



TASMANIA

TASMANIAN OFFICE OF FINANCIAL SUPERVISION ACT 1992

No. 11 of 1992

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**TASMANIAN OFFICE OF FINANCIAL SUPERVISION
ACT 1992**

No. 11 of 1992

AN ACT to establish the Tasmanian Office of Financial Supervision and for related purposes

[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 *Tasmanian Office of Financial Supervision Act 1992*.

Commencement

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

Interpretation

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

“**Board**” means the board of directors of TOFS;

“**chairperson**” means the chairperson of the Board;

“**chief executive officer**” means the chief executive officer of the Board;

“**director**” means a director of the Board;

“**employee**”, in relation to TOFS, includes—

(a) a person whose services are made available to TOFS; and

(b) a person engaged by TOFS on a contract for services;

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

“**TOFS**” means the Tasmanian Office of Financial Supervision.

Interpretation—words, &c., used in Financial Institutions (Tasmania) Code

4—Unless the contrary intention appears, words and expressions used in the Financial Institutions (Tasmania) Code have the same respective meanings in this Act.

PART 2

TOFS AND ITS BOARD

Division 1—Establishment and general functions and powers of TOFS

Establishment of TOFS

5—(1) A body called the Tasmanian Office of Financial Supervision is established.

(2) TOFS—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

Functions

6—TOFS—

- (a) is the State Supervisory Authority for the purposes of the financial institutions legislation; and
- (b) is to carry out the functions conferred on it by the financial institutions legislation or as may be prescribed.

General powers

7—(1) TOFS has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), TOFS has such powers as are conferred on it by or under the financial institutions legislation.

(3) Without limiting subsection (1), TOFS may—

- (a) enter into a management contract with any person or body under which that person or body is to perform such of the functions of TOFS as is specified in the contract; and
- (b) enter into other contracts; and
- (c) engage consultants.

TOFS independent body

8—Except as expressly provided in the financial institutions legislation or this Act, TOFS is not subject to direction by the Minister or the Ministerial Council.

TOFS to comply with financial institutions agreement, &c.

9—In performing its functions and exercising its powers, TOFS must—

- (a) comply with any applicable provisions of the financial institutions agreement; and
- (b) strive to ensure that the principal objects of the financial institutions scheme are achieved in relation to Tasmania.

TOFS does not represent Crown

10—TOFS does not represent the Crown.

TOFS exempt public authority under Corporations Law

11—TOFS is an exempt public authority for the purposes of the Corporations Law.

Division 2—Establishment and composition of TOFS Board

The Board

12—There is to be a board of directors of TOFS.

Composition of the Board

13—(1) The Board consists of not less than 3 and not more than 5 directors appointed by the Governor on the nomination of the Minister.

(2) The Minister must, before nominating a person for appointment as a director, seek nominations from representatives of building societies, credit unions and such consumer organizations as the Minister thinks fit.

(3) One of the directors is to be appointed as chairperson of the Board.

(4) A person holding an office or appointment with a financial institution or an institution providing financial services in competition with a financial institution may not be appointed as a director.

(5) Schedule 1 has effect with respect to the directors of the Board.

(6) Schedule 2 has effect with respect to meetings of the Board.

Role of the Board

14—It is the role of the Board to ensure that TOFS performs its functions in a proper and efficient way.

PART 3

THE STAFF OF TOFS

Chief executive officer

15—(1) The chief executive officer is to be appointed or employed by the Board.

(2) The chief executive officer is responsible to the Board for managing the administrative affairs of the Board.

(3) If a person employed under the *Tasmanian State Service Act 1984* is appointed as chief executive officer, that person may hold that office in conjunction with the person's position or office under that Act.

(4) A director must not be appointed as chief executive officer.

(5) A person who holds an office or appointment with a financial institution must not be appointed as chief executive officer.

(6) The appointment of a person as chief executive officer is not invalid merely because of a defect or irregularity in relation to the appointment.

(7) The chief executive officer may be appointed for such term not exceeding 3 years as is specified in the instrument of appointment.

(8) The chief executive officer holds office on such terms and conditions in relation to matters not provided for by this Act (including terms and conditions relating to remuneration allowances) as are determined by the Board.

Staff

16—(1) TOFS may appoint or employ such persons as it considers necessary for the performance of its functions.

(2) Subject to any relevant award or industrial agreement, the terms and conditions of persons appointed or employed under subsection (1) are as determined by TOFS.

(3) The *Tasmanian State Service Act 1984* does not apply to TOFS or its employees.

Arrangements relating to staff

17—(1) TOFS may arrange with the Head of an Agency within the meaning of the *Tasmanian State Service Act 1984* for the services of persons employed in that Agency to be made available to it.

(2) TOFS may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees in the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) TOFS may arrange for the services of an employee of TOFS to be made available to the Commonwealth or a State or to an authority of the Commonwealth or State.

PART 4**MISCELLANEOUS****Financial interests of directors and employees**

18—(1) A person is not eligible to be a director or an employee of TOFS if—

- (a) that person, or an associate of that person, has an amount invested, or deposited, with a financial institution, or a related body corporate exceeding a limit prescribed by the regulations for the purposes of this paragraph; or
- (b) that person, or an associate of that person, is indebted to a financial institution, or a related body corporate—
 - (i) in an amount exceeding a limit prescribed by the regulations for the purposes of this paragraph; or
 - (ii) in consequence of the financial institution having granted a loan or other financial accommodation on terms that are more favourable than those ordinarily available on a commercial basis.

(2) A regulation made for the purposes of this section may prescribe different limits for different classes of investments, deposits, loans or other transactions.

(3) The question whether a person is an associate of another person for the purposes of this section is to be determined as prescribed.

Directors and employees to act honestly, &c.

19—(1) This section applies to a director and an employee of TOFS.

(2) A person to whom this section applies who, in the course of his or her official duties, is required to consider any matter concerning—

- (a) a person or body with whom that person is associated; or
- (b) a person or body by whom that person is employed or has been employed at any time during the previous 3 years, or a related body—

must immediately inform TOFS of that fact in writing.

Penalty: Fine not exceeding 20 penalty units.

(3) A person to whom this section applies must at all times act honestly in the exercise of official powers and functions.

Penalty: Fine not exceeding 20 penalty units.

(4) A person to whom this section applies must not make improper use of an office held for the purposes of this Act or the financial institutions legislation—

(a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or

(b) to cause detriment to TOFS or a financial institution.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

(5) A person to whom this section applies or a person who is formerly one to whom this section applies, must not make improper use of information acquired by virtue of an office held for the purposes of this Act or the financial institutions legislation—

(a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or

(b) to cause detriment to TOFS or a financial institution.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

(6) It is a defence to a contravention of subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, that person was not aware of the fact the existence of which obliged the person to inform TOFS.

(7) The question whether a person is associated with another person or a body for the purposes of this section is to be determined as prescribed.

Liability of directors

20—(1) A director incurs no liability for an honest act or omission in the performance or purported performance of functions, or exercise or purported exercise of powers, under this Act.

(2) A liability that would, but for this section, attach to a director attaches to TOFS.

- (3) This section does not apply to—
- (a) wilful misconduct; or
 - (b) wilful neglect; or
 - (c) wilful failure to comply with this Act.

Liability of staff

21—(1) An employee of TOFS incurs no liability for an honest act or omission in the course of the employee's employment.

(2) A liability that would, but for this section, attach to an employee attaches to TOFS.

- (3) This section does not apply to—
- (a) wilful misconduct; or
 - (b) wilful neglect; or
 - (c) wilful failure to comply with this Act.

TOFS's seal

22—(1) The TOFS's seal is to be kept in such custody as the Board directs and may be used only as authorized by the Board.

(2) Judicial notice must be taken of the imprint of TOFS's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

Judicial notice of certain signatures

23—Judicial notice must be taken of—

- (a) the signature of a director, or the chief executive officer, in his or her official capacity; and
- (b) the fact that the signatory holds or has held the office concerned.

Evidentiary provisions

24—(1) Evidence of a direction issued, or determination made by TOFS under this Act, another Act or the financial institutions legislation may be given by the production of a copy of the direction or determination certified as a true copy by the chairperson of the Board or chief executive officer.

(2) A certificate signed by the chairperson of the Board or chief executive officer stating any matter in relation to—

- (a) a supervision levy, amount of contribution or support levy, determined under Subdivision (6) of Division 2 of Part 2 of the Financial Institutions (Tasmania) Code; or
- (b) an amount ordered to be paid by way of compulsory loan under the subdivision—

is evidence of the matter.

Delegation of TOFS's powers

25—(1) Subject to subsection (2), TOFS may, by resolution of the Board, delegate its powers under or in relation to the financial institutions legislation to—

- (a) a director; or
- (b) the chief executive officer; or
- (c) any other employee of TOFS; or
- (d) the SSA of another participating State who, under the law of that State, is authorized to accept the delegation; or
- (e) any other body or person.

(2) The powers under section 95 (supervision levy) of the Financial Institutions (Tasmania) Code may not be delegated.

(3) TOFS may, by resolution of the Board, revoke wholly or in part a delegation made under subsection (1).

(4) A delegation—

- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
- (b) does not prevent the performance or exercise of a power by the Board.

(5) A power exercised by a delegate has the same effect as if exercised by the Board.

(6) A certificate signed by the chairperson stating any matter in relation to a delegation of a power under subsection (1) is evidence of the matter.

(7) A document purporting to be a certificate under subsection (6) is, unless the contrary is established, taken to be such a certificate and to have been properly given.

TOFS may act as delegate

26—TOFS is authorized to act as the delegate of the SSA of another participating State in relation to the SSA's powers under or in relation to the financial institutions legislation.

Treasurer to provide funds to SSA

27—(1) The Treasurer may provide such amount as the Treasurer considers necessary to enable TOFS to perform its functions and exercise its powers for a period not exceeding 6 months from the commencement of this Act.

(2) Any funds provided under subsection (1) must be repaid to the Treasurer by TOFS not later than 30 June 1993 or on receipt of sufficient supervision levies under section 95 of the Financial Institutions (Tasmania) Code, whichever occurs first.

Determination of TOFS's budget

28—(1) TOFS must prepare and submit to the Minister a draft budget for each financial year in such form, and at such time, as the Minister directs.

(2) The draft budget must include details of—

(a) the amount of supervision levy that TOFS intends to impose in the financial year under section 95 of the Financial Institutions (Tasmania) Code; and

(b) consultations held under section 29 of this Act.

(3) The Minister must determine TOFS's budget for the financial year within 60 days after the draft budget is submitted to the Minister.

(4) If the Minister does not determine TOFS's budget within that period, the Minister is taken to have determined that TOFS's budget for the financial year is to be the draft budget submitted to the Minister.

(5) TOFS must authorize expenditure only in accordance with the budget determined by the Minister unless the Minister otherwise directs.

Consultation

29—In preparing its draft budget, TOFS must consult with representatives from building societies and credit unions.

Expenses of Act

30—All expenses incurred in the administration of this Act are to be paid out of the proceeds of supervision levies collected pursuant to section 95 of the Financial Institutions (Tasmania) Code.

Accounts and audit

31—(1) TOFS must keep proper accounting records so as to enable—

(a) the preparation from time to time of accounts presenting fairly the results of TOFS's operations (including operations affecting the supervision fund or the contingency fund); and

(b) the accounts to be conveniently and properly audited.

(2) Annual accounts must be prepared in respect of each financial year on the basis of those accounting records.

(3) In preparing its accounts, TOFS—

(a) must comply with any requirements prescribed by the regulations; and

(b) must have regard to accounting standards published by the Australian Accounting Standards Board.

(4) The annual accounts must be audited by the Auditor-General and the Auditor-General may, at any time, conduct an audit of TOFS's operations.

(5) A reference in this section to accounts includes an account of receipts and payments, an account of income and expenditure and a balance sheet, together with statements, reports and notes attached to, and intended to be read with, the accounts.

Annual report

32—(1) TOFS must, on or before 31 October in each year, submit to the Minister a report on the administration of the financial institutions legislation in this State during the financial year ending on the preceding 30 June.

(2) The report must include the audited accounts for that financial year.

(3) The Minister must, within 7 sitting days after receiving the report, cause copies to be laid before each House of Parliament.

***State Authorities Financial Management Act 1990* does not apply**

33—The *State Authorities Financial Management Act 1990* does not apply to TOFS.

Regulations

34—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this Act may contain provisions of a saving or transitional nature consequent on the enactment of this Act.

(3) A provision referred to in subsection (2) may, if the regulations so provide, take effect from the date of commencement of this Act or a later date.

SCHEDULE 1

Section 13

PROVISIONS WITH RESPECT TO DIRECTORS OF THE BOARD

Term of office

1—A director holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.

Terms and conditions of appointment

2—(1) The director is to be paid such remuneration and allowances as are determined by the Governor.

(2) A director holds office on such terms and conditions (if any) with respect to matters not provided for in this Schedule as are specified in the instrument of appointment.

Tasmanian State Service Act 1984 not to apply

3—The *Tasmanian State Service Act 1984* does not apply to the appointment of a director.

Leave of absence

4—The Board may grant leave of absence to a director on such terms and conditions as the Board, subject to any determination of the Minister, considers appropriate.

Resignation

5—A director may resign by signed notice given to the Governor.

Termination of appointment

6—The Governor may terminate the appointment of a director if the director—

- (a) is, in the opinion of the Governor, unable to perform adequately or competently the duties of a director; or
- (b) is, in the opinion of the Governor, physically or mentally incapable of continuing as a director; or

SCHEDULE 1—*continued*

- (c) becomes bankrupt, applies to take the benefit of any law for the relief or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) contravenes this Act without reasonable excuse; or
- (e) is absent, without the Board's leave and without reasonable excuse, from 3 consecutive meetings of the Board; or
- (f) accepts an office or appointment with a financial institution.

Appointment not invalid because of appointment defect

7—An appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

Validity of proceedings, &c.

8—(1) No act or proceeding of the Board or any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the composition of the Board.

(2) All acts and proceedings of the Board or any person acting pursuant to any decision or direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any director or that any director was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act as, or capable of being, a director, and as if the Board had been fully constituted.

SCHEDULE 1—*continued*

Presumptions

9—In any proceedings by or against the Board, unless evidence is given to the contrary, no proof is required of—

- (a) the constitution of the Board; or
 - (b) any resolution of the Board; or
 - (c) the appointment of any director; or
 - (d) the presence of a quorum at any meeting of the Board.
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SCHEDULE 2

Section 13

PROVISIONS WITH RESPECT TO MEETINGS OF THE BOARD

Interpretation

1—In this Schedule—

“**chairperson**” means the chairperson of the Board and includes a person appointed to act as chairperson of the Board;

“**required minimum number of directors**” means 3 directors, of whom one is the chairperson.

Times and places of meetings

2—(1) Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The chairperson—

(a) may at any time convene a meeting; and

(b) must convene a meeting when requested by at least 3 directors.

Presiding at meetings

3—(1) The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, a director chosen by the directors present at the meeting must preside.

Quorum and voting at meetings

4—(1) At a meeting of the Board—

(a) subject to subsection (2), the required minimum number of directors constitute a quorum; and

(b) a question is to be decided by a majority of votes of the directors present and voting; and

(c) the director presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(2) If, because of clause 8, a director is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the director were present, the remaining directors present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter if one of them is the chairperson.

SCHEDULE 2—*continued*

Conduct of meetings

5—(1) The Board may, subject to this Schedule, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A director who participates in a meeting of the Board under a permission under subsection (2) is to be taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

6—(1) If at least the required minimum number of directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the required minimum number of directors signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the Board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

Minutes

7—The Board must keep minutes of its proceedings.

Disclosure of interests—

8—(1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and

SCHEDULE 2—*continued*

- (b) the interest could conflict with the proper performance of the director's duties in relation to consideration of the matter—

the director must, as soon as practicable after the relevant facts come to the director's knowledge, disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Board otherwise determines, the director must not—

- (a) be present during any deliberation of the Board in relation to the matter; or
(b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a director who has made a disclosure under subsection (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
(b) take part in the making by the Board of the determination.

