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FINANCIAL CORPORATIONS ACT 1974

No. 36 of 1974

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FINANCIAL CORPORATIONS ACT 1974

No. 36 of 1974

An Act relating to Corporations engaged in certain Financial Operations.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Financial Corporations Act* 1974.¹ Short title.

2. (1) Parts I, II and V shall come into operation on the day on which this Act receives the Royal Assent.¹ Commencement.

(2) The remaining provisions of this Act shall come into operation on such day as is, or on such days as respectively are, fixed by Proclamation.

3. The object of this Act is to assist the Australian Government to achieve effective management of the Australian economy by providing a means for— Object of Act.

(a) the examination of the business activities of certain financial and trading corporations; and

(b) the regulation of those activities for the purpose of contributing to economic stability, the maintenance of full employment, the efficient allocation of productive resources, the ensuring of an adequate level of finance for housing and the economic prosperity and welfare of the people of Australia.

4. (1) In this Act, unless the contrary intention appears— Interpretation.
“Australia” includes all the external Territories to which this Act extends;

“balance-sheet” includes a statement of assets and liabilities or any similar document;

“building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under the law in force in a State or a Territory relating to such societies;

“category” means one of the categories into which registered corporations are divided in the list prepared for the purposes of section 10;

- “credit union” means a society or other body of persons—
- (a) that is registered or incorporated as a credit union or credit society under the law in force in a State or a Territory relating to credit unions or credit societies; or
 - (b) the principal business of which consists of borrowing moneys from its members or intended members and lending those moneys to its members and which is incorporated under the law in force in a State or a Territory,

but does not include a building society;

“financial corporation” means a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;

“foreign corporation” means a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution;

“registered corporation” means a corporation the name of which is entered in the Register of Corporations kept by the Reserve Bank under sub-section 9 (9);

“Reserve Bank” means the Reserve Bank of Australia;

“share” includes stock, and also includes an interest in a share or in any stock;

“Statistician” has the same meaning as in the *Census and Statistics Act 1905-1973*;

“terminating building society” means a building society that is, by virtue of a provision in the rules or other document constituting the society or governing its activities, to cease to exist on a day specified in, or ascertained in accordance with, the rules or other document or on the occurrence of an event so specified or ascertained;

“Territory” does not include Papua New Guinea;

“trading corporation” means a trading corporation within the meaning of paragraph 51 (xx) of the Constitution.

(2) A reference in this Act to the provision of finance includes a reference to—

- (a) the lending of money, with or without security;
- (b) the supplying of goods by way of hire-purchase;
- (c) the sale (other than a lay-by sale), in the course of the carrying on of a business of selling goods by retail, of goods on terms under which payment in full for the goods is not required to be made before the expiration of 3 months from the day on which the goods are sold or agreed to be sold;
- (d) the letting on hire of goods;
- (e) the acquisition of debts due to another person;
- (f) the purchase of bills of exchange or promissory notes;
- (g) the purchase of securities issued by Australia, a State or an authority of Australia or of a State; and

- (h) the purchase of debentures or other securities (other than shares) issued by a corporation.

(3) For the purposes of this Act, the receipt of moneys by a building society or credit union in respect of the issue of shares in the capital of the building society or credit union shall be deemed to constitute the borrowing of those moneys by the building society or credit union.

(4) For the purposes of this Act, a debt shall be taken to be due notwithstanding that the time for payment of the debt has not arrived.

5. This Act extends to every external Territory except Papua New Guinea. Extension to external Territories.

6. (1) Subject to this section, for the purpose of the application of sections 7 and 8 in relation to a corporation— Assets and liabilities of corporations.

- (a) the assets and liabilities of the corporation on any day shall be taken to be the assets and liabilities in Australia of the corporation that were included in the assets and liabilities of the corporation in the last balance-sheet of the corporation prepared and audited before that day;
- (b) the value on that day of any of those assets shall be taken to be the value of the assets concerned as shown in that balance-sheet; and
- (c) the amount on that day of any of those liabilities shall be taken to be the amount of the liabilities concerned as shown in that balance-sheet.

(2) If, for the purposes of the application of this section in relation to a corporation on any day, there is not such a balance-sheet as is mentioned in sub-section (1), then, for the purposes of the application of sections 7 and 8 in relation to the corporation—

- (a) the assets and liabilities of the corporation on that day shall be taken to be the assets and liabilities in Australia of the corporation;
- (b) the value on that day of any of those assets shall be taken to be the value of the assets concerned as shown in the accounting records of the corporation; and
- (c) the amount on that day of any of those liabilities shall be taken to be the amount of the liabilities concerned as shown in the accounting records of the corporation.

7. (1) Subject to sub-sections (2) and (3), the question whether corporations are related to each other for the purposes of this Act shall be determined in the same manner as the question whether corporations are related to each other is determined under the *Companies Ordinance* 1962-1973 of the Australian Capital Territory or, if that Ordinance is amended, under that Ordinance as amended. Related corporations.

(2) A corporation shall not be taken for the purposes of this Act to be related to another corporation (not being a corporation that carries on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail) unless the first-mentioned corporation is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed and—

- (a) the sole or principal business activities in Australia of the first-mentioned corporation are the borrowing of money and the provision of finance; or
- (b) the sum of the amounts of such of the assets in Australia of the first-mentioned corporation as consist of debts due to that corporation, being debts resulting from transactions entered into in the course of the provision of finance by that corporation, exceeds—
 - (i) 50 per centum; or
 - (ii) if a greater or lesser percentage is prescribed by the regulations—the percentage so prescribed,
 of the sum of the values of all the assets in Australia of that corporation.

(3) A corporation shall not be taken for the purposes of this Act to be related to another corporation (being a corporation that carries on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail) unless the first-mentioned corporation—

- (a) is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed; and
- (b) engages in the provision of finance in the course of carrying on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail.

Corporation
to which Act
applies.

8. (1) Subject to sub-section (2), this Act applies to a corporation if, and only if, the corporation is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed and—

- (a) the sole or principal business activities in Australia of the corporation are the borrowing of money and the provision of finance;
- (b) the sum of the values of such of the assets in Australia of the corporation as consist of debts due to the corporation, being debts resulting from transactions entered into in the course of the provision of finance by the corporation, exceeds—
 - (i) 50 per centum; or
 - (ii) if a greater or lesser percentage is prescribed by the regulations—the percentage so prescribed,

of the sum of the values of all the assets in Australia of the corporation; or

- (c) the corporation engages in the provision of finance in the course of carrying on in Australia a business (whether or not that business is its sole or principal business) of selling goods by retail and the sum of the values of such of the assets of the corporation and of any corporation that is related to the corporation as consist of debts due to the corporation concerned, being debts resulting from transactions entered into in the course of the provision of finance by that corporation, exceeds—
 - (i) \$5,000,000; or
 - (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed.
- (2) This Act does not apply to a corporation if—
 - (a) the corporation, not being a company, society or association, is established for a public purpose by a law of Australia, of a State or of a Territory;
 - (b) the corporation is a bank as defined by sub-section 5 (1) of the *Banking Act 1959-1973*;
 - (c) the corporation is a terminating building society;
 - (d) the corporation is a friendly or benefit society registered under a law of a State or of a Territory providing for the registration of friendly or benefit societies;
 - (e) the corporation is a medical benefits organization or hospital benefits organization registered under the *National Health Act 1953-1973*;
 - (f) the corporation is registered under the *Life Insurance Act 1945-1973*;
 - (g) the sole or principal business in Australia of the corporation is insurance business as defined by sub-section 3 (1) of the *Insurance Act 1973*;
 - (h) the corporation is authorized by a law of a State or of a Territory to act as an executor, administrator and trustee;
 - (j) the sole or principal purpose for which the corporation borrows money is to lend money to a corporation or corporations that, by reason of sub-section 7 (2) or (3), is not or are not to be taken to be related to the first-mentioned corporation but would, but for that sub-section, be treated as being so related by reason of sub-section 7 (1);
 - (k) the sum of the values of all the assets of the corporation and of every corporation that is related to the corporation does not exceed—
 - (i) \$1,000,000; or
 - (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed; or

(1) the Treasurer has, by order in writing published in the *Gazette*, exempted the corporation from the application of this Act.

(3) The reference in paragraph (2) (j) to the lending of money to a corporation does not include a reference to the provision of finance to the corporation by way of acquiring debts due to the corporation or of purchasing securities other than securities issued by the corporation.

PART II—REGISTRATION OF CORPORATIONS

Corporations
to furnish
information
to Reserve
Bank.

9. (1) If, at the commencement of this Part, a corporation is a corporation to which this Act applies, the corporation shall, before the expiration of the period of 60 days after the date of commencement of this Part, furnish to the Reserve Bank the documents mentioned in sub-section (6).

(2) Where, after the commencement of this Part, a corporation becomes a corporation to which this Act applies, whether at the time of its incorporation or at a later time and whether or not the corporation has previously been a corporation to which this Act applies, the corporation shall, before the expiration of the period of 60 days after the day on which it becomes a corporation to which this Act applies, furnish to the Reserve Bank the documents mentioned in sub-section (6).

(3) If a corporation to which sub-section (1) or (2) applies fails to furnish to the Reserve Bank the documents referred to in that sub-section before the expiration of the period so referred to, the corporation is guilty of a separate offence on each day occurring after the expiration of that period and before the corporation furnishes the documents and is punishable, on conviction of such an offence in respect of a day, by a fine not exceeding \$5,000.

(4) The Reserve Bank may, before the expiration of the period referred to in sub-section (1) or (2) (including any period that is deemed to be substituted for that period by any other application or applications of this sub-section) allow a longer period for the furnishing by a particular corporation of documents in accordance with that sub-section and, in that case, the longer period shall, for the purposes of the application of that sub-section in relation to that corporation, be deemed to be substituted for the period referred to in that sub-section.

(5) Neither sub-section (1) nor (2) applies to a corporation if, before the expiration of the period referred to in that sub-section (including any period that is deemed to be substituted for that period by any application or applications of sub-section (4) in relation to that corporation), the corporation ceases to be a corporation to which this Act applies.

(6) The documents referred to in sub-sections (1) and (2) are—

(a) a notice in writing setting out—

- (i) the name, the place and date of incorporation and the address of the registered office of the corporation;
- (ii) the name, and the address of the registered office, of every corporation that is related to the corporation;
- (iii) particulars of the principal methods by which the corporation ordinarily borrows moneys; and
- (iv) particulars of the principal kinds of finance ordinarily provided by the corporation;

(b) a copy of the last audited balance-sheet of the corporation; and

(c) if there is not such a balance-sheet as is mentioned in paragraph (b) or the balance-sheet so mentioned includes both assets and liabilities in Australia and assets and liabilities outside Australia but does not show the assets and liabilities in Australia separately from the assets and liabilities outside Australia—a statement showing the assets and liabilities in Australia of the corporation.

(7) If—

(a) a registered corporation changes its name or the address of its registered office;

(b) a change takes place in the principal methods by which a registered corporation ordinarily borrows moneys or in the principal kinds of finance ordinarily provided by a registered corporation;

(c) a corporation that is related to a registered corporation ceases to be so related; or

(d) a corporation becomes related to a registered corporation,

the registered corporation shall, before the expiration of the period of 60 days after the occurrence of the event concerned, notify the Reserve Bank in writing accordingly.

Penalty: \$1,000.

(8) A corporation is not required by this section to furnish to the Reserve Bank a notice or notification in relation to a matter if a notice or notification in relation to that matter has already been furnished to the Reserve Bank by another corporation.

(9) The Reserve Bank shall cause a Register of Corporations to be kept for the purposes of this Act and shall—

(a) cause to be entered in the Register the name, the address of the registered office, and any other particulars that it considers appropriate to be entered, of every corporation that furnishes to the Reserve Bank the documents mentioned in sub-section (6);

- (b) if a registered corporation notifies the Reserve Bank in accordance with sub-section (7), or the Reserve Bank otherwise becomes aware, of a change in the name or the address of the registered office of the corporation, or of a change in any other particulars relating to the corporation that are entered in the Register, cause the Register to be altered accordingly; and
- (c) upon request by a registered corporation that is not, or has ceased to be, a corporation to which this Act applies, cause to be removed from the Register the name, the address of the registered office, and any other particulars, of the corporation.

(10) A written notice or notification by a corporation to the Reserve Bank under this section shall be signed by a senior officer of the corporation.

(11) The Reserve Bank shall, if requested to do so by the Secretary to the Department of the Treasury, furnish to him a copy of a document received by the Reserve Bank under this section.

Categories of registered corporations.

10. (1) For the purposes of this Act the Treasurer shall prepare a list of registered corporations, being a list in which the corporations are divided into such categories as he determines.

(2) The Treasurer may at any time vary the list prepared for the purposes of sub-section (1) for the purpose of adding to it corporations that become registered corporations, or removing from it corporations that are found not to be or cease to be registered corporations, after the list is prepared or for the purpose of transferring a corporation from one category to another category.

(3) The Reserve Bank shall advise the Treasurer as to the respective categories in which registered corporations should be included and as to whether a registered corporation should be transferred from one category to another category.

(4) In determining the category in which a corporation is to be included or in determining whether a corporation should be transferred from one category to another category, the Treasurer shall have regard to—

- (a) the assets and liabilities of the corporation;
- (b) the principal methods by which the corporation ordinarily borrows moneys; and
- (c) the principal kinds of finance ordinarily provided by the corporation,

and shall endeavour to ensure that, as far as practicable, corporations carrying on the same or similar kinds of business are included in the same category.

(5) The Treasurer shall cause a copy of the list prepared for the purposes of sub-section (1), and a copy of any variation of the list, to be

furnished to the Reserve Bank and shall also cause a copy of the list or variation to be published in the *Gazette*.

(6) As soon as practicable after a corporation is included in a category or is transferred from one category to another category, the Reserve Bank shall notify the corporation of the category in which it has been included or to which it has been transferred.

(7) If—

- (a) after a corporation has been included in a category the corporation requests the Treasurer to transfer the corporation to another category; or
- (b) after a corporation has been transferred from one category to another category the corporation requests the Treasurer to re-transfer the corporation to the former category or to transfer the corporation to a third category,

and the corporation furnishes information or makes submissions to the Treasurer in support of the request, the Treasurer shall, after taking into account the information or submissions and any advice furnished to him by the Reserve Bank in relation to the matter—

- (c) reconsider the question of the category in which the corporation should be included; and
- (d) if he thinks that the corporation should be transferred to a different category, vary the list prepared for the purposes of subsection (1) accordingly.

PART III—STATISTICS

11. (1) The regulations may require a registered corporation to furnish to the Reserve Bank or to the Statistician, or to each of them, statements setting out such information relating to the business of the corporation as is specified in the regulations and, in particular, without limiting the generality of the foregoing, may require a registered corporation so to furnish statements in relation to all or any of the following matters:—

Furnishing
of statements
by registered
corporations.

- (a) the moneys borrowed or otherwise raised by the corporation during a particular period;
- (b) the finance provided or investments made by the corporation during a particular period;
- (c) the assets and liabilities of the corporation as at a particular time;
- (d) the rates of interest paid by the corporation in respect of moneys borrowed by the corporation during a particular period; and
- (e) the rates of interest charged by the corporation in respect of finance provided by the corporation during a particular period.

(2) Statements referred to in sub-section (1) shall—

- (a) be prepared in accordance with such forms as are prescribed by the regulations and in accordance with such directions as are specified in those forms and such instructions (not inconsistent with those directions) as are given by the Reserve Bank; and
- (b) be furnished before the expiration of such periods as are prescribed by the regulations.

(3) The Reserve Bank or the Statistician may, if it appears to the Reserve Bank or the Statistician that the circumstances justify the Reserve Bank or the Statistician in so doing, extend, or further extend, the period before the expiration of which a statement referred to in sub-section (1) is required by the regulations to be furnished to the Reserve Bank or the Statistician, as the case may be.

(4) The regulations may—

- (a) prescribe different forms of statements, and different periods within which statements are to be furnished, in relation to registered corporations included in different categories; and
- (b) prescribe forms and periods that are to be applicable to a registered corporation the sum of the values (as ascertained in accordance with the regulations) of the assets of which exceeds a particular amount that are different from the forms and periods that are to be applicable to a registered corporation the sum of the values (as ascertained in accordance with the regulations) of the assets of which does not exceed that amount.

(5) Except as provided by paragraph (4) (b), the regulations shall not prescribe different forms or periods in relation to registered corporations included in the same category.

(6) Where a statement is furnished by a corporation to the Reserve Bank or to the Statistician in accordance with a requirement of a regulation made for the purposes of this section, the Reserve Bank or the Statistician, as the case may be, may direct the corporation to furnish to the Reserve Bank or the Statistician a further statement or further statements setting out such additional information as is specified in the direction in relation to any matter dealt with by the first-mentioned statement.

(7) Where the Reserve Bank or the Statistician has directed a corporation under sub-section (6) to furnish a further statement or statements within a particular period, the Reserve Bank or the Statistician, as the case may be, may extend, or further extend, the period for the furnishing of the statement or statements.

(8) A statement prepared by a corporation under this section shall be verified by a statutory declaration made by a senior officer of the corporation.

(9) A form prescribed for the purposes of, or a direction given under, this section shall not be such as to require the disclosure of information with respect to the affairs of a particular person who has entered into a contract or transaction with a corporation.

(10) A corporation that fails to prepare and furnish a statement in accordance with a requirement of a regulation made for the purposes of, or a direction given under, this section is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

(11) The Reserve Bank shall, if the Secretary to the Department of the Treasury requests it to do so, furnish to him a copy of, or any information contained in, a statement furnished to the Reserve Bank in pursuance of a requirement of a regulation made for the purposes of, or a direction given under, this section.

(12) Subject to section 22, from statements furnished to the Statistician in pursuance of a requirement of a regulation made for the purposes of, or a direction given under, this section, the Statistician shall, from time to time, prepare and publish statements containing such information as the Treasurer directs.

(13) The regulations may provide that, for the purposes of the application of the regulations in relation to statements included in a specified class of statements, any 2 or more corporations that are related to each other and are included in the same category may, with the consent in writing of the Reserve Bank or the Statistician, be treated as constituting a single corporation and any transactions between those corporations disregarded accordingly, and, where the regulations so provide, it is a sufficient compliance with a requirement of the regulations that each of those corporations furnish such a statement to the Reserve Bank or to the Statistician if a single statement is so furnished in relation to all of those corporations on the basis that the corporations concerned together constitute a single corporation.

(14) The Treasurer may, by writing signed by him, exempt a corporation from the obligation to prepare and furnish a statement in accordance with regulations made for the purposes of this Part.

(15) An exemption under sub-section (14) may be granted subject to such conditions as are specified in the instrument of exemption.

PART IV—REGULATION AND CONTROL OF BUSINESS OF FINANCIAL CORPORATIONS

Division 1—Application of Part

12. This Part does not apply in relation to a registered corporation unless the sum of the values of all the assets in Australia of the corporation and of every corporation that is related to the corporation, being

Corporations
subject to
Part IV.

the values of those assets as shown in the last statements of assets of the corporations concerned that were furnished in pursuance of a requirement of a regulation made for the purposes of, or of a direction given under, section 11 exceeds—

- (a) \$5,000,000; or
- (b) if a greater or lesser amount is prescribed by the regulations in relation to the category in which the registered corporation is included—the amount so prescribed.

Division 2—Asset Ratios

Control of
asset ratios
of registered
corporations.

13. (1) This section does not apply in relation to a registered corporation unless—

- (a) the regulations declare that this section applies in relation to all registered corporations to which this Part applies; or
- (b) the regulations declare that this section applies in relation to all registered corporations to which this Part applies that are included in a particular category or categories and the first-mentioned corporation is included in that category or one of those categories.

(2) The Reserve Bank may make a determination by virtue of which each registered corporation, or each registered corporation that is included in a specified category or in one of several specified categories, is required, within such period (not being less than 30 days) as is prescribed, to ensure that—

- (a) the assets of the corporation include prescribed assets of a particular kind or kinds; and
- (b) the sum of the values of the assets of that kind or those kinds included in the assets of the corporation is not less than an amount ascertained in accordance with the regulations.

(3) Two or more determinations under sub-section (2) may be in force concurrently in relation to the one corporation.

(4) The provision that may be made by the regulations for ascertaining an amount for the purposes of a determination under sub-section (2) shall be a provision that the amount concerned shall be one of the following amounts:—

- (a) a percentage, determined by the Reserve Bank, of the sum of the values of all the assets of the corporation;
- (b) a percentage, determined by the Reserve Bank, of the sum of the values of all the assets of the corporation that are included in a class or classes of those assets determined by the Reserve Bank;
- (c) a percentage, determined by the Reserve Bank, of the sum of the amounts of all the liabilities of the corporation;

- (d) a percentage, determined by the Reserve Bank, of the sum of the amounts of all the liabilities of the corporation that are included in a class or classes of those liabilities determined by the Reserve Bank.

(5) Regulations made for the purpose of ascertaining an amount for the purposes of a determination under sub-section (2) may make different provisions for ascertaining that amount in relation to registered corporations included in different categories but shall not make different provisions for ascertaining that amount in relation to registered corporations included in the same category.

(6) The Reserve Bank may make different determinations under sub-section (2) in relation to registered corporations included in different categories but shall not make different determinations in relation to registered corporations included in the same category.

(7) A registered corporation that fails to comply on any day with a requirement of a determination made under sub-section (2) is guilty of an offence in respect of that day and is punishable, on conviction of such an offence in respect of a day, by a fine not exceeding \$1,000.

(8) A corporation is not guilty of an offence under sub-section (7) in respect of a day on which it fails to comply with a requirement of a determination made under sub-section (2) if—

- (a) that day is a Saturday or Sunday or, in the State or Territory in which the head office in Australia of the corporation is situated, a public holiday or bank holiday; and
- (b) on the last day before that day that was not a Saturday or Sunday or, in that State or Territory, a public holiday or bank holiday, the corporation had not failed to comply with any requirement of such a determination that was applicable to the corporation.

(9) For the purposes of this section, the value as at a particular time of any assets of a corporation, or the amount as at a particular time of any liabilities of a corporation, shall be ascertained in accordance with the regulations.

Division 3—Lending Policies

14. (1) The regulations may authorize the Reserve Bank to determine the policy in relation to the provision of finance that is to be followed by registered corporations, and a registered corporation shall follow a policy so determined that is applicable to it.

Control of
lending
policies of
registered
corporations.

Penalty: \$5,000.

(2) The reference in sub-section (1) to policy in relation to the provision of finance is a reference to general policy with respect to the

amount of finance that is provided or the purposes for which, or the direction in which, finance is provided.

(3) Without limiting the operation of sub-section (1), the regulations may authorize the Reserve Bank to give directions as to the classes of purposes for which, or the classes of transactions in relation to which, registered corporations may or may not provide finance, and a registered corporation shall comply with any directions so given that are applicable to it.

Penalty: \$5,000.

(4) Regulations made for the purposes of sub-section (1) may authorize the Reserve Bank to make—

- (a) different determinations in relation to registered corporations included in different categories; and
- (b) different determinations in relation to different classes of purposes for which, or different directions in which, finance is provided,

but, except as provided by paragraph (b), shall not authorize the Reserve Bank to make different determinations in relation to registered corporations included in the same category.

(5) Regulations made for the purposes of sub-section (3) may authorize the Reserve Bank to give—

- (a) different directions in relation to registered corporations included in different categories; and
- (b) different directions in relation to different classes of purposes or classes of transactions,

but, except as provided by paragraph (b), shall not authorize the Reserve Bank to give different directions in relation to registered corporations included in the same category.

(6) Nothing in this section permits the making of regulations authorizing the Reserve Bank to make a determination or give a direction with respect to the provision of finance to a particular person.

Division 4—Interest Rates

Control of rates of interest receivable or payable by registered corporations.

15. (1) The regulations may prohibit the receipt or payment of interest by a registered corporation at a rate exceeding a rate determined from time to time by the Reserve Bank.

(2) Regulations made for the purposes of sub-section (1) may authorize the making of—

- (a) different determinations in relation to registered corporations included in different categories; and

- (b) different determinations in relation to different classes of transactions or in relation to transactions entered into in different circumstances,

but, except as provided by paragraph (b), shall not authorize the making of different determinations in relation to registered corporations included in the same category.

(3) Notwithstanding sub-section (2), regulations made for the purposes of sub-section (1) shall authorize the making of a determination in relation to a registered corporation being a building society that carries on business in one State or Territory only that is different from determinations made in relation to other registered corporations being building societies that do not carry on business in that State or Territory or do not carry on business only in that State or Territory.

(4) A determination made in pursuance of a regulation made for the purposes of this section does not affect interest payable under a contract made before the determination takes effect to the extent to which the interest is payable in respect of any period in respect of which the rate of interest payable is specified in the contract.

(5) A registered corporation that fails to comply with a requirement of a regulation made for the purposes of this section is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000.

Division 5—General

16. The Reserve Bank may make a determination or give a direction revoking or varying a determination previously made or direction previously given by the Reserve Bank under, or under regulations made for the purposes of, this Part.

Revocation and variation of determinations and directions.

17. (1) A determination made or direction given by the Reserve Bank under, or under regulations made for the purposes of, this Part—

General provisions relating to determinations and directions.

- (a) shall be reduced to writing; and
- (b) does not have any force or effect unless—
 - (i) it has been approved by the Treasurer in writing; and
 - (ii) a copy of the determination or direction has been published in the *Gazette*.

(2) In any proceedings, a certificate signed by the Governor or the Deputy Governor of the Reserve Bank setting out the terms of a determination made or direction given by the Reserve Bank under, or under regulations made for the purposes of, this Part is *prima facie* evidence of the terms of the determination or direction.

(3) For the purposes of sub-section (2), a document purporting to be a certificate referred to in that sub-section shall, unless the contrary is

established, be deemed to be such a certificate and to have been duly issued.

Exemptions.

18. (1) If the Treasurer, after consulting the Reserve Bank, considers that the public interest and the existence of special circumstances in relation to a registered corporation justify his so doing, he may, by writing signed by him, exempt the corporation from the application, during such period as is specified in the instrument of exemption, of a determination made or direction given by the Reserve Bank under regulations made for the purposes of this Part.

(2) An exemption under this section may be granted subject to such conditions as are specified in the instrument of exemption.

(3) A copy of an instrument of exemption under this section shall be published in the *Gazette* not later than 90 days after the instrument is signed by the Treasurer.

(4) Where an exemption under this section is granted subject to conditions, the corporation to which the exemption applies shall comply with those conditions.

Penalty: \$2,000 for each day during which the contravention continues.

PART V—MISCELLANEOUS

Saving of other laws.

19. This Act is not intended to exclude or limit the operation of any other laws of Australia, or the operation of any laws of a State or Territory, in so far as those laws are capable of operating concurrently with this Act.

Furnishing of information and statements to Reserve Bank.

20. (1) A registered corporation shall furnish to the Reserve Bank such information in writing or statements in respect of its business as the Reserve Bank directs.

Penalty: \$2,000.

(2) A direction under this section may require a corporation to cause a statement referred to in the direction to be audited by an auditor approved by the Reserve Bank before it is furnished to the Reserve Bank.

(3) A direction under this section shall not require information or statements to be furnished with respect to the affairs of a particular person who has entered into a contract or transaction with a corporation.

(4) Where the Reserve Bank has directed a corporation under this section to furnish information or a statement within a particular period, the Reserve Bank may extend, or further extend, the period for the furnishing of the information or statement.

- 21.** A document that is required by or under this Act or the regulations to be furnished to the Reserve Bank or the Statistician shall—
- Manner of furnishing of documents.
- (a) in the case of a document to be furnished to the Reserve Bank—be delivered to the Head Office of the Reserve Bank; and
- (b) in the case of a document to be furnished to the Statistician—be delivered to the Office of the Statistician in Canberra.
- 22.** Any information with respect to the affairs of a particular corporation that is furnished to the Reserve Bank or to the Statistician under this Act or the regulations shall not be made public without the consent of that corporation.
- Information about affairs of particular corporation not to be published.
- 23.** (1) Where a corporation is convicted of an offence against this Act, the Australian Industrial Court may, upon the application of the Attorney-General by motion, direct compliance by the corporation, within a period specified by the Court, with the provisions of this Act or the regulations, or of a determination or direction, with which the corporation failed to comply.
- Corporations may be directed to comply with Act.
- (2) Jurisdiction is conferred on the Australian Industrial Court to hear and determine an application made under sub-section (1).
- 24.** The validity of an act or transaction of a corporation shall not be called in question in any legal proceedings on the ground that any provision of this Act or the regulations, or of a determination or direction, has not been complied with.
- Validity of acts and transactions of corporation.
- 25.** (1) References in sub-section 10 (2) and section 11 of the *Reserve Bank Act* 1959-1973 to the monetary and banking policy of the Reserve Bank include references to the policy of the Reserve Bank in the performance of its functions under this Act and the regulations.
- Policy of Reserve Bank.
- (2) Sub-section 10 (2) of the *Reserve Bank Act* 1959-1973 applies in relation to the exercise of the powers of the Reserve Bank under this Act and the regulations in like manner as it applies in relation to the exercise of the powers of the Reserve Bank under the *Reserve Bank Act* 1959-1973.
- 26.** A corporation shall not, in the course of carrying on any business, advertise or hold out, by the use of the words “registered under the *Financial Corporations Act* 1974”, the words “registered with the Reserve Bank” or words of like import, that the corporation is registered under this Act or has any special status under or by virtue of this Act, whether or not the corporation is registered under this Act.
- Corporation not to hold out that it is registered under the Act.

Penalty: \$1,000.

Secrecy.

27. (1) This section applies to every person who is or has been—

- (a) the Governor or the Deputy Governor of the Reserve Bank, the Secretary to the Department of the Treasury or any other member of the Reserve Bank Board;
- (b) an officer, or a temporary or casual employee, of the Reserve Bank;
- (c) the Statistician; or
- (d) an officer of, or person temporarily employed in, the Australian Public Service.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act or the regulations, the *Reserve Bank Act 1959-1973* or the *Census and Statistics Act 1905-1973*—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him under or for the purposes of this Act or the regulations by reason of his office or employment; or
- (b) produce to any person a document furnished for the purposes of this Act or the regulations.

Penalty: \$1,000 or imprisonment for 3 months.

(3) A person to whom this section applies shall not be required to produce in a court any document relating to the affairs of any other person of which he has the custody, or to which he has access, under or for the purposes of this Act or the regulations by virtue of his office or employment, or to divulge or communicate to any court any information concerning the affairs of any other person obtained by him under or for the purposes of this Act or the regulations by reason of his office or employment, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act or the regulations.

(4) Nothing in this section applies in relation to the communication of information to, or the production of a document to, the Treasurer, or an officer acting on behalf of, and with the authority of, the Treasurer.

(5) In this section—

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

“produce” includes permit access to and “production” has a corresponding meaning.

Defence to prosecutions.

28. (1) It is a defence to a prosecution of a corporation for an offence constituted by a contravention of or a failure to comply with a provision of this Act if the defendant proves that the contravention or failure was due to the defendant's not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.

(2) For the purposes of sub-section (1), a corporation shall conclusively be presumed to have been aware at a particular time of a fact or occurrence of which a director of the corporation was aware at that time or of which a servant or agent of the corporation, being a servant or agent having duties or acting on behalf of the corporation in relation to the matter concerned, was aware at that time.

29. Proceedings for an offence against this Act shall not be instituted without the consent in writing of the Treasurer.

Treasurer's consent required for proceedings for offences.

30. (1) The Treasurer may appoint a committee or committees of persons for the purposes of this section and shall appoint at least one such committee.

Advisory committees.

(2) The Treasurer shall, from time to time as he thinks desirable, seek the advice of the committee or committees appointed under sub-section (1) on matters to be included in regulations to be made for the purposes of Part III or IV and on the operation of this Act.

(3) In selecting the persons to constitute committees under this section, the Treasurer shall endeavour to ensure that the persons concerned will include persons who have relevant knowledge of the operations of registered corporations that would be directly affected by regulations referred to in sub-section (2).

(4) Subject to the *Remuneration Tribunal Act 1973*, members of committees appointed under this section shall be paid such allowances as are prescribed.

(5) The regulations may make provision for and in relation to the convening of meetings of committees appointed under this section and the procedure to be followed at such meetings.

31. The Reserve Bank shall, from time to time as it considers desirable, consult associations or other bodies representing registered corporations with the object of keeping itself informed of their views in relation to the exercise by the Reserve Bank of its powers under this Act and the regulations and in relation to trends in activities of their members.

Consultations by Reserve Bank.

32. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

NOTE

1. Act No. 36, 1974; assented to 7 August 1974.