



New South Wales

Co-operatives Legislation Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Financial Sector Reform (New South Wales) Bill 1999*.

The New South Wales Financial Institutions Commission (FINCOM) is proposed to be abolished by the *Financial Sector Reform (New South Wales) Bill 1999*, consequent on the proposed transfer of the supervision of building societies, credit unions and friendly societies to Commonwealth regulators. State legislation provides for FINCOM to be the supervisory authority for co-operative housing societies, and for the Department of Fair Trading to be the supervisory authority for general co-operatives. This Bill will transfer FINCOM's role in relation to co-operative housing societies to the Department of Fair Trading.

This Bill makes other minor or consequential amendments.

Overview of Bill

The object of this Bill is to amend legislation relating to co-operative societies, so as:

- (a) to provide for supervisory functions relating to co-operative housing societies and Starr-Bowkett societies to be exercised within the Department of Fair Trading, instead of by the New South Wales Financial Institutions Commission (FINCOM), and
- (b) to clarify the circumstances in which a person may trade or carry on business under a name or title containing the word "co-operative", and
- (c) to make minor or consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Co-operation Act 1923* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Co-operatives Act 1992* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Co-operatives Amendment Act 1997* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Co-operative Housing and Starr-Bowkett Societies Act 1998* set out in Schedule 4.

Schedule 1 Amendment of Co-operation Act 1923

The *Co-operation Act 1923* currently provides for the Registrar's functions in relation to co-operative housing societies to be exercised by FINCOM. That Act will be repealed on the commencement of the *Co-operative Housing and Starr-Bowkett Societies Act 1998*.

Schedule 1 [2] omits section 5C, which provides for FINCOM to exercise the Registrar's functions in relation to co-operative housing societies.

Schedule 1 [3] inserts a new section 5D, which provides for the Director-General of the Department of Fair Trading to exercise the Registrar's functions under the Act.

Schedule 1 [4] is a savings and transitional provision that preserves things done by FINCOM under the Act, and extends protections afforded to FINCOM (currently in section 22 of the *Financial Institutions Commission Act 1992*) to members of the staff of the Department in connection with matters taken over by the Department.

Schedule 1 [1] makes a consequential amendment.

Schedule 2 Amendment of Co-operatives Act 1992

The *Co-operatives Act 1992* deals with general co-operatives, which are currently subject to supervision by the Department of Fair Trading. Most of the amendments contained in this Schedule are made for the purposes of clarification and consistency.

Schedule 2 [1] omits notes in the Act that refer to core consistent provisions. Provisions were categorised as "core consistent provisions" by an in-principle agreement between the States and Territories for the purpose of their adoption in each jurisdiction. The notes were inserted by the *Co-operatives Legislation Act 1997* for the purpose of identifying core consistent provisions that were being inserted by that Act. However, the categorisation of core consistent provisions has undergone change, and the notes no longer are an accurate reflection of them. The notes are therefore proposed to be omitted, and their identification will be achieved by other means.

Schedule 2 [2] inserts new section 3A, to make it clear that the Act does not apply to co-operative housing societies and Starr-Bowkett societies. These are regulated under the *Co-operation Act 1923* (to be repealed) and the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (following the repeal of the 1923 Act).

Schedule 2 [3] and **[4]** re-express the conferral of the supervisory functions of the Director-General of the Department of Fair Trading, for consistency with amendments made to the 1923 and 1998 Acts by this Bill.

Schedule 2 [5] amends section 255 to include an express exception to the prohibition on the use of the word "co-operative" in the name of a body corporate. The exception is for bodies allowed to use the word "co-operative" under other legislation, so that such bodies will not need to rely on exemptions under section 255.

Schedule 2 [6] inserts a new section 260 to regulate the use of the word "co-operative". This amendment places the regulation of this word in the *Co-operatives Act 1992*, instead of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (see Schedule 4 [15]).

Schedule 3 Amendment of Co-operatives Amendment Act 1997

This Schedule omits an uncommenced amendment, which would replace the definition of *Registrar* in the *Co-operatives Act 1992*. That definition is dealt with differently by this Bill (see Schedule 2 [3]).

Schedule 4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998

This Schedule amends the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, which is uncommenced. The principal purpose of this Schedule is to transfer FINCOM's supervisory functions under the Act to the Department of Fair Trading. This is achieved by omitting references to FINCOM and replacing them by references to the Registrar, whose functions will be exercised by the Director-General of the Department.

Schedule 4 [1]–[6], [9]–[15], [18] and [20] make amendments in connection with the transfer of functions under the Act from FINCOM to the Department of Fair Trading.

Schedule 4 [7] omits section 22 (requiring FINCOM to keep the Minister informed), which is not necessary in the context of the administration of legislation by a government department.

Schedule 4 [8] substitutes section 23 (relating to the inspection of documents), in terms that parallel section 413A of the *Co-operatives Act 1992*.

Schedule 4 [15] also inserts a new section 47B (authorising the Registrar to delegate his or her functions under the Act), in terms that parallel section 411 of the *Co-operatives Act 1992*.

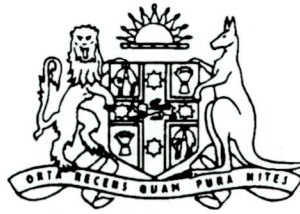
Schedule 4 [16] and **[17]** amend section 84, to remove the regulation of the use of the word "co-operative". This will be covered by amendments to the *Co-operatives Act 1992* (see Schedule 2 [6]).

Schedule 4 [19] omits Division 3 of Part 5 (relating to transfers of engagements from co-operative housing societies to financial institutions), as these provisions will not be applicable when the new arrangements involving Commonwealth bodies and Commonwealth financial institutions legislation are in force.

Schedule 4 [21] omits a reference to a dissolved association.

Schedule 4 [22] updates a reference to an association.

Schedule 4 [23] omits an uncommenced and superseded amendment to the *Co-operatives Act 1992*.



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New South Wales

Co-operatives Legislation Amendment Bill 1999

No. , 1999

A Bill for

An Act to amend the *Co-operation Act 1923*, the *Co-operatives Act 1992*, the *Co-operatives Amendment Act 1997*, and the *Co-operative Housing and Starr-Bowkett Societies Act 1998* in connection with the administration of the co-operatives legislation; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Co-operatives Legislation Amendment Act 1999</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Co-operation Act 1923 (1924 No 1)	7
The <i>Co-operation Act 1923</i> is amended as set out in Schedule 1.	8
4 Amendment of Co-operatives Act 1992 No 18	9
The <i>Co-operatives Act 1992</i> is amended as set out in Schedule 2.	10
5 Amendment of Co-operatives Amendment Act 1997 No 39	11
The <i>Co-operatives Amendment Act 1997</i> is amended as set out in Schedule 3.	12 13
6 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11	14
The <i>Co-operative Housing and Starr-Bowkett Societies Act 1998</i> is amended as set out in Schedule 4.	15 16 17

Schedule 1 Amendment of Co-operation Act 1923

	1
	2
	(Section 3)
	3
[1] Section 5 Definitions	4
Omit the definition of <i>Registrar</i> . Insert instead:	5
	6
<i>Registrar</i> —see section 5D.	7
[2] Section 5C Certain functions of the Registrar to be exercised by FINCOM	8
	9
Omit the section.	10
	11
[3] Section 5D	12
Insert as section 5D:	13
	14
5D Exercise of registrar's functions	15
(1) The powers, authorities, duties and functions expressed to be conferred or imposed on the "registrar" by or under this Act are to be exercised and performed by the Director-General of the Department of Fair Trading.	16
	17
	18
	19
(2) For that purpose, a reference in this Act to the registrar is to be read as a reference to the Director-General of the Department of Fair Trading.	20
	21
	22
[4] Fifth Schedule Savings and transitional provisions	23
Insert at the end of the Schedule:	24
	25
<i>Co-operatives Legislation Amendment Act 1999</i>	26
	26
10 Functions of registrar exercised by FINCOM	27
(1) Anything done or omitted to be done in connection with a matter by, to or in relation to the New South Wales Financial Institutions Commission under section 5C before its repeal by the <i>Co-operatives Legislation Amendment Act 1999</i> is taken to have been done or omitted by, to or in relation to the registrar.	28
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Co-operatives Legislation Amendment Bill 1999

Schedule 1 Amendment of Co-operation Act 1923

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|--|----------------------------|
| (2) Any liability attaching to that Commission under section 22 of the <i>Financial Institutions Commission 1992</i> in connection with any such matter becomes a liability of the Crown. | 1
2
3 |
| (3) A member of the staff of the Department of Fair Trading or a delegate of the Director-General of that Department incurs no liability for an honest act or omission in the exercise or performance of powers, authorities, duties or functions under this Act (whether before or after the commencement of this clause) in connection with any such matter. | 4
5
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9 |
| (4) A liability that would, but for this clause, attach to a member of the staff of the Department of Fair Trading or a delegate of the Director-General of that Department attaches to the Crown. | 10
11
12
13 |
| (5) Subclause (3) does not apply to: | 14 |
| (a) wilful misconduct, or | 15 |
| (b) wilful neglect, or | 16 |
| (c) wilful failure to comply with this Act. | 17 |

Schedule 2	Amendment of Co-operatives Act 1992	1
		2
	(Section 4)	3
[1] Notes		4
	Omit all notes that refer to core consistent provisions.	5
		6
[2] Section 3A		7
	Insert after section 3:	8
		9
	3A Application to co-operative housing societies and other bodies	10
		11
	Except where expressly provided by this Act and except as provided by the regulations, this Act does not apply to or in respect of:	12
		13
		14
	(a) a co-operative housing body under the <i>Co-operative Housing and Starr-Bowkett Societies Act 1998</i> , or	15
		16
	(b) a body that is of the same nature as such a co-operative housing body but that is not registered under that Act.	17
		18
		19
[3] Section 5 Definitions		20
		21
	Omit the definition of <i>Registrar</i> from section 5 (1). Insert instead:	22
	<i>Registrar</i> —see section 5B.	23
[4] Section 5B		24
		25
	Insert after section 5A:	26
		26
	5B Exercise of Registrar's functions	27
		27
	(1) The functions expressed to be conferred or imposed on the "Registrar" by or under this Act are to be exercised by the Director-General of the Department of Fair Trading.	28
		29
		30
	(2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to the Director-General of the Department of Fair Trading.	31
		32
		33

[5] Section 255 Name to include certain matter	1
Insert at the end of section 255 (5) (g):	2
, or	3
(h) a corporation that is allowed under another Act to use	4
the word "co-operative" or the abbreviation "co-op"	5
in its name.	6
	7
[6] Section 260	8
Insert after section 259:	9
	10
260 Restriction on use of word "co-operative" or similar words	11
(1) A person, other than a co-operative, must not trade, or carry	12
on business, under a name or title containing the word "co-	13
operative", the abbreviation "co-op" or words importing a	14
similar meaning.	15
(2) Subsection (1) does not apply to:	16
(a) an entity mentioned in section 255 (5), or	17
(b) a person or body exempted by the Registrar under this	18
section.	19
(3) A person or body may apply to the Registrar for exemption	20
from subsection (1).	21
(4) The Registrar may, by written notice given to the person or	22
body, grant an exemption for such time and on such terms	23
and conditions as the Registrar determines. An exemption	24
can provide that specified provisions of this Act apply to the	25
person or body as if the person or body were a co-operative,	26
and the specified provisions then apply accordingly (as if a	27
reference in those provisions to a co-operative included a	28
reference to the person or body).	29
(5) The Registrar may, at any time:	30
(a) revoke an exemption, or	31
(b) vary or revoke the terms or conditions of an	32
exemption.	33

- (6) A person who contravenes this section or a condition of an exemption under this section, and every director or other person having the control and management of a body contravening this section or the condition, is guilty of an offence. 1
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- Maximum penalty: 20 penalty units. 6

Co-operatives Legislation Amendment Bill 1999

Schedule 3 Amendment of Co-operatives Amendment Act 1997

**Schedule 3 Amendment of Co-operatives
 Amendment Act 1997**

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2

3

(Section 5)

4

**Schedule 1 Amendments (item [9]—section 5 (1), definition of
“Registrar”)**

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6

Omit Schedule 1 [9].

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8

Schedule 4	Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998	1 2 3
	(Section 6)	4
[1]	The whole Act (except where inconsistent with other items of this Schedule)	5 6 7
	Omit "FINCOM" wherever occurring.	8
	Insert instead "the Registrar" or "The Registrar" as appropriate.	9
[2]	Headings in the Act (and so much of the Act as consists of references to headings in the Act)	10 11
	Omit "FINCOM" wherever occurring. Insert instead "Registrar".	12 13
[3]	Section 3 Definitions	14
	Omit the definitions of <i>employee</i> and <i>FINCOM</i> from section 3 (1).	15 16
[4]	Section 3 (1)	17
	Insert in alphabetical order:	18
	<i>Registrar</i> —see section 47A.	19 20
[5]	Sections 19 (f), 20 (2), 24 (2), 28 (1) (a), (b) and (c), 40 (6) (c), (7) and (10), 41 (3), 43 (14) (b) and (15), 140 (7), 149 (4) and (7), 152, 153 (6), 155 (2) and (3), 158 (3) (b), and 214 (4)	21 22 23
	Omit "it" wherever occurring. Insert instead "the Registrar".	24 25
[6]	Sections 20 (1), 25, 28 (1) and (2), 40 (1) and (2), 105 (3), 140 (10) (b), 149 (11), 176 (2)	26 27
	Omit "its" wherever occurring. Insert instead "the Registrar's".	28 29
[7]	Section 22 FINCOM to keep Minister informed	30
	Omit the section.	31 32

[8] Section 23	1
Omit the section. Insert instead:	2 3
23 Inspection of documents	4
(1) A person may:	5
(a) inspect documents prescribed by the regulations or documents of a class prescribed by the regulations kept by the Registrar relating to co-operative housing bodies on payment of the fee (if any) prescribed by the regulations, and	6 7 8 9 10
(b) obtain, on payment of the fee prescribed by the regulations, a certified copy of a document that a person may inspect under paragraph (a).	11 12 13
(2) If a reproduction or transparency of a document, or an extract of information contained in a document, is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.	14 15 16 17
[9] Section 28 (2)	18
Omit "it" where secondly occurring. Insert instead "the Registrar".	19 20
[10] Section 29 Obtaining evidence	21
Omit "employee of FINCOM" wherever occurring in section 29 (1). Insert instead "officer of the Department of Fair Trading".	22 23 24
[11] Section 29 (2), (4) and (6)	25
Omit "employee" and "employee's" wherever occurring. Insert instead "officer" or "officer's" as appropriate.	26 27 28
[12] Sections 29 (6), and 41 (4) and (5)	29
Omit "FINCOM's" wherever occurring. Insert instead "the Registrar's".	30 31 32

[13] Section 43 Appointment of administrator	1
Omit "employee of FINCOM" wherever occurring in section 43 (14).	2
Insert instead "officer of the Department of Fair Trading".	3
	4
[14] Section 43 (15)	5
Omit "debt due to FINCOM". Insert instead "debt due to the Crown".	6
	7
[15] Part 2, Division 3 (section 47A)	8
Insert after section 47:	9
	10
Division 3 Exercise of functions and powers of Registrar	11
	12
47A Exercise of functions and powers of Registrar	13
(1) The functions and powers expressed to be conferred on the "Registrar" by or under this Act are to be exercised and performed by the Director-General of the Department of Fair Trading.	14
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(2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to the Director-General of the Department of Fair Trading.	18
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47B Delegation by Registrar	21
(1) The Registrar may delegate to any person any of the Registrar's functions and powers except this power of delegation.	22
	23
	24
(2) A delegate may sub-delegate to another person any function or power delegated under this section if authorised by the terms of the delegation to do so.	25
	26
	27
[16] Section 84 Use of words "co-operative housing society" or "Starr-Bowkett"	28
	29
Omit ", co-operative" from section 84 (2) (a).	30
	31

Co-operatives Legislation Amendment Bill 1999

Schedule 4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act
1998

[17] Section 84 (7)	1
Omit the subsection.	2 3
[18] Sections 149 (6) and 199 (2)	4
Omit "it" where firstly occurring. Insert instead "the Registrar".	5 6
[19] Part 5, Division 3 (sections 164–172)	7
Omit the Division.	8 9
[20] Section 191 The Standards Committee	10
Omit section 191 (1) (c). Insert instead:	11 12
(c) the Director-General of the Department of Fair Trading or his or her nominee (being a member of the staff of the Department of Fair Trading),	13 14 15
[21] Schedule 5 Savings and transitional provisions	16
Omit "Newcastle Co-operative Building Societies Association Limited" from clause 5.	17 18 19
[22] Schedule 5	20
Omit "St. George Association of Co-op. Housing & Building Societies Ltd" from clause 5.	21 22 23
Insert instead "State Wide Association of CHS & Originators Limited".	24
[23] Schedule 6 Amendment of Acts	25
Omit Schedule 6.5.	26 27