

FIRST PRINT

## FINANCIAL INSTITUTIONS COMMISSION BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

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

This Bill is cognate with the Financial Institutions (New South Wales) Bill 1992.

The object of this Bill is to provide for the establishment of the New South Wales Financial Institutions Commission as the body that is to exercise the functions of the State Supervisory Authority for New South Wales under proposed uniform financial institutions legislation.

That legislation will provide for the prudential supervision of building societies, credit unions and certain industry credit providers. It is based on laws enacted in Queensland and proposed to be applied as laws in all States and Territories.

The Commission will also exercise the functions of the Registrar of Co-operatives under the Co-operation Act 1923 (in respect of co-operative housing societies) and under the Friendly Societies Act 1989.

The Commission will be independent of Government.

The Bill provides for the following:

- the establishment of the Commission as a statutory body independent of the Government with functions imposed on it under the financial institutions legislation and certain Acts;
- the management of the Commission by a Board consisting of a full-time Chief Executive and 3 part-time members;
- employment of staff by the Commission;
- the duties and liabilities of members of the Board and the staff of the Commission;
- the keeping of a Register of financial interests that members of the Board or staff members and their spouses and children have in financial institutions;
- financial matters, including the Commission's budget;
- the procedures of the Board;

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- consequential amendments to other Acts;
  - savings and transitional provisions for the transfer of staff to the Commission from the Registry of Co-operatives and the Credit Union Savings Reserve Board.
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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 words and expressions used in the proposed Act have the same meanings as in the financial institutions legislation.

**PART 2—THE COMMISSION**

Clause 5 constitutes the Commission as a body corporate with the corporate name of the New South Wales Financial Institutions Commission (or FINCOM).

Clause 6 states that the Commission has the functions conferred on it by or under the financial institutions legislation, the Co-operation Act 1923, the Friendly Societies Act 1989 or any other Act.

Clause 7 provides for the general powers of the Commission.

Clause 8 provides that the Commission is independent of Government.

Clause 9 requires the Commission to comply with the financial institutions agreement between the States and Territories on which the financial institutions legislation is based.

Clause 10 provides that the Commission does not represent the Crown.

Clause 11 provides that the Commission is an exempt public authority for the purposes of the Corporations Law.

Clause 12 deals with the keeping and affixing of the seal of the Commission.

**PART 3—MANAGEMENT OF THE COMMISSION**

Clause 13 establishes a 4 member Board of the Commission consisting of a full-time Chief Executive and 3 part-time members.

Clause 14 deals with the qualifications of the appointed members of the Board.

Clause 15 states the functions of the Board.

Clause 16 deals with the appointment of the Chief Executive.

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Clause 17 provides that the Chief Executive manages the Commission in accordance with the policies determined by the Board.

**PART 4—STAFF ETC.**

Clause 18 deals with employment of staff by the Commission.

Clause 19 deals with arrangements for the use of staff of public authorities.

Clause 20 gives the Commission power to engage consultants.

**PART 5—DUTIES AND LIABILITIES OF BOARD AND STAFF**

**Division 1—General duties and liabilities**

Clause 21 imposes various duties on members of the Board, including the duty to act honestly at all times.

Clause 22 confers certain protections from liability on Board members and staff members.

**Division 2—Register of Financial Interests**

Clause 23 contains definitions for the purposes of the proposed Division.

Clause 24 requires the Commission to keep a Register of Financial Interests.

Clause 25 requires Board members and staff members to disclose certain interests that they or their spouses and children have in financial institutions.

Clause 26 deals with the noting of disclosed matter on the Register.

Clause 27 requires the Register to be kept at the Commission's principal office and to be open for inspection free of charge.

**PART 6—FINANCE**

Clause 28 deals with the preparation of a budget by the Commission and the determination of that budget by the Minister.

Clause 29 requires the Commission to consult with industry bodies and societies in preparing its draft budget.

Clause 30 provides that the expenses of the Commission in exercising its functions under the Co-operation Act 1923 or the Friendly Societies Act 1989 are payable out of the Supervision Fund established under the proposed Financial Institutions (NSW) Code. The clause also makes it clear that remuneration and allowances payable under the proposed Act are payable out of that Fund.

Clause 31 permits the Commission to appoint a registered company auditor as its auditor for the purposes of the Public Finance and Audit Act 1983. The Commission will still be able to be the subject of a special audit under that Act by the Auditor-General.

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**PART 7—GENERAL**

Clause 32 states that the proposed Act binds the Crown.

Clause 33 enables the Commission to delegate functions to certain persons, including the State Supervisory Authority of another State.

Clause 34 authorises the Commission to receive a delegation of functions from the State Supervisory Authority of another State.

Clause 35 deals with evidentiary matters.

Clause 36 provides for the way in which documents are to be served on the Commission.

Clause 37 deals with the recovery of money owing to the Commission.

Clause 38 provides for the manner in which prosecutions for offences under the proposed Act are to be dealt with.

Clause 39 is a regulation-making power.

Clause 40 gives effect to Schedule 2 which contains consequential amendments to other Acts.

Clause 41 gives effect to Schedule 3 which contains savings and transitional provisions for the transfer of staff to the Commission.

Schedule 1 contains provisions relating to the members and procedure of the Board.

Schedule 2 makes consequential amendments to other Acts.

Schedule 3 contains savings and transitional provisions.

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# FINANCIAL INSTITUTIONS COMMISSION BILL 1992

NEW SOUTH WALES



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**FINANCIAL INSTITUTIONS COMMISSION BILL 1992**

**NEW SOUTH WALES**



No.      , 1992

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**A BILL FOR**

**An Act to establish the New South Wales Financial Institutions Commission and to provide for its functions; and for related purposes.**

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

- 5 1. This Act may be cited as the Financial Institutions Commission Act 1992.

**Commencement**

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

**Definitions**

- 10 3. (1) In this Act:  
“Board” means the Board of the Commission;  
“Chief Executive” means the Chief Executive of the Commission;  
“Commission” means the New South Wales Financial Institutions Commission established by this Act.
- 15 (2) In this Act:  
(a) a reference to a function includes a reference to a power, authority and duty; and  
(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

20 **Interpretation—words etc. used in Financial Institutions (NSW) Code**

4. Words and expressions used in this Act have the same meanings as in the Financial Institutions (NSW) Code.

**PART 2—THE COMMISSION**

25 **Constitution of the Commission**

5. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Financial Institutions Commission.
- 30 (2) The New South Wales Financial Institutions Commission may also be called FINCOM and the use of that name has the same effect for all purposes as the use of its corporate name.



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**Functions**

6. The Commission has the functions conferred or imposed on it by or under the financial institutions legislation (as SSA), the Co-operation Act 1923, the Friendly Societies Act 1989 or any other Act.

**General powers**

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

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

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(3) Without limiting subsection (1), the Commission has, for or in connection with the exercise of its functions, all the powers of a natural person, and may, for example:

(a) enter into contracts; and

(b) acquire, hold and dispose of property; and

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(c) appoint agents and attorneys; and

(d) engage consultants.

(4) The Commission has power to exercise its functions both within and outside the State.

**Commission is independent**

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8. Except as is expressly provided in the financial institutions legislation or this Act, the Commission is not subject to direction by or on behalf of the Government or the Ministerial Council.

**Commission to comply with financial institutions agreement**

9. In exercising its functions, the Commission must:

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(a) comply with any applicable provisions of the financial institutions agreement; and

(b) strive to ensure that the principal objects of the financial institutions scheme are achieved in relation to New South Wales.

**Commission does not represent the Crown**

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10. The Commission does not represent the Crown.

**Commission is exempt public authority under Corporations Law**

11. The Commission is an exempt public authority for the purposes of the Corporations Law.

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**Seal of the Commission**

12. The seal of the Commission is to be kept by the Chief Executive and is to be affixed to a document:

- 5 (a) only in the presence of the Chief Executive or a member of the staff of the Commission authorised in that behalf by the Chief Executive; and
- (b) only with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal.

**PART 3—MANAGEMENT OF THE COMMISSION**

10 **Establishment of the Board**

13. (1) The Commission is to have a Board consisting of:

- (a) the Chief Executive; and
- (b) 3 part-time members appointed by the Governor on the recommendation of the Minister.

15 (2) Of the appointed members of the Board one is, by the instrument of his or her appointment or by a subsequent instrument signed by the Governor, to be appointed as Chairperson of the Board.

(3) A reference in this Act to a member of the Board includes a reference to the Chief Executive.

20 (4) Schedule 1 (Constitution and procedure of the Board) has effect.

**Qualifications of members**

25 14. (1) Each of the persons recommended by the Minister for appointment as a member of the Board must have such qualifications or experience in one or more of the following fields as the Minister considers necessary to enable the Commission to exercise its functions:

- (a) supervision or management of financial institutions;
- (b) financial intermediation;
- (c) capital markets and risk management;
- (d) economics;
- 30 (e) audit of financial institutions.

(2) A person who holds an office or appointment with a financial institution is not eligible to be appointed as a member of the Board.

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**Functions of the Board**

15. The functions of the Board are as follows:

- (a) to determine the policies and long term strategic plans of the Commission;
- (b) to oversee the effective, efficient and economical management of the Commission. 5

**Chief Executive**

16. (1) The Governor may appoint a Chief Executive of the Commission.

(2) The employment of the Chief Executive is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act. 10

(3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive. 15

(4) The Minister may, at any time, remove a person from office as acting Chief Executive.

(5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine. 20

**Chief Executive to manage and control affairs of the Commission**

17. (1) The affairs of the Commission are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board. 25

(2) Any act, matter or thing done in the name of, or on behalf of, the Commission by the Chief Executive, or by any person authorised by the Chief Executive to do that act, matter or thing, is taken to have been done by the Commission. 30

**PART 4—STAFF ETC.**

**Employment of staff**

18. (1) The Commission may employ such staff as it considers necessary for the exercise of its functions.

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(2) The Commission may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

5 (3) Part 2 of the Public Sector Management Act 1988 does not apply to the members of staff of the Commission.

**Use of staff and facilities of public authorities**

19. (1) The Commission may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a public authority of the State or of another State or of the Commonwealth.

10 (2) Any member of staff of a public authority of whose services the Commission makes use is taken to be a member of staff of the Commission for the purposes of this Act.

15 (3) The Commission may arrange for the services of a member of the staff of the Commission to be made available to the Commonwealth or a State or to a public authority of the Commonwealth or a State.

(4) In this section:

“public authority” includes a Government department or administrative office and a local authority.

**Consultants**

20 20. (1) The Commission may engage consultants.

(2) Any consultant engaged by the Commission is taken not to be a member of staff of the Commission for the purposes of this or any other Act.

**PART 5—DUTIES AND LIABILITIES OF BOARD AND STAFF**

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**Division 1—General duties and liabilities**

**Board members and staff to act honestly etc.**

21. (1) In this section:

30 “officer of the Commission” means a member of the Board or a member of the staff of the Commission.

(2) An officer of the Commission who, in the course of official duties, is required to consider any matter concerning:

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- (a) a person or body by whom the officer is employed or has been employed at any time during the previous 3 years or with whom the officer is associated; or
- (b) a related body in relation to a financial body by whom the officer is employed or has been employed at any time during the previous 3 years, 5
- must immediately inform the Commission in writing.
- Maximum penalty: 50 penalty units.
- (3) An officer of the Commission must at all times act honestly in the exercise of the functions that the person has as an officer of the Commission. 10
- Maximum penalty: 50 penalty units.
- (4) An officer of the Commission must not make improper use of an office held for the purposes of this Act or the financial institutions legislation: 15
- (a) to gain, directly or indirectly, an advantage for himself, herself or another person; or
- (b) to cause detriment to the Commission or a financial institution.
- Maximum penalty: 100 penalty units or imprisonment for 10 years, or both. 20
- (5) An officer of the Commission, or a person who has at any time been an officer of the Commission, must not make improper use of information acquired by virtue of an office held for the purposes of this Act or the financial institutions legislation:
- (a) to gain, directly or indirectly, an advantage for himself, herself or another person; or 25
- (b) to cause detriment to the Commission or a financial institution.
- Maximum penalty: 100 penalty units or imprisonment for 10 years, or both.
- (6) It is a defence to a contravention of subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, the defendant was not aware of the fact the existence of which obliged the defendant to inform the Commission. 30
- (7) The question whether a prescribed person is associated with a person or body for the purposes of this section is to be determined as prescribed. 35

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**Liability of Board members and staff**

22. (1) A member of the Board or of the staff of the Commission incurs no liability for an honest act or omission in the exercise of functions under this Act.

5 (2) A liability that would, but for this section, attach to a member of the Board or of the staff of the Commission attaches to the Commission.

(3) This section does not apply to:

(a) wilful misconduct; or

(b) wilful neglect; or

10 (c) wilful failure to comply with this Act.

**Division 2—Register of Financial Interests**

**Definitions**

23. (1) In this Division:

15 “officer of the Commission” means a member of the Board or a member of the staff of the Commission;

“Register” means the Register of Financial Interests maintained under section 24;

“responsible employee” means the person appointed under section 24.

20 (2) For the purposes of this Division, a person has a financial interest if (and only if) the person, or the spouse or a child of the person:

(a) has a relevant interest in securities of a financial institution; or

(b) has money deposited with a financial institution; or

(c) is in receipt of a loan from a financial institution; or

25 (d) is a member of a financial institution.

(3) The question whether a person has a relevant interest in securities is to be determined as prescribed.

**Register of Financial Interests to be kept**

24. (1) The Commission is to keep a Register of Financial Interests.

30 (2) The Commission is to appoint a member of its staff to be the person responsible for making entries in the Register under this Division.

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**Requirement to notify certain interests**

**25. (1)** If a person who has a financial interest becomes an officer of the Commission, the person must, within 7 days after the day on which he or she becomes an officer of the Commission, if the person has not already done so, cause written particulars of the interest to be delivered to the responsible employee. 5

Maximum penalty: 50 penalty units.

**(2)** If there is a change, other than a prescribed change (if any), in a financial interest of an officer of the Commission, the officer must, within 7 days after the day on which the change happens, cause written particulars of the change to be delivered to the responsible employee. 10

Maximum penalty: 50 penalty units.

**(3)** For the purposes of subsection (2), if an officer of the Commission ceases to have a financial interest, there is taken to be a change in that financial interest of the officer. 15

**(4)** A person is taken not to have contravened this section if the person establishes that:

(a) at the time the person became an officer of the Commission, the person was not aware that the person had a financial interest or the person was not, at the time when the change happened, aware of the change; and 20

(b) the person caused written particulars of the financial interest or of the change to be delivered to the responsible employee within 7 days after the day on which the person became aware that the person had the financial interest or that the change had happened. 25

**(5)** Particulars to be delivered under this section include:

(a) the day on which the officer of the Commission started or ceased to have the financial interest or on which the change happened; and  
 (b) except as otherwise provided by the regulations, particulars of the nature of the financial interest and, if the financial interest is a relevant interest in securities, particulars of the extent of that interest. 30

**Duties of the responsible employee**

**26.** When particulars of a financial interest, or a change in a financial interest, of an officer of the Commission are delivered to the responsible employee, the employee must cause the particulars, or such of the particulars as are appropriate having regard to the form of the Register, to 35

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be entered in the Register as particulars of a financial interest, or a change in a financial interest, of the officer.

**Register to be open for inspection**

- 5 27. The Commission is to keep the Register at its principal office and ensure that the Register is open for public inspection during normal business hours without fee.

**PART 6—FINANCE****Determination of Commission's budget**

- 10 28. (1) The Commission must prepare and submit to the Minister a draft budget for each financial year in such form, and at such time, as the Minister directs.

(2) The draft budget must include details of:

- 15 (a) the amount of supervision levy that the Commission intends to impose in the financial year under section 95 of the Financial Institutions (NSW) Code; and

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

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

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

- 25 (5) The Commission must authorise expenditure only in accordance with the budget determined by the Minister unless the Minister otherwise directs.

**Consultation**

- 30 29. In preparing its draft budget, the Commission must, to the extent that it is appropriate and practicable to do so, consult with industry bodies and societies.

**Expenses payable out of Supervision Fund**

30. (1) The Commission may pay out of the Supervision Fund the expenses of exercising its functions under the Co-operation Act 1923 and the Friendly Societies Act 1989.



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(2) To remove doubt, it is declared that any remuneration or allowance payable to a person as a member of the Board or as a member of the staff of the Commission, or otherwise payable to a person under this Act, is payable out of the Supervision Fund.

**Appointment of auditor**

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31. (1) The Commission may appoint a registered company auditor (within the meaning of the Corporations Law) to be the sole auditor in respect of the Commission under the Public Finance and Audit Act 1983.

(2) The Commission is an authority for the purposes of Division 2A (Special audits of activities) of Part 3 of the Public Finance and Audit Act 1983.

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**PART 7—GENERAL**

**Act binds the Crown**

32. This Act 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.

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**Delegation of functions**

33. (1) The Commission may delegate to an authorised person or to a committee established under this section any of the functions of the Commission, other than this power of delegation and other than its powers under section 95 (Supervision levy) of the Financial Institutions (NSW) Code.

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(2) A delegate may sub-delegate to an authorised person any function delegated by the Commission if the delegate is authorised in writing to do so by the Commission.

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(3) The Commission may establish one or more committees, comprised of such persons (whether or not authorised persons) as the Commission thinks appropriate, for the purposes of a delegation under this section. The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Commission.

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(4) In this section, “authorised person” means:

(a) a member of the Board; or

(b) a member of the staff of the Commission; or

(c) the SSA of another participating State who, under the law of that State, is authorised to accept the delegation; or

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(d) the Registrar of Co-operatives or any other public official.

(5) The Commission must consult with the Minister before delegating any function to the SSA of another participating State.

**Commission may act as delegate**

5    **34.** (1) The Commission is authorised to act as the delegate of the SSA of another State in relation to that SSA's functions under or in relation to the financial institutions legislation.

(2) The Commission must consult with the Minister before accepting any delegation for the purposes of this section.

10 **Evidentiary provisions**

15    **35.** (1) Evidence of a direction issued, or determination made, by the Commission under this Act, another Act or the financial institutions legislation, may be given by the production of a copy of the direction or determination certified as a true copy by the Chairperson of the Board or the Chief Executive.

(2) A certificate signed by the Chairperson of the Board or the Chief Executive certifying any matter in relation to:

20    (a) a supervision levy, amount of contribution, or support levy, determined under Subdivision 6 of Division 2 of Part 2 of the Financial Institutions (NSW) Code; or

(b) an amount ordered to be paid by way of compulsory loan under that Subdivision,

is evidence of the matter certified.

**Service of documents on the Commission**

25    **36.** (1) A document may be served on the Commission by leaving it at, or by sending it by post to:

(a) the office of the Commission; or

(b) if it has more than one office—any one of its offices.

30    (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Commission in any other manner.

**Recovery of charges etc. by the Commission**

35    **37.** Any charge, fee or money due to the Commission may be recovered by the Commission as a debt in a court of competent jurisdiction.

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**Prosecution for offences**

38. (1) Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Despite subsection (1), an offence against section 21 (Board members and staff to act honestly etc.) is to be dealt with summarily before a Local Court: 5

(a) only if the prosecutor proposes that it be so dealt with; and

(b) only while the Local Court is satisfied that it is proper for the offence to be so dealt with. 10

(3) In any other case, an offence against section 21 is to be dealt with as an indictable offence.

(4) This Act does not operate to exclude the prosecution of a person otherwise than under this Act, but a person is not, in relation to substantially the same acts or omissions, liable to be prosecuted both under this Act and under any other Act or any law. 15

**Regulations**

39. 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. 20

**Amendment of other Acts**

40. The Acts specified in Schedule 2 are amended in the manner set out in that Schedule.

**Savings, transitional and other provisions** 25

41. Schedule 3 has effect.

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*Financial Institutions Commission 1992***SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD**

(Sec. 13)

**Part 1—Preliminary**5 **Definitions**

1. In this Schedule:

“**appointed member**” means a member of the Board appointed by the Governor;

“**member**” means any member of the Board.

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**Part 2—Constitution****Deputies**

2. (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

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(2) In the absence of an appointed member, the member’s deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is taken to be a member.

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(3) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of appointed members**

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3. Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Terms and conditions of appointment**

4. (1) An appointed member is entitled to be paid such remuneration and allowances as are determined by the Governor.

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued***

(2) An appointed member holds office on such terms and conditions not provided for by this Act as are determined by the Governor.

**Vacation of office by appointed member** 5

5. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or 10
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or 15
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 20
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or 25
- (i) accepts an office or appointment with a financial institution. 30

(2) The Governor may remove an appointed member from office at any time.

**Disclosure of pecuniary interests**

6. (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and 35

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SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued*

- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- 5           the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
- 10           (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- 15           is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- 20           (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- 25           (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.
- (5) For the purpose of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- 30           (a) be present during any deliberation of the Board for the purpose of making the determination; or
- 35           (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued***

**Filling of vacancy in office of appointed member**

7. If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 5

**Effect of certain other Acts**

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or 10

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 15

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

**Part 3—Procedure**

**General procedure** 20

9. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**Quorum**

10. The quorum for a meeting of the Board is 3 members. 25

**Presiding member**

11. (1) The Chairperson of the Board or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Board.

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SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued*

- 5 (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Transaction of business outside meetings or by telephone etc.**

- 10 13. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

- 15 (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or  
20 (b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

- 25 (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

- 30 14. The Chairperson of the Board may call the first meeting of the Board in such manner as the Chairperson thinks fit.



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**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

(Sec. 40)

**Co-operation Act 1923 (1924 No. 1)**

Section 5C:

After section 5B, insert:

**Certain functions of the Registrar to be exercised by FINCOM**

5C. (1) On and from the commencement of this section, the functions of the Registrar under this Act in relation to co-operative housing societies are to be exercised by the New South Wales Financial Institutions Commission.

(2) For that purpose, a reference in this Act to the Registrar is, in relation to the application of this Act to and in respect of co-operative housing societies, to be read as a reference to that Commission.

5

10

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**Friendly Societies Act 1989 No. 232**

Section 3A:

After section 3, insert:

**Registrar's functions to be exercised by FINCOM**

3A. (1) On and from the commencement of this section, the functions of the Registrar under this Act are to be exercised by the New South Wales Financial Institutions Commission.

(2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to that Commission.

20

25

**Public Authorities (Financial Arrangements) Act 1987 No. 33**

Schedule 1 (Authorities):

Insert, in alphabetical order:

New South Wales Financial Institutions Commission.

**Public Finance and Audit Act 1983 No. 152**

30

Schedule 2 (Statutory Bodies):

Insert, in alphabetical order:

New South Wales Financial Institutions Commission.

*Financial Institutions Commission 1992*SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued***Public Sector Management Act 1988 No. 33**

## Schedule 3A (Chief Executive Positions):

- 5           Insert in Part 3, in alphabetical order of public authorities:  
           Chief Executive of the New South Wales Financial  
           Institutions Commission

## SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 41)

**Part 1—General**10 **Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or from a later date.
- 15 (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:
- 20 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of 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 publication.

25 **Part 2—Transfer of employees to the Commission****Meaning of “transferred employee”**

2. In this Part, “transferred employee” means a person who becomes a member of the staff of the Commission because of the operation of this Part.

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*

**Governor may transfer positions in Registry of Co-operatives**

3. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, specify positions in the Registry of Co-operatives as positions that are to be transferred to the Commission. Such a position is referred to in this Schedule as a “**transferred position**”. 5

(2) An order must specify the date on which the transfer takes effect and that date is the “**transfer date**” for the position. 10

(3) A person who holds a transferred position immediately before the transfer date for the position is transferred on that date to a position in the staff of the Commission and ceases to hold the transferred position.

(4) An order may specify a position by reference to the functions or activities which a person employed in a position performs or in any other manner. 15

**Transfer of CUSR B staff**

4. A person who is an officer or employee of the Credit Union Savings Reserve Board under the Credit Union Act 1969 immediately before the repeal of that Act is transferred on that repeal to a position in the staff of the Commission and ceases to be an officer or employee of that Board. 20

**Terms and conditions of new position**

5. The terms and conditions on which a person becomes a member of staff of the Commission under this Part are (until other provision is duly made under this or any other Act or law) to be the same as those on which he or she was employed in the transferred position immediately before becoming a member of staff of the Commission. 25

**Accrued annual leave and long service leave**

6. (1) A transferred employee may elect to be paid the money value of any accrued leave (annual leave or long service leave) or to retain the entitlement to leave. 30

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*

5 (2) If the employee elects to retain the entitlement to leave, he or she is taken to have, on commencing employment with the Commission, the amount of accrued leave to which the employee was entitled immediately before the end of his or her previous employment.

(3) This leave is in addition to any leave which accrues after the commencement of employment by the Commission.

(4) In this clause:

10 “**accrued leave**” means leave owing to an employee (but not taken) immediately before the commencement of his or her employment with the Commission.

**Accrued sick leave**

15 7. (1) A transferred employee is taken to have, on commencing employment with the Commission, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.

20 (2) The eligibility of an employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee’s employment by the Commission.

(3) In this clause:

25 “**accrued sick leave**” means the amount of sick leave to which the employee would have been entitled in the event of illness immediately before the commencement of employment by the Commission.

**Maternity leave etc.**

30 8. (1) For the purposes of determining whether a transferred employee is entitled to maternity leave, paternity leave, adoption leave or any other leave (other than long service leave) for which a condition of eligibility is a minimum period of service, service with the employee’s previous employer is taken to be service with the Commission.

35 (2) Except as provided by subclause (1), the eligibility of a transferred employee for leave referred to in that subclause is to be determined in accordance with the conditions applying to that leave in the employee’s employment by the Commission.

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**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—**  
*continued***Reappointment to the Public Service**

9. (1) A member of staff of the Commission who immediately before becoming a member of that staff was a member of staff of the Registry of Co-operatives may apply for a position in the Public Service as if he or she were an officer of the Public Service. 5

(2) Any such member who applies for such a position, or is appointed as an officer of the Public Service, is taken (for the purposes of the Public Sector Management Act 1988, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Relations Act 1991 and for all other purposes) to be an officer of the Public Service in relation to the application or appointment. 10

(3) This clause applies only to applications for positions in the Public Service made within 5 years after the commencement of this Act. 15

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LEGISLATIVE COUNCIL

FINANCIAL INSTITUTIONS (NEW SOUTH WALES) BILL  
FINANCIAL INSTITUTIONS COMMISSION BILL

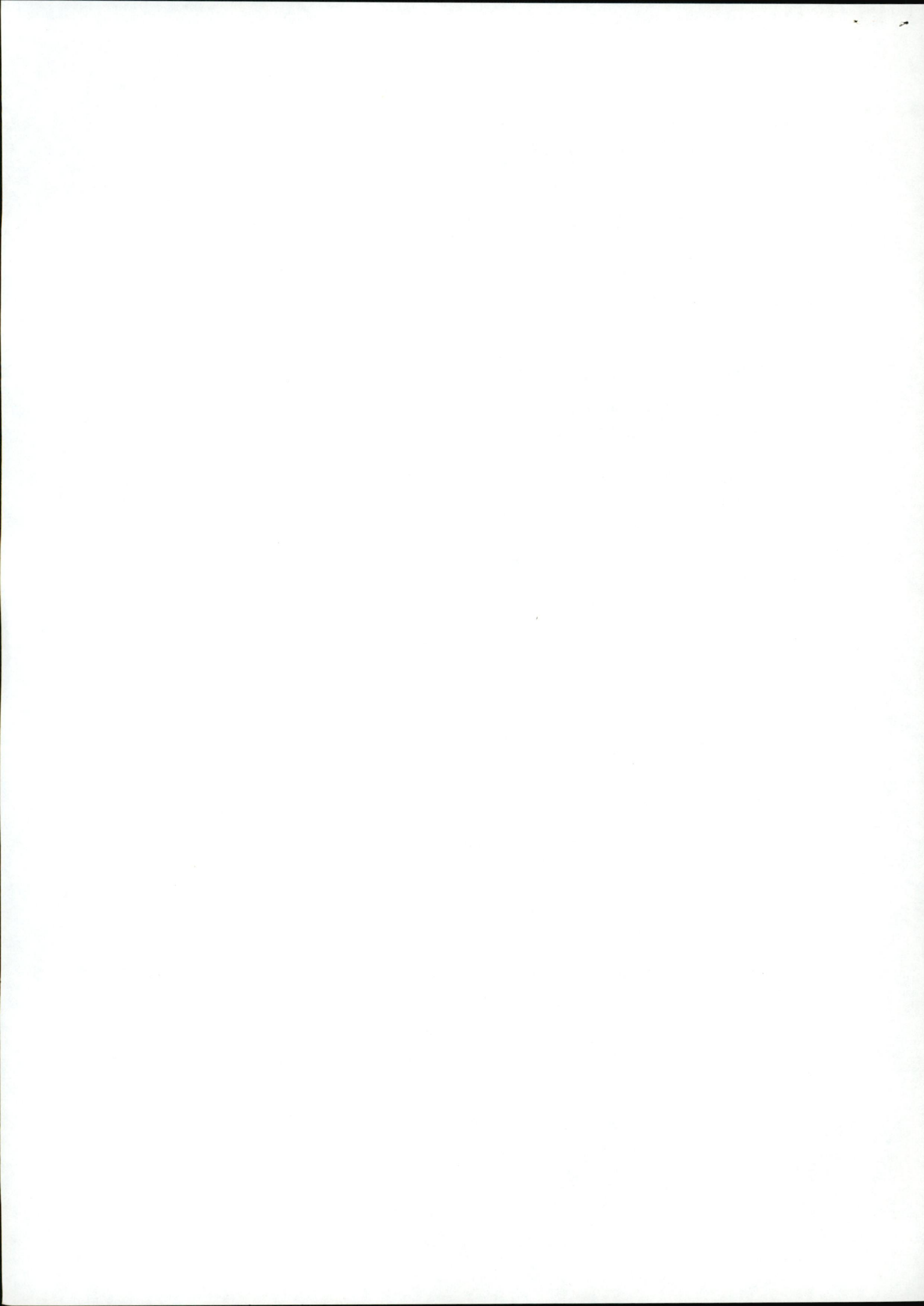
AMENDMENT TO MOTION FOR SECOND READING  
(Select Committee)

Mr Egan to say—

Mr PRESIDENT

I move: That the question be amended by the omission of the words "now read a second time" with a view to inserting instead:

- (1) Referred to a Select Committee for investigation and report.
- (2) (a) That such Committee consist of seven Members comprising:
  - (i) 4 Government Members;
  - (ii) 1 Opposition Member;
  - (iii) 1 Australian Democrat Member; and
  - (iv) 1 Call to Australia Member; and
- (b) That the Members of the Committee are to be nominated in writing to the President by the Leader of their respective parties.
- (3) That the Committee have leave to sit during the sittings or any adjournment of the House; to adjourn from place to place; to make visits of inspection within New South Wales and other States and Territories of Australia; and have power to take evidence and to send for persons, papers, records and things; and to report from time to time.
- (4) That should the House stand adjourned and the Committee agree to any report before the House resumes sitting:
  - (a) the Committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House;
  - (b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and
  - (c) the documents shall be laid upon the Table of the House at its next sitting.



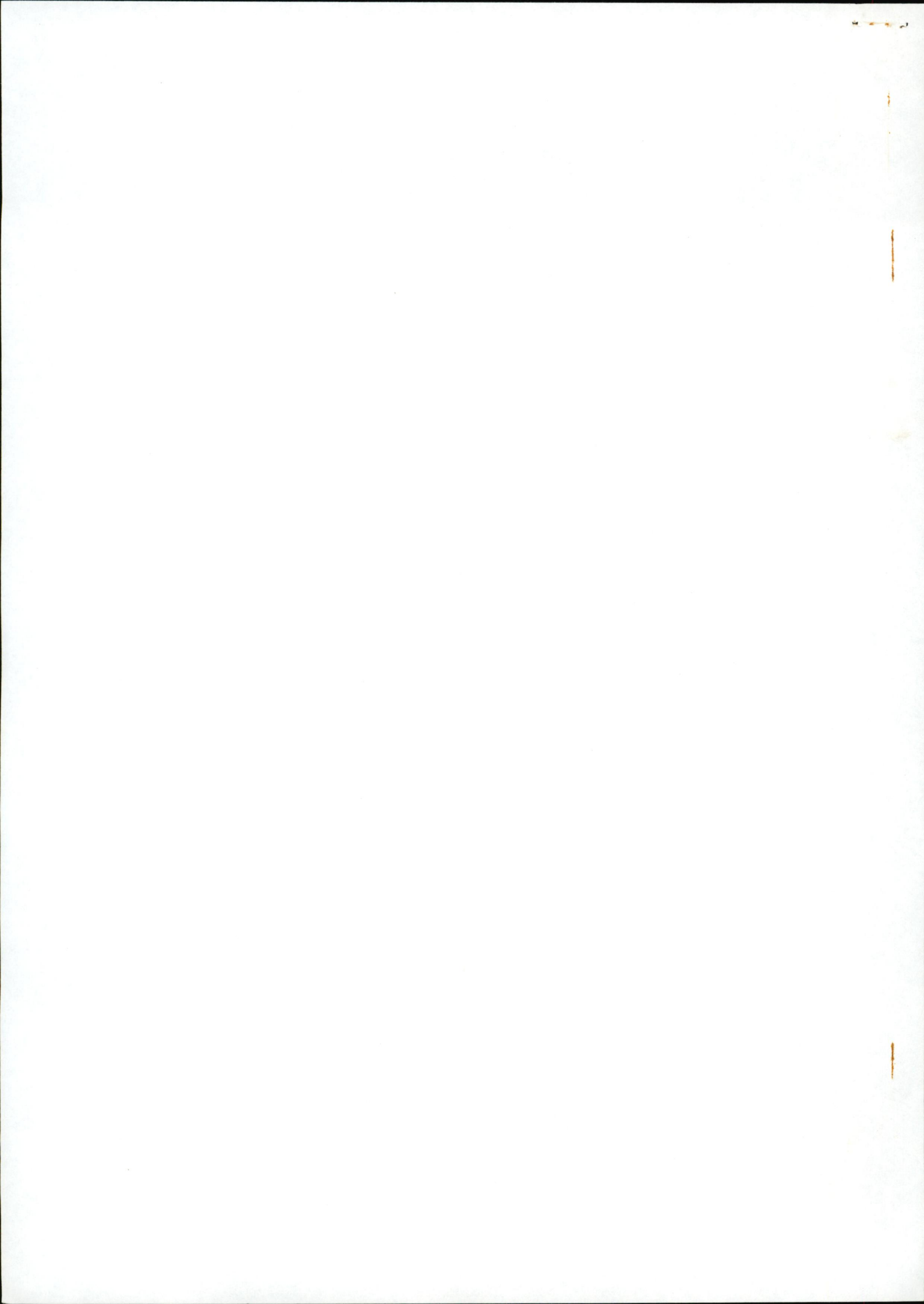


(5) That the Committee report by Tuesday 19 May 1992.

(6) That, upon receipt of a request from the Committee for funding, the Government immediately provide the Legislative Council with such additional funds that the Committee considers necessary for the conduct of its inquiry.

Signed.....

Date.....



# FINANCIAL INSTITUTIONS COMMISSION ACT 1992 No. 47

NEW SOUTH WALES



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**SCHEDULE 1—PROVISIONS RELATING TO THE CONSTITUTION AND  
PROCEDURE OF THE BOARD**

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

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**FINANCIAL INSTITUTIONS COMMISSION ACT 1992 No. 47**

**NEW SOUTH WALES**



**Act No. 47, 1992**

**An Act to establish the New South Wales Financial Institutions Commission and to provide for its functions; and for related purposes.  
[Assented to 30 June 1992]**

**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Financial Institutions Commission Act 1992.

**Commencement**

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

**Definitions**

3. (1) In this Act:

“Board” means the Board of the Commission;

“Chief Executive” means the Chief Executive of the Commission;

“Commission” means the New South Wales Financial Institutions Commission established by this Act.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Interpretation—words etc. used in Financial Institutions (NSW) Code**

4. Words and expressions used in this Act have the same meanings as in the Financial Institutions (NSW) Code.

**PART 2—THE COMMISSION**

**Constitution of the Commission**

5. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Financial Institutions Commission.

(2) The New South Wales Financial Institutions Commission may also be called FINCOM and the use of that name has the same effect for all purposes as the use of its corporate name.

**Functions**

6. The Commission has the functions conferred or imposed on it by or under the financial institutions legislation (as SSA), the Co-operation Act 1923, the Friendly Societies Act 1989 or any other Act.

**General powers**

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

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

(3) Without limiting subsection (1), the Commission has, for or in connection with the exercise of its functions, all the powers of a natural person, and may, for example:

- (a) enter into contracts; and
- (b) acquire, hold and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants.

(4) The Commission has power to exercise its functions both within and outside the State.

**Commission is independent**

8. Except as is expressly provided in the financial institutions legislation or this Act, the Commission is not subject to direction by or on behalf of the Government or the Ministerial Council.

**Commission to comply with financial institutions agreement**

9. In exercising its functions, the Commission must:

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

**Commission does not represent the Crown**

10. The Commission does not represent the Crown.

**Commission is exempt public authority under Corporations Law**

11. The Commission is an exempt public authority for the purposes of the Corporations Law.

**Seal of the Commission**

12. The seal of the Commission is to be kept by the Chief Executive and is to be affixed to a document:

- (a) only in the presence of the Chief Executive or a member of the staff of the Commission authorised in that behalf by the Chief Executive; and
- (b) only with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal.

**PART 3—MANAGEMENT OF THE COMMISSION****Establishment of the Board**

13. (1) The Commission is to have a Board consisting of:

- (a) the Chief Executive; and
- (b) 3 part-time members appointed by the Governor on the recommendation of the Minister.

(2) Of the appointed members of the Board one is, by the instrument of his or her appointment or by a subsequent instrument signed by the Governor, to be appointed as Chairperson of the Board.

(3) A reference in this Act to a member of the Board includes a reference to the Chief Executive.

(4) Schedule 1 (Constitution and procedure of the Board) has effect.

**Qualifications of members**

14. (1) Each of the persons recommended by the Minister for appointment as a member of the Board must have such qualifications or experience in one or more of the following fields as the Minister considers necessary to enable the Commission to exercise its functions:

- (a) supervision or management of financial institutions;
- (b) financial intermediation;
- (c) capital markets and risk management;
- (d) economics;
- (e) audit of financial institutions.

(2) A person who holds an office or appointment with a financial institution is not eligible to be appointed as a member of the Board.



**Functions of the Board**

15. The functions of the Board are as follows:

- (a) to determine the policies and long term strategic plans of the Commission;
- (b) to oversee the effective, efficient and economical management of the Commission.

**Chief Executive**

16. (1) The Governor may appoint a Chief Executive of the Commission.

(2) The employment of the Chief Executive is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.

(4) The Minister may, at any time, remove a person from office as acting Chief Executive.

(5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

**Chief Executive to manage and control affairs of the Commission**

17. (1) The affairs of the Commission are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board.

(2) Any act, matter or thing done in the name of, or on behalf of, the Commission by the Chief Executive, or by any person authorised by the Chief Executive to do that act, matter or thing, is taken to have been done by the Commission.

**PART 4—STAFF ETC.****Employment of staff**

18. (1) The Commission may employ such staff as it considers necessary for the exercise of its functions.

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(2) The Commission may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

(3) Part 2 of the Public Sector Management Act 1988 does not apply to the members of staff of the Commission.

**Use of staff and facilities of public authorities**

19. (1) The Commission may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a public authority of the State or of another State or of the Commonwealth.

(2) Any member of staff of a public authority of whose services the Commission makes use is taken to be a member of staff of the Commission for the purposes of this Act.

(3) The Commission may arrange for the services of a member of the staff of the Commission to be made available to the Commonwealth or a State or to a public authority of the Commonwealth or a State.

(4) In this section:

“public authority” includes a Government department or administrative office and a local authority.

**Consultants**

20. (1) The Commission may engage consultants.

(2) Any consultant engaged by the Commission is taken not to be a member of staff of the Commission for the purposes of this or any other Act.

**PART 5—DUTIES AND LIABILITIES OF BOARD AND STAFF**

**Division 1—General duties and liabilities**

**Board members and staff to act honestly etc.**

21. (1) In this section:

“officer of the Commission” means a member of the Board or a member of the staff of the Commission.

(2) An officer of the Commission who, in the course of official duties, is required to consider any matter concerning:

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- (a) a person or body by whom the officer is employed or has been employed at any time during the previous 3 years or with whom the officer is associated; or
- (b) a related body in relation to a financial body by whom the officer is employed or has been employed at any time during the previous 3 years,

must immediately inform the Commission in writing.

Maximum penalty: 50 penalty units.

(3) An officer of the Commission must at all times act honestly in the exercise of the functions that the person has as an officer of the Commission.

Maximum penalty: 50 penalty units.

(4) An officer of the Commission must not make improper use of an office held for the purposes of this Act or the financial institutions legislation:

- (a) to gain, directly or indirectly, an advantage for himself, herself or another person; or
- (b) to cause detriment to the Commission or a financial institution.

Maximum penalty: 100 penalty units or imprisonment for 10 years, or both.

(5) An officer of the Commission, or a person who has at any time been an officer of the Commission, must not make improper use of information acquired by virtue of an office held for the purposes of this Act or the financial institutions legislation:

- (a) to gain, directly or indirectly, an advantage for himself, herself or another person; or
- (b) to cause detriment to the Commission or a financial institution.

Maximum penalty: 100 penalty units or imprisonment for 10 years, or both.

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

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

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**Liability of Board members and staff**

22. (1) A member of the Board or of the staff of the Commission incurs no liability for an honest act or omission in the exercise of functions under this Act.

(2) A liability that would, but for this section, attach to a member of the Board or of the staff of the Commission attaches to the Commission.

(3) This section does not apply to:

- (a) wilful misconduct; or
- (b) wilful neglect; or
- (c) wilful failure to comply with this Act.

**Division 2—Register of Financial Interests**

**Definitions**

23. (1) In this Division:

“**officer of the Commission**” means a member of the Board or a member of the staff of the Commission;

“**Register**” means the Register of Financial Interests maintained under section 24;

“**responsible employee**” means the person appointed under section 24.

(2) For the purposes of this Division, a person has a financial interest if (and only if) the person, or the spouse or a child of the person:

- (a) has a relevant interest in securities of a financial institution; or
- (b) has money deposited with a financial institution; or
- (c) is in receipt of a loan from a financial institution; or
- (d) is a member of a financial institution.

(3) The question whether a person has a relevant interest in securities is to be determined as prescribed.

**Register of Financial Interests to be kept**

24. (1) The Commission is to keep a Register of Financial Interests.

(2) The Commission is to appoint a member of its staff to be the person responsible for making entries in the Register under this Division.

**Requirement to notify certain interests**

**25.** (1) If a person who has a financial interest becomes an officer of the Commission, the person must, within 7 days after the day on which he or she becomes an officer of the Commission, if the person has not already done so, cause written particulars of the interest to be delivered to the responsible employee.

Maximum penalty: 50 penalty units.

(2) If there is a change, other than a prescribed change (if any), in a financial interest of an officer of the Commission, the officer must, within 7 days after the day on which the change happens, cause written particulars of the change to be delivered to the responsible employee.

Maximum penalty: 50 penalty units.

(3) For the purposes of subsection (2), if an officer of the Commission ceases to have a financial interest, there is taken to be a change in that financial interest of the officer.

(4) A person is taken not to have contravened this section if the person establishes that:

- (a) at the time the person became an officer of the Commission, the person was not aware that the person had a financial interest or the person was not, at the time when the change happened, aware of the change; and
  - (b) the person caused written particulars of the financial interest or of the change to be delivered to the responsible employee within 7 days after the day on which the person became aware that the person had the financial interest or that the change had happened.
- (5) Particulars to be delivered under this section include:
- (a) the day on which the officer of the Commission started or ceased to have the financial interest or on which the change happened; and
  - (b) except as otherwise provided by the regulations, particulars of the nature of the financial interest and, if the financial interest is a relevant interest in securities, particulars of the extent of that interest.

**Duties of the responsible employee**

**26.** When particulars of a financial interest, or a change in a financial interest, of an officer of the Commission are delivered to the responsible employee, the employee must cause the particulars, or such of the particulars as are appropriate having regard to the form of the Register, to

be entered in the Register as particulars of a financial interest, or a change in a financial interest, of the officer.

### **Register to be open for inspection**

27. The Commission is to keep the Register at its principal office and ensure that the Register is open for public inspection during normal business hours without fee.

## **PART 6—FINANCE**

### **Determination of Commission's budget**

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

(2) The draft budget must include details of:

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

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

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

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

(5) The Commission must authorise expenditure only in accordance with the budget determined by the Minister unless the Minister otherwise directs.

### **Consultation**

29. In preparing its draft budget, the Commission must, to the extent that it is appropriate and practicable to do so, consult with industry bodies and societies.

### **Expenses payable out of Supervision Fund**

30. (1) The Commission may pay out of the Supervision Fund the expenses of exercising its functions under the Co-operation Act 1923 and the Friendly Societies Act 1989.

(2) To remove doubt, it is declared that any remuneration or allowance payable to a person as a member of the Board or as a member of the staff of the Commission, or otherwise payable to a person under this Act, is payable out of the Supervision Fund.

### **Appointment of auditor**

31. (1) The Commission may appoint a registered company auditor (within the meaning of the Corporations Law) to be the sole auditor in respect of the Commission under the Public Finance and Audit Act 1983.

(2) The Commission is an authority for the purposes of Division 2A (Special audits of activities) of Part 3 of the Public Finance and Audit Act 1983.

## **PART 7—GENERAL**

### **Act binds the Crown**

32. This Act 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.

### **Delegation of functions**

33. (1) The Commission may delegate to an authorised person or to a committee established under this section any of the functions of the Commission, other than this power of delegation and other than its powers under section 95 (Supervision levy) of the Financial Institutions (NSW) Code.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Commission if the delegate is authorised in writing to do so by the Commission.

(3) The Commission may establish one or more committees, comprised of such persons (whether or not authorised persons) as the Commission thinks appropriate, for the purposes of a delegation under this section. The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Commission.

(4) In this section, “authorised person” means:

- (a) a member of the Board; or
- (b) a member of the staff of the Commission; or
- (c) the SSA of another participating State who, under the law of that State, is authorised to accept the delegation; or

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(d) the Registrar of Co-operatives or any other public official.

(5) The Commission must consult with the Minister before delegating any function to the SSA of another participating State.

**Commission may act as delegate**

34. (1) The Commission is authorised to act as the delegate of the SSA of another State in relation to that SSA's functions under or in relation to the financial institutions legislation.

(2) The Commission must consult with the Minister before accepting any delegation for the purposes of this section.

**Evidentiary provisions**

35. (1) Evidence of a direction issued, or determination made, by the Commission under this Act, another Act or the financial institutions legislation, may be given by the production of a copy of the direction or determination certified as a true copy by the Chairperson of the Board or the Chief Executive.

(2) A certificate signed by the Chairperson of the Board or the Chief Executive certifying any matter in relation to:

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

is evidence of the matter certified.

**Service of documents on the Commission**

36. (1) A document may be served on the Commission by leaving it at, or by sending it by post to:

- (a) the office of the Commission; or
- (b) if it has more than one office—any one of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Commission in any other manner.

**Recovery of charges etc. by the Commission**

37. Any charge, fee or money due to the Commission may be recovered by the Commission as a debt in a court of competent jurisdiction.



**Prosecution for offences**

**38.** (1) Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Despite subsection (1), an offence against section 21 (Board members and staff to act honestly etc.) is to be dealt with summarily before a Local Court:

- (a) only if the prosecutor proposes that it be so dealt with; and
- (b) only while the Local Court is satisfied that it is proper for the offence to be so dealt with.

(3) In any other case, an offence against section 21 is to be dealt with as an indictable offence.

(4) This Act does not operate to exclude the prosecution of a person otherwise than under this Act, but a person is not, in relation to substantially the same acts or omissions, liable to be prosecuted both under this Act and under any other Act or any law.

**Regulations**

**39.** 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.

**Amendment of other Acts**

**40.** The Acts specified in Schedule 2 are amended in the manner set out in that Schedule.

**Savings, transitional and other provisions**

**41.** Schedule 3 has effect.

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD**

(Sec. 13)

**Part 1—Preliminary****Definitions**

1. In this Schedule:

“**appointed member**” means a member of the Board appointed by the Governor;

“**member**” means any member of the Board.

**Part 2—Constitution****Deputies**

2. (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

(2) In the absence of an appointed member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is taken to be a member.

(3) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of appointed members**

3. Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Terms and conditions of appointment**

4. (1) An appointed member is entitled to be paid such remuneration and allowances as are determined by the Governor.

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued***

(2) An appointed member holds office on such terms and conditions not provided for by this Act as are determined by the Governor.

**Vacation of office by appointed member**

5. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (i) accepts an office or appointment with a financial institution.

(2) The Governor may remove an appointed member from office at any time.

**Disclosure of pecuniary interests**

6. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued***

- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

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

(5) For the purpose of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

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

(6) A contravention of this clause does not invalidate any decision of the Board.

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SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued*

**Filling of vacancy in office of appointed member**

7. If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

**Part 3—Procedure**

**General procedure**

9. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**Quorum**

10. The quorum for a meeting of the Board is 3 members.

**Presiding member**

11. (1) The Chairperson of the Board or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Board.

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**SCHEDULE 1—PROVISIONS RELATING TO THE  
CONSTITUTION AND PROCEDURE OF THE BOARD—*continued***

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Transaction of business outside meetings or by telephone etc.**

13. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

14. The Chairperson of the Board may call the first meeting of the Board in such manner as the Chairperson thinks fit.

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

(Sec. 40)

**Co-operation Act 1923 (1924 No. 1)****Section 5C:**

After section 5B, insert:

**Certain functions of the Registrar to be exercised by FINCOM**

5C. (1) On and from the commencement of this section, the functions of the Registrar under this Act in relation to co-operative housing societies are to be exercised by the New South Wales Financial Institutions Commission.

(2) For that purpose, a reference in this Act to the Registrar is, in relation to the application of this Act to and in respect of co-operative housing societies, to be read as a reference to that Commission.

**Friendly Societies Act 1989 No. 232****Section 3A:**

After section 3, insert:

**Registrar's functions to be exercised by FINCOM**

3A. (1) On and from the commencement of this section, the functions of the Registrar under this Act are to be exercised by the New South Wales Financial Institutions Commission.

(2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to that Commission.

**Public Authorities (Financial Arrangements) Act 1987 No. 33****Schedule 1 (Authorities):**

Insert, in alphabetical order:

New South Wales Financial Institutions Commission.

**Public Finance and Audit Act 1983 No. 152****Schedule 2 (Statutory Bodies):**

Insert, in alphabetical order:

New South Wales Financial Institutions Commission.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

**Public Sector Management Act 1988 No. 33**

Schedule 3A (Chief Executive Positions):

Insert in Part 3, in alphabetical order of public authorities:  
 Chief Executive of the New South Wales Financial  
 Institutions Commission

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 41)

**Part 1—General**

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or from a later date.

(3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:

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

**Part 2—Transfer of employees to the Commission**

**Meaning of “transferred employee”**

2. In this Part, “transferred employee” means a person who becomes a member of the staff of the Commission because of the operation of this Part.



**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*****Governor may transfer positions in Registry of Co-operatives**

3. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, specify positions in the Registry of Co-operatives as positions that are to be transferred to the Commission. Such a position is referred to in this Schedule as a “**transferred position**”.

(2) An order must specify the date on which the transfer takes effect and that date is the “**transfer date**” for the position.

(3) A person who holds a transferred position immediately before the transfer date for the position is transferred on that date to a position in the staff of the Commission and ceases to hold the transferred position.

(4) An order may specify a position by reference to the functions or activities which a person employed in a position performs or in any other manner.

**Transfer of CUSR B staff**

4. A person who is an officer or employee of the Credit Union Savings Reserve Board under the Credit Union Act 1969 immediately before the repeal of that Act is transferred on that repeal to a position in the staff of the Commission and ceases to be an officer or employee of that Board.

**Terms and conditions of new position**

5. The terms and conditions on which a person becomes a member of staff of the Commission under this Part are (until other provision is duly made under this or any other Act or law) to be the same as those on which he or she was employed in the transferred position immediately before becoming a member of staff of the Commission.

**Accrued annual leave and long service leave**

6. (1) A transferred employee may elect to be paid the money value of any accrued leave (annual leave or long service leave) or to retain the entitlement to leave.

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*

(2) If the employee elects to retain the entitlement to leave, he or she is taken to have, on commencing employment with the Commission, the amount of accrued leave to which the employee was entitled immediately before the end of his or her previous employment.

(3) This leave is in addition to any leave which accrues after the commencement of employment by the Commission.

(4) In this clause:

“**accrued leave**” means leave owing to an employee (but not taken) immediately before the commencement of his or her employment with the Commission.

**Accrued sick leave**

7. (1) A transferred employee is taken to have, on commencing employment with the Commission, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.

(2) The eligibility of an employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's employment by the Commission.

(3) In this clause:

“**accrued sick leave**” means the amount of sick leave to which the employee would have been entitled in the event of illness immediately before the commencement of employment by the Commission.

**Maternity leave etc.**

8. (1) For the purposes of determining whether a transferred employee is entitled to maternity leave, paternity leave, adoption leave or any other leave (other than long service leave) for which a condition of eligibility is a minimum period of service, service with the employee's previous employer is taken to be service with the Commission.

(2) Except as provided by subclause (1), the eligibility of a transferred employee for leave referred to in that subclause is to be determined in accordance with the conditions applying to that leave in the employee's employment by the Commission.

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*

**Reappointment to the Public Service**

9. (1) A member of staff of the Commission who immediately before becoming a member of that staff was a member of staff of the Registry of Co-operatives may apply for a position in the Public Service as if he or she were an officer of the Public Service.

(2) Any such member who applies for such a position, or is appointed as an officer of the Public Service, is taken (for the purposes of the Public Sector Management Act 1988, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Relations Act 1991 and for all other purposes) to be an officer of the Public Service in relation to the application or appointment.

(3) This clause applies only to applications for positions in the Public Service made within 5 years after the commencement of this Act.

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

