

FIRST PRINT

**FINANCIAL INSTITUTIONS (NEW SOUTH WALES)
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Financial Institutions Commission Bill 1992 is cognate with this Bill.

The object of this Bill is to apply as laws of New South Wales certain laws of Queensland relating to the regulation of certain State-based financial institutions (permanent building societies, credit unions and non-terminating building societies) and industry credit providers.

The applied laws will replace the Permanent Building Societies Act 1967 and the Credit Union Act 1969 of the State.

The Bill forms part of a legislative scheme that involves the enactment of Bills by the States, the ACT and the Northern Territory. The scheme is based on an agreement reached by a meeting of Heads of Government on 22 November 1991 in Adelaide.

The Bill provides for the following:

- the application as laws of New South Wales of the AFIC Code and the Financial Institutions Code of Queensland, and the regulations in force for the purposes of those Codes;
 - supporting administrative provisions for the conferral of functions and jurisdiction on the Australian Financial Institutions Commission, the Australian Financial Institutions Appeals Tribunal and the Queensland Supreme Court;
 - declaring the New South Wales Financial Institutions Commission to be the State Supervisory Authority ("SSA") for New South Wales;
 - matters pertaining to fees, levies, contributions and loans;
 - special transitional arrangements concerning the Credit Unions Contingency Fund and the Credit Union Savings Reserve Board under the Credit Union Act 1969;
 - consequential repeals and amendments to other Acts;
 - savings and transitional arrangements flowing from those repeals and amendments.
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PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 contains definitions.

Clause 4 provides that a reference to a Queensland Act is a reference to the Act as amended and in force for the time being.

PART 2—AFIC (NSW) CODE AND AFIC (NSW) REGULATIONS

Clause 5 provides that the AFIC Code set out in the Australian Financial Institutions Commission Act 1992 ("the AFIC Act") of Queensland applies as a law of New South Wales and may be referred to as the AFIC (NSW) Code.

Clause 6 provides that regulations made for the purposes of the AFIC Code in Queensland apply as regulations in force for the purposes of the AFIC (NSW) Code and may be referred to as the AFIC (NSW) Regulations.

Clause 7 contains provisions that enable certain expressions in the AFIC (NSW) Code and the AFIC (NSW) Regulations to have meanings appropriate for New South Wales.

PART 3—FINANCIAL INSTITUTIONS (NSW) CODE AND FINANCIAL INSTITUTIONS (NSW) REGULATIONS

Clause 8 provides that the Financial Institutions Code set out in the Financial Institutions Act of Queensland applies as a law of New South Wales and may be referred to as the Financial Institutions (NSW) Code.

Clause 9 provides that regulations made for the purposes of the Financial Institutions Code in Queensland apply as regulations in force for the purposes of the Financial Institutions (NSW) Code and may be referred to as the Financial Institutions (NSW) Regulations.

Clause 10 contains provisions that enable certain expressions in the Financial Institutions (NSW) Code and the Financial Institutions (NSW) Regulations to have meanings appropriate for New South Wales.

PART 4—CONFERRAL OF FUNCTIONS AND JURISDICTION

Clause 11 provides that AFIC has the functions and powers in New South Wales that are expressed to be conferred on it under the scheme legislation (i.e. the applied Codes and Regulations).

Clause 12 provides that the Australian Financial Institutions Appeals Tribunal (established under the Queensland AFIC Act) has the functions and powers in New South Wales that are expressed to be conferred on it under the scheme legislation.

Clause 13 confers jurisdiction on the Queensland Supreme Court in respect of certain appeals and references under the scheme legislation.

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PART 5—STATE SUPERVISORY AUTHORITY

Clause 14 provides that the proposed New South Wales Financial Institutions Commission is the State Supervisory Authority ("the SSA") for New South Wales.

PART 6—IMPOSITION OF FEES AND OTHER AMOUNTS

Clause 15 imposes the fees that are prescribed by the Regulations under the applied Codes.

Clause 16 imposes requirements for various levies, contributions and loans that are required under the scheme legislation.

PART 7—GENERAL

Clause 17 provides that the scheme legislation binds the Crown.

Clause 18 imposes obligations on the Premier to respond to a report from AFIC as to the performance of the SSA.

Clause 19 confers a regulation-making power to enable regulations to be made varying the effect in New South Wales of amendments made to the applied Codes. These regulations require the approval of the Ministerial Council and are intended to allow necessary local variations to be accommodated.

Clause 20 varies the application of the applied Codes in New South Wales to reflect local variations in matters concerning criminal procedure.

Clause 21 provides that fees, fines and penalties paid under the scheme legislation are to be paid to the State.

**PART 8—SPECIAL PROVISIONS CONCERNING CREDIT UNIONS
CONTINGENCY FUND ETC.**

Clause 22 contains definitions for the purposes of the proposed Part.

Clause 23 requires money standing to the credit of the Credit Union Savings Reserve Fund ("the SR Fund") under the existing Credit Union Act 1969 to be transferred to the Credit Unions Contingency Fund ("the Contingency Fund") set up under the proposed Financial Institutions (NSW) Code. The liabilities of the SR Fund are also transferred to the Contingency Fund.

Clause 24 enables refunds to be paid out of the Contingency Fund to credit unions which have contributed too much. This parallels an existing provision of the current Credit Union Act 1969.

Clause 25 enables dividends to be paid to credit unions out of the Contingency Fund if the capital amount in the Fund is sufficient.

Clause 26 transfers the assets and liabilities of the Credit Union Savings Reserve Board to the proposed Financial Institutions Commission.

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PART 9—SAVINGS, TRANSITIONAL AND CONSEQUENTIAL

Clause 27 deals with interpretation of expressions used in the proposed Part.

Clause 28 provides for the continuation under the new scheme of mergers begun under the existing law.

Clause 29 provides for the continuation under the new scheme of voluntary transfers of engagements begun under the existing law.

Clause 30 provides for the continuation under the new scheme of directed transfers of engagements begun under the existing law.

Clause 31 continues the operation of directions given under the existing law to suspend the operations of a financial institution.

Clause 32 ensures continuity of appointment for an administrator appointed for a financial institution under the existing law.

Clause 33 enables the SSA to instigate proceedings under the existing law in relation to the financial institutions to be covered by the new scheme.

Clause 34 provides for the continuation of investigations commenced under the existing law.

Clause 35 provides for the continuation of special meetings or inquiries commenced under the existing law.

Clause 36 continues certain exemptions that enable certain bodies to use the expression "credit union" or "building society" in their names.

Clause 37 contains a general savings and transitional provision to continue the effect of actions taken under the existing law.

Clause 38 empowers the making of savings and transitional regulations.

Clause 39 repeals the Acts that are to be replaced by the scheme legislation.

Clause 40 gives effect to Schedule 1.

Schedule 1 makes consequential amendments to various laws.

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BILL 1992**

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

**FINANCIAL INSTITUTIONS (NEW SOUTH WALES) BILL
1992**

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No. , 1992

A BILL FOR

An Act to make provision for a uniform legislative scheme for certain financial institutions, to amend certain Acts and for other purposes.

See also Financial Institutions Commission Bill 1992.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Financial Institutions (New South
5 Wales) Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by
proclamation.

Definitions

- 10 3. In this Act:
“AFIC” means the Australian Financial Institutions Commission
established by the AFIC Act;
“AFIC Act” means the Australian Financial Institutions Commission
Act 1992 of Queensland;
15 “AFIC (NSW) Code” means the provisions applying because of
section 5;
“AFIC (NSW) Regulations” means the provisions applying because
of section 6;
20 “Appeals Tribunal” means the Australian Financial Institutions
Appeals Tribunal established under the AFIC Act;
“Financial Institutions Act” means the Financial Institutions
(Queensland) Act 1992 of Queensland;
“financial institutions agreement” has the same meaning as in the
AFIC (NSW) Code;
25 “Financial Institutions (NSW) Code” means the provisions
applying because of section 8;
“Financial Institutions (NSW) Regulations” means the provisions
applying because of section 9;
30 “Ministerial Council” means the Ministerial Council established
under the financial institutions agreement;
“scheme legislation of New South Wales” means:
(a) this Act and regulations under this Act; and
(b) the AFIC (NSW) Code; and
(c) the AFIC (NSW) Regulations; and

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- (d) the Financial Institutions (NSW) Code; and
- (e) the Financial Institutions (NSW) Regulations.

References to Queensland Acts

4. In this Act, a reference to a Queensland Act includes a reference to:

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

PART 2—AFIC (NSW) CODE AND AFIC (NSW) REGULATIONS

Application in New South Wales of the AFIC Code

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

- (a) applies as a law of New South Wales; and
- (b) as so applying may be referred to as the AFIC (NSW) Code.

Application of regulations

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

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

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

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

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- (a) operates to the advantage of a person (other than the State or an authority of the State) by:
- (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
- 5 (b) does not operate to the disadvantage of another person (other than the State or an authority of the State) by:
- (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.
- (4) Subsection (3) does not affect any other operation that the provision
- 10 has because of subsection (2) or otherwise.

Interpretation of some expressions in the Code and Regulations

7. (1) In the AFIC (NSW) Code and the AFIC (NSW) Regulations:
- "Corporations Law" and "Corporations Regulations" have the meaning provided for by Part 3 of the Corporations (New South
- 15 Wales) Act 1990;
- "Financial Institutions Code" means the Financial Institutions (NSW) Code;
- "Magistrate" means a Magistrate appointed under the Local Courts Act 1982;
- 20 "the Code" means the AFIC (NSW) Code;
- "this State" means New South Wales.

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

25 **PART 3—FINANCIAL INSTITUTIONS (NSW) CODE AND FINANCIAL INSTITUTIONS (NSW) REGULATIONS**

Application in New South Wales of the Financial Institutions Code

8. The Financial Institutions Code set out in section 30 of the Financial Institutions Act as in force for the time being:
- 30 (a) applies as a law of New South Wales; and
- (b) as so applying may be referred to as the Financial Institutions (NSW) Code.

Application of regulations

9. (1) The regulations in force for the time being under Part 3 of the
- 35 Financial Institutions Act:

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

(2) Subject to subsection (3) of this section, where regulations under Part 3 of the Financial Institutions Act take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette under section 28A of the Acts Interpretation Act 1954 of Queensland, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Financial Institutions Act from the specified day. 5 10

(3) To the extent that a provision of the Financial Institutions (NSW) Regulations is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision: 15

- (a) operates to the advantage of a person (other than the State or an authority of the State) by:

- (i) increasing the person's rights; or
- (ii) relieving the person of liabilities; and

- (b) does not operate to the disadvantage of another person (other than the State or an authority of the State) by: 20

- (i) decreasing the person's rights; or
- (ii) imposing liabilities on the person.

(4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise. 25

Interpretation of some expressions in the Code and Regulations

10. (1) In the Financial Institutions (NSW) Code and the Financial Institutions (NSW) Regulations:

"AFIC Code" means the AFIC (NSW) Code;

"continuing association" means: 30

- (a) an association of credit unions; or
- (b) a union of associations of credit unions,

registered under the Credit Union Act 1969 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code; 35

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- “**continuing association of credit unions**” means an association of credit unions registered under the Credit Union Act 1969 immediately before the commencement of section 428 of the Financial Institutions (NSW) Code;
- 5 “**continuing building society**” means:
- (a) a permanent building society registered under the Permanent Building Societies Act 1967 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code; and
- 10 (b) a non-terminating building society registered under the Co-operation Act 1923 immediately before that commencement; and
- (c) a society mentioned in the Second Schedule to the Co-operation Act 1923 immediately before that commencement;
- 15 “**continuing credit union**” means a credit union registered under the Credit Union Act 1969 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code;
- “**continuing foreign society**” means:
- 20 (a) a corporation or other body for which an exemption is in force under section 28 (3A) of the Credit Union Act 1969 immediately before the commencement of section 425 of the Financial Institutions (NSW) Code, except one to which section 36 of this Act applies; and
- 25 (b) a body of persons for which an exemption is in force under section 35 (3A) of the Permanent Building Societies Act 1967 immediately before that commencement, except one to which section 36 of this Act applies;
- “**continuing society**” means a continuing building society or continuing credit union;
- 30 “**Corporations Law**” and “**Corporations Regulations**” have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;
- “**Legislature of this State**” means the Parliament of New South Wales;
- 35 “**Magistrate**” means a Magistrate appointed under the Local Courts Act 1982;
- “**previous law**” means the Permanent Building Societies Act 1967, the Credit Union Act 1969 or the Co-operation Act 1923;
- 40 “**Registrar**” means the Registrar of Co-operative Societies under the Co-operation Act 1923;

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

“this State” means New South Wales.

(2) The Corporations (New South Wales) Act 1990, and the applicable provisions of New South Wales within the meaning of that Act, are prescribed for the purposes of section 65 (4) of the Financial Institutions (NSW) Code. 5

PART 4—CONFERRAL OF FUNCTIONS AND JURISDICTION

Conferral of functions and powers on AFIC

11. AFIC has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of New South Wales. 10

Conferral of functions and powers on Tribunal

12. The Australian Financial Institutions Appeals Tribunal established under the AFIC Act has the functions and powers conferred or expressed to be conferred on it by or under the scheme legislation of New South Wales. 15

Conferral of jurisdiction on Queensland Supreme Court

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

- (a) an appeal under the scheme legislation of New South Wales by a party to a proceeding before the Appeals Tribunal on a question of law from a decision of the Tribunal in the proceeding; or 20
- (b) a reference under the scheme legislation of New South Wales at the request of a party or by the Appeals Tribunal of its own initiative of a question of law arising in a proceeding before the Tribunal for decision. 25

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

PART 5—STATE SUPERVISORY AUTHORITY

Financial Institutions Commission to be SSA

14. The New South Wales Financial Institutions Commission constituted under the Financial Institutions Commission Act 1992 is the State Supervisory Authority for New South Wales. 30

PART 6—IMPOSITION OF FEES AND OTHER AMOUNTS**Fees for chargeable matters**

15. This section imposes the fees that the Financial Institutions (NSW) Regulations or the AFIC (NSW) Regulations prescribe.

5 **Levies, contributions and loans**

16. (1) This section imposes:

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

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

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PART 7—GENERAL**Crown is bound**

17. (1) The scheme legislation of New South Wales binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

Action to be taken by Premier under certain report

- 30 18. (1) If the Premier is provided with a report under section 49 (6) of the AFIC (NSW) Code, the Premier must provide AFIC with a response to the report within 14 days of its receipt by the Premier.

(2) If:

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

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

(3) The Premier must comply with the request.

(4) If, at the time at which the Premier seeks to present a copy of the report to a House of the Parliament the House is not sitting, the Premier is to present a copy of the report to the Clerk of that House. 5

(5) If the Premier has, in accordance with subsection (4), presented a copy of the report to the Clerk of a House of the Parliament, the report:

(a) is, on presentation and for all purposes, taken to have been laid before that House; and 10

(b) is to be printed by authority of the Clerk of that House; and

(c) is, for all purposes, taken to be a document published by order or under the authority of that House; and

(d) is to be recorded in the Votes and Proceedings of the Legislative Assembly or the Minutes of the Proceedings of the Legislative Council, as appropriate, on the first sitting day of that House after the receipt of the report by the Clerk of that House. 15

Amendment of certain provisions

19. (1) If, under the financial institutions agreement, the Ministerial Council: 20

(a) approves:

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

(ii) regulations proposed to be made under the AFIC Act or the Financial Institutions Act (whether or not amending other regulations); and 25

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a), 30

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

(2) If regulations are made under subsection (1), the AFIC Act or the Financial Institutions Act or regulations in force under either of those Acts have effect in New South Wales (as the case requires) as if varied in accordance with the regulations made under subsection (1). 35

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Special provision concerning offences

20. (1) In this section:

“relevant Code” means the Financial Institutions (NSW) Code and the AFIC (NSW) Code.

5 (2) A reference in a relevant Code to a court of summary jurisdiction is a reference to a Local Court established under the Local Courts Act 1982.

(3) If an offence against a relevant Code may be dealt with summarily, the offence may be dealt with, in a summary manner, by a Magistrate sitting alone, according to the provisions of the Act or Acts for the time
10 being regulating proceedings before justices of the peace.

(4) For the purposes of the Fines and Penalties Act 1901, a relevant Code is taken to be an Act.

(5) Section 61 (Aiding and abetting, attempts etc.) of the Financial Institutions (NSW) Code is not to be taken to affect the application in
15 relation to any relevant Code of the provisions (other than sections 351 and 546) of the Crimes Act 1900.

Fees, fines and penalties

21. All fees, fines, penalties and other money which, under or by virtue of the scheme legislation of New South Wales are authorised or
20 directed to be imposed on any person and are not, under that legislation, fees, levies, contributions, loans or other amounts payable to a specified person must be paid to the State.

**PART 8—SPECIAL PROVISIONS CONCERNING CREDIT
UNIONS CONTINGENCY FUND ETC.**

25 **Definitions**

22. In this Part:

“Contingency Fund” means the Credit Unions Contingency Fund established under section 97 of the Financial Institutions (NSW) Code;

30 “Savings Reserve Fund” means the Credit Union Savings Reserve Fund established under section 69L of the Credit Union Act 1969;

“Supervision Fund” means the Supervision Fund established under section 94 of the Financial Institutions (NSW) Code.

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Transfer from Savings Reserve Fund to Contingency Fund

23. (1) The amount standing to the credit of the Savings Reserve Fund immediately before the repeal of the Credit Union Act 1969 is, on that repeal, to be credited to the Contingency Fund.

(2) Any amount that would have been payable out of the Savings Reserve Fund under the Credit Union Act 1969 had that Act not been repealed (including any liability of the Credit Union Savings Reserve Board under that Act) is payable out of the Contingency Fund.

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Refund of contributions to Funds

24. (1) The SSA may refund an amount to a credit union from the Contingency Fund if satisfied that the total amount contributed by the credit union to the Contingency Fund (including any contributions to the Savings Reserve Fund), less any refunds of contributions, exceeds the amount of the required total contributions to the Contingency Fund by the credit union.

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(2) This section ceases to operate 2 years after its commencement.

Dividends from Contingency Fund

25. (1) The SSA may pay a dividend out of the Contingency Fund to all credit unions if the SSA thinks that the capital amount in that Fund justifies it doing so.

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(2) Any such dividend is to be paid at a specified rate on the total amount that a credit union has contributed to the Contingency Fund.

(3) Instead of paying a dividend to a credit union, the SSA may pay the dividend into the Supervision Fund in lieu of any supervision levy that is payable into that Fund by the credit union. The SSA is to notify the credit union concerned if it pays a dividend in this way.

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(4) A payment of dividend in lieu of supervision levy is to be regarded as a payment by the credit union into the Supervision Fund as supervision levy.

(5) This section ceases to operate 2 years after its commencement.

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Transfer of assets and liabilities of CUSRB

26. (1) On and from the repeal of the Credit Union Act 1969, the following provisions have effect:

(a) the assets of CUSRB vest in FINCOM without the need for any conveyance, transfer, assignment or assurance;

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- (b) the rights and liabilities of CUSRB become rights and liabilities of FINCOM;
- 5 (c) all proceedings relating to the assets, rights and liabilities of CUSRB commenced before that repeal by or against CUSRB and pending immediately before that repeal are taken to be proceedings pending by or against FINCOM;
- 10 (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities of CUSRB before that repeal by, to or in respect of CUSRB is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of FINCOM;
- (e) a reference in an instrument or in any document of any kind to CUSRB is to be read as, or as including, a reference to FINCOM.
- (2) The operation of this section is not to be regarded:
 - 15 (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - 20 (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) In this section:
 - 25 "assets" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;
 - 30 "CUSRB" means the Credit Union Savings Reserve Board established under the Credit Union Act 1969;
 - "FINCOM" means the New South Wales Financial Institutions Commission established under the Financial Institutions Commission Act 1992;
 - 35 "instrument" means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;
 - "liabilities" means liabilities, debts and obligations (whether present or future and whether vested or contingent).

PART 9—SAVINGS, TRANSITIONAL AND CONSEQUENTIAL**Interpretation—words etc. used in Financial Institutions (NSW) Code**

27. Words and expressions used in this Part have the same respective meanings as in the Financial Institutions (NSW) Code. 5

Mergers

28. (1) A special resolution of a continuing society approving an amalgamation and its terms under:

- (a) section 39 of the Permanent Building Societies Act 1967; or
- (b) section 43 or 43A of the Co-operation Act 1923; or 10
- (c) section 33 of the Credit Union Act 1969,

that has not been registered under the Act before the commencement of this section is taken, for the purpose of section 293 (2) of the Financial Institutions (NSW) Code, to be a special resolution approving a proposed merger. 15

(2) Compliance by a continuing society with:

- (a) section 41 (1) and (2) of the Permanent Building Societies Act 1967; or
- (b) section 69B (1) and (2) of the Co-operation Act 1923; or
- (c) section 34 (1) and (2) of the Credit Union Act 1969, 20

in relation to an amalgamation is taken to be compliance by the society with section 293 (3) and (4) of the Financial Institutions (NSW) Code in relation to a proposed merger.

(3) An application by 2 or more continuing societies to be registered as an amalgamated building society or credit society under: 25

- (a) section 39 of the Permanent Building Societies Act 1967; or
- (b) section 43 or 43A of the Co-operation Act 1923; or
- (c) section 33 of the Credit Union Act 1969,

that has not been determined under the Act before the commencement of this section is taken to be an application for the registration of a merger made under section 293 of the Financial Institutions (NSW) Code. 30

Transfer of engagements

29. (1) A special resolution of a continuing society:

- (a) transferring its engagements to another continuing society under section 40 of the Permanent Building Societies Act 1967, section 35

Financial Institutions (New South Wales) 1992

69 of the Co-operation Act 1923 or section 33A of the Credit Union Act 1969; or

- 5 (b) undertaking to fulfil the engagements of another continuing society under section 40 or 40A of the Permanent Building Societies Act 1967, section 69, 69A or 69AA of the Co-operation Act 1923 or section 33A of the Credit Union Act 1969,

that has not been registered under the Act before the commencement of this section is taken, for the purpose of section 293 (2) of the Financial Institutions (NSW) Code, to be a special resolution approving a proposed
10 transfer of engagements.

(2) A resolution of a general meeting of a continuing society, or of its board, undertaking to fulfil the engagements of another continuing society under:

- (a) section 40 or 40A of the Permanent Building Societies Act 1967; or
15 (b) section 69, 69A or 69AA of the Co-operation Act 1923; or
(c) section 33A of the Credit Union Act 1969,

is taken to be an approval, with the consent of the SSA, of a proposed transfer of engagements by the society's board under section 293 (2) of the Financial Institutions (NSW) Code.

- 20 (3) Compliance by a continuing society with:

- (a) section 41 (1) and (2) of the Permanent Building Societies Act 1967; or
(b) section 69B (1) and (2) of the Co-operation Act 1923; or
(c) section 34 (1) and (2) of the Credit Union Act 1969,

- 25 in relation to a transfer of engagements is taken to be compliance by the society with section 293 (3) and (4) of the Financial Institutions (NSW) Code.

Directed transfer of engagements

30. A direction to a continuing society under:

- 30 (a) section 41A of the Permanent Building Societies Act 1967; or
(b) section 69C of the Co-operation Act 1923; or
(c) section 34A of the Credit Union Act 1969,

- that it transfer its engagements to another continuing society and that is in force immediately before the commencement of this section is taken to be
35 a direction to the society given by the SSA under section 296 of the Financial Institutions (NSW) Code.

Suspension of operations

31. A direction given to a continuing society under:

- (a) section 111 of the Permanent Building Societies Act 1967; or
- (b) section 118B of the Co-operation Act 1923; or
- (c) section 96 of the Credit Union Act 1969,

5

that is in force immediately before the commencement of this section is taken to be a direction given to the society by the SSA under section 89 of the Financial Institutions (NSW) Code.

Administrator etc.

32. (1) An administrator of a continuing society appointed under:

10

- (a) section 86A of the Permanent Building Societies Act 1967; or
- (b) section 95A of the Co-operation Act 1923; or
- (c) section 71A of the Credit Union Act 1969,

is taken to be appointed by the SSA under section 90 of the Financial Institutions (NSW) Code.

15

(2) Directors of a continuing society appointed under:

- (a) section 86A (5) of the Permanent Building Societies Act 1967; or
- (b) section 95A (6) of the Co-operation Act 1923; or
- (c) section 71A (6) of the Credit Union Act 1969,

are taken to have been appointed under section 90 (9) (d) of the Financial Institutions (NSW) Code.

20

Proceedings under former Acts

33. (1) The SSA may institute proceedings under the Permanent Building Societies Act 1967, the Co-operation Act 1923 or the Credit Union Act 1969, in relation to a continuing society.

25

(2) For the purpose of subsection (1), a reference in the Act to the Registrar is taken to be a reference to the SSA.

Investigations

34. (1) If, immediately before the commencement of this section, an investigation is being conducted into the affairs of a continuing society under the Permanent Building Societies Act 1967, the Co-operation Act 1923 or the Credit Union Act 1969, the investigation may continue under Part 10 of the Financial Institutions (NSW) Code.

30

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(2) For the purpose of continuing the investigation, the SSA may appoint an investigator under section 348 of the Financial Institutions (NSW) Code.

- 5 (3) Any document or other information properly obtained by the person conducting the investigation before the commencement of this section may be had regard to by the person continuing the investigation.

Special meeting or inquiry

35. (1) A special meeting or inquiry called or started in relation to a continuing society under:

- 10 (a) section 113 of the Permanent Building Societies Act 1967; or
 (b) section 118 of the Co-operation Act 1923; or
 (c) section 98 of the Credit Union Act 1969,

may continue under the Financial Institutions (NSW) Code.

- 15 (2) The meeting is taken to have been called or started under section 87 of the Financial Institutions (NSW) Code.

Exemption for use of name "credit union" and "building society"

- 20 36. (1) A corporation or other body for which an exemption is in force under section 28 (3A) of the Credit Union Act 1969 immediately before the commencement of section 425 of the Financial Institutions (NSW) Code but which does not carry on business as a credit union is taken to have been granted an exemption from section 144 (2) of the Financial Institutions (NSW) Code in respect of the words "credit union".

- 25 (2) A body of persons for which an exemption is in force under section 35 (3A) of the Permanent Building Societies Act 1967 immediately before that commencement but which does not carry on business as a building society is taken to have been granted an exemption from section 144 (2) of the Financial Institutions (NSW) Code in respect of the words "building society".

- 30 (3) In each case the exemption from section 144 (2) of the Financial Institutions (NSW) Code is taken to have been granted on the conditions to which it was subject under the Credit Union Act 1969 or the Permanent Building Societies Act 1967 immediately before the commencement of this section.

35 **General savings and transitional provisions**

37. (1) Except as otherwise provided by this Act or the Financial Institutions (NSW) Code or by regulations made under section 38,

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anything done under a provision of an Act repealed by section 39 that had an effect immediately before the commencement of a corresponding provision of the Financial Institutions (NSW) Code is to be considered to have been done under that corresponding provision.

(2) Subsection (1) applies even if when done under the corresponding provision of the Financial Institutions (NSW) Code the thing can only be done by a different person or body and in such a case is to be considered to have been done by that person or body. 5

Savings and transitional regulations

38. (1) The Governor, on the recommendation of the Minister made with the approval of the Ministerial Council, may make regulations of a saving or transitional nature consequent on the enactment or commencement of this Act. 10

(2) If the regulations so provide, they have effect despite any provision of the Financial Institutions (NSW) Code or the AFIC (NSW) Code. 15

Repeals

39. Each of the following Acts is repealed:

- Credit Union Act 1969 No. 8
- Permanent Building Societies Act 1967 No. 18
- Building and Co-operative Societies Act 1901 (1902 No. 17) 20
- Credit Union (Amendment) Act 1978 No. 30
- Credit Union (Amendment) Act 1981 No. 4
- Credit Union (Amendment) Act 1984 No. 168
- Credit Union (Amendment) Act 1986 No. 183
- Permanent Building Societies (Amendment) Act 1985 No. 84 25
- Permanent Building Societies (Amendment) Act 1989 No. 225

Consequential amendments

40. The Acts and Regulation specified in Schedule 1 are amended as set out in that Schedule.

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

(Sec. 40)

Co-operation Act 1923 (1924 No. 1)

Section 4A:

5 After section 4, insert:

Act ceases to apply to certain building societies

4A. On and from the commencement of section 8 of the
Financial Institutions (New South Wales) Act 1992, this Act
ceases to apply to non-terminating building societies and to
10 societies mentioned in the Second Schedule.

Government Insurance Office (Privatisation) Act 1991 No. 38

Section 42A (GIO Life Limited may exceed maximum
permissible shareholding in building society):

Omit the section.

15 **Interpretation Act 1987 No. 15**

(1) Section 21 (Meaning of commonly used words and
expressions):

Insert in section 21 (1) in alphabetical order:

20 “AFIC (NSW) Code” means the provisions applying
because of section 5 of the Financial Institutions (New
South Wales) Act 1992;

“AFIC (NSW) Regulations” means the provisions
applying because of section 6 of the Financial
Institutions (New South Wales) Act 1992;

25 “Financial Institutions (NSW) Code” means the
provisions applying because of section 8 of the
Financial Institutions (New South Wales) Act 1992;

30 “Financial Institutions (NSW) Regulations” means the
provisions applying because of section 9 of the
Financial Institutions (New South Wales) Act 1992;

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*

(2) Section 68 (Reference to amended Acts and instruments):

At the end of section 68 (4) (a) (vi), insert:

; and

- (vii) the AFIC (NSW) Code and the Financial Institutions (NSW) Code; 5

Stamp Duties Act 1920 No. 47

Second Schedule (General Exemptions From Stamp Duty Under Part 3):

- (a) From paragraph (8), omit “as amended, or the Permanent Building Societies Act 1967”, insert instead “as amended, the Permanent Building Societies Act 1967 or the Financial Institutions (NSW) Code”. 10
- (b) From paragraph (8), omit “the Co-operation Act 1923 or the Permanent Building Societies Act 1967”, insert instead “the Co-operation Act 1923, the Permanent Building Societies Act 1967 or the Financial Institutions (NSW) Code”. 15

Trustee Act 1925 No. 14

(1) Section 14A (Authorised investments):

- (a) Omit section 14A (2) (p) and (q), insert instead: 20
- (p) subscription of share capital in, deposit with, or loan of money to, a prescribed building society under the Financial Institutions (New South Wales) Code.
- (b) From section 14A (3), omit “and (q)”, insert instead “and (p)”. 25

(2) Section 21A (Building societies—transfers of engagements and amalgamations):

Omit section 21A (1) (b), insert instead:

- (b) a merger of the society under the Financial Institutions (New South Wales) Code. 30

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued***Trustee Regulation 1988**

Clause 4A:

After Clause 4, insert:

5 **Prescribed building societies—authorised trustee investments**

4A. The following building societies are prescribed for the purposes of section 14A (2) (p) of the Act:

10 Greater Newcastle Permanent Building Society Ltd.
Hume Permanent Building Society Ltd.
Illawarra Mutual Building Society Ltd.
Newcastle Permanent Building Society Limited.
St George Building Society Ltd.

**FINANCIAL INSTITUTIONS (NEW SOUTH WALES)
ACT 1992 No. 46**

NEW SOUTH WALES



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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

**FINANCIAL INSTITUTIONS (NEW SOUTH WALES) ACT
1992 No. 46**

NEW SOUTH WALES



Act No. 46, 1992

An Act to make provision for a uniform legislative scheme for certain financial institutions, to amend certain Acts and for other purposes.
[Assented to 30 June 1992]

See also Financial Institutions Commission Act 1992.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Financial Institutions (New South Wales) Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act:

“AFIC” means the Australian Financial Institutions Commission established by the AFIC Act;

“AFIC Act” means the Australian Financial Institutions Commission Act 1992 of Queensland;

“AFIC (NSW) Code” means the provisions applying because of section 5;

“AFIC (NSW) Regulations” means the provisions applying because of section 6;

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

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

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

“Financial Institutions (NSW) Code” means the provisions applying because of section 8;

“Financial Institutions (NSW) Regulations” means the provisions applying because of section 9;

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

“scheme legislation of New South Wales” means:

- (a) this Act and regulations under this Act; and
- (b) the AFIC (NSW) Code; and
- (c) the AFIC (NSW) Regulations; and

Financial Institutions (New South Wales) Act 1992 No. 46

- (d) the Financial Institutions (NSW) Code; and
- (e) the Financial Institutions (NSW) Regulations.

References to Queensland Acts

4. In this Act, a reference to a Queensland Act includes a reference to:
- (a) that Queensland Act as amended and in force for the time being; and
 - (b) an Act passed in substitution for that Act.

PART 2—AFIC (NSW) CODE AND AFIC (NSW) REGULATIONS

Application in New South Wales of the AFIC Code

5. The AFIC Code set out in section 21 of the AFIC Act as in force for the time being:
- (a) applies as a law of New South Wales; and
 - (b) as so applying may be referred to as the AFIC (NSW) Code.

Application of regulations

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

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

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

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

Financial Institutions (New South Wales) Act 1992 No. 46

- (a) operates to the advantage of a person (other than the State or an authority of the State) by:
 - (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
 - (b) does not operate to the disadvantage of another person (other than the State or an authority of the State) by:
 - (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.
- (4) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in the Code and Regulations

7. (1) In the AFIC (NSW) Code and the AFIC (NSW) Regulations:

“Corporations Law” and “Corporations Regulations” have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;

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

“Magistrate” means a Magistrate appointed under the Local Courts Act 1982;

“the Code” means the AFIC (NSW) Code;

“this State” means New South Wales.

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

**PART 3—FINANCIAL INSTITUTIONS (NSW) CODE AND
FINANCIAL INSTITUTIONS (NSW) REGULATIONS**

Application in New South Wales of the Financial Institutions Code

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

- (a) applies as a law of New South Wales; and
- (b) as so applying may be referred to as the Financial Institutions (NSW) Code.

Application of regulations

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

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

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

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

- (a) operates to the advantage of a person (other than the State or an authority of the State) by:
 - (i) increasing the person's rights; or
 - (ii) relieving the person of liabilities; and
- (b) does not operate to the disadvantage of another person (other than the State or an authority of the State) by:
 - (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person.

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

Interpretation of some expressions in the Code and Regulations

10. (1) In the Financial Institutions (NSW) Code and the Financial Institutions (NSW) Regulations:

“AFIC Code” means the AFIC (NSW) Code;

“continuing association” means:

- (a) an association of credit unions; or
- (b) a union of associations of credit unions,

registered under the Credit Union Act 1969 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code;

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“continuing association of credit unions” means an association of credit unions registered under the Credit Union Act 1969 immediately before the commencement of section 428 of the Financial Institutions (NSW) Code;

“continuing building society” means:

- (a) a permanent building society registered under the Permanent Building Societies Act 1967 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code; and
- (b) a non-terminating building society registered under the Co-operation Act 1923 immediately before that commencement; and
- (c) a society mentioned in the Second Schedule to the Co-operation Act 1923 immediately before that commencement;

“continuing credit union” means a credit union registered under the Credit Union Act 1969 immediately before the commencement of section 414 of the Financial Institutions (NSW) Code;

“continuing foreign society” means:

- (a) a corporation or other body for which an exemption is in force under section 28 (3A) of the Credit Union Act 1969 immediately before the commencement of section 425 of the Financial Institutions (NSW) Code, except one to which section 36 of this Act applies; and
- (b) a body of persons for which an exemption is in force under section 35 (3A) of the Permanent Building Societies Act 1967 immediately before that commencement, except one to which section 36 of this Act applies;

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

“Corporations Law” and **“Corporations Regulations”** have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;

“Legislature of this State” means the Parliament of New South Wales;

“Magistrate” means a Magistrate appointed under the Local Courts Act 1982;

“previous law” means the Permanent Building Societies Act 1967, the Credit Union Act 1969 or the Co-operation Act 1923;

“Registrar” means the Registrar of Co-operative Societies under the Co-operation Act 1923;

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

“this State” means New South Wales.

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

PART 4—CONFERRAL OF FUNCTIONS AND JURISDICTION

Conferral of functions and powers on AFIC

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

Conferral of functions and powers on Tribunal

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

Conferral of jurisdiction on Queensland Supreme Court

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

- (a) an appeal under the scheme legislation of New South Wales by a party to a proceeding before the Appeals Tribunal on a question of law from a decision of the Tribunal in the proceeding; or
- (b) a reference under the scheme legislation of New South Wales at the request of a party or by the Appeals Tribunal of its own initiative of a question of law arising in a proceeding before the Tribunal for decision.

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

PART 5—STATE SUPERVISORY AUTHORITY

Financial Institutions Commission to be SSA

14. The New South Wales Financial Institutions Commission constituted under the Financial Institutions Commission Act 1992 is the State Supervisory Authority for New South Wales.

PART 6—IMPOSITION OF FEES AND OTHER AMOUNTS**Fees for chargeable matters**

15. This section imposes the fees that the Financial Institutions (NSW) Regulations or the AFIC (NSW) Regulations prescribe.

Levies, contributions and loans

16. (1) This section imposes:

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

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

PART 7—GENERAL**Crown is bound**

17. (1) The scheme legislation of New South Wales binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

Action to be taken by Premier under certain report

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

(2) If:

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

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

(3) The Premier must comply with the request.

(4) If, at the time at which the Premier seeks to present a copy of the report to a House of the Parliament the House is not sitting, the Premier is to present a copy of the report to the Clerk of that House.

(5) If the Premier has, in accordance with subsection (4), presented a copy of the report to the Clerk of a House of the Parliament, the report:

- (a) is, on presentation and for all purposes, taken to have been laid before that House; and
- (b) is to be printed by authority of the Clerk of that House; and
- (c) is, for all purposes, taken to be a document published by order or under the authority of that House; and
- (d) is to be recorded in the Votes and Proceedings of the Legislative Assembly or the Minutes of the Proceedings of the Legislative Council, as appropriate, on the first sitting day of that House after the receipt of the report by the Clerk of that House.

Amendment of certain provisions

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

- (a) approves:
 - (i) a proposed amendment of the AFIC Act or the Financial Institutions Act; or
 - (ii) regulations proposed to be made under the AFIC Act or the Financial Institutions Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

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

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

Special provision concerning offences

20. (1) In this section:

“**relevant Code**” means the Financial Institutions (NSW) Code and the AFIC (NSW) Code.

(2) A reference in a relevant Code to a court of summary jurisdiction is a reference to a Local Court established under the Local Courts Act 1982.

(3) If an offence against a relevant Code may be dealt with summarily, the offence may be dealt with, in a summary manner, by a Magistrate sitting alone, according to the provisions of the Act or Acts for the time being regulating proceedings before justices of the peace.

(4) For the purposes of the Fines and Penalties Act 1901, a relevant Code is taken to be an Act.

(5) Section 61 (Aiding and abetting, attempts etc.) of the Financial Institutions (NSW) Code is not to be taken to affect the application in relation to any relevant Code of the provisions (other than sections 351 and 546) of the Crimes Act 1900.

Fees, fines and penalties

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

**PART 8—SPECIAL PROVISIONS CONCERNING CREDIT
UNIONS CONTINGENCY FUND ETC.****Definitions**

22. In this Part:

“**Contingency Fund**” means the Credit Unions Contingency Fund established under section 97 of the Financial Institutions (NSW) Code;

“**Savings Reserve Fund**” means the Credit Union Savings Reserve Fund established under section 69L of the Credit Union Act 1969;

“**Supervision Fund**” means the Supervision Fund established under section 94 of the Financial Institutions (NSW) Code.

Transfer from Savings Reserve Fund to Contingency Fund

23. (1) The amount standing to the credit of the Savings Reserve Fund immediately before the repeal of the Credit Union Act 1969 is, on that repeal, to be credited to the Contingency Fund.

(2) Any amount that would have been payable out of the Savings Reserve Fund under the Credit Union Act 1969 had that Act not been repealed (including any liability of the Credit Union Savings Reserve Board under that Act) is payable out of the Contingency Fund.

Refund of contributions to Funds

24. (1) The SSA may refund an amount to a credit union from the Contingency Fund if satisfied that the total amount contributed by the credit union to the Contingency Fund (including any contributions to the Savings Reserve Fund), less any refunds of contributions, exceeds the amount of the required total contributions to the Contingency Fund by the credit union.

(2) This section ceases to operate 2 years after its commencement.

Dividends from Contingency Fund

25. (1) The SSA may pay a dividend out of the Contingency Fund to all credit unions if the SSA thinks that the capital amount in that Fund justifies it doing so.

(2) Any such dividend is to be paid at a specified rate on the total amount that a credit union has contributed to the Contingency Fund.

(3) Instead of paying a dividend to a credit union, the SSA may pay the dividend into the Supervision Fund in lieu of any supervision levy that is payable into that Fund by the credit union. The SSA is to notify the credit union concerned if it pays a dividend in this way.

(4) A payment of dividend in lieu of supervision levy is to be regarded as a payment by the credit union into the Supervision Fund as supervision levy.

(5) This section ceases to operate 2 years after its commencement.

Transfer of assets and liabilities of CUSRB

26. (1) On and from the repeal of the Credit Union Act 1969, the following provisions have effect:

- (a) the assets of CUSRB vest in FINCOM without the need for any conveyance, transfer, assignment or assurance;

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- (b) the rights and liabilities of CUSRB become rights and liabilities of FINCOM;
 - (c) all proceedings relating to the assets, rights and liabilities of CUSRB commenced before that repeal by or against CUSRB and pending immediately before that repeal are taken to be proceedings pending by or against FINCOM;
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities of CUSRB before that repeal by, to or in respect of CUSRB is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of FINCOM;
 - (e) a reference in an instrument or in any document of any kind to CUSRB is to be read as, or as including, a reference to FINCOM.
- (2) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) In this section:
- “assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;
 - “CUSRB” means the Credit Union Savings Reserve Board established under the Credit Union Act 1969;
 - “FINCOM” means the New South Wales Financial Institutions Commission established under the Financial Institutions Commission Act 1992;
 - “instrument” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;
 - “liabilities” means liabilities, debts and obligations (whether present or future and whether vested or contingent).

PART 9—SAVINGS, TRANSITIONAL AND CONSEQUENTIAL**Interpretation—words etc. used in Financial Institutions (NSW) Code**

27. Words and expressions used in this Part have the same respective meanings as in the Financial Institutions (NSW) Code.

Mergers

28. (1) A special resolution of a continuing society approving an amalgamation and its terms under:

- (a) section 39 of the Permanent Building Societies Act 1967; or
- (b) section 43 or 43A of the Co-operation Act 1923; or
- (c) section 33 of the Credit Union Act 1969,

that has not been registered under the Act before the commencement of this section is taken, for the purpose of section 293 (2) of the Financial Institutions (NSW) Code, to be a special resolution approving a proposed merger.

(2) Compliance by a continuing society with:

- (a) section 41 (1) and (2) of the Permanent Building Societies Act 1967; or
- (b) section 69B (1) and (2) of the Co-operation Act 1923; or
- (c) section 34 (1) and (2) of the Credit Union Act 1969,

in relation to an amalgamation is taken to be compliance by the society with section 293 (3) and (4) of the Financial Institutions (NSW) Code in relation to a proposed merger.

(3) An application by 2 or more continuing societies to be registered as an amalgamated building society or credit society under:

- (a) section 39 of the Permanent Building Societies Act 1967; or
- (b) section 43 or 43A of the Co-operation Act 1923; or
- (c) section 33 of the Credit Union Act 1969,

that has not been determined under the Act before the commencement of this section is taken to be an application for the registration of a merger made under section 293 of the Financial Institutions (NSW) Code.

Transfer of engagements

29. (1) A special resolution of a continuing society:

- (a) transferring its engagements to another continuing society under section 40 of the Permanent Building Societies Act 1967, section

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69 of the Co-operation Act 1923 or section 33A of the Credit Union Act 1969; or

- (b) undertaking to fulfil the engagements of another continuing society under section 40 or 40A of the Permanent Building Societies Act 1967, section 69, 69A or 69AA of the Co-operation Act 1923 or section 33A of the Credit Union Act 1969,

that has not been registered under the Act before the commencement of this section is taken, for the purpose of section 293 (2) of the Financial Institutions (NSW) Code, to be a special resolution approving a proposed transfer of engagements.

(2) A resolution of a general meeting of a continuing society, or of its board, undertaking to fulfil the engagements of another continuing society under:

- (a) section 40 or 40A of the Permanent Building Societies Act 1967; or
- (b) section 69, 69A or 69AA of the Co-operation Act 1923; or
- (c) section 33A of the Credit Union Act 1969,

is taken to be an approval, with the consent of the SSA, of a proposed transfer of engagements by the society's board under section 293 (2) of the Financial Institutions (NSW) Code.

(3) Compliance by a continuing society with:

- (a) section 41 (1) and (2) of the Permanent Building Societies Act 1967; or
- (b) section 69B (1) and (2) of the Co-operation Act 1923; or
- (c) section 34 (1) and (2) of the Credit Union Act 1969,

in relation to a transfer of engagements is taken to be compliance by the society with section 293 (3) and (4) of the Financial Institutions (NSW) Code.

Directed transfer of engagements

30. A direction to a continuing society under:

- (a) section 41A of the Permanent Building Societies Act 1967; or
- (b) section 69C of the Co-operation Act 1923; or
- (c) section 34A of the Credit Union Act 1969,

that it transfer its engagements to another continuing society and that is in force immediately before the commencement of this section is taken to be a direction to the society given by the SSA under section 296 of the Financial Institutions (NSW) Code.

Suspension of operations

31. A direction given to a continuing society under:

- (a) section 111 of the Permanent Building Societies Act 1967; or
- (b) section 118B of the Co-operation Act 1923; or
- (c) section 96 of the Credit Union Act 1969,

that is in force immediately before the commencement of this section is taken to be a direction given to the society by the SSA under section 89 of the Financial Institutions (NSW) Code.

Administrator etc.

32. (1) An administrator of a continuing society appointed under:

- (a) section 86A of the Permanent Building Societies Act 1967; or
- (b) section 95A of the Co-operation Act 1923; or
- (c) section 71A of the Credit Union Act 1969,

is taken to be appointed by the SSA under section 90 of the Financial Institutions (NSW) Code.

(2) Directors of a continuing society appointed under:

- (a) section 86A (5) of the Permanent Building Societies Act 1967; or
- (b) section 95A (6) of the Co-operation Act 1923; or
- (c) section 71A (6) of the Credit Union Act 1969,

are taken to have been appointed under section 90 (9) (d) of the Financial Institutions (NSW) Code.

Proceedings under former Acts

33. (1) The SSA may institute proceedings under the Permanent Building Societies Act 1967, the Co-operation Act 1923 or the Credit Union Act 1969, in relation to a continuing society.

(2) For the purpose of subsection (1), a reference in the Act to the Registrar is taken to be a reference to the SSA.

Investigations

34. (1) If, immediately before the commencement of this section, an investigation is being conducted into the affairs of a continuing society under the Permanent Building Societies Act 1967, the Co-operation Act 1923 or the Credit Union Act 1969, the investigation may continue under Part 10 of the Financial Institutions (NSW) Code.

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(2) For the purpose of continuing the investigation, the SSA may appoint an investigator under section 348 of the Financial Institutions (NSW) Code.

(3) Any document or other information properly obtained by the person conducting the investigation before the commencement of this section may be had regard to by the person continuing the investigation.

Special meeting or inquiry

35. (1) A special meeting or inquiry called or started in relation to a continuing society under:

- (a) section 113 of the Permanent Building Societies Act 1967; or
- (b) section 118 of the Co-operation Act 1923; or
- (c) section 98 of the Credit Union Act 1969,

may continue under the Financial Institutions (NSW) Code.

(2) The meeting is taken to have been called or started under section 87 of the Financial Institutions (NSW) Code.

Exemption for use of name "credit union" and "building society"

36. (1) A corporation or other body for which an exemption is in force under section 28 (3A) of the Credit Union Act 1969 immediately before the commencement of section 425 of the Financial Institutions (NSW) Code but which does not carry on business as a credit union is taken to have been granted an exemption from section 144 (2) of the Financial Institutions (NSW) Code in respect of the words "credit union".

(2) A body of persons for which an exemption is in force under section 35 (3A) of the Permanent Building Societies Act 1967 immediately before that commencement but which does not carry on business as a building society is taken to have been granted an exemption from section 144 (2) of the Financial Institutions (NSW) Code in respect of the words "building society".

(3) In each case the exemption from section 144 (2) of the Financial Institutions (NSW) Code is taken to have been granted on the conditions to which it was subject under the Credit Union Act 1969 or the Permanent Building Societies Act 1967 immediately before the commencement of this section.

General savings and transitional provisions

37. (1) Except as otherwise provided by this Act or the Financial Institutions (NSW) Code or by regulations made under section 38,

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anything done under a provision of an Act repealed by section 39 that had an effect immediately before the commencement of a corresponding provision of the Financial Institutions (NSW) Code is to be considered to have been done under that corresponding provision.

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

Savings and transitional regulations

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

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

Repeals

39. Each of the following Acts is repealed:

- Credit Union Act 1969 No. 8
- Permanent Building Societies Act 1967 No. 18
- Building and Co-operative Societies Act 1901 (1902 No. 17)
- Credit Union (Amendment) Act 1978 No. 30
- Credit Union (Amendment) Act 1981 No. 4
- Credit Union (Amendment) Act 1984 No. 168
- Credit Union (Amendment) Act 1986 No. 183
- Permanent Building Societies (Amendment) Act 1985 No. 84
- Permanent Building Societies (Amendment) Act 1989 No. 225

Consequential amendments

40. The Acts and Regulation specified in Schedule 1 are amended as set out in that Schedule.

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

(Sec. 40)

Co-operation Act 1923 (1924 No. 1)

Section 4A:

After section 4, insert:

Act ceases to apply to certain building societies

4A. On and from the commencement of section 8 of the Financial Institutions (New South Wales) Act 1992, this Act ceases to apply to non-terminating building societies and to societies mentioned in the Second Schedule.

Government Insurance Office (Privatisation) Act 1991 No. 38

Section 42A (GIO Life Limited may exceed maximum permissible shareholding in building society):

Omit the section.

Interpretation Act 1987 No. 15

(1) **Section 21 (Meaning of commonly used words and expressions):**

Insert in section 21 (1) in alphabetical order:

“AFIC (NSW) Code” means the provisions applying because of section 5 of the Financial Institutions (New South Wales) Act 1992;

“AFIC (NSW) Regulations” means the provisions applying because of section 6 of the Financial Institutions (New South Wales) Act 1992;

“Financial Institutions (NSW) Code” means the provisions applying because of section 8 of the Financial Institutions (New South Wales) Act 1992;

“Financial Institutions (NSW) Regulations” means the provisions applying because of section 9 of the Financial Institutions (New South Wales) Act 1992;

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*

(2) Section 68 (Reference to amended Acts and instruments):

At the end of section 68 (4) (a) (vi), insert:

; and

(vii) the AFIC (NSW) Code and the Financial Institutions (NSW) Code;

Stamp Duties Act 1920 No. 47

Second Schedule (General Exemptions From Stamp Duty Under Part 3):

- (a) From paragraph (8), omit “as amended, or the Permanent Building Societies Act 1967”, insert instead “as amended, the Permanent Building Societies Act 1967 or the Financial Institutions (NSW) Code”.
- (b) From paragraph (8), omit “the Co-operation Act 1923 or the Permanent Building Societies Act 1967”, insert instead “the Co-operation Act 1923, the Permanent Building Societies Act 1967 or the Financial Institutions (NSW) Code”.

Trustee Act 1925 No. 14

(1) Section 14A (Authorised investments):

(a) Omit section 14A (2) (p) and (q), insert instead:

(p) subscription of share capital in, deposit with, or loan of money to, a prescribed building society under the Financial Institutions (New South Wales) Code.

(b) From section 14A (3), omit “and (q)”, insert instead “and (p)”.

(2) Section 21A (Building societies—transfers of engagements and amalgamations):

Omit section 21A (1) (b), insert instead:

(b) a merger of the society under the Financial Institutions (New South Wales) Code.

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*

Trustee Regulation 1988

Clause 4A:

After Clause 4, insert:

Prescribed building societies—authorised trustee investments

4A. The following building societies are prescribed for the purposes of section 14A (2) (p) of the Act:

Greater Newcastle Permanent Building Society Ltd.

Hume Permanent Building Society Ltd.

Illawarra Mutual Building Society Ltd.

Newcastle Permanent Building Society Limited.

St George Building Society Ltd.

[Minister's second reading speech made in—
Legislative Assembly on 7 May 1992
Legislative Council on 8 May 1992 a.m.]