

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 15 November 1990)

(SENATOR SPINDLER)

A BILL

for

**An Act to amend the *Financial Corporations Act 1974*
and for related purposes**

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

Short title etc.

5 1. (1) This Act may be cited as the *Financial Corporations (Prudential Standards) Amendment Act 1990*.

(2) In this Act, "Principal Act" means the *Financial Corporations Act 1974*.

Commencement

2. (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

10 (2) Clause 13 commences on a day to be fixed by proclamation.

(3) If clause 13 does not commence under subsection (2) within the period of 6 months commencing on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

Commencement

3. Section 2 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

"(2) Part IV commences on the day on which the *Financial Corporations (Prudential Standards) Amendment Act 1990* commences."

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Interpretation

4. (1) Section 4 of the Principal Act is amended by:

- (a) omitting from subsection (1) the definition of "Territory";
- (b) inserting in subsection (1) the following definition:

'designated financial corporation' means a permanent building society, a credit union and any other category of financial corporation specified by the Treasurer, on the recommendation of the Governor, by notice in the *Gazette*;"

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(c) inserting in subsection (1) the following definition:

'Governor' means the Governor of the Reserve Bank;"

(d) inserting in subsection (1) the following definition:

'relevant state officer' means the officer or officers, in each state or territory, empowered to administer legislation concerning designated financial corporations;"

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Extension to external Territories

5. Section 5 of the Principal Act is amended by omitting "except Papua New Guinea".

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Corporation to which Act applies

6. Notwithstanding paragraph 8(2) (d) of the Principal Act, a friendly society is subject to the operations of Parts II and III of the Principal Act.

Corporations to furnish information to Reserve Bank

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7. Section 9 of the Principal Act is amended:

- (a) by omitting from subsection (3) "\$5,000" and substituting "\$25,000";
- (b) by omitting from subsection (7) "\$1,000" and substituting "\$5,000".

Furnishing of statements by registered corporations

8. Section 11 of the Principal Act is amended by omitting from subsection (10) "\$2,000" and substituting "\$10,000".

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Application of Part

9. Section 12 of the Principal Act is amended by omitting "This Part does" and substituting "Part IV and IVA do".

Control of lending policies of registered corporations

10. Section 14 of the Principal Act is amended:

- (a) by omitting from subsection (1) "\$5,000" and substituting "\$25,000;
- (b) by omitting from subsection (3) "\$5,000" and substituting "\$25,000".

5 **Control of rates of interest receivable or payable by registered corporations**

11. Section 15 of the Principal Act is amended by omitting from subsection (5) "\$10,000" and substituting "\$50,000".

Exemptions

10 "12. Section 18 of the Principal Act is amended by omitting from subsection (4) "\$2,000" and substituting "\$10,000".

Insertion of New Part

13. After Part IV of the Principal Act the following Part is inserted:

"PART IVA - PRUDENTIAL STANDARDS

Prim assets ratio

15 "18A.(1) A designated financial corporation must at all times hold prime assets that satisfy the required prime assets ratio.

"(2) Each category of designated financial corporation must at all times satisfy the prescribed prime assets ratio.

20 "(3) Except with the written permission of the Governor, a designated financial corporation must not grant or offer a loan unless the designated financial corporation is in compliance with subsections (1) or (2).

"(4) The permission of the Governor may be subject to conditions and may be withdrawn by instrument in writing.

25 "(5) A designated financial corporation may appeal to the Treasurer against a decision to withdraw permission granted under subsection (3) by the Governor.

"(6) The Treasurer must:

- (a) determine any appeal arising under subsection (5); and
- (b) confirm, vary or revoke the decision of the Governor.

30 "(7) A designated financial corporation is in compliance with subsection (1) if the amount of its prime assets less commitments of a kind or type specified by the Treasurer under subsection (9) equals or exceeds 10% or, if some other percentage is specified under subsection (9), the specified percentage, of its total assets less designated capital.

"(8) In this section:

"designated capital" means the total of the values of the following:

- (a) permanent shares to the extent that they are paid up;
- (b) realised profits, including realised profits transferred to reserves;
- (c) 50% or, if some other percentage is prescribed, that other percentage, of revaluation reserves in respect of real property owned by the designated financial corporation; 5
- (d) subordinated deposits not repayable by the designated financial corporation within the next 5 years or, if some other period is prescribed, that other period;
- (e) capital of any class or description specified under subsection (9) to be designated capital: 10

but does not include:

- (f) capital of any class or description which is specified under subsection (9) not to be designed capital; or
- (g) a revaluation reserve in the circumstances or to the extent specified under subsection (9); 15

"monetary value", in relation to any security or investment, means the cost or market value of the security or investment, whichever is the lesser;

"prime assets" means the total of the following:

- (a) cash at bank excluding any amount represented by a cheque drawn and not yet presented for payment; 20
- (b) cash in hand;
- (c) deposits with a bank;
- (d) the monetary value of any securities issued or guaranteed by
 - (i) the Commonwealth; or 25
 - (ii) the Treasurer or the Government of any State or Territory;
- (e) the monetary value of bills of exchange that have been accepted or endorsed by a bank and are payable within 200 days;
- (f) the monetary value of any loan made by the designated financial corporation to a corporation declared or deemed to be declared to be an authorised dealer in the short term money market under section 97 (7) (b) of the *Companies Act 1981* which is secured against securities issued or granted by the Commonwealth or guaranteed by the Treasurer or the Government of any State or Territory; 30
- (g) the monetary value of any other securities and assets specified under subsection (6): 35

but does not include the following:

- (h) the amount of any of the above to the extent necessary to satisfy any lien or charge (other than a floating charge including a floating charge given to the Reserve Bank);
- (j) any money received from the Government or a State or the Commonwealth for liquidity support; 40

(k) the monetary value of any security that does not mature within a period of 2 years.

"subordinated deposit" means money invested with a designated financial corporation on deposit under an agreement that if the designated financial corporation is wound up, any claim of the depositor against the designated financial corporation in respect of the deposit is to rank in priority:

(a) equally with the claim of any other depositor who is a party to a similar agreement; and

(b) after the claims of:

(i) any other creditor of the designated financial corporation; and

(ii) members to repayment of any share capital other than permanent share capital.

"(9) The Treasurer may, on the recommendation of the Governor, by notice in the *Gazette*, specify any matter that may be specified under this section.

Capital adequacy

"18B.(1) A designated financial corporation must at all times maintain capital adequacy.

"(2) If the Governor is of the opinion that a designated financial corporation is in breach of subsection (1), the Governor may, by notice in writing, direct the designated financial corporation to remedy the breach within the period specified in the notice.

"(3) A designated financial corporation must comply with a direction.

"(4) A designated financial corporation is in breach of subsection (1) if at any time the defined capital of the designated financial corporation is less than the approved minimum capital applicable to the designated financial corporation as at that time.

"(5) The Treasurer may, on the recommendation of the Governor, by notice in the *Gazette*:

(a) specify the classes of capital of a designated financial corporation that may be brought into account as defined capital; and

(b) specify the maximum percentage of capital accounted for by any class of capital specified under paragraph (a); and

(c) provide for adjustments that must be made to the value of assets or transactions as recorded in the accounts of the designated financial corporation; and

(d) specify the classes of assets or transactions to be brought into account in calculating the total weighted value assets of the designated financial corporation; and

- (e) fix the weighted percentage for each class of assets or transactions specified under paragraph (d); and
- (f) require further amounts (whether in respect of off balance sheet transactions or otherwise) to be brought into account in calculating the total weighted value assets of a designated financial corporation; and
- (g) fix the weighted percentage for each class of assets or transactions specified under paragraph (f).

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"(6) Where the Treasurer has not issued a notice under subsection (5) within the period of 6 months beginning on the day on which this Act receives the Royal Assent then the provisions relating to capital adequacy in the *Banking Act 1959* shall apply.

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"(7) In this section:

"approved minimum capital" means 8%, or if some other percentage is prescribed, that percentage, of the total weighted value assets of the designated financial corporation;

"assets" means:

- (a) in relation to a designated financial corporation, the amount for the time being recorded in the accounts of the designated financial corporation as the assets of the designated financial corporation; and
- (b) in relation to a holding designated financial corporation, the amount for the time being recorded in the group accounts or consolidated accounts as the assets of the holding designated financial corporation or related entities to the holding designated financial corporation;

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subject to any adjustments required under subsections (5) or (6);

"defined capital" means the total for the time being of the amount recorded in the accounts of a designated financial corporation or the group accounts or consolidated accounts of a holding designated financial corporation that may be brought into account as capital:

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- (a) as specified under subsections (5) or (6); or
- (b) as approved in writing by the Reserve Bank upon written application by the designated financial corporation or holding designated financial corporation;

"total weighted value assets", means the total for the time being of:

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- (a) the assets of the designated financial corporation within the classes of assets specified under subsections (5) or (6); and
- (b) any further amounts required under subsections (5) or (6) to be brought into account in respect of off balance sheet transactions or otherwise:

adjusted in each case by multiplying the amount by the weighted percentage fixed in respect of that class of assets or transactions.

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Notification of large exposures

"18C.(1) Within 30 days of the commencement of this section, a designated financial corporation must give the Governor notice of any large exposure to which it is subject as at that commencement in relation to:

- (a) an individual person; or
- (b) a group of related parties; or
- (c) a specified type of transaction.

"(2) A designated financial corporation must give the Governor notice of its intention to enter into a large exposure in relation to:

- (a) an individual person; or
- (b) a group of related parties; or
- (c) a specified type of transaction.

"(3) A designated financial corporation must provide the Governor with such information as the Governor may by notice in writing require so as to satisfy the Governor that an existing or proposed large exposure does not or would not result in the designated financial corporation undertaking an excessive risk.

"(4) The Governor may approve in writing a large exposure or approve a large exposure subject to such conditions as it thinks fit.

"(5) If the Governor does not approve a large exposure of which notice has been given under subsection (2), the designated financial corporation must not enter into the large exposure.

"(6) In this section:

"large exposure" means an exposure the extent or nature of which is of a type specified by the Treasurer, on the recommendation of the Governor, by notice in the *Gazette*;

"specified type of transaction" means a type of transaction specified by the Treasurer on the recommendation of the Governor by notice in the *Gazette*.

Variation of capital adequacy requirements

"18D.(1) If the Governor is of the opinion that:

- (a) a designated financial corporation or a related party has undertaken excessive risks as a result of the level of specified assets acquired or the extent of specified transactions entered into; or
- (b) it is expedient to do so in the interests of persons who are members of, or invest in, or deposit money with, the designated financial corporation:

the Governor may by notice in writing to the designated financial corporation vary its capital adequacy requirements under section 18B.

"(2) A variation under subsection (1) may be made by:

- (a) increasing the weighted percentage fixed under section 18B for any class of assets or transactions of the designated financial corporation which the Governor determines to be affected; or
- (b) increasing the percentage of total weighted value assets fixed under section 18B by means of which the prescribed minimum capital of the designated financial corporation is to be calculated under section 18B. 5

"(3) The Governor may, of his own motion or on application in writing by the designated financial corporation, by notice in writing vary or revoke a notice under subsection (1), if the Governor is of the opinion that it is appropriate to do so having regard to any change in the: 10

- (a) pattern of loans, investments or transactions made by the designated financial corporation; or
- (b) risks associated with its loans, investments or transactions.

"(4) A notice issued under this section has effect in respect of the designated financial corporation to which it applies as if the notice were made under section 18B (5) and section 18B applies accordingly. 15

"(5) A designated financial corporation may appeal to the Treasurer against a decision by the Governor:

- (a) to issue a notice under this section; or 20
- (b) to reject an application by a designated financial corporation requesting a notice revoking or varying a notice under subsection (1).

"(6) The Treasurer must:

- (a) determine any appeal arising under subsection (5); and
- (b) confirm, vary or revoke the decision of the Governor. 25

Foreign currency transactions

"18E.(1) A designated financial corporation must not invest any of its funds in a foreign currency.

"(2) Except as provided in subsection (3), a designated financial corporation must not carry out any of its activities in a foreign currency. 30

"(3) A designated financial corporation may borrow money in a foreign currency from a source within or outside Australia if:

- (a) the loan contract is hedged in accordance with subsection (4); and
- (b) the designated financial corporation complies with any guidelines fixed under subsection (5); and 35
- (c) the transaction has been approved by the Governor.

"(4) A loan contract is hedged if:

- (a) the designated financial corporation enters into an approved hedging arrangement to minimise the risk of any loss in relation to the principal and interest payments on the loan contract or underlying loan instrument that might otherwise be incurred due to adverse movements in currency exchange rates; and
- (b) the cost of the hedging arrangement is fixed in Australian currency as at the time the loan contract is entered into or the underlying loan instrument is issued; and
- (c) the other party to the hedging arrangement is a bank or a corporation which is declared or deemed to be declared under section 97 (7) (b) of the *Companies Act 1981* to be an authorised dealer in the short term money market or a party approved by the Reserve Bank.

"(5) The Treasurer may, on the recommendation of the Governor, by notice in the *Gazette*, fix guidelines for the purposes of subsection (3).

"(6) In this section:

"approved hedging arrangement" means one or more of the following types of contracts:

- (a) a foreign exchange forward hedge contract;
- (b) a cross currency swap contract;
- (c) a contract of a kind approved by the Governor;

"interest" excludes any fee payable in respect of a hedging arrangement which is expressed as a marginal rate of interest."

Administration Levy

"18F (1) On or before 30 June 1991 and on or before 30 June in each subsequent year, the Governor must determine the amount to be paid by each category of designated financial corporation as an administration levy to the Reserve Bank.

"(2) The administration levy for each category of designated financial corporation is to be determined by the Governor to be:

- (a) a fixed amount; or
- (b) a specified percentage of the total assets of the designated financial corporation as at 30 June; or
- (c) both.

"(3) The Governor must not make a different determination under subsection (2) in relation to designated financial corporations included in the same category.

"(4) The Governor may require the administration levy to be paid in one amount or by instalments as determined by the Governor.

"(5) The administration levy must be paid by the designated financial corporation within 30 days of being notified by the Governor by notice in writing of the amount that is payable.

"(6) If a designated financial corporation is in default in payment of the administration levy: 5

- (a) interest accrues on the amount outstanding from the date of default at the rate specified by the Reserve Bank; and
- (b) the Reserve Bank may recover any amount outstanding together with interest accrued as a debt in any court of competent jurisdiction.

"(7) The Governor may on the application of a designated financial corporation vary: 10

- (a) the amount of levy payable by the designated financial corporation; or
- (b) the period within which the levy is to be paid.

"(8) The amount paid by a designated financial corporation as an administration levy is to be treated as an expense in the accounts of the designated financial corporation.

"(9) The amount paid by a designated financial corporation as an administration levy is not to be taken into account in determining the amount a designated financial corporation must contribute under section 18J or deposit under section 18M. 15

Financial Corporation Administration Levy Fund

18G (1) There is established within the Reserve Bank a fund called the Financial Corporation Administration Levy Fund. 20

"(2) The Reserve Bank must pay into the fund:

- (a) all amounts received as administration levy; and
- (b) any income from the investment of any money credited to the fund and the proceeds of the sale of any investment.

"(3) The Reserve Bank must pay out the fund: 25

- (a) any payment for or towards the costs and expenses of performing its functions and exercising its powers under this Act; and
- (b) costs incurred in administering the fund.

"(4) The Reserve Bank may:

- (a)
 - (i) invest any money in the fund in any manner which may be approved by the Treasurer for the purposes of this section; and 30
 - (ii) such approval shall be by notice in the *Gazette*.

Financial Corporation Reserve Funds

"18H (1) There is to be established within the Reserve Bank for each category of designated financial corporation a separate Reserve Fund.

"(2) Each Reserve Fund is to be administered by the Governor:

- (a) for the purpose of providing protection for members, depositors and creditors of any designated financial corporation; and
- (b) any other purpose authorised by this Act.

"(3) There is to be paid into each Reserve Fund:

- (a) contributions from the relevant designated financial corporation by way of compulsory levy; and
- (b) any income from the investment of any money credited to the Reserve Fund and the proceeds of the sale of any investment.

"(4) There is to be paid out of the relevant Reserve Fund:

- (a) any amount required to meet claims made by a liquidator of a designated financial corporation and admitted by the Reserve Bank;
- (b) any payment for providing expert or specialist services to financial corporations for improving their operations; and
- (c) any payment for or towards the costs and expenses of administering that Fund.

"(5) The Reserve Bank may:

- (a) (i) invest any money in the Reserve Funds in any manner which may be approved by the Treasurer for the purposes of this section; and
- (ii) such approval shall be by notice in the *Gazette*.

"(6) The Reserve Bank may apply any money in the Reserve Funds:

- (a) to make a loan to a designated financial corporation involved in a merger with a bank or another financial corporation; and
- (b) to make a loan to a liquidator of a designated financial corporation; and
- (c) to make payments in accordance with a financial or other agreement or arrangement entered into by the Reserve Bank for facilitating a proposed takeover, acquisition or merger of a designated financial corporation.

Contributions to the Reserve Fund

"18J (1) Unless subsection (2) applies, a designated financial corporation must contribute to the relevant Reserve Fund an amount to be determined from time to time by the Governor and approved by the Treasurer.

"(2) A designated financial corporation is not required to contribute to the relevant Reserve Fund if the designated financial corporation has shares and deposits insurance coverage approved by the Governor with an insurer approved for the purpose in writing by the Treasurer.

"(3) The contribution determined under subsection (1) is payable before the expiration of 3 months after a designated financial corporation receives written notice of the determination from the Reserve Bank. 5

"(4) Subject to subsection (5), if a designated financial corporation does not pay the contribution within 14 days of the due date, each director of the designated financial corporation is guilty of an offence against this Act. 10

Penalty: \$20,000 per Director.

"(5) The Governor may by notice in writing, subject to any conditions, extend the 14 day period referred to in subsection (4).

Application of Reserve Funds

"18K (1) The liquidator of a designated financial corporation may apply to the Governor for a payment out of the relevant Reserve Fund. 15

"(2) If the Governor is satisfied that there is likely to be a deficiency remaining after all assets of the financial corporation have been disposed of or realised and applied in settlement of all claims admitted or admissible to proof against the designated financial corporation, the Governor may order that an amount not exceeding the amount of the likely deficiency be paid out of the relevant Reserve Fund to the liquidator. 20

"(3) (a) The liquidator must repay to the Reserve Bank any amount remaining from the payment under subsection (2) after the payment of all claims admitted or admissible to proof against the financial corporation.

(b) All amounts received under paragraph (a) must be deposited in the relevant Reserve Fund. 25

"(4) If there are designated financial corporations which have contributed to a relevant Reserve Fund under section 18J, the Governor may apply any part of the balance to the credit of the relevant Reserve Fund at any time for any purpose which the Governor considers will benefit designated financial corporations including the making of payments on behalf of a designated financial corporation to an insurer under section 18J(2). 30

"(5) For the purposes of subsection (2), a claim by a member of the designated financial corporation to recover any amount paid in respect of shares in the designated financial corporation may be admitted to proof against the designated financial corporation.

5 "(6) The relevant state officer may apply on behalf of a designated financial corporation to the Governor for a payment to be made to the designated financial corporation out of the relevant Reserve Fund.

Financial Corporations Liquidity Support Funds

10 "18L (1) There is to be established within the Reserve Bank for each category of designated financial corporation a separate Liquidity Support Fund.

"(2) Each Liquidity Support Fund is to be administered by the Governor for the purpose of providing liquidity support to any designated financial corporation.

"(3) There is to be paid into each Liquidity Support Fund:

- 15 (a) deposits by financial corporations under section 18M;
 (b) income from the investment of any money credited to the relevant Liquidity Support Fund and the proceeds of the sale of any investment;

"(4) There is to be paid out of the relevant Liquidity Support Fund:

- 20 (a) money required for the repayment of deposits under section 18M;
 (b) money required for the payment of interest on deposits in accordance with section 18M;
 (c) costs incurred in administering that Liquidity Support Fund.

"(5) The Reserve Bank may invest any money in the Liquidity Support Funds in any manner approved by the Treasurer for the purposes of this section.

25 "(6) The Governor with the approval of the relevant state officer, may apply any money in the relevant Liquidity Support Fund to make a loan to a designated financial corporation on such terms and conditions as the Governor determines for the purpose of providing liquidity support.

Deposits with Liquidity Support Fund

30 "18M (1) A designated financial corporation must deposit by way of loan with the relevant Liquidity Support Fund such amounts as are determined from time to time by the Governor and approved by the Treasurer on such terms and conditions as are approved by the Governor.

"(2) If a designated financial corporation does not make a deposit within 14 days after the due date, each director of the designated financial corporation is guilty of an offence.

Penalty: \$20,000 per Director.

"(3) If the Governor approves the repayment of a deposit made under this section. 5
the Reserve Bank must repay the deposit.

"(4) The Reserve Bank must pay interest to a designated financial corporation on deposits made by it under this section in accordance with the terms of the deposit.

Variation in Asset Ratios

"18N (1) Nothing in this Part precludes the application of differing levels of prime 10
asset ratios and approved minimum capital to the different categories of designated
financial corporations.

(2) Subject to paragraph 18(2)(d), all designated financial corporations within a
particular category must be subject to the same level of prime assets ratio and approved 15
minimum capital.

Offences

"18P (1) A designated financial corporation that fails to comply on any day with a
requirement of sections 18A, 18B, 18C, 18D or 18E, 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 20
not exceeding \$5,000.

(2) A designated financial corporation is not guilty of an offence under subsection
(1) in respect of a day on which it fails to comply with a requirement of subsection (1)
if:

- (a) that day is a Saturday or Sunday or, in the State or Territory in which the head 25
office in Australia of the designated financial 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 30
applicable to the designated financial corporation.

Furnishing of information and statements to Reserve Bank

14. Section 20 of the Principal Act is amended by omitting from subsection (1)
"\$2,000" and substituting "\$10,000".

15. Section 20 of the Principal Act is amended:
by inserting in subsection (3) "Subject to section 18C" before "A direction".

Corporation not to hold out that it is registered under the Act

5 16. Section 26 of the Principal Act is amended by omitting "\$1,000" and substituting "\$5,000".

Secrecy

17. Section 27 of the Principal Act is amended by omitting from subsection (2) "\$1,000" and substituting "\$5,000".

10 18. Section 30 of the Principal Act is amended:
by inserting in subsection (2) "or IVA" after "IV".

Repeal of Division

19. Division 2 of Part IV of the Principal Act is repealed.

