

[Act 1999 No 2]



New South Wales

Co-operatives Legislation Amendment Bill 1999

Explanatory note

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

This Bill is cognate with the *Financial Sector Reform (New South Wales) Bill 1999*.

The New South Wales Financial Institutions Commission (FINCOM) is proposed to be abolished by the *Financial Sector Reform (New South Wales) Bill 1999*, consequent on the proposed transfer of the supervision of building societies, credit unions and friendly societies to Commonwealth regulators. State legislation provides for FINCOM to be the supervisory authority for co-operative housing societies, and for the Department of Fair Trading to be the supervisory authority for general co-operatives. This Bill will transfer FINCOM's role in relation to co-operative housing societies to the Department of Fair Trading.

This Bill makes other minor or consequential amendments.

Overview of Bill

The object of this Bill is to amend legislation relating to co-operative societies, so as:

- (a) to provide for supervisory functions relating to co-operative housing societies and Starr-Bowkett societies to be exercised within the Department of Fair Trading, instead of by the New South Wales Financial Institutions Commission (FINCOM), and
- (b) to clarify the circumstances in which a person may trade or carry on business under a name or title containing the word “co-operative”, and
- (c) to make minor or consequential amendments.

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 *Co-operation Act 1923* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Co-operatives Act 1992* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Co-operatives Amendment Act 1997* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Co-operative Housing and Starr-Bowkett Societies Act 1998* set out in Schedule 4.

Schedule 1 Amendment of Co-operation Act 1923

The *Co-operation Act 1923* currently provides for the Registrar’s functions in relation to co-operative housing societies to be exercised by FINCOM. That Act will be repealed on the commencement of the *Co-operative Housing and Starr-Bowkett Societies Act 1998*.

Schedule 1 [2] omits section 5C, which provides for FINCOM to exercise the Registrar's functions in relation to co-operative housing societies.

Schedule 1 [3] inserts a new section 5D, which provides for the Director-General of the Department of Fair Trading to exercise the Registrar's functions under the Act.

Schedule 1 [4] is a savings and transitional provision that preserves things done by FINCOM under the Act, and extends protections afforded to FINCOM (currently in section 22 of the *Financial Institutions Commission Act 1992*) to members of the staff of the Department in connection with matters taken over by the Department.

Schedule 1 [1] makes a consequential amendment.

Schedule 2 Amendment of Co-operatives Act 1992

The *Co-operatives Act 1992* deals with general co-operatives, which are currently subject to supervision by the Department of Fair Trading. Most of the amendments contained in this Schedule are made for the purposes of clarification and consistency.

Schedule 2 [1] omits notes in the Act that refer to core consistent provisions. Provisions were categorised as "core consistent provisions" by an in-principle agreement between the States and Territories for the purpose of their adoption in each jurisdiction. The notes were inserted by the *Co-operatives Legislation Act 1997* for the purpose of identifying core consistent provisions that were being inserted by that Act. However, the categorisation of core consistent provisions has undergone change, and the notes no longer are an accurate reflection of them. The notes are therefore proposed to be omitted, and their identification will be achieved by other means.

Schedule 2 [2] inserts new section 3A, to make it clear that the Act does not apply to co-operative housing societies and Starr-Bowkett societies. These are regulated under the *Co-operation Act 1923* (to be repealed) and the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (following the repeal of the 1923 Act).

Schedule 2 [3] and **[4]** re-express the conferral of the supervisory functions of the Director-General of the Department of Fair Trading, for consistency with amendments made to the 1923 and 1998 Acts by this Bill.

Schedule 2 [5] amends section 255 to include an express exception to the prohibition on the use of the word “co-operative” in the name of a body corporate. The exception is for bodies allowed to use the word “co-operative” under other legislation, so that such bodies will not need to rely on exemptions under section 255.

Schedule 2 [6] inserts a new section 260 to regulate the use of the word “co-operative”. This amendment places the regulation of this word in the *Co-operatives Act 1992*, instead of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (see Schedule 4 [15]).

Schedule 3 Amendment of Co-operatives Amendment Act 1997

This Schedule omits an uncommenced amendment, which would replace the definition of *Registrar* in the *Co-operatives Act 1992*. That definition is dealt with differently by this Bill (see Schedule 2 [3]).

Schedule 4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998

This Schedule amends the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, which is uncommenced. The principal purpose of this Schedule is to transfer FINCOM’s supervisory functions under the Act to the Department of Fair Trading. This is achieved by omitting references to FINCOM and replacing them by references to the Registrar, whose functions will be exercised by the Director-General of the Department.

Schedule 4 [1]–[6], [9]–[15], [18] and [20] make amendments in connection with the transfer of functions under the Act from FINCOM to the Department of Fair Trading.

Schedule 4 [7] omits section 22 (requiring FINCOM to keep the Minister informed), which is not necessary in the context of the administration of legislation by a government department.

Schedule 4 [8] substitutes section 23 (relating to the inspection of documents), in terms that parallel section 413A of the *Co-operatives Act 1992*.

Schedule 4 [15] also inserts a new section 47B (authorising the Registrar to delegate his or her functions under the Act), in terms that parallel section 411 of the *Co-operatives Act 1992*.

Schedule 4 [16] and **[17]** amend section 84, to remove the regulation of the use of the word “co-operative”. This will be covered by amendments to the *Co-operatives Act 1992* (see Schedule 2 [6]).

Schedule 4 [19] omits Division 3 of Part 5 (relating to transfers of engagements from co-operative housing societies to financial institutions), as these provisions will not be applicable when the new arrangements involving Commonwealth bodies and Commonwealth financial institutions legislation are in force.

Schedule 4 [21] omits a reference to a dissolved association.

Schedule 4 [22] updates a reference to an association.

Schedule 4 [23] omits an uncommenced and superseded amendment to the *Co-operatives Act 1992*.