Division 2 of Part 1 of Schedule 8 of the Commonwealth Reform Act, that determines, or provides for determining, that particular employees of AFIC become APRA employees on a particular date, not being a date before the transfer date.

- (2) The transfer agreement has effect according to its terms.

11—Effect of transfer under section 10 or of employees of AFIC becoming appointed to the Australian Public Service

- (1) This section applies if a person becomes an APRA employee under section 10.
- (2) This section also applies if—
- (a) a person is appointed to the Australian Public Service under section 81B(1) of the *Public Service Act 1922* of the Commonwealth on or after the transfer date; and
 - (b) immediately before the appointment, the person was an employee of AFIC.
- (3) If the person is the executive director of AFIC, the executive director's appointment under the AFIC Code immediately ends.
- (4) If the person is another employee of AFIC, the employee's employment with AFIC immediately ends.
- (5) A person is not entitled to receive any payment or other benefit, whether under a contract or otherwise, because the person's appointment or employment ends under this section.

12—Statement of accrued benefits etc

Before an employee of AFIC becomes an APRA employee under section 10 or is appointed to the Australian Public Service as mentioned in section 11(2), AFIC must give the person, and APRA or the Commonwealth Public Service Commissioner, a written statement stating particulars of the benefits to which the person has an accrued entitlement, the person's remuneration and the person's length of service with AFIC.

Division 3—Information may be given to APRA or ASIC

13—Giving of information

- (1) This section applies to—
- (a) a director of AFIC's board; and
 - (b) an employee of AFIC; and
 - (c) a person appointed by AFIC to carry out duties under the fiscal bodies legislation; and
 - (d) a person who has been a person mentioned in paragraph (a), (b) or (c).
- (2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation.
- (3) This section applies despite section 155 of the AFIC Code and section 477 of the Friendly Societies Code.

Division 4—Transfer of AFIC's assets and liabilities

14—Transfer of assets and liabilities

- (1) The Queensland Minister administering the *Financial Sector Reform (Queensland) Act 1999* of Queensland may enter into a transfer agreement under Division 3 of Part 1 of Schedule 8 of the Commonwealth Reform Act connected with the transfer of AFIC's assets or liabilities to APRA or ASIC.
- (2) The transfer agreement has effect according to its terms.

Division 5—Proceedings involving AFIC

15—Continuation and preservation of certain civil proceedings involving AFIC

- (1) This section applies to a proceeding—
 - (a) whether or not it arose or arises under the fiscal bodies legislation; and
 - (b) regardless of where it arose or arises.
- (2) For the purposes of a proceeding commenced before the transfer date to which AFIC was a party immediately before that date, the State of Queensland is substituted for AFIC as a party to the proceeding.
- (3) For the purposes of a proceeding not commenced before the transfer date and which—
 - (a) could, if commenced after that date, be brought against AFIC; or
 - (b) could have, but for the repeal of the *Financial Institutions (Application of Laws) Act 1992* by this Act and the dissolution of AFIC, been brought against AFIC,the proceeding may instead be brought against the State of Queensland.
- (4) For the purposes of this section, evidence that would have been admissible for or against AFIC is admissible for or against the State of Queensland.
- (5) This section does not apply to a proceeding for an offence.

16—Continuation of certain offence proceedings

- (1) This section applies to a proceeding for an offence brought under section 63 of the AFIC Code by AFIC, or a person authorised in writing by AFIC, that commenced before the transfer date but was not completed before that date.
- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of AFIC, or the person authorised by AFIC, and APRA or ASIC may be substituted in the proceeding for AFIC or the person.
- (3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Note—

See Part 5 for proceedings commencing after the transfer date.

Part 4—Provisions relating to SAOFS

Division 1—Transfer of SAOFS' assets and liabilities

17—Transfer of assets and liabilities

- (1) The Minister may enter into a transfer agreement under Division 3 of Part 1 of Schedule 8 of the Commonwealth Reform Act connected with the transfer of SAOFS's assets or liabilities to APRA or ASIC.
- (2) The transfer agreement has effect according to its terms.

Division 2—Provisions about SAOFS' staff

18—Transfer of staff to APRA under transfer agreement

- (1) The Minister may enter into a transfer agreement under Division 2 of Part 1 of Schedule 8 of the Commonwealth Reform Act that determines, or provides for determining, that particular employees of SAOFS become APRA employees on a particular date, not being a date before the transfer date.
- (2) The transfer agreement has effect according to its terms.

19—Effect of transfer to APRA or APS

- (1) This section applies—
 - (a) if a person becomes an APRA employee under section 18; or
 - (b) if—
 - (i) a person is appointed to the Australian Public Service under section 81B(1) of the *Public Service Act 1922* of the Commonwealth on or after the transfer date; and
 - (ii) immediately before the appointment, the person was an employee of SAOFS.
- (2) The person's employment with SAOFS immediately ends.
- (3) A person is not entitled to receive any payment or other benefit because the person's employment ends under this section.

20—Statement of accrued benefits etc

Before an employee of SAOFS becomes an APRA employee under section 18 or is appointed to the Australian Public Service as mentioned in section 19(1)(b)(i), SAOFS must give the person, and APRA or the Commonwealth Public Service Commissioner, a written statement stating particulars of—

- (a) the person's remuneration; and
- (b) the person's accrued benefits and entitlements in respect of service with SAOFS and prior service recognised by SAOFS; and
- (c) the person's length of service with SAOFS and the length of prior service recognised by SAOFS.

Division 3—Winding up of Funds

21—Supervision Fund

- (1) Despite the repeal of the *Financial Institutions (Application of Laws) Act 1992*, the Supervision Fund continues in existence until SAOFS has fulfilled its obligations under this section.
- (2) SAOFS must pay out of the Supervision Fund at such time or times as SAOFS determines—
 - (a) to APRA—
 - (i) such amount in respect of liabilities relating to leave or other entitlements of employees of SAOFS who become employees of APRA, being liabilities existing immediately before the date on which the relevant employees become employees of APRA, as is determined by SAOFS; and
 - (ii) such amount in respect of any other liabilities of SAOFS that, by reason of this Act, become liabilities of APRA, as is determined by SAOFS; and
 - (b) to ASIC—
 - (i) such amount in respect of liabilities relating to leave or other entitlements of employees of SAOFS who become employees of ASIC, being liabilities existing immediately before the date on which the relevant employees become employees of ASIC, as is determined by SAOFS; and
 - (ii) such amount in respect of any other liabilities of SAOFS that, by reason of this Act, become liabilities of ASIC, as is determined by SAOFS.
- (3) SAOFS must also pay out of the Supervision Fund—
 - (a) any expenses incurred by SAOFS before the transfer date (see section 94(3) of the repealed *Financial Institutions Code*); and
 - (b) any other expenses incurred by SAOFS before it is wound up under Part 5 of the *South Australian Office of Financial Supervision Act 1992*.
- (4) SAOFS must pay into the Supervision Fund all amounts that would be payable into the Fund were it not for the repeal of the *Financial Institutions (Application of Laws) Act 1992*.¹
- (5) The amount remaining (if any) in the Supervision Fund after compliance with subsections (2) and (3) must be distributed by SAOFS to each building society, credit union and friendly society that is a transferring financial institution under the *Corporations Law*, in such proportions as the Minister considers fair.

Note—

- 1 Proceeds from the realisation of surplus SAOFS assets are also to be paid into the Supervision Fund: see Part 5 of the *South Australian Office of Financial Supervision Act 1992*.

22—Credit Unions Contingency Fund

- (1) On the day before the transfer date, SAOFS must, under section 99A of the Financial Institutions Code, distribute the whole of retained earnings to the contribution accounts of credit unions.
- (2) For the purposes of subsection (1), section 99A(3) of the Financial Institutions Code does not apply.
- (3) Immediately after SAOFS complies with subsection (1) it must pay from the Credit Unions Contingency Fund to each credit union the amount standing to the credit union's credit in the fund.
- (4) Subsection (3) applies despite section 103 of the Financial Institutions Code.
- (5) In this section—

contribution accounts, of credit unions, means the parts of the Credit Unions Contingency Fund that, under section 98(10) of the Financial Institutions Code, are treated as a deferred asset in the accounts of the credit unions;

retained earnings has the same meaning as in section 99A of the Financial Institutions Code.

Division 4—Proceedings involving SAOFS

23—Continuation and preservation of civil proceedings involving SAOFS

- (1) For the purposes of a proceeding commenced before the transfer date to which SAOFS was a party immediately before that date, the State is substituted for SAOFS as a party to the proceeding.
- (2) For the purposes of a proceeding not commenced before the transfer date and which—
 - (a) could, if commenced after that date, be brought against SAOFS; or
 - (b) could have, but for the dissolution of SAOFS, been brought against SAOFS,the proceeding may instead be brought against the State.
- (3) For the purposes of this section, evidence that would have been admissible for or against SAOFS is admissible for or against the State.
- (4) This section does not apply to a proceeding for an offence.

24—Continuation of certain offence proceedings

- (1) This section applies to a proceeding for an offence brought under section 404 of the Financial Institutions Code or section 471 of the Friendly Societies Code by SAOFS, or a person authorised in writing by SAOFS, that commenced before the transfer date but was not completed by that date.
- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of SAOFS, or the person authorised by SAOFS, and APRA or ASIC may be substituted for SAOFS or the person.
- (3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Note—

See Part 5 for proceedings commencing after the transfer date.

Division 5—Information may be given by SAOFS

25—Giving of information

- (1) This section applies to—
 - (a) a member of SAOFS; and
 - (b) an employee of SAOFS; and
 - (c) a person appointed by SAOFS for the purpose of carrying out duties under the fiscal bodies legislation; and
 - (d) a person who has been a person mentioned in paragraph (a), (b) or (c).
- (2) A person to whom this section applies may disclose to APRA or ASIC or the Minister information the person acquired while engaged in the administration of the fiscal bodies legislation.
- (3) This section applies despite section 410 of the Financial Institutions Code and section 477 of the Friendly Societies Code.

Part 5—Enforcement by APRA and ASIC of repealed Codes

26—Conferral of enforcement powers on APRA and ASIC

- (1) APRA and ASIC have the same enforcement powers relating to anything done or omitted to be done under a Code before the transfer date as AFIC or SAOFS had immediately before that date.
- (2) For the purposes of subsection (1), a Code applies with all necessary changes.
- (3) In this section—

Code means—

 - (a) the AFIC Code; or
 - (b) the Financial Institutions Code; or
 - (c) the Friendly Societies Code.

27—AFIC Code provisions

- (1) The following provisions continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date:
 - (a) Part 8 of the AFIC Code (except for sections 50, 51, 55 and 58); and
 - (b) the other provisions of the Code relevant to that Part.
- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

- (3) For the purposes of subsection (1)—
- (a) a reference in the Code to AFIC is taken to be a reference to the relevant Commonwealth body; and
 - (b) a reference in the Code to a financial institution is taken to be a reference to an entity that on the transfer date is a company under the *Corporations Law* and that, immediately before that date, was a financial institution under the Code; and
 - (c) in section 52(1) of the Code, the words "the financial institutions scheme" are taken to be omitted and the words "investigating whether an offence against the fiscal bodies legislation has been committed" are taken to be substituted; and
 - (d) a reference in section 52(1)(a) or (b) of the Code to an employee of AFIC or of a State supervisory authority is taken to be a reference to an employee of the relevant Commonwealth body; and
 - (e) section 52(5) of the Code is taken to be omitted; and
 - (f) a reference in section 53(1) or (2) of the Code to the executive director is taken to be a reference to the relevant Commonwealth body; and
 - (g) a reference in section 53(5) of the Code to officers and employees of the State supervisory authorities is taken to be a reference to officers and employees of the relevant Commonwealth body; and
 - (h) section 63(1A) and (1B) of the Code are taken to be omitted; and
 - (i) a reference in section 63(2) of the Code to the Ministerial Council is taken to be a reference to the Minister administering this Act; and
 - (j) the Code applies with all other necessary changes.
- (4) This section does not limit section 26.

28—Financial Institutions Code provisions

- (1) The following provisions continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date:
- (a) Subdivision 1A of Division 2 of Part 2 (except for sections 75, 79 and 82), Part 10 and sections 392, 397, 398 and 404 of the Financial Institutions Code; and
 - (b) the other provisions of the Code relevant to the provisions mentioned in paragraph (a).
- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.
- (3) For the purposes of subsection (1)—
- (a) a reference in the Code to the SSA is taken to be a reference to the relevant Commonwealth body; and

- (b) a reference in the Code to a financial body is taken to be a reference to an entity that on the transfer date is a company under the *Corporations Law* and that, immediately before that date, was a financial body under the Code; and
 - (c) a reference in the Code to a society is taken to be reference to an entity that on the transfer date is a company under the *Corporations Law* and that, immediately before that date, was a society under the Code; and
 - (d) in section 76(1) of the Code, the words "the financial institutions legislation" are taken to be omitted and the words "investigating whether an offence against the financial institutions legislation has been committed" are taken to be substituted; and
 - (e) a reference in section 76(1)(a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of the relevant Commonwealth body; and
 - (f) section 76(5) of the Code is taken to be omitted; and
 - (g) in the definition of *financial body to which this section applies* in section 397(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
 - (h) section 397(2) of the Code is taken to be omitted; and
 - (i) in the definition of *financial body to which this section applies* in section 398(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
 - (j) in the definition of *prescribed person* in section 398(1) of the Code, paragraphs (a) and (b) are taken to be omitted; and
 - (k) section 398(2) of the Code is taken to be omitted; and
 - (l) a reference in section 404(2) of the Code to the Minister is taken to be a reference to the Minister administering this Act; and
 - (m) the Code applies with all other necessary changes.
- (4) This section does not limit section 26.

29—Friendly Societies Code provisions

- (1) The following provisions continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date:
 - (a) Subdivision 2 of Division 2 of Part 2 (except for sections 31, 35 and 38), Divisions 3 and 4 of Part 4A, Part 10 and sections 460, 465, 466 and 471 of the Friendly Societies Code; and
 - (b) the other provisions of the Code relevant to the provisions mentioned in paragraph (a).
- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

- (3) For the purposes of subsection (1)—
- (a) a reference in the Code to the SSA is taken to be a reference to the relevant Commonwealth body; and
 - (b) a reference in the Code to a society is taken to be a reference to an entity that on the transfer date is a company under the *Corporations Law* and that, immediately before that date, was a society under the Code; and
 - (c) in section 32(1) of the Code, the words "the friendly societies legislation" are taken to be omitted and the words "investigating whether an offence against the friendly societies legislation has been committed" are taken to be substituted; and
 - (d) a reference in section 32(1)(a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of the relevant Commonwealth body; and
 - (e) section 32(4) of the Code is taken to be omitted; and
 - (f) in the definition of *society to which this section applies* in section 465(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
 - (g) section 465(2) of the Code is taken to be omitted; and
 - (h) in the definition of *society to which this section applies* in section 466(1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted; and
 - (i) in the definition of *prescribed person* in section 466(1) of the Code, paragraphs (a) and (b) are taken to be omitted; and
 - (j) section 466(2) of the Code is taken to be omitted; and
 - (k) a reference in section 471(2) of the Code to the Minister is taken to be a reference to the Minister administering this Act; and
 - (l) the Code applies with all other necessary changes.
- (4) This section does not limit section 26.

30—Conferral of functions and powers

The functions and powers necessary for the purposes of this Part are conferred on APRA and ASIC.

Part 6—Other transitional provisions

31—Dormant accounts

- (1) This section applies if—
- (a) before the transfer date a society transferred an amount from a person's deposit account with the society to another account under section 138A(4)(c) of the Financial Institutions Code; and
 - (b) immediately before the transfer date the amount has not been lawfully totally paid out as mentioned in section 138A(6)(b) of that Code.

(2) Immediately before the transfer date the amount remaining in that other account for the person is taken to have been transferred back to the person's deposit account as if the deposit account had never been classified as a dormant account or closed under section 138A of the Financial Institutions Code.

(3) In this section—

society means an entity that, immediately before the transfer date, was a society under the Financial Institutions (South Australia) Code.

32—Withdrawable shares in building societies

(1) A person who, immediately before the transfer date, was entitled to a withdrawable share of a building society, is taken to have become on that date the holder of a deposit with the building society of an amount equal to the amount paid up on the share.

(2) Any withdrawable shares of a building society on issue immediately before the transfer date and converted to deposits under subsection (1) are taken to have been cancelled.

(3) Despite the cancellation of a person's withdrawable shares under subsection (2), the person continues as a member of the building society but is otherwise subject to the rules of the society.

(4) In this section—

building society means a transferring financial institution of this jurisdiction (within the meaning of Part 1 of Schedule 4 to the *Corporations Law*) authorised under the Financial Institutions Code to operate as a building society immediately before the transfer date;

withdrawable share means a withdrawable share within the meaning of the Financial Institutions Code.

33—Matters in relation to deregistered financial bodies and societies

(1) This section applies to an entity that was, at some time before the transfer date—

- (a) a society under the Financial Institutions Code or the Friendly Societies Code; or
- (b) a building society under the *Building Societies Act 1990* or a corresponding previous enactment; or
- (c) a credit union under the *Credit Unions Act 1989* or a corresponding previous enactment; or
- (d) a friendly society under the *Friendly Societies Act 1919*,

and the registration of which had been cancelled under an applicable law before that date.

(2) If property formerly vested in an entity to which this section applies vests in ASIC under section 17 and was held by that entity on trust, ASIC may—

- (a) continue to act as trustee; or
- (b) apply to a court for the appointment of a new trustee.

- (3) If any property formerly so vested was not held by the entity on trust, ASIC—
- (a) may dispose of or deal with the property as it sees fit; and
 - (b) may apply any money it receives to—
 - (i) defray expenses incurred by ASIC in exercising its powers in relation to the entity; and
 - (ii) make payments authorised by subsection (4); and
 - (c) must deal with the balance (if any) of that money under Part 9.7 of the *Corporations Act 2001* of the Commonwealth as applying under this section.
- (3a) Money received by ASIC on a disposal of, or dealing with, property of an entity under subsection (3)(a) that is not applied under subsection (3)(b) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 9.7 of the *Corporations Act 2001* of the Commonwealth as if the entity had been a company.
- (3b) For the purposes of subsection (3a), Part 3 of the *Corporations (Ancillary Provisions) Act 2001* has effect as if that Part did not contain sections 16(1)(b) and 17.
- (4) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in ASIC.
- (5) ASIC's obligation under subsection (4) is limited to satisfying the liabilities out of the entity's property to the extent that the property is properly available to satisfy those liabilities.
- (6) ASIC must keep—
- (a) a record of the property to which this section applies; and
 - (b) a record of its dealings with that property; and
 - (c) accounts of all money received from those dealings; and
 - (d) all accounts, vouchers, receipts and papers relating to the property and that money.
- (7) ASIC may do an act on behalf of the entity or the entity's liquidator if ASIC is satisfied that the entity or liquidator would be bound to do the act if the entity still existed.
- (8) A person may recover from an insurer of the entity an amount that was payable to the entity under the insurance contract if—
- (a) the entity had a liability to the person; and
 - (b) the insurance contract covered the liability immediately before the cancellation of the registration.
- (9) The functions and powers that are necessary for the purposes of this section are conferred on ASIC.

34—Mergers and transfers of engagements commenced under Financial Institutions (South Australia) Code

- (1) This section applies if a transfer of engagements or merger commenced before the transfer date under Part 7 of the Financial Institutions (South Australia) Code and immediately before that date has not been completed, or been given effect.
- (2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Financial Institutions (South Australia) Code on or after the transfer date and, for that purpose, that Part and other provisions of the Code relevant to that Part continue to apply.
- (3) For the purposes of subsection (2)—
 - (a) a reference in the Financial Institutions (South Australia) Code to the SSA is taken to be a reference to the relevant Commonwealth body; and
 - (b) a reference in the Financial Institutions (South Australia) Code to the SSA of a participating State is taken to be a reference to the relevant Commonwealth body; and
 - (c) the Financial Institutions (South Australia) Code applies with all other necessary changes.
- (4) For the purposes of this section, a transfer of engagements was commenced before the transfer date under Part 7 of the Financial Institutions (South Australia) Code if, before that date—
 - (a) one of the following conditions was satisfied in relation to each society or foreign society involved:
 - (i) the transfer was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code; or
 - (ii) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the transfer may be approved by the board of the society or foreign society; or
 - (b) in a case where each entity involved in the transfer is a society, SAOFS gave a direction, under the Financial Institutions (South Australia) Code, requiring the transfer.
- (5) For the purposes of this section, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved:
 - (a) the merger was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code; or
 - (b) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the merger may be approved by the board of the society or foreign society.
- (6) The functions and powers of SAOFS that are necessary for the purposes of this section are conferred on the relevant Commonwealth body.

(7) In this section—

financial institutions agreement has the same meaning as in section 3 of the AFIC Code;

foreign society means a body corporate that, before the transfer date, was a society under the financial institutions legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Financial Institutions (South Australia) Code;

participating State means a State or Territory that, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated;

relevant Financial Institutions Code means—

- (a) in relation to a society, the Financial Institutions (South Australia) Code; or
- (b) in relation to a foreign society, the law of another participating State corresponding to the Financial Institutions (South Australia) Code;

relevant SSA means—

- (a) in relation to a society, SAOFS; or
- (b) in relation to a foreign society, the State Supervisory Authority under the financial institutions legislation of the other participating State;

society means an entity that, immediately before the transfer date, was a society under the Financial Institutions (South Australia) Code.

35—Mergers and transfers of engagements commenced under Friendly Societies (South Australia) Code

- (1) This section applies if a transfer of engagements or merger commenced before the transfer date under Part 7 of the Friendly Societies (South Australia) Code and immediately before that date has not been completed, or been given effect.
- (2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Friendly Societies (South Australia) Code on or after the transfer date and, for that purpose, that Part and other provisions of the Code relevant to that Part continue to apply.
- (3) For the purposes of subsection (2)—
 - (a) a reference in the Friendly Societies (South Australia) Code to the SSA is taken to be a reference to the relevant Commonwealth body; and
 - (b) a reference in the Friendly Societies (South Australia) Code to the SSA of a participating State is taken to be a reference to the relevant Commonwealth body; and
 - (c) the Friendly Societies (South Australia) Code applies with all other necessary changes.

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- (4) For the purposes of this section, a transfer of engagements was commenced before the transfer date under Part 7 of the Friendly Societies (South Australia) Code if, before that date—
- (a) one of the following conditions was satisfied in relation to each society or foreign society involved:
 - (i) the transfer was approved by a special resolution of the society or foreign society, in accordance with the relevant Friendly Societies Code; or
 - (ii) the relevant SSA made a determination, under the relevant Friendly Societies Code, that the transfer may be approved by the board of the society or foreign society; or
 - (b) in a case where each entity involved in the transfer is a society, SAOFS gave a direction, under the Friendly Societies (South Australia) Code, requiring the transfer.
- (5) For the purposes of this section, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved:
- (a) the merger was approved by a special resolution of the society or foreign society in accordance with the relevant Friendly Societies Code; or
 - (b) the relevant SSA made a determination, under the relevant Friendly Societies Code, that the merger may be approved by the board of the society or foreign society.
- (6) The functions and powers of SAOFS that are necessary for the purposes of this section are conferred on the relevant Commonwealth body.
- (7) In this section—

financial institutions agreement has the same meaning as in section 3 of the AFIC Code;

foreign society means a body corporate that, before the transfer date, was a society under the friendly societies legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Friendly Societies (South Australia) Code;

friendly societies legislation has the same meaning as in section 8A of the AFIC Code;

participating State means a State or Territory which, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated;

relevant Friendly Societies Code means—

- (a) in relation to a society, the Friendly Societies (South Australia) Code; or
- (b) in relation to a foreign society, the law of another participating State corresponding to the Friendly Societies (South Australia) Code;

relevant SSA means—

- (a) in relation to a society, SAOFS; or

- (b) in relation to a foreign society, the State Supervisory Authority under the friendly societies legislation of the other participating State;

society means an entity that, immediately before the transfer date, was a society under the Friendly Societies (South Australia) Code.

36—Australian Financial Institutions Appeals Tribunal

- (1) All applications made to the Australian Financial Institutions Appeal Tribunal under a Code for review of a decision that have not been decided are taken to have been withdrawn on the transfer date.

- (2) In this section—

Code means—

- (a) the AFIC Code; or
- (b) the Financial Institutions Code; or
- (c) the Friendly Societies Code.

Part 7—Miscellaneous

37—Registration or record of transfer

- (1) 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 such documents evidencing a transaction under a transfer agreement given effect to by this Act as the Registrar-General or other authority may require, register or record in an appropriate manner the transfer or transfers to which the application relates.
- (2) No fee is payable in respect of an application under subsection (1).

38—Exemption from State taxes

- (1) No stamp duty or other duty or tax is chargeable under any Act in respect of anything effected by or done under a transfer agreement given effect to by this Act.
- (2) No obligation arises under an Act for the assessment or imposition of any such duty or tax—
 - (a) to lodge a statement or return relating to the vesting of an asset under such a transfer agreement; or
 - (b) to include information about such vesting in a statement or return.

39—Relationship of Act with other laws

- (1) This Act has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
- (2) Nothing effected by or done 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.

40—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.

Legislation repealed by principal Act

The *Financial Sector Reform (South Australia) Act 1999* repealed the following:

Financial Institutions (Application of Laws) Act 1992

Friendly Societies (South Australia) Act 1997

Legislation amended by principal Act

The *Financial Sector Reform (South Australia) Act 1999* amended the following:

Aboriginal Lands Trust Act 1966

Acts Interpretation Act 1915

Adelaide Festival Theatre Act 1964

Administration and Probate Act 1919

Associations Incorporation Act 1985

Bank Mergers (South Australia) Act 1997

Benefit Associations Act 1958

Botanic Gardens and State Herbarium Act 1978

Business Names Act 1996

Carrick Hill Trust Act 1985

Community Titles Act 1996

Conveyancers Act 1994

Co-operatives Act 1997

Corporations (South Australia) Act 1990

Criminal Assets Confiscation Act 1996

Criminal Law Consolidation Act 1935

Da Costa Samaritan Fund (Incorporation of Trustees) Act 1953

Economic Development Act 1993

Enfield General Cemetery Act 1944

Enforcement of Judgments Act 1991

Evidence Act 1929

Fair Trading Act 1987

Family and Community Services Act 1972
Firearms Act 1977
The Flinders University of South Australia Act 1966
Government Financing Authority Act 1982
History Trust of South Australia Act 1981
Holidays Act 1910
Housing and Urban Development (Administrative Arrangements) Act 1995
Industrial and Employee Relations Act 1994
Land Agents Act 1994
Landlord and Tenant Act 1936
Legal Practitioners Act 1981
Local Government Finance Authority Act 1983
Motor Accident Commission Act 1992
Oaths Act 1936
Outback Areas Community Development Trust Act 1978
Pay-roll Tax Act 1971
Pharmacists Act 1991
Primary Industry Funding Schemes Act 1998
Public Charities Funds Act 1935
Public Finance and Audit Act 1987
Public Trustee Act 1995
Renmark Irrigation Trust Act 1936
Residential Tenancies Act 1995
Retail and Commercial Leases Act 1995
Retirement Villages Act 1987
Security and Investigation Agents Act 1995
South Australian Co-operative and Community Housing Act 1991
South Australian Housing Trust Act 1995
South Australian Motor Sport Act 1984
South Australian Multicultural and Ethnic Affairs Commission Act 1980
South Australian Office of Financial Supervision Act 1992
South Australian Tourism Commission Act 1993
State Lotteries Act 1966
Strata Titles Act 1988
Supreme Court Act 1935

Taxation Administration Act 1996
Trustee Act 1936
Unclaimed Moneys Act 1891
West Beach Recreation Reserve Act 1987
Wheat Marketing Act 1989
WorkCover Corporation Act 1994
Wrongs Act 1936

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	17.6.1999: s 2(1) except ss 3, 5—8, 15, 16, 21, 23, 24, 26—30, 32—36 and Sch (item 53(a), (c)—(j) & (n))—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(2)
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 15 (ss 74 & 75)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 (<i>Gazette</i> 21.6.2001 p2270)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2		
s 6A	inserted by 23/2001 s 74	15.7.2001
Pt 6		
s 33		
s 33(3)	amended by 23/2001 s 75(a)	15.7.2001
s 33(3a) and (3b)	inserted by 23/2001 s 75(b)	15.7.2001
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	

