



New South Wales

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.



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New South Wales

Financial Sector Reform (New South Wales) Bill 1999

No , 1999

A Bill for

An Act to make provision for the reform of the financial sector; to dissolve the New South Wales Financial Institutions Commission; to repeal the *Financial Institutions (New South Wales) Act 1992*, the *Friendly Societies (New South Wales) Act 1997*, and the *Financial Institutions Commission Act 1992*; to amend certain Acts; and for other purposes.

See also *Co-operatives Legislation Amendment Bill 1999*.

The Legislature of New South Wales enacts:

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Part 1 Preliminary

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1 Name of Act and purposes

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(1) This Act is the *Financial Sector Reform (New South Wales) Act 1999*.

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(2) The main purposes of this Act are:

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(a) to facilitate the registration of building societies, credit unions and friendly societies and related bodies as companies under the Corporations Law in accordance with amendments made by the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth, and

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(b) to facilitate the transfer of businesses under the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth, and

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(c) to wind up the New South Wales Financial Institutions Commission, and

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(d) to enact transitional and ancillary provisions.

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2 Commencement

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(1) This Act commences on a day or days to be appointed by proclamation.

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(2) Different days may be appointed for the repeal of different provisions of any Act repealed by this Act.

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3 Definitions

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In this Act:

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AFIC means the Australian Financial Institutions Commission established by the AFIC Act.

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AFIC Act means the *Australian Financial Institutions Commission Act 1992* of Queensland.

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AFIC Code means the AFIC (NSW) Code.

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AFIC (NSW) Code means the provisions applying before the transfer date because of section 5 of the *Financial Institutions (New South Wales) Act 1992*, and includes the AFIC (NSW) Regulations.

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AFIC (NSW) Regulations means the provisions applying before the transfer date because of section 6 of the <i>Financial Institutions (New South Wales) Act 1992</i> .	1
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AFIC Regulations means the AFIC (NSW) Regulations.	4
APRA means the Australian Prudential Regulation Authority.	5
APRA Act means the <i>Australian Prudential Regulation Authority Act 1998</i> of the Commonwealth.	6
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APRA employee means a person appointed under section 45 of the APRA Act.	8
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ASIC means the Australian Securities and Investments Commission.	10
authorised APRA officer , in a provision of Part 4, means a person authorised under section 9 to perform or exercise the functions or powers of an authorised APRA officer under that provision.	11
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employee , in relation to AFIC or FINCOM, includes a person engaged by AFIC or FINCOM on a contract for services.	14
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enforcement power means a function or power relating to:	16
(a) the investigation of an offence, or	17
(b) the institution and carrying on of a prosecution for an offence, or	18
	19
(c) matters relating to an investigation or prosecution of an offence.	20
Financial Institutions Code means the Financial Institutions (NSW) Code.	21
	22
financial institutions legislation has the same meaning as in the AFIC Code.	23
	24
Financial Institutions (NSW) Code means the provisions applying before the transfer date because of section 8 of the <i>Financial Institutions (New South Wales) Act 1992</i> , and includes the Financial Institutions (NSW) Regulations.	25
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Financial Institutions (NSW) Regulations means the provisions applying before the transfer date because of section 9 of the <i>Financial Institutions (New South Wales) Act 1992</i> .	29
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	31
FINCOM means the New South Wales Financial Institutions Commission.	32
	33
FINCOM employee means a member of the staff of FINCOM employed under section 18 of the <i>Financial Institutions Commission Act 1992</i> , and includes the Chief Executive of FINCOM.	34
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fiscal bodies legislation has the same meaning as in section 3 of the AFIC Code. 1
2

Friendly Societies Code means the Friendly Societies (NSW) Code. 3

Friendly Societies (NSW) Code means the provisions applying before the transfer date because of section 5 of the *Friendly Societies (New South Wales) Act 1997*, and includes the Friendly Societies (NSW) Regulations. 4
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Friendly Societies (NSW) Regulations means the provisions applying before the transfer date because of section 6 of the *Friendly Societies (New South Wales) Act 1997*. 8
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FSR Act means the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth. 11
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FS(TB) Act means the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth. 13
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jurisdiction means a State or Territory. 15

relevant Commonwealth body means APRA or ASIC. 16

SSA means State Supervisory Authority. 17

transfer date means the date that, under section 3 (16) of the FSR Act, is specified as the transfer date for the purposes of that Act. 18
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4 Act to bind Crown 20

(1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities. 21
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(2) Nothing in this section makes the Crown in any of its capacities liable to be prosecuted for an offence. 24
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Part 2 Registration of certain entities as companies

5 Transferring financial institutions

- (1) On the transfer date, each transferring financial institution of this jurisdiction is taken, in accordance with Schedule 4 to the Corporations Law of New South Wales, to become registered as a company under that Law under the name under which the institution was registered under the previous governing Code immediately before the transfer date.
- (2) Subsection (1) applies even if the institution is an externally-administered body corporate immediately before the transfer date.
- (3) Registration under the Corporations Law of New South Wales of a transferring financial institution of this jurisdiction as a company does not create a new legal entity.
- (4) In this section, *previous governing Code* and *transferring financial institution of this jurisdiction* have the same respective meanings as they have in Schedule 4 to the Corporations Law.

**Part 3 Conferral of functions and powers on APRA and
 ASIC**

6 Conferral of functions and powers on APRA

- (1) APRA has the functions and powers conferred or expressed to be
conferred on it by or under this Act.
- (2) APRA has power to do acts in New South Wales in the performance
or exercise of any function or power conferred or expressed to be
conferred on APRA by or under a law of another jurisdiction
corresponding to this Act.

7 Conferral of functions and powers on ASIC

- (1) ASIC has the functions and powers conferred or expressed to be
conferred on it by or under this Act.
- (2) ASIC has power to do acts in New South Wales in the performance or
exercise of any function or power conferred or expressed to be
conferred on ASIC by or under a law of another jurisdiction
corresponding to this Act.

**Part 4 Authorised deposit-taking institutions and life
insurance companies: transfer of business****8 Words defined in FS(TB) Act**

Unless the contrary intention appears, words defined in the FS(TB) Act
have the same respective meanings in this Part.

9 Authorised APRA officer

- (1) APRA may, in writing, authorise a person who is an APRA board
member, or an APRA staff member, to perform or exercise the
functions or powers of an authorised APRA officer under a particular
provision of this Part.
- (2) The functions and powers necessary for the purposes of this section are
conferred on APRA.

10 Voluntary transfers

- (1) The purpose of this section is to facilitate voluntary transfers of
business under Part 3 of the FS(TB) Act for regulated bodies.
- (2) This section applies when a certificate of transfer issued under section
18 of the FS(TB) Act comes into force under Division 3 of Part 3 of
that Act.
- (3) The receiving body is taken to be the successor in law to the
transferring body, to the extent of the transfer.
- (4) In particular:
 - (a) if the transfer is a total transfer, all the assets and liabilities of
the transferring body become respectively the assets and
liabilities of the receiving body without any transfer,
conveyance or assignment, and
 - (b) if the transfer is a partial transfer, all the assets and liabilities of
the transferring body included in the list of assets and liabilities
specified in the statement of detail become respectively assets
and liabilities of the receiving body without any transfer,
conveyance or assignment, and

- (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body. 1
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- (5) If there is an approved section 20 statement in relation to the transfer that specifies: 4
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 - (a) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement, or 6
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 - (b) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism. 9
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11 Compulsory transfers 13

- (1) The purpose of this section is to facilitate compulsory transfers of business under Part 4 of the FS(TB) Act for regulated bodies. 14
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- (2) This section applies when a certificate of transfer issued under section 33 of the FS(TB) Act comes into force under Division 3 of Part 4 of that Act. 16
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- (3) The receiving body is taken to be the successor in law to the transferring body, to the extent of the transfer. 19
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- (4) In particular: 21
 - (a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment, and 22
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 - (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body included in the list, referred to in section 33 (2) (c) of the FS(TB) Act, included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment, and 26
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 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body. 32
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| (5) If the certificate of transfer includes provisions of a kind referred to in section 33 (3) of the FS(TB) Act specifying: | 1 |
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| (a) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with those provisions, or | 3 |
| | 4 |
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| (b) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism. | 6 |
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| (6) If there is an approved section 30 statement in relation to the transfer that specifies: | 10 |
| | 11 |
| (a) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement, or | 12 |
| | 13 |
| | 14 |
| (b) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism. | 15 |
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| 12 Certificates evidencing operation of Part | 19 |
| (1) An authorised APRA officer may, by a certificate in writing signed by the officer, certify any matter in relation to the operation or effect of this Part, and, in particular, may certify that: | 20 |
| | 21 |
| | 22 |
| (a) a particular asset of a transferring body has become a transferred asset of a receiving body, or | 23 |
| | 24 |
| (b) a particular liability of a transferring body has become a transferred liability of a receiving body. | 25 |
| | 26 |
| (2) For all purposes and in all proceedings, a certificate under subsection (1) is evidence of the matters certified. | 27 |
| | 28 |
| 13 Certificates in relation to land and interests in land | 29 |
| If: | 30 |
| (a) a receiving body becomes, under this Part, the owner of land, or of an interest in land, that is situated in New South Wales, and | 31 |
| | 32 |
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| (b) there is lodged with the Registrar-General a certificate that: | 34 |
| (i) is signed by an authorised APRA officer, and | 35 |
| (ii) identifies the land or interest, and | 36 |
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- (iii) states that the receiving body has, under this Part, become the owner of that land or interest. 1
 - the Registrar-General may: 2
 - (c) register or record the matter in the same manner as dealings in land or interests in land of that kind are registered or recorded, and 3
 - (d) deal with, and give effect to, the certificate. 4
- 14 **Certificates in relation to other assets** 5
- (1) If: 6
- (a) an asset (other than land or an interest in land) becomes, under this Part, an asset of a receiving body, and 7
 - (b) there is lodged with the person or authority who has, under the law, responsibility for keeping a register or record in respect of assets of that kind a certificate that: 8
 - (i) is signed by an authorised APRA officer, and 9
 - (ii) identifies the asset, and 10
 - (iii) states that the asset has, under this Part, become an asset of the receiving body. 11
- that person or authority may: 12
- (c) register or record the matter in the same manner as transactions in relation to assets of that kind are registered or recorded, and 13
 - (d) deal with, and give effect to, the certificate. 14
- (2) This section does not affect the operation of the Corporations Law. 15
- 15 **Documents purporting to be certificates** 16
- A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given. 17
- 16 **Relationship of Part with other instruments** 18
- (1) This Part has effect despite anything in a contract, deed, undertaking, agreement or other instrument. 19
- (2) Nothing done under this Part: 20
- (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong, or 21

- (b) places a receiving body, a transferring body or another person in breach of:
 - (i) a law of the State, or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information, or
- (c) releases a surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

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Clause 17 Financial Sector Reform (New South Wales) Bill 1999

Part 5 Repeals and transitional provisions

Division 1 Repeals

Part 5 Repeals and transitional provisions

Division 1 Repeals

17 Repeals

- (1) The following Acts are repealed:

Financial Institutions (New South Wales) Act 1992

Friendly Societies (New South Wales) Act 1997.

- (2) The *Financial Institutions Commission Act 1992* is repealed.

Division 2 Provisions relating to AFIC

Subdivision 1 AFIC to continue

18 AFIC continues to have certain powers

- (1) This section applies despite:

- (a) the repeal of the AFIC Act by the *Financial Sector Reform (Queensland) Act 1999* of Queensland, and
- (b) the repeal of the *Financial Institutions (New South Wales) Act 1992* and of the *Friendly Societies (New South Wales) Act 1997* by section 17 (1) of this Act.

- (2) While AFIC continues in existence under the *Financial Sector Reform (Queensland) Act 1999* of Queensland, AFIC has power:

- (a) to do any act in New South Wales that AFIC considers necessary or expedient to do for any of the purposes for which it continues in existence, and
- (b) to do any act in respect of a society that is or was registered under the Financial Institutions Code or the Friendly Societies Code that AFIC considers necessary or expedient to do for any of the purposes for which it continues in existence, and
- (c) to do any act that it is authorised to do by or under this Act.

19	Delegation of AFIC's powers	1
(1)	AFIC's board may delegate any of AFIC's powers under section 18 to an appropriately qualified employee of AFIC.	2 3
(2)	In subsection (1), <i>appropriately qualified</i> has the same meaning as in the <i>Financial Sector Reform (Queensland) Act 1999</i> of Queensland.	4 5
	Subdivision 2 Provisions about AFIC's staff	6 7
20	Definition	8
	In this Subdivision:	9
	<i>employees</i> of AFIC includes the executive director of AFIC.	10
21	Transfer of staff to APRA under transfer agreement	11
(1)	The Queensland Minister administering the <i>Financial Sector Reform (Queensland) Act 1999</i> of Queensland may enter into a transfer agreement under Division 2 of Part 1 of Schedule 8 to the FSR Act, that determines, or provides for determining, that particular employees of AFIC become APRA employees on a particular date, not being a date before the transfer date.	12 13 14 15 16 17
(2)	The transfer agreement has effect according to its terms.	18
22	Effect of transfer to APRA or Australian Public Service	19
(1)	This section applies if a person becomes an APRA employee under section 21.	20 21
(2)	This section also applies if:	22
(a)	a person is appointed to the Australian Public Service under section 81B (1) of the <i>Public Service Act 1922</i> of the Commonwealth on or after the transfer date, and	23 24 25
(b)	immediately before the appointment, the person was an employee of AFIC.	26 27
(3)	If the person is the executive director of AFIC, the executive director's appointment under the AFIC Code immediately ends.	28 29
(4)	If the person is another employee of AFIC, the employee's employment with AFIC immediately ends.	30 31

- (5) A person is not entitled to receive any payment or other benefit, whether under a contract or otherwise, because the person's appointment or employment ends under this section. 1
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23 Statement of accrued benefits and other details 4

- (1) Before an employee of AFIC becomes an APRA employee under section 21 or is appointed to the Australian Public Service as mentioned in section 22 (2), AFIC must give the person, and APRA or the Commonwealth Public Service Commissioner, a written statement. 5
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- (2) The statement must state particulars of the benefits to which the person has an accrued entitlement, the person's remuneration and the person's length of service with AFIC. 10
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Subdivision 3 Information may be given to APRA or ASIC 13
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24 Giving of information 15

- (1) This section applies to: 16
- (a) a director of AFIC's board, and 17
 - (b) an employee of AFIC, and 18
 - (c) a person appointed by AFIC to carry out duties under the fiscal bodies legislation, and 19
20
 - (d) a person who has been a person mentioned in paragraph (a), (b) or (c). 21
22
- (2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation. 23
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- (3) This section applies despite section 155 of the AFIC Code and section 477 of the Friendly Societies Code. 26
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Subdivision 4 Transfer of AFIC's assets and liabilities 28
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25 Transfer of assets and liabilities 30

- (1) The Queensland Minister administering the *Financial Sector Reform (Queensland) Act 1999* of Queensland may enter into a transfer agreement under Division 3 of Part 1 of Schedule 8 to the FSR Act 31
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connected with the transfer of AFIC's assets or liabilities to APRA or ASIC.

- (2) The transfer agreement has effect according to its terms.

Subdivision 5 Proceedings involving AFIC

26 Continuation and preservation of certain civil proceedings involving AFIC

- (1) This section applies to a proceeding:
- (a) whether or not it arose or arises under the fiscal bodies legislation, and
 - (b) regardless of where it arose or arises.
- (2) For the purposes of a proceeding commenced before the transfer date to which AFIC was a party immediately before that date, the State of Queensland is substituted for AFIC as a party to the proceeding.
- (3) For the purposes of a proceeding not commenced before the transfer date and which could if commenced after that date be brought against AFIC, or but for the commencement of section 17 (1) and the dissolution of AFIC, could have been brought against AFIC, the proceeding may instead be brought against the State of Queensland.
- (4) For the purposes of this section, evidence that would have been admissible for or against AFIC is admissible for or against the State of Queensland.
- (5) This section does not apply to a proceeding for an offence.

27 Continuation of certain offence proceedings

- (1) This section applies to a proceeding for an offence brought under section 63 of the AFIC Code by AFIC, or a person authorised in writing by AFIC, that commenced before the transfer date but that was not completed before that date.
- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of AFIC or the person authorised by AFIC; and APRA or ASIC may be substituted in the proceeding for AFIC or the person.
- (3) The functions and powers necessary for this section are conferred on APRA and ASIC.

Division 3 Provisions relating to FINCOM

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Subdivision 1 Dissolution of FINCOM

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28 Dissolution of FINCOM

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- (1) FINCOM and its Board are dissolved. 6
- (2) The members of the Board of FINCOM cease to hold office, and are 7
not entitled to any compensation for loss of office. 8

Subdivision 2 General

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29 Supervision Fund

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- (1) FINCOM must pay the money standing to the credit of the Supervision 12
Fund established under section 94 of the Financial Institutions Code to 13
such entities, in such amounts and at such times as the Minister 14
determines. 15
- (2) Before making a determination under this section, the Minister must 16
consult such representatives of the financial institutions industry and 17
other persons as the Minister considers appropriate. 18

30 Credit Unions Contingency Fund

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- (1) On the day before the transfer date, FINCOM must, under section 99A 20
of the Financial Institutions Code, distribute the whole of retained 21
earnings to the contribution accounts of credit unions. 22
- (2) For the purposes of subsection (1), section 99A (3) of the Financial 23
Institutions Code does not apply. 24
- (3) On or as soon as practicable after the transfer date, FINCOM must pay 25
to each credit union the amount standing to the credit union's credit in 26
the Credit Unions Contingency Fund immediately before the transfer 27
date, subject to any necessary adjustments. 28
- (4) Subsection (3) applies despite section 103 of the Financial Institutions 29
Code. 30

(5) In this section:	1
<i>contribution accounts</i> of credit unions means the parts of the Credit Unions Contingency Fund that, under section 98 (10) of the Financial Institutions Code, are treated as a deferred asset in the accounts of the credit unions.	2
<i>credit union</i> means a credit union under the Financial Institutions Code.	3
<i>retained earnings</i> has the same meaning as in section 99A of the Financial Institutions Code.	4
	5
31 Transitional arrangements regarding final report and audit of FINCOM	6
(1) The purpose of this section is to make provision for reports, financial statements and auditing concerning FINCOM's affairs in relation to the period beginning with the transfer date and ending with the date on which FINCOM is dissolved.	7
(2) The regulations may make provision for or with respect to the preparation and submission of a report of FINCOM's operations, the preparation and submission of financial statements relating to FINCOM, and the auditing of those statements and of the accounts to which they relate.	8
(3) This section does not affect any obligations imposed by or under the <i>Public Finance and Audit Act 1983</i> , the <i>Annual Reports (Statutory Bodies) Act 1984</i> or any other Act.	9
Subdivision 3 Provisions about FINCOM's staff	10
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32 Transfer of staff to APRA under transfer agreement	12
(1) The Minister may enter into a transfer agreement under Division 2 of Part 1 of Schedule 8 to the FSR Act that determines, or provides for determining, that particular FINCOM employees become APRA employees on a particular date.	13
(2) The transfer agreement has effect according to its terms.	14
33 Effect of transfer to APRA or Australian Public Service	15
(1) This section applies:	16
(a) if a person becomes an APRA employee under section 32, or	17

- (b) if:
 - (i) a person is appointed to the Australian Public Service under section 81B (1) of the *Public Service Act 1922* of the Commonwealth on or after the transfer date, and
 - (ii) immediately before the appointment, the person was a FINCOM employee.
- (2) The employee's employment with FINCOM immediately ends.
- (3) A person is not entitled to receive any payment or other benefit, whether under a contract or otherwise, because the person's appointment or employment ends under this section.

34 Statement of accrued benefits and other details

- (1) Before a FINCOM employee becomes an APRA employee under section 32 or is appointed to the Australian Public Service as mentioned in section 33 (1) (b) (i), FINCOM must give the person, and APRA or the Commonwealth Public Service Commissioner, a written statement.
- (2) The statement must state particulars of:
 - (a) the person's remuneration, and
 - (b) the person's accrued benefits and entitlements in respect of service with FINCOM and prior service recognised by FINCOM, and
 - (c) the person's length of service with FINCOM and the length of prior service recognised by FINCOM.

Subdivision 4 Information may be given to APRA or ASIC

35 Giving of information

- (1) This section applies to:
 - (a) a member of the Board of FINCOM, and
 - (b) a FINCOM employee, and
 - (c) a person appointed by FINCOM for the purpose of carrying out duties under the fiscal bodies legislation, and
 - (d) a person who has been a person mentioned in paragraph (a), (b) or (c).

- (2) A person to whom this section applies may disclose to APRA or ASIC information the person acquired while engaged in the administration of the fiscal bodies legislation. 1
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- (3) This section applies despite section 410 of the Financial Institutions Code and section 477 of the Friendly Societies Code. 4
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Subdivision 5 Transfer of FINCOM's assets and liabilities

36 Transfer of assets and liabilities

- (1) The Minister may enter into transfer agreements under Division 3 of Part 1 of Schedule 8 to the FSR Act connected with the transfer of FINCOM's assets or liabilities to APRA or ASIC. 8
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- (2) The transfer agreement has effect according to its terms. 12

Subdivision 6 Proceedings involving FINCOM

37 Continuation and preservation of civil proceedings involving FINCOM

- (1) For the purposes of a proceeding commenced before the transfer date to which FINCOM was a party immediately before that date, the State is substituted for FINCOM as a party to the proceeding. 15
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- (2) For the purposes of a proceeding not commenced before the transfer date and which could, if commenced after that date, be brought against FINCOM, or but for the commencement of section 17 (2), could have been brought against FINCOM, the proceeding may instead be brought against the State. 19
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- (3) For the purposes of this section, evidence that would have been admissible for or against FINCOM is admissible for or against the State. 24
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- (4) This section does not apply to a proceedings for an offence. 27

38 Continuation of certain offence proceedings

- (1) This section applies to a proceeding for an offence brought under section 404 of the Financial Institutions Code or section 471 of the Friendly Societies Code by FINCOM, or a person authorised in writing by FINCOM, that commenced before the transfer date but was not completed before that date. 28
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- (2) On and after the transfer date, the proceeding may continue to be prosecuted by either APRA or ASIC in place of FINCOM or the person authorised by FINCOM; and APRA or ASIC may be substituted in the proceeding for FINCOM or the person. 1
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- (3) The functions and powers necessary for this section are conferred on APRA and ASIC. 5
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Division 4 APRA's and ASIC's functions and powers under Codes 7
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39 Conferral of functions and powers relating to building societies, credit unions and friendly societies 10
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- (1) Either relevant Commonwealth body has the same enforcement powers relating to anything done or omitted to be done under a Code before the transfer date as AFIC or FINCOM had immediately before that date. 12
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- (2) For the purposes of subsection (1), a Code applies with all necessary changes. 16
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- (3) In this section: 18
Code means the AFIC Code, Financial Institutions Code or Friendly Societies Code. 19
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40 AFIC Code provisions 21

- (1) Part 8 of the AFIC Code (other than sections 50, 51, 55 and 58) and the other provisions of the Code relevant to that Part, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 17 (1) had not commenced. 22
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- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date. 26
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- (3) For the purposes of the application mentioned in subsection (1): 30
(a) a reference in the Code to AFIC is taken to be a reference to either relevant Commonwealth body, and 31
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- (b) a reference in the Code to a financial institution is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial institution under the Code, and
 - (c) in section 52 (1) of the Code, the words "the financial institutions scheme" are taken to be omitted and the words "investigating whether an offence against the fiscal bodies legislation has been committed" are taken to be substituted, and
 - (d) a reference in section 52 (1) (a) or (b) of the Code to an employee of AFIC or of a State supervisory authority is taken to be a reference to an employee of either relevant Commonwealth body, and
 - (e) section 52 (5) of the Code is taken to be omitted, and
 - (f) a reference in section 53 (1) or (2) of the Code to the executive director is taken to be a reference to either relevant Commonwealth body, and
 - (g) a reference in section 53 (5) of the Code to officers and employees of the State supervisory authorities is taken to be a reference to officers and employees of either relevant Commonwealth body, and
 - (h) section 63 (1A) and (1B) of the Code are taken to be omitted, and
 - (i) a reference in section 63 (2) of the Code to the Ministerial Council is taken to be a reference to the Minister administering this Act, and
 - (j) the Code applies with all other necessary changes.
- (4) This section does not limit section 39.
- 41 Financial Institutions Code provisions**
- (1) Subdivision 1A of Division 2 of Part 2 (other than sections 75, 79 and 82), Part 10 and sections 392, 397, 398 and 404 of the Financial Institutions Code, and the other provisions of the Code relevant to that Subdivision, that Part and those sections, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 17 (1) had not commenced.

- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date. 1
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- (3) For the purposes of the application mentioned in subsection (1): 5
- (a) a reference in the Code to the SSA is taken to be a reference to either relevant Commonwealth body, and 6
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- (b) a reference in the Code to a financial body is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a financial body under the Code, and 8
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- (c) a reference in the Code to a society is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a society under the Code, and 12
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- (d) in section 76 (1) of the Code, the words "the financial institutions legislation" are taken to be omitted and the words "investigating whether an offence against the financial institutions legislation has been committed" are taken to be substituted, and 16
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- (e) a reference in section 76 (1) (a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of either relevant Commonwealth body, and 21
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- (f) section 76 (5) of the Code is taken to be omitted, and 24
- (g) in the definition of *financial body to which this section applies* in section 397 (1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and 25
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- (h) section 397 (2) of the Code is taken to be omitted, and 28
- (i) in the definition of *financial body to which this section applies* in section 398 (1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and 29
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- (j) in the definition of *prescribed person* in section 398 (1) of the Code, paragraphs (a) and (b) are taken to be omitted, and 32
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- (k) section 398 (2) of the Code is taken to be omitted, and 34
- (l) a reference in section 404 (2) of the Code to the Minister is taken to be a reference to the Minister administering this Act, and 35
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(m) the Code applies with all other necessary changes.

(4) This section does not limit section 39.

42 Financial Institutions Code provisions as applied under section 40 of AFIC Code

(1) The following provisions continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 17 (1) had not commenced:

(a) section 40 of the AFIC Code to the extent it applies the relevant provisions.

(b) the relevant provisions as applied under section 40 of the AFIC Code.

(c) the other provisions of the AFIC Code and the Financial Institutions Code relevant to section 40 of the AFIC Code and the relevant provisions.

(2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date.

(3) For the purposes of the application mentioned in subsection (1):

(a) a reference in section 40 of the AFIC Code or in section 5 of the AFIC Regulations to a special services provider is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a special services provider under that Code, and

(b) a reference in section 40 of the AFIC Code or in section 5 of the AFIC Regulations to AFIC is taken to be a reference to either relevant Commonwealth body, and

(c) in section 76 (1) of the Financial Institutions Code, the words "the financial institutions legislation" are taken to be omitted and the words "investigating whether an offence against the financial institutions legislation has been committed" are taken to be substituted, and

(d) section 76 (5) of the Financial Institutions Code is taken to be omitted, and

- (e) in the definition of *financial body to which this section applies* in section 397 (1) of the Financial Institutions Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and 1
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- (f) section 397 (2) of the Financial Institutions Code is taken to be omitted, and 4
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- (g) in the definition of *financial body to which this section applies* in section 398 (1) of the Financial Institutions Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and 6
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- (h) in the definition of *prescribed person* in section 398 (1) of the Financial Institutions Code, paragraphs (a) and (b) are taken to be omitted, and 9
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- (i) section 398 (2) of the Financial Institutions Code is taken to be omitted, and 12
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- (j) a reference in section 404 (2) of the Financial Institutions Code to the Minister is taken to be a reference to the Minister administering this Act, and 14
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16
- (k) the AFIC Code and the Financial Institutions Code apply with all other necessary changes. 17
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- (4) This section does not limit section 39. 19
- (5) In this section: 20
 - relevant provisions* means Subdivision 1A of Division 2 of Part 2 (other than sections 75, 79 and 82), Part 10 and sections 392, 397, 398 and 404 of the Financial Institutions Code. 21
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43 Friendly Societies Code provisions 24

- (1) Subdivision 2 of Division 2 of Part 2 (other than sections 31, 35 and 38), Divisions 3 and 4 of Part 4A, Part 10 and sections 460, 465, 466 and 471 of the Friendly Societies Code, and the other provisions of the Code relevant to that Subdivision, those Divisions, that Part or those sections, continue to apply on and after the transfer date in relation to anything done or omitted to be done before that date as if section 17 (1) had not commenced. 25
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- (2) Despite subsection (1), a provision, or part of a provision, applying under that subsection that creates an offence is not limited in its application to anything done or omitted to be done before the transfer date. 32
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- (3) For the purposes of the application mentioned in subsection (1):
- (a) a reference in the Code to the SSA is taken to be a reference to either relevant Commonwealth body, and
 - (b) a reference in the Code to a society is taken to be a reference to an entity that on the transfer date is a company under the Corporations Law and that, immediately before that date, was a society under the Code, and
 - (c) in section 32 (1) of the Code, the words "the friendly societies legislation" are taken to be omitted and the words "investigating whether an offence against the friendly societies legislation has been committed" are taken to be substituted, and
 - (d) a reference in section 32 (1) (a) or (b) of the Code to an employee of the SSA is taken to be a reference to an employee of either relevant Commonwealth body, and
 - (e) section 32 (4) of the Code is taken to be omitted, and
 - (f) in the definition of *society to which this section applies* in section 465 (1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and
 - (g) section 465 (2) of the Code is taken to be omitted, and
 - (h) in the definition of *society to which this section applies* in section 466 (1) of the Code, paragraphs (a), (b), (d), (e) and (f) are taken to be omitted, and
 - (i) in the definition of *prescribed person* in section 466 (1) of the Code, paragraphs (a) and (b) are taken to be omitted, and
 - (j) section 466 (2) of the Code is taken to be omitted, and
 - (k) a reference in section 471 (2) of the Code to the Minister is taken to be a reference to the Minister administering this Act, and
 - (l) the Code applies with all other necessary changes.
- (4) This section does not limit section 39.

44 Conferral of functions and powers

The functions and powers necessary for the purposes of this Division are conferred on APRA and ASIC.

Division 5 Miscellaneous

45 Dormant accounts

(1) This section applies if:

(a) before the transfer date a society transferred an amount from a person's deposit account with the society to another account under section 138A (4) (c) of the Financial Institutions Code, and

(b) immediately before the transfer date the amount had not been lawfully totally paid out as mentioned in section 138A (6) (b) of that Code.

(2) Immediately before the transfer date the amount remaining in the other account for the person is taken to have been transferred back to the person's deposit account as if it had never been classified as a dormant account or closed under section 138A of the Financial Institutions Code.

46 Withdrawable shares in building societies

(1) A person who, immediately before the transfer date, was entitled to a withdrawable share of a building society, is deemed to have become immediately before that date the holder of a deposit with the building society of an amount equal to the amount paid up on the share.

(2) The holder of the deposit continues to have the same voting or other rights (if any) as the holder of the withdrawable share had.

(3) Any withdrawable shares of a building society on issue immediately before the transfer date and converted to deposit under subsection (1) are deemed to have been cancelled.

(4) This section applies subject to such standards or rules about the conversion of withdrawable shares to deposits as are determined by FINCOM.

(5) In this section:

building society means a transferring financial institution of this jurisdiction (within the meaning of Part 1 of Schedule 4 to the Corporations Law) authorised under the Financial Institutions Code to operate as a building society immediately before the transfer date.

withdrawable share means a withdrawable share within the meaning of the Financial Institutions Code.

47 Matters in relation to dissolved or deregistered societies

- (1) This section applies if, before the transfer date, a society's registration has been cancelled under:
 - (a) the Financial Institutions Code, or
 - (b) the Friendly Societies Code, or
 - (c) the *Co-operation Act 1923*, or
 - (d) the *Permanent Building Societies Act 1967* or a corresponding previous enactment, or
 - (e) the *Credit Union Act 1969* or a corresponding previous enactment, or
 - (f) the *Friendly Societies Act 1989* or a corresponding previous enactment, or
 - (g) the provisions of any other law prescribed by the regulations.
- (2) If property vested in ASIC under section 36 was held by a society whose registration has been cancelled as mentioned in subsection (1) and was so held on trust, ASIC may:
 - (a) continue to act as trustee, or
 - (b) apply to a court for the appointment of a new trustee.
- (3) If a society referred to in subsection (2) had property that it did not hold on trust, ASIC may:
 - (a) dispose of or deal with the property as it sees fit, and
 - (b) apply any money it so receives:
 - (i) to defray expenses incurred by ASIC in exercising its powers in relation to the society, and
 - (ii) to make payments authorised by subsection (4).

and must deal with the rest (if any) under Part 9.7 of the Corporations Law, which is deemed to apply as if the society had been a company.
- (4) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in ASIC.

- (5) ASIC's obligation under subsection (4) is limited to satisfying the liabilities out of the society's property to the extent that the property is properly available to satisfy those liabilities. 1
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- (6) ASIC must keep: 4
- (a) a record of property that it knows is vested in it under section 36, and 5
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- (b) a record of its dealings with that property, and 7
- (c) account of all money received from those dealings, and 8
- (d) all accounts, vouchers, receipts and papers relating to the property and that money. 9
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- (7) ASIC may do an act on behalf of the society or the society's liquidator if ASIC is satisfied the society or liquidator would be bound to do the act if the society still existed. 11
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- (8) A person may recover from an insurer of the society an amount that was payable to the society under the insurance contract if: 14
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- (a) the society had a liability to the person, and 16
- (b) the insurance contract covered the liability immediately before the cancellation of the registration. 17
18
- (9) ASIC may establish a society as a company if ASIC is satisfied that the society's registration should not have been cancelled. 19
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- (10) A court may make an order that ASIC establish a society as a company if: 21
22
- (a) an application for so establishing a society is made to the court: 23
- (i) by a person aggrieved by the cancellation of the society's registration, or 24
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- (ii) by a former liquidator of the society, and 26
- (b) the court is satisfied that it is just that the society be so established. 27
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- (11) If the court makes an order under subsection (10), it may: 29
- (a) validate anything done between the cancellation of the society's registration and its establishment as a company, and 30
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- (b) make any other order it considers appropriate. 32

- (12) ASIC must give notice of the establishment of a company in the Commonwealth of Australia Gazette and, if it exercises its power under subsection (9) in response to an application by a person, it must also give notice to the applicant. 1
- (13) If a society is established as a company, the society is taken to have continued in existence until the transfer date and to be a transferring financial institution of this jurisdiction as referred to in Part 2. 2
- (14) A person who was a director of a society immediately before its registration was cancelled becomes a director of the company as which it is established under this section as from the time when ASIC or a court so establishes it. 3
- (15) Any property of the society that is still vested in ASIC reverts in the company so established and, if the society held particular property subject to a security or other interest or claim, the society takes the property subject to that interest or claim. 4
- (16) The functions and powers that are necessary for the purposes of this section are conferred on ASIC. 5
- (17) In this section: 6
- society* means an entity that was: 7
- (a) a society under the Financial Institutions Code or the Friendly Societies Code, or 8
- (b) one of the following: 9
- (i) a permanent building society registered under the *Permanent Building Societies Act 1967* or a corresponding previous enactment, or 10
- (ii) a non-terminating building society registered under the *Co-operation Act 1923*, or 11
- (iii) a society mentioned in the Second Schedule to the *Co-operation Act 1923*, or 12
- (c) a credit union under the *Credit Union Act 1969* or a corresponding previous enactment, or 13
- (d) a friendly society under the *Friendly Societies Act 1989* or a corresponding previous enactment, or 14
- (e) an entity of a prescribed class or description. 15

48 Mergers and transfers of engagements commenced under Financial Institutions (NSW) Code	1
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(1) This section applies if a transfer of engagements or merger commenced before the transfer date under Part 7 of the Financial Institutions (NSW) Code and immediately before that date has not been completed, or been given effect.	3
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(2) The transfer of engagements or merger may be completed, or be given effect, under Part 7 of the Financial Institutions (NSW) Code on or after the transfer date and, for that purpose, that Part, and other provisions of the Code relevant to that Part, continue to apply as if section 17 (1) had not commenced.	7
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(3) For the purpose of the application mentioned in subsection (2):	12
(a) a reference in the Financial Institutions (NSW) Code to the SSA is taken to be a reference to either relevant Commonwealth body, and	13
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(b) a reference in the Financial Institutions (NSW) Code to the SSA of a participating State is taken to be a reference to either relevant Commonwealth body, and	16
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(c) the Financial Institutions (NSW) Code applies with all other necessary changes.	19
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(4) For the purposes of this section, a transfer of engagements was commenced before the transfer date under Part 7 of the Financial Institutions (NSW) Code if, before that date:	21
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(a) one of the following conditions was satisfied in relation to each society or foreign society involved:	24
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(i) the transfer was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code,	26
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(ii) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the transfer may be approved by the board of the society or foreign society, or	29
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(b) in a case where each entity involved in the transfer is a society, FINCOM gave a direction, under the Financial Institutions (NSW) Code, requiring the transfer.	33
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(5) For the purposes of this section, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each society or foreign society involved:	36
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- (a) the merger was approved by a special resolution of the society or foreign society, in accordance with the relevant Financial Institutions Code. 1
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- (b) the relevant SSA made a determination, under the relevant Financial Institutions Code, that the merger may be approved by the board of the society or foreign society. 4
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- (6) The functions and powers of the SSA that are necessary for the purposes of this section are conferred on each relevant Commonwealth body. 7
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- (7) In this section: 10
- financial institutions agreement*** has the same meaning as in section 3 of the AFIC Code. 11
12
- foreign society*** means a body corporate that, before the transfer date, was a society under the financial institutions legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Financial Institutions (NSW) Code. 13
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- participating State*** means a State that, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated. 17
18
19
- relevant Financial Institutions Code*** means: 20
- (a) in relation to a society, the Financial Institutions (NSW) Code, or 21
22
- (b) in relation to a foreign society, the law of another participating State corresponding to the Financial Institutions (NSW) Code. 23
24
- relevant SSA*** means: 25
- (a) in relation to a society, FINCOM, or 26
- (b) in relation to a foreign society, the State supervisory authority under the financial institutions legislation of the other participating State. 27
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29
- society*** means an entity that, immediately before the transfer date, was a society under the Financial Institutions (NSW) Code. 30
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- 49 Mergers and transfers of engagements commenced under Friendly Societies (NSW) Code** 1
2
- (1) This section applies if a transfer of engagements or merger commenced 3
before the transfer date under Part 7 of the Friendly Societies (NSW) 4
Code and immediately before that date has not been completed, or 5
been given effect. 6
- (2) The transfer of engagements or merger may be completed, or be given 7
effect, under Part 7 of the Friendly Societies (NSW) Code on or after 8
the transfer date and, for that purpose, that Part, and other provisions 9
of the Code relevant to that Part, continue to apply as if section 17 (1) 10
had not commenced. 11
- (3) For the purposes of the application mentioned in subsection (2): 12
- (a) a reference in the Friendly Societies (NSW) Code to the SSA 13
is taken to be a reference to either relevant Commonwealth 14
body, and 15
- (b) a reference in the Friendly Societies (NSW) Code to the SSA 16
of a participating State is taken to be a reference to either 17
relevant Commonwealth body, and 18
- (c) the Friendly Societies (NSW) Code applies with all other 19
necessary changes. 20
- (4) For the purposes of this section, a transfer of engagements was 21
commenced before the transfer date under Part 7 of the Friendly 22
Societies (NSW) Code if, before that date: 23
- (a) one of the following conditions was satisfied in relation to each 24
society or foreign society involved: 25
- (i) the transfer was approved by a special resolution of the 26
society or foreign society, in accordance with the 27
relevant Friendly Societies Code. 28
- (ii) the relevant SSA made a determination, under the 29
relevant Friendly Societies Code, that the transfer may 30
be approved by the board of the society or foreign 31
society, or 32
- (b) in a case where each entity involved in the transfer is a society, 33
FINCOM gave a direction, under the Friendly Societies (NSW) 34
Code, requiring the transfer. 35
- (5) For the purposes of this section, a merger was commenced before the 36
transfer date if, before that date, one of the following conditions was 37
satisfied in relation to each society or foreign society involved: 38

(a)	the merger was approved by a special resolution of the society or foreign society, in accordance with the relevant Friendly Societies Code.	1 2 3
(b)	the relevant SSA made a determination, under the relevant Friendly Societies Code, that the merger may be approved by the board of the society or foreign society.	4 5 6
(6)	The functions and powers of the SSA that are necessary for the purposes of this section are conferred on each relevant Commonwealth body.	7 8 9
(7)	In this section:	10
	<i>financial institutions agreement</i> has the same meaning as in section 3 of the AFIC Code.	11 12
	<i>foreign society</i> means a body corporate that, before the transfer date, was a society under the friendly societies legislation of another participating State, whether or not it was registered as a foreign society under Part 11 of the Friendly Societies (NSW) Code.	13 14 15 16
	<i>friendly societies legislation</i> has the same meaning as in section 8A of the AFIC Code.	17 18
	<i>participating State</i> means a State which, immediately before the transfer date, was a party to the financial institutions agreement and in which, immediately before that date, the foreign society was incorporated.	19 20 21 22
	<i>relevant Friendly Societies Code</i> means:	23
(a)	in relation to a society, the Friendly Societies (NSW) Code, or	24
(b)	in relation to a foreign society, the law of another participating State corresponding to the Friendly Societies (NSW) Code.	25 26
	<i>relevant SSA</i> means:	27
(a)	in relation to a society, FINCOM, or	28
(b)	in relation to a foreign society, the State supervisory authority under the friendly societies legislation of the other participating State.	29 30 31
	<i>society</i> means an entity that, immediately before the transfer date, was a society under the Friendly Societies (NSW) Code.	32 33
50	Australian Financial Institutions Appeals Tribunal	34
(1)	This section applies on the transfer date.	35

- (2) The Australian Financial Institutions Appeals Tribunal established under section 8 of the AFIC Act ceases to exist by reason of the *Financial Sector Reform (Queensland) Act 1999* of Queensland. 1
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- (3) All applications made to the Australian Financial Institutions Appeals Tribunal under a Code for review of a decision that have not been decided are taken to have been withdrawn. 4
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6
- (4) In this section: 7
Code means the AFIC Code, Financial Institutions Code or Friendly Societies Code. 8
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Division 6 State taxes 10
11

51 Exemption from State taxes 12

- (1) No duty or other tax is chargeable under any Act in respect of anything effected by or done under this Act. 13
14
- (2) Subsection (1) does not apply to Part 4. 15

Division 7 References to building societies, credit unions and friendly societies 16
17
18

52 Building societies and credit unions 19

Unless the contrary intention appears and subject to the regulations, a reference in an Act (other than this Act) or a statutory instrument to a building society or credit union has effect, on and after the transfer date, as a reference to an authorised deposit-taking institution. 20
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53 Friendly societies 24

Unless the contrary intention appears and subject to the regulations, a reference in an Act (other than this Act) or a statutory instrument to a friendly society has effect, on and after the transfer date, as reference to: 25
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27
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- (a) a body that, immediately before the transfer date, was a society within the meaning of the Friendly Societies Code, or 29
30
- (b) a body that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth. 31
32

Division 8 Savings or transitional regulations**54 Savings or transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Financial Sector Reform (New South Wales) Act 1999

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

- (4) Without limiting subsection (1), any such regulation may make provision for or with respect to the construction of references in any Act, statutory instrument or other document of any kind to:

(a) any Act repealed by this Act or any provision of any such Act, or

(b) the AFIC Code, the AFIC (NSW) Code, the AFIC (NSW) Regulations or any provision of any such Code or Regulations, or

(c) the Financial Institutions Code, the Financial Institutions (NSW) Code, the Financial Institutions (NSW) Regulations or any provision of any such Code or Regulations, or

(d) the Friendly Societies Code, the Friendly Societies (NSW) Code, the Friendly Societies (NSW) Regulations or any provision of any such Code or Regulations, or

(e) a previous law that corresponds with any such Act, Code or Regulations, or

(f) a law of another State or Territory that corresponds with any such Act, Code or Regulations, or

(g) AFIC or FINCOM, or

Clause 54 Financial Sector Reform (New South Wales) Bill 1999

Part 5 Repeals and transitional provisions

Division 8 Savings or transitional regulations

- | | | |
|-----|---|---|
| (h) | building societies, credit unions or friendly societies, or | 1 |
| (i) | any other entity referred to in any such Act, Code or Regulations, or | 2 |
| | | 3 |
| (j) | any similar matters. | 4 |

Part 6 Amendments1
2**55 Amendments**

3

Each Act specified in a Schedule to this Act is amended as set out in that Schedule.

4
5**Part 7 Miscellaneous**

6

56 Delegation

7

The Minister may delegate his or her functions or powers under this Act to any person, other than this power of delegation.

8
9**57 Regulations**

10

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act

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12
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**Schedule 1 Amendment of Corporations (New South
Wales) Act 1990 No 83 arising from
changes to Corporations Law before 1999**

(Section 55)

[1] The whole Act

Omit "Australian Securities Commission" wherever occurring.
Insert instead "Australian Securities and Investments Commission".

[2] The whole Act

Omit "ASC" wherever occurring. Insert instead "ASIC".

[3] Part 6 (section 21) Accounting standards

Omit the Part.

**[4] Section 60 Interpretation of some expressions in the ASIC Law, and the
ASIC Regulations, of New South Wales**

Omit "section 260" from the definition of *affairs* in section 60 (1).
Insert instead "section 246AA".

[5] Section 60 (1)

Omit "accounts or accounting records" from paragraph (b) of the definition
of *books*.
Insert instead "financial reports or financial records".

[6] Part 13, Division 3 (section 93 Exemptions from Part 7.12 etc)

Omit the Division.

**[7] Section 97 Certain transfers by companies not to restrict reduction of
share capital**

Insert at the end of the section:

- (2) Subsection (1) does not apply to a transfer made on or after the
commencement of Schedule 1 [7] to the *Financial Sector
Reform (New South Wales) Act 1999*.

Schedule 2 Amendment of other Acts

	1
	2
(Section 55)	3
2.1 Financial Institutions Commission Act 1992 No 47	4
	5
[1] Section 33 Delegation of functions	6
Insert at the end of section 33 (4) (d):	7
. or	8
(e) the Australian Prudential Regulation Authority.	9
	10
[2] Section 33 (6)	11
Insert after section 33 (5):	12
	13
(6) Nothing in this Act prevents the exercise, by officers or delegates of the Australian Prudential Regulation Authority, of functions or powers delegated under this section to the Authority.	14
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2.2 Interpretation Act 1987 No 15	18
	19
[1] Section 21 Meaning of commonly used word and expressions	20
Omit the definitions of <i>AFIC (NSW) Code</i> , <i>AFIC (NSW) Regulations</i> , <i>building society</i> , <i>credit union</i> , <i>Financial Institutions (NSW) Code</i> , <i>Financial Institutions (NSW) Regulations</i> , <i>Friendly Societies (NSW) Code</i> , <i>Friendly Societies (NSW) Regulations</i> and <i>friendly society</i> from section 21 (1).	21
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[2] Section 21 (1)	27
Omit the definitions of <i>ASC Law</i> and <i>ASC Regulations</i> from section 21 (1).	28
Insert instead:	29
	30
<i>ASIC Law</i> and <i>ASIC Regulations</i> have the meaning provided for by Part 11 of the <i>Corporations (New South Wales) Act 1990</i> . A reference to <i>ASC Law</i> or <i>ASC Regulations</i> is taken to be a reference to ASIC Law or ASIC Regulations respectively.	31
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Financial Sector Reform (New South Wales) Bill 1999

Schedule 2 Amendment of other Acts

[3] Section 21 (1)

Insert in alphabetical order:

authorised deposit-taking institution or *ADI* means an
authorised deposit-taking institution within the meaning of the
Banking Act 1959 of the Commonwealth.

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[4] Section 68 References to amended Acts and instruments

Omit "ASC" from section 68 (4) (a) (v). Insert instead "ASIC".

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