

Act 1992 No. 46

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

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

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

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

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

The Bill provides for the following:

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

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 contains definitions.

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

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

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

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

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

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

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

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

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

PART 4—CONFERRAL OF FUNCTIONS AND JURISDICTION

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

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

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

PART 5—STATE SUPERVISORY AUTHORITY

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

PART 6—IMPOSITION OF FEES AND OTHER AMOUNTS

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

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

PART 7—GENERAL

Clause 17 provides that the scheme legislation binds the Crown.

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

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

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

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

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

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

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

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

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

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

PART 9—SAVINGS, TRANSITIONAL AND CONSEQUENTIAL

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

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

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

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

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

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

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

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

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

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

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

Clause 38 empowers the making of savings and transitional regulations.

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

Clause 40 gives effect to Schedule 1.

Schedule 1 makes consequential amendments to various laws.
