

First print



New South Wales

# Financial Institutions (New South Wales) Amendment Bill 1996

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Financial Institutions (New South Wales) Act 1992*:

- (a) to permit retained earnings in the Credit Unions Contingency Fund to be treated as contributions made by credit unions to that fund, and
  - (b) to dispense with the right of appeal under the Act to the Queensland Supreme Court in respect of decisions of the Australian Financial Institutions Appeals Tribunal.
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## Outline of provisions

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

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

**Clause 3** is a formal provision giving effect to the amendments to the *Financial Institutions (New South Wales) Act 1992* set out in Schedule 1.

**Clause 4** is a saving of rights, in relation to matters pending, in respect of appeals abolished by the amendment made by Schedule 1 [1].

**Schedule 1 [1]** repeals section 13 of the Act, which afforded an appeal to the Queensland Supreme Court against decisions of the Australian Financial Institutions Appeals Tribunal. In the absence of the section, appeals will lie to the Supreme Court of New South Wales by virtue of section 96 of the *AFIC Code*, applied by section 381 of the *Financial Institutions (NSW) Code*. (In section 96 of the *AFIC Code*, **Court** means the Supreme Court of New South Wales, by virtue of section 4 of the *AFIC Code* and the definition of **Court** in the *Financial Institutions (NSW) Code*.)

**Schedule 1 [2]** repeals sections 24 and 25 of the Act, the operation of which is now spent, and inserts a new section 24. The new section permits the Financial Institutions Commission to determine that retained earnings in the Credit Unions Contingency Fund (that is, amounts credited to the Fund other than actual contributions from credit unions) are to be regarded as contributions to the Fund by credit unions and apportioned among the credit unions' contribution accounts accordingly. The Commission must be satisfied that the distribution will not affect the viability of the fund with respect to the purposes for which it was established. A consequence of regarding funds as contributions by a credit union is that the funds concerned are treated as an asset of the credit union and are taken into account for the purpose of determining future levels of contribution. In a proper case, some or all of those funds might be refunded under section 98A of the *Financial Institutions (NSW) Code*.

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New South Wales

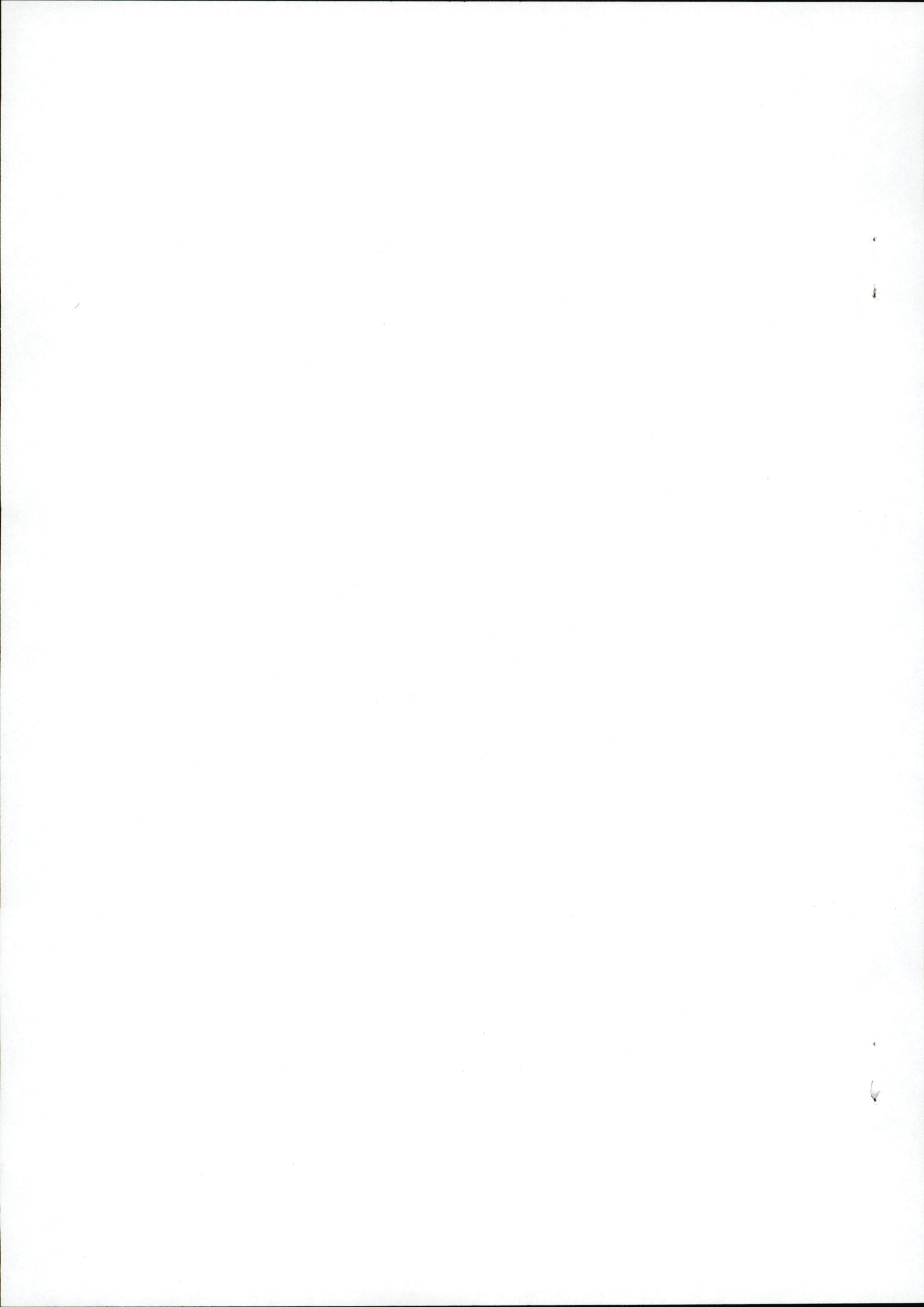
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New South Wales

## Financial Institutions (New South Wales) Amendment Bill 1996

No. , 1996

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### **A Bill for**

An Act to amend the *Financial Institutions (New South Wales) Act 1992* with respect to retained earnings in the Credit Unions Contingency Fund and with respect to appeals against decisions of the Australian Financial Institutions Appeals Tribunal.

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

**1 Name of Act**

This Act is the *Financial Institutions (New South Wales) Amendment Act 1996*.

**2 Commencement**

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

**3 Amendment of Financial Institutions (New South Wales) Act 1992 No 46**

The *Financial Institutions (New South Wales) Act 1992* is amended as set out in Schedule 1. 10

**4 Saving**

- (1) Section 13 of the *Financial Institutions (New South Wales) Act 1992*, although repealed by this Act, is taken to continue in force for the purpose only of conferring on the Queensland Supreme Court jurisdiction in the matter of: 15
- (a) an appeal referred to in subsection (1) (a) of that section that was instituted before the date of commencement of Schedule 1 [1], and
  - (b) a reference referred to in subsection (1) (b) of that section made before that date. 20
- (2) Nothing in this section affects the jurisdiction of the Supreme Court of New South Wales or the operation of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

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## Schedule 1 Amendments

(Section 3)

**[1] Section 13 Conferral of jurisdiction on Queensland Supreme Court**

Omit the section.

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**[2] Sections 24 and 25**

Omit the sections. Insert instead:

**24 Distribution of retained earnings of Contingency Fund**

- (1) The SSA may from time to time:
- (a) determine that the retained earnings of the Contingency Fund, or such part of those earnings as may be specified in the determination, are to be treated as contributions to the fund and apportioned in accordance with paragraph (b), and 10
  - (b) apportion the earnings to which the determination applies to the contribution accounts of credit unions in an equitable manner, taking into account the extent to which, in the opinion of the SSA, the generation of retained earnings is attributable to the contributions of each credit union. 15  
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- (2) Before making a determination under this section, the SSA must be satisfied that the capital amount of the Contingency Fund will continue to be sufficient, after an apportionment under this section has been effected, for the purposes referred to in section 97 (2) (a)–(d) of the *Financial Institutions (NSW) Code*. 25
- (3) In this section, *retained earnings* means amounts for the time being standing to the credit of the Contingency Fund, other than unrefunded amounts:
- (a) paid by credit unions as contributions under section 98 of the *Financial Institutions (NSW) Code*, or 30

Financial Institutions (New South Wales) Amendment Bill 1996

Schedule 1 Amendments

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- (b) paid by credit unions as deposits under the *Credit Union Act 1969* and reckoned as contributions under section 98 of that Code, or
  - (c) otherwise credited to the contribution accounts of credit unions.
- (4) An amount apportioned to a credit union under this section is to be treated as if it were a contribution paid to the Fund under section 98 of the *Financial Institutions (NSW) Code* by the credit union concerned.

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# **FINANCIAL INSTITUTIONS (NEW SOUTH WALES) AMENDMENT BILL 1996**

## **NOTES FOR SECOND READING SPEECH - LEGISLATIVE COUNCIL**

**Mr President,**

**This Bill has two main purposes:**

**Firstly, to permit the retained earnings in the Credit Unions Contingency Fund to be treated as contributions made by credit unions to that Fund; and**

**Secondly, to dispense with the right of appeal under the Act to the Queensland Supreme Court.**

**Under Clause 408 of the Financial Institutions Agreement between the States and the Territories any Financial Institutions Legislation must not be introduced unless the Ministerial Council has approved the Legislation in the form in which it is introduced.**

**The Ministerial Council has approved of the Bill as tabled.**

**In 1978, the late Honourable Syd Einfeld, then Minister for Co-operatives, introduced amendments to the Credit Union Act to establish a Credit Union Savings Reserve Fund.**

**All credit unions contributed a small proportion of their funds into the Reserve Fund to provide the resources to protect members' deposits.**



Since the Fund was established, no member of a New South Wales credit union has suffered the loss of any part of their deposits.

These far-sighted principles were taken up by some other States and, in 1992 were included in the uniform national Financial Institutions Scheme which commenced on 1st July in that year.

Section 97 of the Financial Institutions (NSW) Code establishes the Credit Unions Contingency Fund, the successor to the Credit Union Reserve Fund.

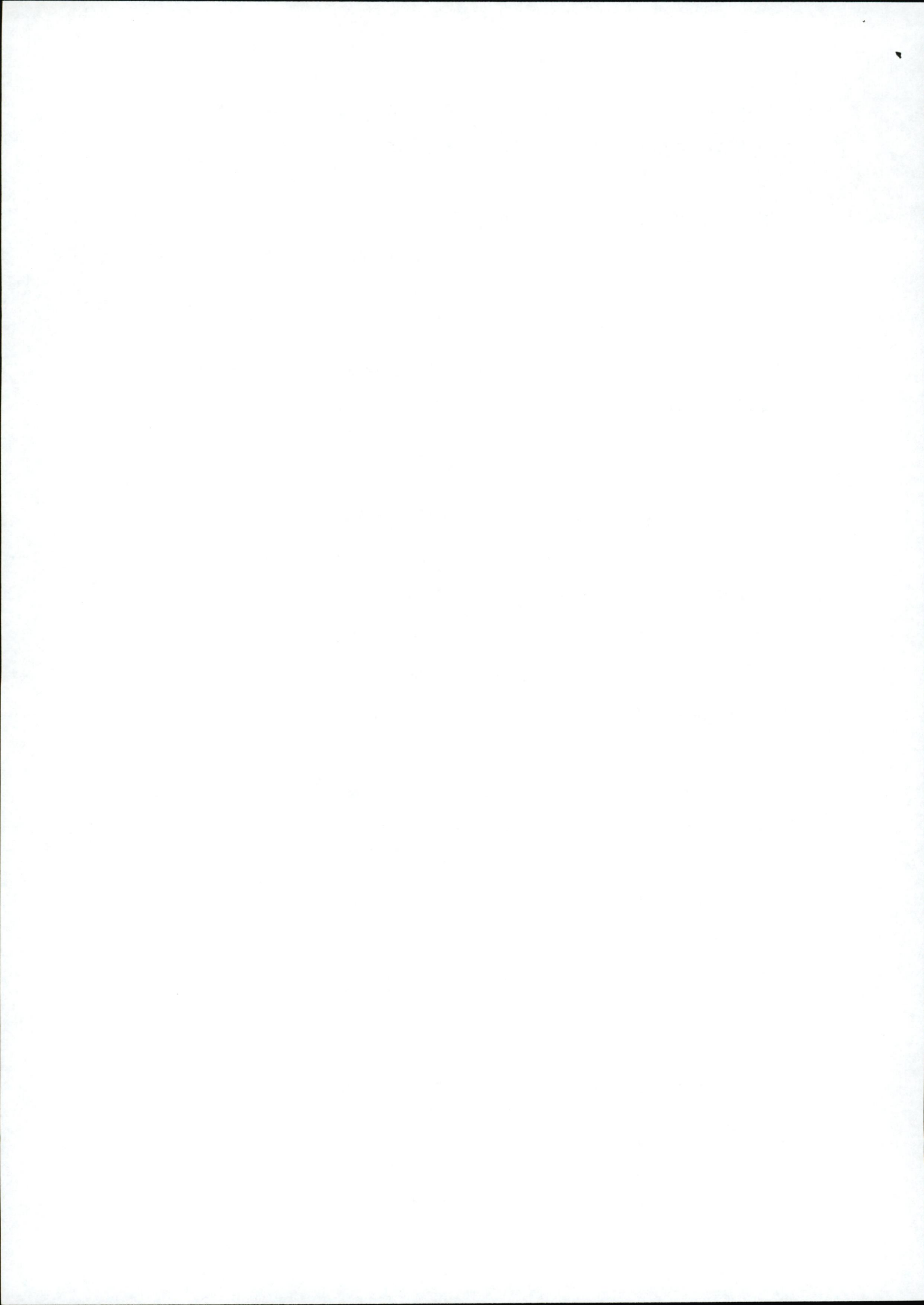
The purposes of the Fund as set out in the Code, are:

- to provide protection for members of credit unions;
- to facilitate mergers and transfers of engagements of credit unions;
- to facilitate rehabilitation of credit unions; and
- to facilitate the liquidation of credit unions in an orderly way.

Over the years, the profits made from the investment of the Fund have far exceeded the very few calls made upon the Fund.

At the close of business on 30 June 1995, credit unions contribution balances were 23.1 million dollars and the retained earnings of the Fund amounted to 26.7 million dollars. A total Fund balance of 49.8 million dollars.

The retained earnings have continued to grow and now exceed 28 million dollars.



These retained earnings rightfully belong to the credit unions which have made contributions to the Fund. However, the Financial Institutions Legislation does not recognise that ownership by the credit unions of those retained earnings in the same way in which they continue to own the actual contributions they have made.

The contributions are recognised in Section 98 of the Code as assets of each credit union. They appear on their balance sheet. They are refunded to the credit union if it is to be wound up or they pass onto the successor credit union if they merge or transfer their engagements to another credit union.

The proposed amendments will enable FINCOM to determine, from time to time, that a prudent proportion of those retained earnings of the Contingency Fund are to be treated as contributions and apportioned equitably among credit unions. Amounts apportioned will be credited to their contributions accounts.

Before making that determination, FINCOM must first satisfy itself that the capital amount of the Contingency Fund will continue to be sufficient after the apportionment has been made for the purposes for which the Fund is established.

Once credited to the contributions accounts of individual credit unions, the amount apportioned is to be treated as if it was a contribution paid to the Fund under Section 98 of the Financial Institutions (NSW) Code.

It will appear on the balance sheet as a deferred asset of the credit union.



It will also be taken into account by FINCOM when FINCOM next makes a determination setting the required contribution balance for all credit unions in accordance with Section 98 of the Code.

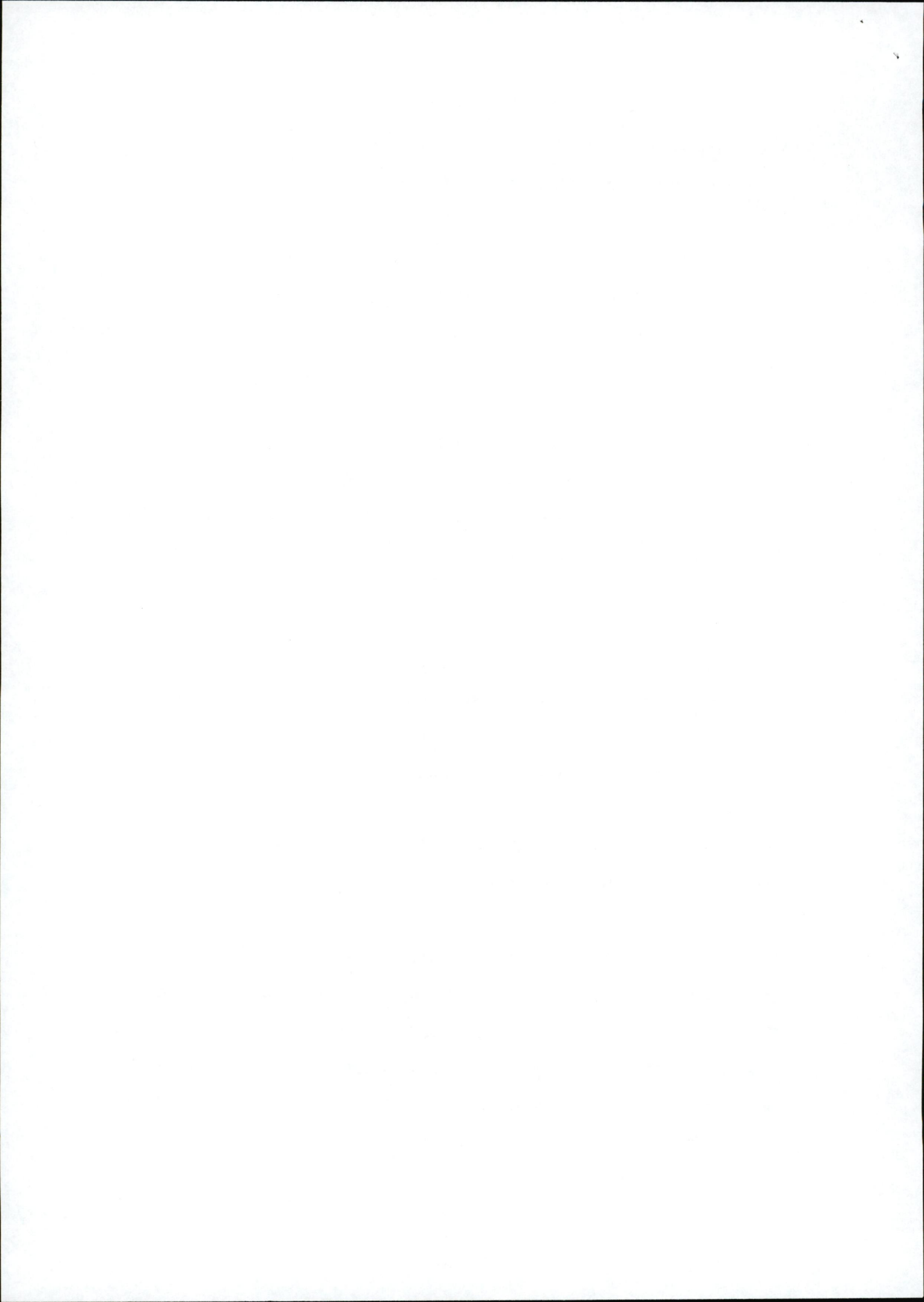
Credit unions which have a balance of contributions which is less than the required balance will then be required to "top up" their contributions to the new level. Those credit unions which have a balance greater than the required level will get a refund of the excess contributions.

FINCOM commissioned an extensive review of New South Wales credit unions and of the adequacy of the Fund by consulting actuaries Trowbridge Consulting and chartered accountants Price Waterhouse. The consultants have recommended that the minimum size of the Fund to meet its statutory purposes at present is 25 million dollars.

During the 1995/96 financial year FINCOM has, under existing provisions of the Financial Institutions (NSW) Code, refunded some 15 million dollars of credit union contributions, bringing the balance of the Fund down to approximately 36 million dollars.

FINCOM has foreshadowed further reductions of the total size of the Fund during the 1996/97 financial year.

Mr President, while I have reminded the House of the foresight of our late colleague, Syd Einfeld, in introducing the reserve fund concept to the credit union legislation, I remind honourable members that the real strength of credit unions lies in the observance by managers and directors of credit unions of high prudential standards in the conduct of their business.





**When introducing the Financial Institutions (Miscellaneous Amendment) Bill recently, I paid tribute to the high level of compliance by credit unions with the rigorous standards promulgated under the Financial Institutions Scheme.**

**Those standards are among the highest in the world.**

**Mr President, the reduction in the size of the Contingency Fund is further recognition of the maturity of the Financial Institutions Scheme.**

**The second amendment proposed in this Bill, the repeal of Section 13 of the Act, is of a housekeeping nature.**

**The Act presently affords a right of appeal in respect of the decisions of the Australian Financial Institutions Appeals Tribunal to both the Queensland and the New South Wales Supreme Courts.**

**The repeal of Section 13 will vest such jurisdiction only in the New South Wales Supreme Court.**

**Mr President, the main purpose of the Bill is to confer ownership of the substantial retained earnings of the Credit Unions Contingency Fund on all of the New South Wales credit unions in proportion to the contributions they have made to the fund over the years.**

**I commend the Bill to the House.**





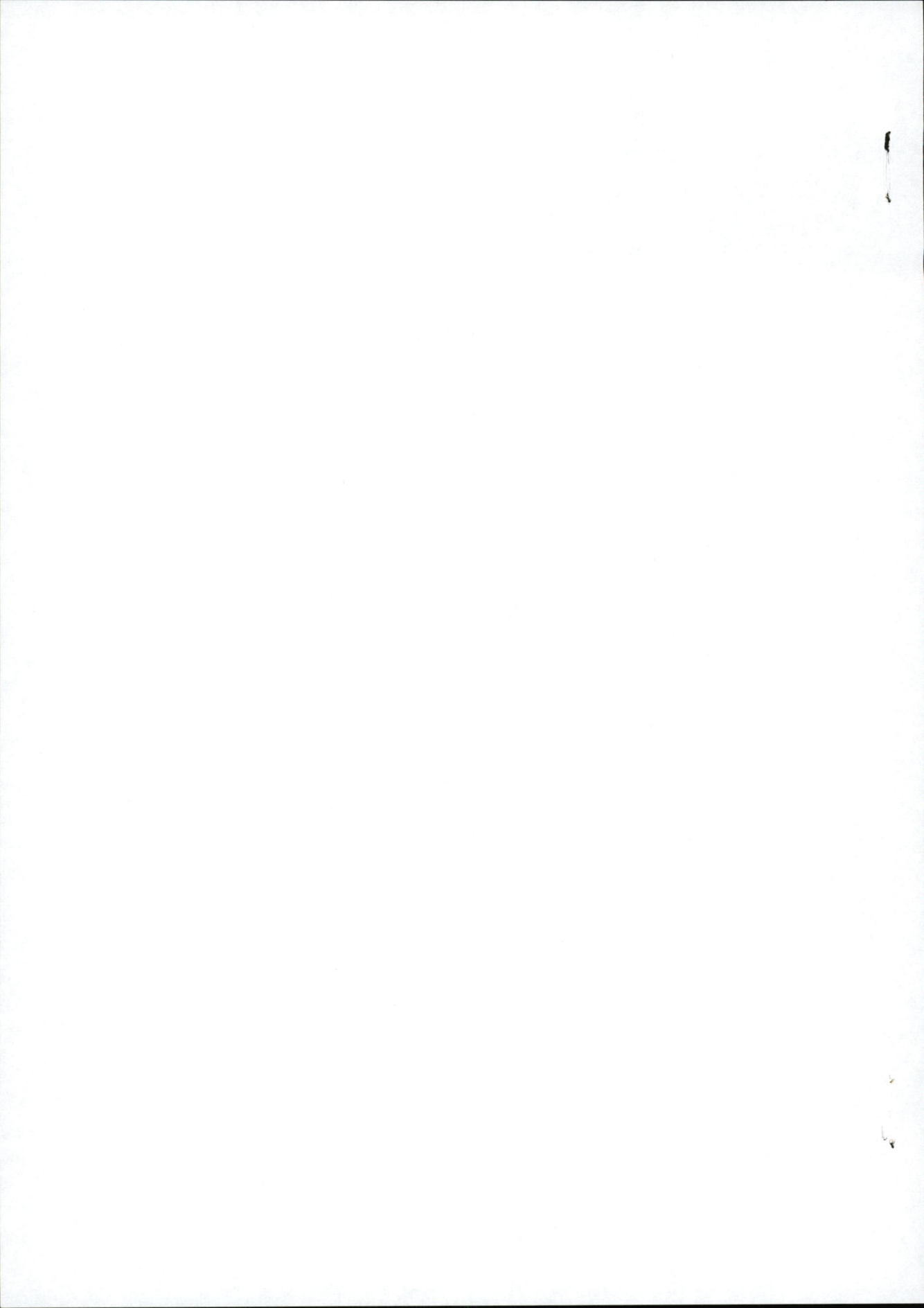
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# **Financial Institutions (New South Wales) Amendment Act 1996 No 32**

Act No 32, 1996

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An Act to amend the *Financial Institutions (New South Wales) Act 1992* with respect to retained earnings in the Credit Unions Contingency Fund and with respect to appeals against decisions of the Australian Financial Institutions Appeals Tribunal. [Assented to 24 June 1996]

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

**1 Name of Act**

This Act is the *Financial Institutions (New South Wales) Amendment Act 1996*.

**2 Commencement**

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

**3 Amendment of Financial Institutions (New South Wales) Act 1992 No 46**

The *Financial Institutions (New South Wales) Act 1992* is amended as set out in Schedule 1.

**4 Saving**

- (1) Section 13 of the *Financial Institutions (New South Wales) Act 1992*, although repealed by this Act, is taken to continue in force for the purpose only of conferring on the Queensland Supreme Court jurisdiction in the matter of:
  - (a) an appeal referred to in subsection (1) (a) of that section that was instituted before the date of commencement of Schedule 1 [1], and
  - (b) a reference referred to in subsection (1) (b) of that section made before that date.
- (2) Nothing in this section affects the jurisdiction of the Supreme Court of New South Wales or the operation of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

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## Schedule 1 Amendments

(Section 3)

[1] **Section 13 Conferral of jurisdiction on Queensland Supreme Court**

Omit the section.

[2] **Sections 24 and 25**

Omit the sections. Insert instead:

**24 Distribution of retained earnings of Contingency Fund**

- (1) The SSA may from time to time:
  - (a) determine that the retained earnings of the Contingency Fund, or such part of those earnings as may be specified in the determination, are to be treated as contributions to the fund and apportioned in accordance with paragraph (b), and
  - (b) apportion the earnings to which the determination applies to the contribution accounts of credit unions in an equitable manner, taking into account the extent to which, in the opinion of the SSA, the generation of retained earnings is attributable to the contributions of each credit union.
- (2) Before making a determination under this section, the SSA must be satisfied that the capital amount of the Contingency Fund will continue to be sufficient, after an apportionment under this section has been effected, for the purposes referred to in section 97 (2) (a)–(d) of the *Financial Institutions (NSW) Code*.
- (3) In this section, ***retained earnings*** means amounts for the time being standing to the credit of the Contingency Fund, other than unrefunded amounts:
  - (a) paid by credit unions as contributions under section 98 of the *Financial Institutions (NSW) Code*, or

- (b) paid by credit unions as deposits under the *Credit Union Act 1969* and reckoned as contributions under section 98 of that Code, or
  - (c) otherwise credited to the contribution accounts of credit unions.
- (4) An amount apportioned to a credit union under this section is to be treated as if it were a contribution paid to the Fund under section 98 of the *Financial Institutions (NSW) Code* by the credit union concerned.

[Minister's second reading speech made in—  
Legislative Assembly on 13 June 1996 p.m.  
Legislative Council on 20 June 1996]