

[Act 1996 No 32]



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*.