



TASMANIA

FINANCIAL INSTITUTIONS (APPLICATION OF LAWS) ACT
1992

No. 10 of 1992

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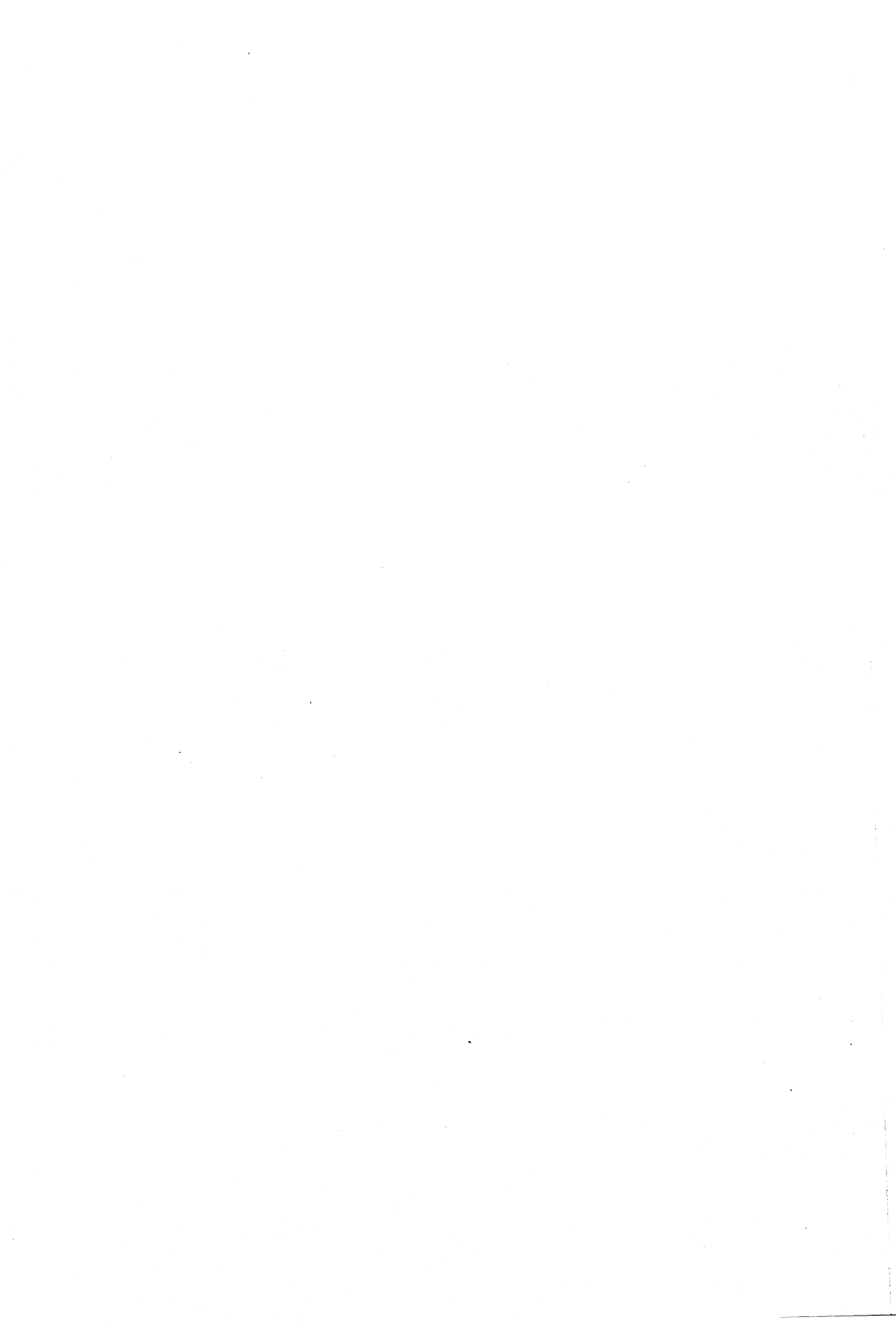
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SCHEDULE 1

ACTS REPEALED





**FINANCIAL INSTITUTIONS (APPLICATION OF LAWS)
ACT 1992**

No. 10 of 1992

AN ACT to make provision for a uniform legislative scheme for certain financial institutions and for other purposes and to amend the *Acts Interpretation Act 1931*

[Royal Assent 7 August 1992]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Financial Institutions (Application of Laws) Act 1992*.

Commencement

2—This Act commences on a day or days to be proclaimed.

Interpretation

3—In this Act, unless the contrary intention appears—

“**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 (Tasmania) Code**” means the provisions applying by reason of section 5;

“**AFIC (Tasmania) Regulations**” means the provisions applying by reason of section 6;

“**Appeals Tribunal**” means the Australian Financial Institutions Appeals Tribunal established under the AFIC Act;

“**Financial Institutions Act**” means the *Financial Institutions (Queensland) Act 1992* of Queensland;

“**financial institutions agreement**” has the same meaning as in the AFIC (Tasmania) Code;

“**Financial Institutions (Tasmania) Code**” means the provisions applying by reason of section 8;

“**Financial Institutions (Tasmania) Regulations**” means the provisions applying by reason of section 9;

“**Ministerial Council**” means the Ministerial Council established under the financial institutions agreement;

“**scheme legislation of Tasmania**” means—

(a) this Act and the regulations under this Act; and

(b) the AFIC (Tasmania) Code; and

(c) the AFIC (Tasmania) Regulations; and

(d) the Financial Institutions (Tasmania) Code; and

(e) the Financial Institutions (Tasmania) Regulations;

“SSA” means—

- (a) until a body is established as the State Supervisory Authority under the *Tasmanian Office of Financial Supervision Act 1992*, the Commissioner for Corporate Affairs; or
- (b) on the establishment of a body as the State Supervisory Authority under that Act, that body.

References to Queensland Acts

4—In this Act, a reference to a Queensland Act includes a reference to—

- (a) that Queensland Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

PART 2

THE AFIC (TASMANIA) CODE AND THE AFIC (TASMANIA) REGULATIONS

Application in Tasmania of the AFIC Code

5—The AFIC Code set out in section 21 of the AFIC Act as in force for the time being—

- (a) applies as a law of Tasmania; and
- (b) as so applying, may be referred to as the AFIC (Tasmania) Code.

Application of regulations

6—(1) The regulations in force for the time being under Part 5 of the AFIC Act—

- (a) apply as regulations in force for the purposes of the AFIC (Tasmania) Code; and
- (b) as so applying, may be referred to as the AFIC (Tasmania) Regulations.

(2) Subject to subsection (3), where regulations under Part 5 of the AFIC Act take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) has effect, and is taken always to have had effect, as if those regulations had taken effect under the AFIC Act from the specified day.

(3) To the extent that a provision of the AFIC (Tasmania) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

(a) operates to the advantage of a person (other than Tasmania or an authority of Tasmania) by—

(i) increasing the person's rights; or

(ii) relieving the person of liabilities; and

(b) does not operate to the disadvantage of another person (other than Tasmania or an authority of Tasmania) by—

(i) decreasing the person's rights; or

(ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in Code and regulations

7—(1) In the AFIC (Tasmania) Code and the AFIC (Tasmania) Regulations—

“**Corporations Law**” and “**Corporations Regulations**” have the meaning given by Part 3 of the *Corporations (Tasmania) Act 1990*;

“**Financial Institutions Code**” means the Financial Institutions (Tasmania) Code;

“**Legislature of this State**” means the House of Assembly and the Legislative Council;

“**Magistrate**” has the same meaning as in the *Magistrates Court Act 1987*;

“**the Code**” means the AFIC (Tasmania) Code;

“**this State**” means Tasmania.

(2) The *Corporations (Tasmania) Act 1990* and the applicable provisions of Tasmania within the meaning of that Act, are prescribed for the purposes of section 39 (2) of the AFIC (Tasmania) Code.

PART 3

THE FINANCIAL INSTITUTIONS (TASMANIA) CODE AND THE FINANCIAL INSTITUTIONS (TASMANIA) REGULATIONS

Application in Tasmania of the *Financial Institutions Code*

8—The Financial Institutions Code set out in section 30 of the Financial Institutions Act as in force for the time being—

- (a) applies as a law of Tasmania; and
- (b) as so applying, may be referred to as the Financial Institutions (Tasmania) Code.

Application of regulations

9—(1) The regulations in force for the time being under Part 3 of the Financial Institutions Act—

- (a) apply as regulations in force for the purposes of the Financial Institutions (Tasmania) Code; and
- (b) as so applying, may be referred to as the Financial Institutions (Tasmania) Regulations.

(2) Subject to subsection (3), where regulations under Part 3 of the Financial Institutions Act take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette under section 28A of the *Acts Interpretation Act 1954* of Queensland, subsection (1) has effect, and is taken always to have had effect, as if those regulations had taken effect under the Financial Institutions Act from the specified day.

(3) To the extent that a provision of the Financial Institutions (Tasmania) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision—

(a) operates to the advantage of a person (other than Tasmania or an authority of Tasmania) by—

(i) increasing the person's rights; or

(ii) relieving the person of liabilities; and

(b) does not operate to the disadvantage of another person (other than Tasmania or an authority of Tasmania) by—

(i) decreasing the person's rights; or

(ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in the Code and regulations

10—(1) In the Financial Institutions (Tasmania) Code and the Financial Institutions (Tasmania) Regulations—

“**AFIC Code**” means the AFIC (Tasmania) Code;

“**continuing association**” and “**continuing association of credit unions**” means the Association of Tasmanian Credit Unions Limited;

“**continuing building society**” means the Bass and Equitable Building Society, the Household Building Society and the Pyramid Building Society;

“**continuing credit union**” means a society registered under the *Co-operative Industrial Societies Act 1928* immediately before the commencement of the Financial Institutions (Tasmania) Code and carrying on business as a credit union;

“**continuing society**” means a continuing building society or continuing credit union;

“**Corporations Law**” and “**Corporations Regulations**” have the meaning given by Part 3 of the *Corporations (Tasmania) Act 1990*;

“**Legislature of this State**” means the House of Assembly and the Legislative Council;

“**Magistrate**” has the same meaning as in the *Magistrates Court Act 1987*;

“previous law” means—

- (a) the *Building Societies Act 1876*, the *Building Societies Act 1887*, the *Building Societies Act 1895* and the *Building Societies Act 1958*; or
- (b) the *Co-operative Industrial Societies Act 1928*;

“Registrar” means the Commissioner for Corporate Affairs;

“the Code” means the Financial Institutions (Tasmania) Code;

“this State” means Tasmania.

(2) The *Corporations (Tasmania) Act 1990*, and the applicable provisions of Tasmania within the meaning of that Act, are prescribed for the purposes of section 65 (4) of the Financial Institutions (Tasmania) Code.

PART 4

CONFERRAL OF FUNCTIONS AND POWERS

Conferral of functions and powers on AFIC

11—AFIC has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of Tasmania.

Conferral of functions and powers on Tribunal

12—The Australian Financial Institutions Appeals Tribunal established under the AFIC Act has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of Tasmania.

Conferral of jurisdiction on Queensland Supreme Court

13—(1) Jurisdiction is conferred on the Supreme Court of Queensland in the matter of—

- (a) an appeal under the scheme legislation of Tasmania by a party to a proceeding before the Appeals Tribunal on a question of law from a decision of the Tribunal in the proceeding; or

(b) a reference under the scheme legislation of Tasmania at the request of a party or by the Appeals Tribunal of its own initiative of a question of law arising in a proceeding before the Tribunal for decision.

(2) Nothing in subsection (1) affects any other jurisdiction of any court or the operation of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

PART 5

STATE SUPERVISORY AUTHORITY

State Supervisory Authority

14—Until a body is established as the State Supervisory Authority under the *Tasmanian Office of Financial Supervision Act 1992*, the Commissioner for Corporate Affairs is the State Supervisory Authority for the purposes of the scheme legislation of Tasmania.

PART 6

APPLICATION OF CODES AND REGULATIONS TO THE CROWN

Crown is bound

15—(1) The scheme legislation of Tasmania binds the Crown in right of Tasmania and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

PART 7

IMPOSITION OF FEES AND OTHER AMOUNTS

Fees for chargeable matters

16—This section imposes the fees that the Financial Institutions (Tasmania) Regulations or the AFIC (Tasmania) Regulations prescribe.

Levies, contributions and loans

17—(1) This section imposes—

- (a) the levy payable under sections 119 and 120 of the AFIC (Tasmania) Code by a financial institution; and
- (b) the levy payable under section 95 of the Financial Institutions (Tasmania) Code by a financial body; and
- (c) the contributions payable under section 98 of the Financial Institutions (Tasmania) Code by a credit union; and
- (d) the support levy payable under section 99 of the Financial Institutions (Tasmania) Code by a credit union; and
- (e) the compulsory loans payable under section 100 of the Financial Institutions (Tasmania) Code by a credit union.

(2) An expression has in subsection (1) the meaning it would have if this section were in the AFIC (Tasmania) Code or the Financial Institutions (Tasmania) Code, as the case requires.

PART 8

GENERAL

Action to be taken by Premier under certain report

18—(1) If the Premier is provided with a report under section 49 (6) of the AFIC (Tasmania) Code, the Premier must provide AFIC with a response to the report within 14 days of its receipt by the Premier.

(2) If—

- (a) the Premier does not provide AFIC with a response to the report within 14 days of the receipt of the report; or
- (b) AFIC is of the opinion that it is necessary to do so—

AFIC may, by written notice given to the Premier, request the Premier to cause a copy of the report provided with the request to be laid before each House of Parliament within 14 sitting days of the receipt of the request.

(3) The Premier must comply with the request.

(4) If, at the time the Premier would otherwise be required to cause a copy of the report to be laid before each House of Parliament, a House is not sitting—

- (a) the Premier must give a copy of the report to the Clerk of the House which is not sitting; and
- (b) the Clerk of that House must cause a copy of the report to be laid before that House on its next sitting day; and
- (c) for the purposes of its printing and publication, the report is to be taken to have been laid before that House, and to have been ordered to be printed by that House, when it is given to the Clerk.

Amendment of certain provisions

19—(1) If, under the financial institutions agreement, the Ministerial Council—

(a) approves—

(i) a proposed amendment of the AFIC Act or the Financial Institutions Act; or

(ii) regulations proposed to be made under the AFIC Act or the Financial Institutions Act (whether or not amending other regulations); and

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a)—

the Governor may make regulations in accordance with that approval varying the effect in Tasmania of that Act or those regulations.

(2) If regulations are made under subsection (1), the AFIC Act or the Financial Institutions Act or regulations in force under either of those Acts have effect in Tasmania (as the case requires) as if varied in accordance with the regulations made under subsection (1).

Offences

20—Where under section 59 of the Financial Institutions (Tasmania) Code, it is provided that an offence against a relevant Code is punishable summarily, proceedings for that offence are to be heard and determined in accordance with the *Justices Act 1959*, and any penalty imposed in respect of that offence may be enforced and recovered as provided by that Act.

Aiding and abetting, attempts, &c.

21—Section 61 of the Financial Institutions (Tasmania) Code is not to be taken to affect the application in relation to any relevant Code of the provisions of the *Criminal Code* (other than section 3 (1) (b), (c) and (d) and section 299).

Fees, fines and penalties

22—All fees, fines, penalties and other money which, under or by virtue of the scheme legislation of Tasmania, are authorized or directed to be imposed on any person and are not, under that legislation, fees, levies, contributions, loans or other amounts payable to a specified person must be paid to the State.

Administration of Act

23—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the Department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

PART 9

TRANSITIONAL, CONSEQUENTIAL AND REPEAL

Interpretation

24—In this Part, unless the contrary intention appears, a word or expression has the same meaning as in the Financial Institutions (Tasmania) Code.

Mergers

25—(1) This section applies where, immediately before the commencement of this section—

- (a) 2 or more continuing societies of the same type had, by special resolution, applied for registration as an amalgamated society in accordance with section 47 of the *Co-operative Industrial Societies Act 1928* and section 30 of the *Building Societies Act 1876*; and
- (b) the Commissioner for Corporate Affairs had not made a decision in relation to that application.

(2) Where this section applies—

- (a) Division 1 of Part 7 of the Financial Institutions (Tasmania) Code applies in relation to the relevant application as if it were an application under section 293 of the Financial Institutions (Tasmania) Code for the merger of the societies; and
- (b) for that purpose, each relevant continuing society is to be taken to have complied with section 293 of the Financial Institutions (Tasmania) Code.

Voluntary transfers of engagements

26—(1) This section applies where, immediately before the commencement of this section—

- (a) a continuing society had decided, by special resolution, to transfer its engagements to another society of the same type in accordance with section 30B of the *Building Societies Act 1876*; and
- (b) that transfer had not been effected.

(2) Where this section applies—

- (a) Division 1 of Part 7 of the Financial Institutions (Tasmania) Code applies in relation to the proposed transfer as if it were a transfer applied for under section 293 of the Financial Institutions (Tasmania) Code; and
- (b) for that purpose, each relevant society is to be taken to have complied with section 293 of the Financial Institutions (Tasmania) Code.

Suspension

27—A suspension relating to a credit union registered under the *Co-operative Industrial Societies Act 1928* in force under section 9 of that Act immediately before the commencement of this section is to be taken to be a suspension by the SSA under section 89 of the Financial Institutions (Tasmania) Code.

Records

28—On and from the commencement of this section each record and each other document in relation to the affairs of a continuing society held by the Commissioner for Corporate Affairs for the purposes of the *Building Societies Act 1876* and the *Co-operative Industrial Societies Act 1928*—

- (a) becomes the property of the SSA; and
- (b) is to be taken to be held for the purposes of—
 - (i) the financial institutions legislation; or
 - (ii) any proceedings in relation to the society being conducted under the *Building Societies Act 1876* and the *Co-operative Industrial Societies Act 1928*.

Special meetings and inquiries

29—(1) Where, immediately before the commencement of this section, a special meeting of a continuing society had been called, but not held, under section 20 of the *Co-operative Industrial Societies Act 1928*, section 87 of the Financial Institutions (Tasmania) Code applies in relation to the meeting as if it had been called in accordance with section 87 (1) of the Financial Institutions (Tasmania) Code.

(2) Where, immediately before the commencement of this section, an inquiry in relation to the affairs of a continuing society under section 20 of the *Co-operative Industrial Societies Act 1928* had commenced, but had not concluded, section 87 of the Financial Institutions (Tasmania) Code applies in relation to the inquiry as if it had been authorized in accordance with section 87 (1) of the Financial Institutions (Tasmania) Code.

Investigations

30—(1) Where, immediately before the commencement of this section, an investigation was being conducted into the affairs of a continuing society under the *Building Societies Act 1876* or the *Co-operative Industrial Societies Act 1928*, the investigation may continue as an investigation under Part 10 of the Financial Institutions (Tasmania) Code.

(2) Where this section applies—

- (a) the SSA may appoint an investigator under section 348 of the Financial Institutions (Tasmania) Code for the purposes of continuing the investigation; and
- (b) any document or other information properly obtained in the course of the investigation is to be taken to have been properly obtained in the course of the continuing investigation under the Financial Institutions (Tasmania) Code.

Proceedings instituted under former Acts

31—(1) The SSA may institute proceedings under the *Building Societies Act 1876* (as if it had not been repealed by this Act) or the *Co-operative Industrial Societies Act 1928* in relation to a continuing society.

(2) For the purposes of subsection (1), a reference in the *Building Societies Act 1876* or the *Co-operative Industrial Societies Act 1928* to the Commissioner for Corporate Affairs is to be read as a reference to the SSA.

Disputes between members and societies

32—(1) This section applies—

(a) where, immediately before the commencement of this section, a dispute between a continuing society and a member of that society—

(i) had been referred to the Commissioner for Corporate Affairs or the Supreme Court under section 31 or 32 of the *Building Societies Act 1876* or section 44 of the *Co-operative Industrial Societies Act 1928*; and

(ii) the dispute had not been determined; or

(b) where—

(i) during the period of 28 days before the commencement of this section, a dispute between a continuing society and a member of that society had been referred to arbitration in accordance with the society's rules; and

(ii) one month after the reference of that dispute to arbitration, no award had been made pursuant to the arbitration; and

(iii) a party to the dispute applies to refer it to the Commissioner for Corporate Affairs.

(2) Where this section applies, section 31 or 32 of the *Building Societies Act 1876* or section 44 of the *Co-operative Industrial Societies Act 1928* of the previous law continues to apply in relation to the relevant dispute as if the relevant continuing society were still a society registered under the *Building Societies Act 1876* or the *Co-operative Industrial Societies Act 1928*.

Use of name by continuing building society

33—A continuing building society need not comply with section 140 (3) of the *Financial Institutions (Tasmania) Code* until 6 months after the date of its commencement.

Acceptance of deposits

34—(1) Despite anything to the contrary in section 138 of the *Financial Institutions (Tasmania) Code*, a continuing building society may accept a deposit of money from a person who is not a member of the continuing building society subject to and in accordance with its rules and any applicable standard in force under section 28 of the *AFIC (Tasmania) Code*.

(2) Nothing in section 431 of the Financial Institutions (Tasmania) Code requires a continuing building society to offer membership to a person only because the person has money on deposit with it immediately before the commencement of that section.

General savings and transitional provisions

35—(1) Except as otherwise provided by this Act or the Financial Institutions (Tasmania) Code or by regulations made under section 36, anything done under a provision of an Act repealed by this Act or under the *Co-operative Industrial Societies Act 1928* that had an effect immediately before the commencement of a corresponding provision of the Financial Institutions (Tasmania) Code is to be considered to have been done under that corresponding provision.

(2) Subsection (1) applies even if when done under the corresponding provision of the Financial Institutions (Tasmania) Code the thing can only be done by a different person or body and in such a case is to be considered to have been done by that person or body.

Regulations—savings and transitional

36—(1) The Governor, on the recommendation of the Minister made with the approval of the Ministerial Council, may make regulations of a saving or transitional nature consequent on the enactment or commencement of this Act.

(2) If the regulations so provide, they have effect despite any provision of the Financial Institutions (Tasmania) Code or the AFIC (Tasmania) Code.

(3) If the regulations so provide, a provision of the regulations may take effect on the date of commencement of this section or a later date.

(4) To the extent to which a provision referred to in subsection (3) takes effect from a date that is earlier than the date of its notification of the making of the regulations in the *Gazette*, the provision—

- (a) operates to the advantage of a person (other than Tasmania or an authority of Tasmania) by—
 - (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and

- (b) does not operate to the disadvantage of another person (other than Tasmania or an authority of Tasmania) by—
- (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.

Co-operative Industrial Societies Act 1928 not to apply to credit unions

37—(1) In so far as it relates to credit unions, the *Co-operative Industrial Societies Act 1928* ceases to have effect.

(2) Subsection (1) is subject to express provision made by the scheme legislation of Tasmania.

Acts Interpretation Act 1931 amended

38—After section 46A of the *Acts Interpretation Act 1931*, the following section is inserted:—

References to AFIC (Tasmania) Code, &c.

46B—In any Act—

“**AFIC (Tasmania) Code**” means the provision applying by reason of section 5 of the *Financial Institutions (Application of Laws) Act 1992*;

“**AFIC (Tasmania) Regulations**” means the provisions applying by reason of section 6 of the *Financial Institutions (Application of Laws) Act 1992*;

“**Financial Institutions (Tasmania) Code**” means the provisions applying by reason of section 8 of the *Financial Institutions (Application of Laws) Act 1992*;

“**Financial Institutions (Tasmania) Regulations**” means the provisions applying by reason of section 9 of the *Financial Institutions (Application of Laws) Act 1992*.

Trustee Act 1898 amended

39—Section 5 (1) of the *Trustee Act 1898* is amended as follows:—

- (a) by omitting from paragraph (e) “permanent building society (within the meaning of the *Building Societies Act 1876*)” and substituting “building society (within the meaning of the *Financial Institutions (Tasmania) Code*)”;
- (b) by omitting from paragraph (ea) “permanent”.

Repeal

40—The Acts specified in Schedule 1 are repealed.

SCHEDULE 1

Section 40

ACTS REPEALED

- Building Societies Act 1876* (40 Vict. No. 5)
 - Building Societies Act 1887* (51 Vict. No. 10)
 - Building Societies Act 1895* (59 Vict. No. 29)
 - Building Societies Act 1958* (No. 22 of 1958)
 - Building Societies Amendment Act 1985* (No. 54 of 1985)
 - Building Societies Amendment Act 1987* (No. 92 of 1987)
-