

Financial Sector Reform (New South Wales) Bill 1999

Explanatory note

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

The *Co-operatives Legislation Amendment Bill 1999* is cognate with this Bill.

Overview of Bill

In 1997 the Financial System Inquiry recommended that the supervision of building societies, credit unions and friendly societies be transferred from the State Financial Institutions Scheme to Commonwealth regulators. Following agreement by State and Territory Governments with the Commonwealth Government to give effect to that recommendation, the Commonwealth developed the *Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 1) 1999*. That legislation is the primary vehicle effecting the transfer.

Additionally, the *Financial Sector (Transfers of Business) Bill 1999* of the Commonwealth was introduced to facilitate the transfer of businesses between certain kinds of financial institutions.

Each State and Territory is expected to pass legislation to support and complement the Commonwealth legislation where necessary to ensure the effectiveness of the transfers.

Some provisions of the Bill are in terms corresponding to provisions in the Corporations Law. The enactment of those provisions is intended to complement, and not limit or otherwise affect, the operation of the Corporations Law.

The objects of this Bill are:

- (a) to enact provisions to support and complement the Commonwealth legislation to ensure the effectiveness of the transfers with which that legislation is concerned, in relation to New South Wales, and
- (b) to wind up the New South Wales Financial Institutions Commission (FINCOM), the body that is the State Supervisory Authority for New South Wales under the existing legislation, and
- (c) to enact transitional and ancillary provisions.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. Definitions include **AFIC** (Australian Financial Institutions Commission, which is a State body established under Queensland legislation), **ASIC** (Australian Securities and Investments Commission, which is a Commonwealth body established under Commonwealth legislation), **APRA** (Australian

Prudential Regulation Authority, which is a Commonwealth body established under Commonwealth legislation), *FINCOM* (New South Wales Financial Institutions Commission, which is a New South Wales body established under New South Wales legislation as the State Supervisory Authority), and *transfer date* (which is effectively the date the transfer of financial institutions to Commonwealth supervision takes effect).

Clause 4 provides that the Crown is bound by the proposed Act.

Part 2 Registration of certain entities as companies

Clause 5 provides that each transferring financial institution is, on the transfer date, taken to be registered as a company under the Corporations Law. The clause complements clause 3 of Schedule 4 to the Corporations Law, as amended by Schedule 3 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Part 3 Conferral of functions and powers on APRA and ASIC

Clause 6 formally confers functions on APRA, which is a Commonwealth body with limited authorisation to exercise functions and powers under State law.

Clause 7 formally confers functions on ASIC, which is a Commonwealth body with limited authorisation to exercise functions and powers under State law.

Part 4 Authorised deposit-taking institutions and life insurance companies: transfer of business

This Part complements provisions of the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth (*FS(TB) Act*).

Clause 8 provides that words defined in the FS(TB) Act have the same meanings in this Part.

Clause 9 provides that APRA may authorise members of its board or of its staff to perform or exercise powers or functions under particular provisions of this Part. This clause parallels section 4 (2) of the FS(TB) Act.

Clause 10 facilitates voluntary transfers of business under Part 3 of the FS(TB) Act. The provisions of the clause are contemplated by sections 11 (1) (d) and 14 of the FS(TB) Act.

Clause 11 facilitates compulsory transfers of business under Part 4 of the FS(TB) Act. The provisions of the clause are contemplated by sections 25 (2) (e) and 28 of the FS(TB) Act.

Clause 12 provides for certificate evidence concerning transferred assets and liabilities. This clause parallels section 37 of the FS(TB) Act.

Clause 13 provides for certification of transfer of ownership in land and for the Registrar-General to register or record the transfer as certified. This clause parallels section 38 of the FS(TB) Act.

Clause 14 provides for certification of transfer of ownership of other assets and the responsible person or authority to register or record the transfer as certified. This clause parallels section 39 of the FS(TB) Act.

Clause 15 presumes, until the contrary is established, that a document purporting to be a certificate under this Part is such a certificate and to have been properly given. This clause parallels section 40 of the FS(TB) Act.

Clause 16 provides protections consequent on the operation of this Part. This clause parallels section 43 (1)–(3) of the FS(TB) Act.

Part 5 Repeals and transitional provisions

Division 1 Repeals

Clause 17 repeals the *Financial Institutions (New South Wales) Act 1992*, the *Friendly*

Societies (New South Wales) Act 1997 and the *Financial Institutions Commission Act 1992*. The Financial Institutions Code, the Friendly Societies Code and the AFIC Code will consequently cease to be operative.

Division 2 Provisions relating to AFIC

Clause 18 recognises that the *Financial Sector Reform (Queensland) Act 1999* is repealing the Queensland legislation establishing AFIC but preserving the existence of AFIC for limited purposes and for a limited time. The clause empowers AFIC to exercise its continuing functions in connection with New South Wales.

Clause 19 authorises the board of AFIC to delegate its functions and powers.

Clause 20 is a definition clause.

Clause 21 empowers the Queensland Minister to enter into an agreement for the transfer of AFIC staff to APRA, as contemplated by Division 2 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 22 and 23 contain provisions relating to the transfer of AFIC staff to APRA or the Australian Public Service.

Clause 24 enables employees of AFIC and other persons associated with AFIC to disclose information to APRA or ASIC.

Clause 25 empowers the Queensland Minister to enter into an agreement for the transfer of AFIC assets or liabilities to APRA or ASIC, as contemplated by Division 3 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 26 and 27 set out how civil and criminal proceedings involving AFIC are to continue.

Division 3 Provisions relating to FINCOM

Clause 28 provides for the dissolution of FINCOM. This may occur on or after the transfer date.

Clause 29 requires FINCOM to distribute the money in the Supervision Fund established under the Financial Institutions Code in accordance with ministerial determinations made after appropriate consultation with industry.

Clause 30 requires FINCOM to distribute the money in the Credit Unions Contingency Fund to credit unions according to their entitlements.

Clause 31 enables regulations to be made to deal with arrangements for the final reports and auditing of FINCOM's affairs.

Clause 32 empowers the Minister to enter into an agreement for the transfer of FINCOM employees to APRA, as contemplated by Division 2 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 33 and 34 contain provisions relating to the transfer of FINCOM employees to APRA or the Australian Public Service.

Clause 35 enables employees of FINCOM and other persons associated with FINCOM to disclose information to APRA or ASIC.

Clause 36 empowers the Minister to enter into an agreement for the transfer of FINCOM assets or liabilities to APRA or ASIC, as contemplated by Division 3 of Part 1 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Clauses 37 and 38 set out how civil and criminal proceedings involving FINCOM are to continue.

Division 4 APRA's and ASIC's functions and powers under Codes

Clause 39 provides that APRA and ASIC have the same enforcement powers relating to current matters as AFIC or FINCOM had.

Clause 40 provides that certain provisions of the AFIC Code continue to apply after the transfer date in relation to current matters.

Clause 41 provides that certain provisions of the Financial Institutions Code continue to apply after the transfer date in relation to current matters.

Clause 42 provides that certain provisions of the Financial Institutions Code, as applied under section 40 of the AFIC Code, continue to apply after the transfer date in relation to current matters with respect to special service providers.

Clause 43 provides that certain provisions of the Friendly Societies Code continue to apply after the transfer date in relation to current matters.

Clause 44 formally confers the necessary functions and powers on APRA and ASIC for the purposes of this Division.

Division 5 Miscellaneous

Clause 45 deals with accounts with a building society or credit union that have been classified or closed as dormant accounts. These accounts will be treated as having been re-opened immediately before the transfer date and as not being dormant.

Clause 46 deals with withdrawable shares in building societies. A person with these shares will, on the transfer date, be treated as the holder of a deposit equal to the amount paid up on the shares.

Clause 47 provides for building societies, credit unions and friendly societies dissolved or deregistered before the transfer date. It includes provisions relating to the property of such entities and claims against their insurers, and permits ASIC to take action on their behalf and establish such an entity as a company in certain circumstances.

Clause 48 provides that mergers and transfers of engagements, commenced under the Financial Institutions Code before the transfer date and not completed before that date, may be completed under that Code or after the transfer date.

Clause 49 provides that mergers and transfers of engagements, commenced under the Friendly Societies Code before the transfer date and not completed before that date, may be completed under that Code or after the transfer date.

Clause 50 refers to the dissolution of the Australian Financial Institutions Appeals Tribunal by the *Financial Sector Reform (Queensland) Act 1999* of Queensland, and provides that applications made to the Tribunal for review of a decision that have not been decided are taken to have been withdrawn.

Division 6 State taxes

Clause 51 provides that no State tax is chargeable in respect of anything effected by or done under the proposed Act, except in relation to Part 4 (which relates to the transfer of the business of authorised deposit-taking institutions and life insurance companies).

Division 7 References to building societies, credit unions and friendly societies

Clause 52 provides that references in Acts and statutory instruments to building societies and credit unions are to have effect as references to authorised deposit-taking institutions. A definition of that expression is proposed to be included in the *Interpretation Act 1987* (see Schedule 2.2 [3]).

Clause 53 provides that references in Acts and statutory instruments to friendly societies are to have effect as references to bodies that were societies under the Friendly Societies Code or are friendly societies for the purposes of the *Life Insurance Act 1995* of the Commonwealth.

Division 8 Savings or transitional regulations

Clause 54 empowers the making of regulations of a savings or transitional nature.

Part 6 Amendments

Clause 55 is a formal provision giving effect to the Schedules of amendments.

Part 7 Miscellaneous

Clause 56 authorises the Minister to delegate his or her functions or powers under the proposed Act.

Clause 57 authorises the making of regulations for the purposes of the proposed Act.

Schedules

Schedule 1 makes amendments to the *Corporations (New South Wales) Act 1990* arising from amendments made by Commonwealth law before 1999. These include amendments to reflect the change of name of the Australian Securities Commission to the Australian Securities and Investments Commission.

Schedule 2 makes other amendments that are of a consequential or minor nature. Amendments to the *Financial Institutions Commission Act 1992* will enable FINCOM to delegate its functions and powers to APRA.