

South Australia

State Bank of South Australia Act 1983

An Act to continue the State Bank of South Australia in existence as the South Australian Asset Management Corporation with the function of managing certain assets; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *State Bank of South Australia Act 1983*.

3—Interpretation

In this Act and the Schedules, unless the contrary intention appears—

accounting records means all financial records necessary for the preparation of proper accounts and includes working papers and other documents necessary to explain the methods and calculations by which accounts are made up;

accounts means, according to context—

- (a) customers' accounts; or
- (b) statements of income and expenditure and balance sheets, including notes (other than reports of the Board or the auditors of the Bank) attached to, or intended to be read with, any such accounts;

the amalgamating banks means The Savings Bank of South Australia established by *The Savings Bank Act of 1875* and the State Bank of South Australia established by the *State Bank Act 1925*;

the Bank means the State Bank of South Australia, or, according to the context, that body as continued in existence under the name the South Australian Asset Management Corporation;

the Board means the Board of the Bank;

the Chief Executive Officer means the person holding or acting in the office of chief executive officer of the Bank;

customer means a person who has an account with the Bank, or who avails himself of any service provided by the Bank;

land includes any estate or interest in land;

officer means an officer or employee of the Bank;

securities includes shares, stock, debentures, bonds and unsecured notes.

4—Transitional provisions

- (2) The provisions of Schedule 1 to this Act are incorporated with, and shall be read as part of, this Act.

5—Act binds Crown

This Act binds the Crown.

Part 2—Constitution and administration of the Bank

Division 1—The Bank and change of corporate name

6—Establishment of the Bank

- (1) There shall be a Bank entitled the *State Bank of South Australia*.
- (2) The Bank—
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be capable of suing and being sued in its corporate name;

- (c) shall have the powers and functions conferred or assigned by or under this Act.
- (3) The Bank is an instrumentality of the Crown and holds its property for and on behalf of the Crown.
- (5) Where a document appears to bear the common seal of the Bank, the document shall be presumed in legal proceedings, in the absence of evidence to the contrary, to have been duly executed by the Bank.

6A—Change of corporate name

- (1) The Bank continues in existence as a body corporate under the name the *South Australian Asset Management Corporation*.
- (2) Despite the change of name, the Bank may, with the approval of the Treasurer, carry on business under the name *State Bank of South Australia* on such terms and conditions as the Treasurer specifies.

Division 2—The Board of Directors

7—Membership of the Board

- (1) There shall be a Board of Directors of the Bank.
- (2) The Board shall consist of not less than four nor more than six persons appointed by the Governor as Directors of the Bank.
- (3) The Chief Executive Officer of the Bank is eligible for appointment as a Director of the Bank.
- (4) One of the Directors shall be appointed by the Governor as the Chairman, and another shall be appointed as the Deputy Chairman, of the Board.

8—Term of office

- (1) Subject to this section, a Director of the Bank shall be appointed for such term of office (not exceeding five years), and upon such conditions, as are specified in the instrument of his appointment.
- (2) If the Chief Executive Officer is appointed as a Director of the Bank, his term of office as Director is not subject to the limitation prescribed by subsection (1) but shall not exceed his term of office as Chief Executive Officer.
- (2a) If a person is at the time of appointment as a Director an employee in the Public Service of the State, the person's term of office as Director expires on the person ceasing to be an employee in the Public Service.
- (3) At the expiration of a term of office, a Director is eligible for re-appointment as such.
- (4) A person who is to fill a casual vacancy in the office of a Director shall be appointed only for the balance of the term of his predecessor.

9—Casual vacancies

- (1) The office of a Director becomes vacant if—
- (a) he dies; or
- (b) his term of office expires; or

- (c) he resigns his office by notice addressed to the Governor; or
 - (d) he is removed from office under subsection (2) or (3).
- (2) The Governor may remove a Director from office if—
- (a) he becomes mentally or physically incapable of carrying out satisfactorily the duties of his office; or
 - (b) he is convicted of an indictable offence; or
 - (c) he is guilty of neglect of duty; or
 - (d) he becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (e) he contravenes a condition of his appointment.
- (3) If a person is at the time of appointment as a Director an employee in the Public Service of the State, the Governor may remove the person from office as a Director while the person remains so employed for any reason the Governor considers sufficient.

10—Directors' remuneration

A Director (not being the Chief Executive Officer) shall be entitled to such remuneration as may be determined by the Governor.

11—Disclosure of interest

- (1) Subject to subsection (2), a Director who has a direct or indirect pecuniary interest in a proposal before the Board—
- (a) shall, as soon as he becomes aware of the proposal, disclose the nature of his interest to the Board; and
 - (b) shall not take part in any deliberations or decision of the Board with respect to that proposal.
- (2) No disclosure is required under subsection (1)—
- (a) in respect of an interest that arises by virtue of the fact that the Director is a customer of the Bank (being an interest that is shared in common with other customers of the Bank); or
 - (b) in respect of an interest—
 - (i) that arises by virtue of the fact that the Director has a shareholding (not being a substantial shareholding within the meaning of Division 4 of Part 4 of the *Companies (South Australia) Code*) in a public company; and
 - (ii) that is shared in common with the other shareholders in that company.
- (3) A Director who fails to comply with subsection (1) is guilty of a summary offence and liable to a penalty not exceeding five thousand dollars.
- (4) A disclosure made under this section shall be recorded in the minutes of the Board.

- (5) Where a Director discloses his interest in a transaction under this section, or his interest in a transaction is not such as need be disclosed under this section—
- (a) the transaction is not liable to be avoided on any ground arising from the fiduciary relationship between the Director and the Bank; and
 - (b) the Director is not liable to account for profits derived from the transaction.

Division 3—Proceedings of the Board

12—Proceedings of the Board

- (1) A meeting of the Board may be convened by—
- (a) the Chairman; or
 - (b) the Chief Executive Officer acting at the request of any two or more Directors.
- (2) The Chairman shall preside at any meeting of the Board at which he is present and, in the absence of the Chairman, the Deputy Chairman shall preside and, in the absence of both Chairman and Deputy Chairman, a Director chosen from amongst their own number by the Directors present at the meeting shall preside.
- (3) No business shall be transacted at a meeting of the Board unless a number of Directors that exceeds one-half of the total number of Directors is present at the meeting.
- (4) Each Director present at a meeting of the Board shall be entitled to one vote on any question arising for decision at that meeting and, in the event of an equality of votes, the person presiding at the meeting shall be entitled to a second, or casting, vote.
- (5) The Board shall cause accurate minutes to be kept of its proceedings.
- (6) If all Directors entitled to vote on a proposed resolution express, in writing, their concurrence in the proposed resolution, it shall become a resolution of the Board notwithstanding that it has not been passed at a meeting of the Board.

13—Validity of acts of the Board

No act or proceeding of the Board is invalid on the ground of a vacancy in the office, or a defect in the appointment, of a member of the Board.

Division 4—Functions and policies of the Board

14—Powers and functions of the Board

- (1) The Board is the governing body of the Bank and has full power to transact any business of the Bank.
- (2) Anything done by the Board in the administration of the Bank's affairs is binding on the Bank.

15—Control and direction by the Treasurer

The Board is subject to the control and direction of the Treasurer.

Division 5—Staff of the Bank

16—The Chief Executive Officer

- (1) There shall be a Chief Executive Officer of the Bank.
- (2) The Chief Executive Officer is, subject to the control of the Board, responsible for the management of the Bank.
- (3) The Chief Executive Officer shall be appointed by the Board.

17—Staff of Bank

- (1) The Board may appoint such officers of the Bank as it thinks necessary for the effective operation of the Bank.
- (2) The officers of the Bank are not subject to the provisions of the *Government Management and Employment Act 1985*.
- (3) The provisions of Schedule 2 to this Act (which are incorporated with, and shall be read as part of, this Act) shall apply to officers appointed under this section.
- (4) The Bank may, with the approval of the Minister administering an administrative unit of the Public Service of the State, on terms mutually arranged, make use of the services of persons employed in the administrative unit.

Division 6—Delegation

18—Delegation by the Board and the Chief Executive Officer

- (1) The Board may delegate any of its powers or functions under this Act.
- (2) The Chief Executive Officer may delegate any of his powers or functions under this Act.
- (3) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) is revocable at will; and
 - (c) does not derogate from the powers of the delegator.

Part 3—The operations of the Bank

19—General functions of the Bank

- (1) The Bank's functions are to manage, realise and otherwise deal with its remaining assets and liabilities and, with the approval of the Treasurer, other assets and liabilities of the Crown or an instrumentality of the Crown, to the best advantage of the State.
 - (1a) For the purpose of performing its functions, the Bank may carry on the general business of banking.
- (2) The business of the Bank may be carried on within or outside the State.
- (3) Without limiting the generality of the foregoing, the Bank may—
 - (a) receive money on current account, fixed deposit, or otherwise;

- (b) borrow and lend money;
 - (c) issue, buy, sell, accept, discount, endorse and otherwise deal with bills of exchange;
 - (d) establish credits and give guarantees;
 - (e) issue bank drafts and effect transfers of money;
 - (f) buy, sell and otherwise deal in foreign currency and precious metals;
 - (g) provide facilities for the safe custody of documents and valuables;
 - (h) issue, buy, sell and otherwise deal with securities (including debentures and inscribed stock);
 - (i) underwrite the issue of securities;
 - (j) establish and administer registers of securities;
 - (k) appoint agents and define their respective powers;
 - (l) act as an agent;
 - (m) act as a trustee;
 - (n) acquire, hold, deal with, and dispose of, real and personal property;
 - (o) erect buildings and structures;
 - (p) hire out chattels in pursuance of hiring agreements, chattel leasing agreements or hire-purchase agreements and conduct any other business involving the hiring or leasing of property;
 - (q) do anything incidental to the foregoing.
- (7) The Bank shall not acquire more than ten per centum of the issued shares of a body corporate without the approval of the Treasurer.

20—Advances by the Treasurer

- (1) The Treasurer may, out of moneys provided by Parliament for the purpose, advance moneys to the Bank by way of grant or loan.
- (2) The terms of an advance under subsection (1) shall be as agreed between the Bank and the Treasurer.

20A—Capital or advances provided by SAFA

- (1) The Treasurer may determine that capital or advances provided to the Bank by the South Australian Government Financing Authority, or a specified part of any such capital or advances, is to be treated as capital or advances provided to the Bank by the Treasurer.
- (2) The Treasurer may make a determination under subsection (1) on terms and conditions the Treasurer considers appropriate, which may, for example, include the provision of compensation to the South Australian Government Financing Authority in respect of the determination.
- (3) The Bank must, if so required by the Treasurer, repay to the Treasurer the capital or advances referred to in subsection (1), or a specified part of any such capital or advances.

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- (4) An amount payable to the South Australian Government Financing Authority as compensation under this section may be paid out of the Consolidated Account (which is appropriated to the necessary extent).
 - (5) The Treasurer may not make a requirement under subsection (3) before the appointed day within the meaning of the *State Bank (Corporatisation) Act 1994*.

21—Guarantee

- (1) The liabilities of the Bank are guaranteed by the Treasurer.
- (2) A liability of the Treasurer arising by virtue of a guarantee under subsection (1) shall be satisfied out of the General Revenue of the State, which is appropriated to the necessary extent.
- (3) Subject to subsection (4), the Treasurer may, after consultation with the Board, fix charges to be paid by the Bank in respect of the guarantee provided by him under this section, insofar as it relates to specified liabilities of the Bank.
- (4) The Treasurer may not fix charges under subsection (3) in respect of the guarantee provided by him under this section in such a manner that they relate, in effect, to all the liabilities of the Bank.

22—Surplus funds

Any surplus of funds remaining after the costs of the Bank have been met in any financial year must be paid into the Consolidated Account or otherwise dealt with as the Treasurer may determine.

Part 4—Accounts and audit

23—Accounts and audit

- (1) The Board shall cause accounting records to be kept in such a manner as to—
 - (a) record correctly and explain the transactions and financial position of the Bank; and
 - (b) enable true and fair accounts of the Bank to be prepared from time to time; and
 - (c) enable the accounts of the Bank to be conveniently and properly audited.
- (2) Within three months after the end of a financial year, the Board shall cause the following accounts to be prepared:
 - (a) an account giving a true and fair view of the income and expenditure of the Bank for the financial year and of any surplus or deficit relating to the financial year; and
 - (b) a balance sheet giving a true and fair view of the state of affairs of the Bank as at the end of the financial year.
- (2a) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts of the Bank.

- (3) The Board shall, as soon as practicable after the accounts prepared under subsection (2) have been audited, forward to the Treasurer a report on the operations of the Bank during the financial year to which the accounts relate together with a copy of the audited accounts.
- (4) Copies of the report and the audited accounts shall be laid before each House of Parliament.

25—Investigations

- (1) The Governor may appoint—
 - (a) the Auditor-General; or
 - (b) some other suitable person,to make an investigation and report under this section.
- (2) An investigator so appointed—
 - (a) must investigate such matters relating to the operations and financial position of the Bank or the Bank Group as are determined by the Governor, which matters may include—
 - (i) any possible conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity on the part of a director or officer of the Bank or a subsidiary of the Bank; or
 - (ii) any possible failure to exercise proper care and diligence on the part of a director or officer of the Bank or a subsidiary of the Bank;
 - (b) may investigate a matter of a kind referred to in subparagraph (i) or (ii) that the investigator has not been required by the Governor to investigate if, in his or her opinion, the matter should be investigated.
- (2a) The investigator must—
 - (a) report to the Governor on the results of an investigation or investigations under subsection (2) and advise the Governor whether, in his or her opinion, any matter should be the subject of further action; and
 - (b) where, in the case of a matter referred to in subsection (2)(b), the investigator decided not to investigate or complete investigation of the matter—report on the matter to the Governor and advise whether, in his or her opinion, the matter should be the subject of any or further investigation or other action.
- (3) An investigator so appointed must comply with any directions of the Governor published in the Gazette as to the manner in which an investigation under subsection (2) is to be conducted and the manner in which the results of such an investigation are to be reported, including any direction requiring reports to be presented to a specified person or body in addition to the Governor.
- (4) Subject to any directions of the Governor, an investigator so appointed may, if he or she sees fit to do so in connection with the investigation, make public statements as to the nature and conduct of the investigation and may invite and receive information or submissions as to any matter relevant to the investigation from such persons as he or she thinks fit.

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- (5) An investigator so appointed must, when presenting to the Governor any report that the person considers need not remain confidential, also present copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly who must in turn, not later than the first sitting day after receipt of the reports, lay them before their respective Houses.
- (7) For the purposes of an investigation under this section, the investigator and authorised persons have the same powers as the Auditor-General and authorised officers have under Division 3 of Part 3 of the *Public Finance and Audit Act 1987* for an audit or examination under that Act, and the provisions of that Division (including section 34(2) and (3)) apply in relation to the investigation and the exercise of those powers as if the investigator or authorised person were the Auditor-General or an authorised officer exercising those powers under that Division.
- (7a) Where, on the application of the investigator or an authorised person, the Supreme Court is satisfied on the balance of probabilities that a person—
- (a) who has been served with a summons to appear before the investigator or an authorised person failed, without reasonable excuse, to appear in obedience to the summons;
 - (b) who has been served with a summons to produce relevant accounts, records or other documents failed, without reasonable excuse, to comply with the summons;
 - (c) who has been required to provide information to the investigator or an authorised person—
 - (i) failed, without reasonable excuse, to do so in the form directed by the investigator or authorised person; or
 - (ii) provided information knowing it to be false or inaccurate in a material particular;
 - (d) refused to be sworn or to affirm, or refused or failed to answer truthfully any relevant question, when required to do so by the investigator or an authorised person;
 - (e) hindered or obstructed the investigator or an authorised person in the exercise of any powers under this section,

the Supreme Court may order the person to take such action, or to refrain from taking such action, as is necessary in the Court's opinion.

- (7b) Where, in the opinion of the investigator, a person has contravened, or failed to comply with, a requirement imposed by or under this section, the investigator must, if in his or her opinion the matter is sufficiently serious, prepare a report setting out details of the contravention or failure and deliver copies of the report to the Governor and the Economic and Finance Committee of the Parliament.

- (8) Without limiting the effect of any other provisions of this section, a magistrate may, on application by the investigator—
- (a) if satisfied that there are reasonable grounds to believe that a person has knowledge of matters, or possession or control of books, documents or records, relevant to the investigation, issue a summons requiring the person to appear before the investigator and answer questions or produce the books, documents or records;
 - (b) if satisfied that a person has been served with such a summons and paid or tendered a reasonable sum for the person's expenses but has failed (without reasonable excuse) to appear or produce books, documents or records in obedience to the summons, issue a warrant directed to all members of the police force for the person to be apprehended and brought before the investigator.
- (9) The grounds of an application for a summons or warrant must be verified by affidavit.
- (10) A person who—
- (a) is served with a summons under this section and paid or tendered a reasonable sum for the person's expenses; but
 - (b) fails (without reasonable excuse) to obey the summons,
- is guilty of a summary offence.
- Penalty: \$5 000 or three months imprisonment.
- (11) An investigator or authorised person incurs no civil or criminal liability for an act or omission in good faith in the exercise or purported exercise of a power conferred by this section.
- (12) A person incurs no civil or criminal liability for anything done in good faith in compliance or purported compliance with a requirement of an investigator or authorised person under this section.
- (13) In this section—
- authorised person**, in relation to an investigation under this section, means a person authorised by the investigator to exercise the powers conferred by this section for the purposes of the investigation;
- the Bank Group** means the Bank and its subsidiaries;
- operations** of the Bank or Bank Group includes, in relation to an investigation specified by regulation, any operations carried out by a specified company or entity or pursuant to a specified trust scheme, partnership, joint venture or other scheme or arrangement and declared by regulation to form part of the operations of the Bank or Bank Group for the purposes of that investigation;
- record** includes—
- (a) information stored or recorded by a computer or any other means; and
 - (b) a computer tape or disk or any other device on or by which information is stored or recorded.

- (14) In this section, a reference to a subsidiary of the Bank is a reference to a body that would be a subsidiary of the Bank according to the provisions of the *Corporations Law* assuming for that purpose that there were substituted in section 46(a)(iii) of that Law for the words "one-half of the issued share capital" the words "one-quarter of the issued share capital".
- (15) In determining whether a body is a subsidiary of the Bank, any shares held, or powers exercisable by, the Bank or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the Bank is an instrumentality of the Crown and holds its property for and on behalf of the Crown.

25A—Custody and use of investigator's records

- (1) In this section—

authorised person has the same meaning as in section 25;

investigation means an investigation under section 25 conducted either before or after the enactment of this section;

investigator means the person by whom an investigation is or was conducted;

investigator's record, in relation to an investigation, means—

- (a) evidentiary material produced voluntarily or under compulsion to the investigator or an authorised person in the course, or for the purposes, of the investigation; or
- (b) any record of evidence or submissions made for the purposes of the investigation; or
- (c) any record (including an expert's report) made or prepared by, or on behalf of or at the request of, the investigator or an authorised person for the purposes of the investigation;

prosecuting authority means—

- (a) the Director of Public Prosecutions of the State or the Commonwealth; or
 - (b) the Australian Securities Commission; or
 - (c) any other authority of the State, another State or a Territory of the Commonwealth, or the Commonwealth that undertakes responsibility for the prosecution of offences.
- (2) Subject to this section, at the conclusion of an investigation, the Attorney-General is entitled to the custody and control of all the investigator's records to the exclusion of the rights of any other person.
- (3) Despite subsection (2), the investigator retains a right of access to and may make copies of the investigator's records.
- (4) If a person would, but for subsection (2), have been entitled to possession of a record at the conclusion of the investigation, the record is to be delivered to the person as soon as the Attorney-General is satisfied that there is no need to retain the record for the purpose of any civil or criminal proceedings.

- (5) If an obligation arose, or an undertaking was given, that a particular record or particular information gained in the course of the investigation be kept confidential, the following provisions apply:
- (a) the obligation or undertaking is binding on the Attorney-General;
 - (b) the obligation or undertaking does not prevent disclosure of the record or information to—
 - (i) the Crown, its officers or its legal advisers; or
 - (ii) a prosecuting authority;
 - (c) if such a disclosure is made, the obligation or undertaking becomes binding on the person to whom the disclosure is made.
- (6) No objection may be taken to the use of an investigator's record or information gained in the course of an investigation for the purposes of, or as evidence in, civil or criminal proceedings merely because of disclosure of the record or information to—
- (a) the Crown, its officers or its legal advisers; or
 - (b) a prosecuting authority.
- (7) No civil or criminal liability arises from disclosure of an investigator's record or information gained in the course of an investigation to—
- (a) the Crown, its officers or its legal advisers; or
 - (b) a prosecuting authority.
- (8) This section does not affect the operation of section 34(3) of the *Public Finance and Audit Act 1987* (relating to the admissibility in criminal proceedings of answers to questions put by an investigator or authorised person) as applied by section 25(7) of this Act.
- (9) This section—
- (a) applies both within and outside the State; and
 - (b) applies outside the State to the full extent of the extra-territorial legislative capacity of the Parliament; and
 - (c) is to be regarded as part of the substantive law of the State.

Part 5—Miscellaneous

27—Customers Unclaimed Moneys Account

- (1) The Bank must administer the Customers Unclaimed Moneys Account as in existence under this Part immediately before the commencement of this section.
- (2) Interest does not accrue on money standing to the credit of the Account except to the extent (if any) determined by the Bank.
- (3) The Bank must pay to a person from the Account any amount to which the person satisfies the Bank that he or she is entitled.
- (4) The *Unclaimed Moneys Act 1891* does not apply to money held in the Account.

29—Immunity of Directors and officers

- (1) No liability attaches to a Director or other officer of the Bank for an act or omission done or made, in good faith, and in carrying out, or purporting to carry out, the duties of his office.
- (2) Any liability that would, but for subsection (1), attach to a Director or other officer of the Bank shall attach instead to the Bank.

30—Validity of transactions of Bank

No contract or transaction purportedly entered into by the Bank before the commencement of this section is invalid by reason of any deficiency in the capacity of the Bank to enter into or carry out the contract or transaction.

31—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) A regulation made under this section may provide for the imposition of a penalty, not exceeding one thousand dollars, for contravention of, or non-compliance with, the regulation by which the penalty is imposed or any other regulation.

Part 6—Restructuring of Bank Group undertaking and disposal of BSAL

32—Definitions

- (1) In this Part—
 - authorised project*—see section 34(1);
 - Bank Group* means the Bank and the subsidiaries of the Bank;
 - Bank Group undertaking* means the undertaking of the Bank and of its subsidiaries, or any part of that undertaking;
 - BSAL* means the public company with the name *Bank of South Australia Limited* formed under the *Corporations Law*;
 - subsidiary*, of the Bank, means—
 - (a) a body that is a subsidiary of the Bank according to Division 6 of Part 1.2 of the *Corporations Law* as modified in its application by subsection (2); or
 - (b) any other body or entity of which the Bank is the parent entity according to Division 4A of Part 3.6 of the *Corporations Law*.
- (2) In applying Division 6 of Part 1.2 of the *Corporations Law* to determine whether a body is a subsidiary of the Bank—
 - (a) the reference in section 46(a)(iii) of that Law to one-half of the issued share capital of a body is to be taken to be a reference to one-quarter of the issued share capital of the body; and

- (b) shares held, or powers exercisable by, the Bank or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the Bank is an instrumentality of the Crown and holds its property for and on behalf of the Crown.
- (3) In applying Division 4A of Part 3.6 of the *Corporations Law* to determine whether the Bank is the parent entity of some other body or entity, the Bank is to be taken to be a company to which that Division applies.

33—Territorial application of this Part

- (1) This Part applies both within and outside the State.
- (2) This Part applies outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

34—Restructuring and disposal

- (1) The following action (collectively referred to as the *authorised project*) is authorised:
 - (a) determination of the most appropriate means of disposing of the Bank Group undertaking and, in particular, whether the Bank Group undertaking should be restructured by vesting the undertaking in a separate body corporate or separate bodies corporate in preparation for disposal;
 - (b) examination of the Bank Group undertaking with a view to its restructuring and disposal;
 - (c) any other action that the Treasurer authorises, after consultation with the Board, in preparation for restructuring and disposal of the Bank Group undertaking;
 - (d) the disposal, or preparation for the disposal, of assets of, or shares in, BSAL.
- (2) The authorised project is to be carried out by—
 - (a) persons employed by the Crown and assigned to work on the project; and
 - (b) officers of the Bank or BSAL assigned to work on the project; and
 - (c) other persons whose services are engaged by the Crown or the Bank or BSAL for the purpose of carrying out the project; and
 - (d) any other person approved by the Treasurer whose participation or assistance is, in the opinion of the Treasurer, reasonably required for the purposes of the project.
- (3) The directors and staff of the Bank and its subsidiaries and the directors and staff of BSAL must, despite any other law—
 - (a) allow—
 - (i) persons engaged on the authorised project; and
 - (ii) prospective purchasers and their agents, as authorised by the Treasurer after consultation with the board of directors of BSAL, access to information in the possession or control of the Bank or its subsidiaries or BSAL that is reasonably required for, or in connection with, the carrying out of the authorised project; and

- (b) provide any other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.¹
- (4) The Treasurer may issue—
 - (a) to a person who is engaged on the authorised project; or
 - (b) to a prospective purchaser or an agent of a prospective purchaser authorised by the Treasurer to have access to information under subsection (3),a certificate identifying the person as such and any person may be refused access to information to which access is sought under subsection (3) unless the person first produces that certificate for the inspection of an appropriate officer of the Bank or subsidiary of the Bank or BSAL.¹

Note—

- 1 Subsections (3) and (4) of section 34 expire on a day to be fixed by the Governor by proclamation (see *State Bank (Corporatisation) Act 1994*, Sch 3 cl 25).

35—Confidentiality

- (1) A person who, through membership of the Board or staff of the Bank or involvement in the authorised project, has acquired information about the affairs of some other person who is or was a customer of the Bank must not disclose or make use of the information unless—
 - (a) the disclosure or use of the information is reasonably required for, or in connection with, the carrying out of the authorised project or the proper conduct of the business of the Bank or BSAL; or
 - (b) the other person approves the disclosure or use of the information; or
 - (c) the disclosure or use of the information is authorised or required by or under some other Act or law.

Penalty:

If the offender is a natural person—\$5 000.

If the offender is a body corporate—\$50 000.

- (2) Despite subsection (1), information may be provided to the Treasurer about a transaction of the Bank or a subsidiary of the Bank if any of the following occurs or has occurred (before or after the commencement of this section) in respect of the transaction, or in respect of another party to the transaction who is in default:
 - (a) the Bank or subsidiary of the Bank commences legal proceedings to recover an amount due or to enforce a security in respect of the transaction;
 - (b) the Bank or subsidiary of the Bank gives notice of intention to sell property given as security in respect of the transaction;
 - (c) the Bank or subsidiary of the Bank enters into possession as mortgagee in respect of property given as security in respect of the transaction;
 - (d) the Bank or subsidiary of the Bank acquires an interest of the other party in property given as security in respect of the transaction, or takes possession or control of such property;

- (e) the other party, being a body corporate, becomes an externally administered body corporate (within the meaning of the *Corporations Law*), or, being an individual, becomes bankrupt, or the affairs of the other party are dealt with under Part X of the *Bankruptcy Act 1966*;
 - (f) the Board of the Bank resolves that it has formed the opinion on reasonable grounds that there is a strong probability of any of the above occurring in the near future in respect of the transaction, or in respect of the other party.
- (3) Where confidential information is provided to the Treasurer under subsection (2), the Treasurer must observe confidentiality in respect of the information except to the extent (if any) that the duties of his or her office otherwise require.

35A—Protection for disclosure and use of information etc

- (1) In this section—
- authorised action* means—
- (a) the disclosure or use of information in the possession or control of—
 - (i) the Bank or a subsidiary of the Bank or BSAL; or
 - (ii) a current or former member of the board of directors or staff of the Bank or a subsidiary of the Bank or BSAL; or
 - (iii) a person involved in the authorised project,as reasonably required for, or in connection with, the carrying out of the authorised project or the proper conduct of the business of the Bank or BSAL; or
 - (b) anything done or allowed under this Part.
- (2) No authorised action—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or other obligee wholly or in part from an obligation.

36—Evidentiary provision

- (1) In any legal proceedings, a certificate of the Treasurer certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, is to be accepted as proof of the matter so certified in the absence of proof to the contrary.
- (2) An apparently genuine document purporting to be a certificate under subsection (1) is to be accepted as such in the absence of proof to the contrary.

Schedule 1—Transitional provisions

1—Vesting of property, rights etc in the Bank

- (1) The Bank succeeds to all the property, rights, powers, liabilities and obligations of the amalgamating banks.
- (2) A reference in any instrument (whether or not of a statutory nature) to either of the amalgamating banks shall be read and construed as a reference to the Bank.
- (3) No liability to stamp duty or any other tax or charge attaches to the Bank or its property, by virtue of the vesting of property in the bank under subsection (1).

2—Provisions applicable to land under the *Real Property Act 1886*

- (1) The Registrar-General shall, on the application of the Bank, register the Bank as the proprietor of the land (being land under the provisions of the *Real Property Act 1886*) that has vested in the Bank in pursuance of this Schedule.
- (2) An instrument relating to land (being land under the provisions of the *Real Property Act 1886*) that has vested in the Bank in pursuance of this Schedule shall, if the instrument is executed by the Bank and is otherwise in registrable form, be registered by the Registrar-General notwithstanding that the Bank has not been registered as the proprietor of the land in pursuance of subsection (1).

3—Certain specified instruments etc preserved

- (1) Without prejudice to the foregoing provisions of this Schedule—
 - (a) any guarantee that was given by the Treasurer, or arose by operation of law, in respect of a liability of either of the amalgamating banks remains in full force notwithstanding that the liability becomes a liability of the Bank in pursuance of this Schedule;
 - (b) an instruction, mandate or authority given to either of the amalgamating banks shall be deemed to have been given to the Bank;
 - (c) a security held by either of the amalgamating banks shall be available to the Bank as security for the discharge of the debt or liability to which it relates and, where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities to the bank incurred after the commencement of this Act; and the Bank shall be entitled to all rights and priorities and shall be subject to all liabilities to which the bank by which the security was formerly held would have been entitled or subject if this Act had not been enacted;
 - (d) all rights and obligations of the amalgamating banks as bailees of documents and chattels are transferred to the Bank;
 - (e) a negotiable instrument drawn on, given to, or endorsed or accepted by, either of the amalgamating banks has effect as if drawn on, given to, or endorsed or accepted by, the Bank;
 - (f) legal proceedings commenced by or against either of the amalgamating banks may be continued by or against the Bank.

- (2) For the purposes of a lease, licence or other agreement relating to the occupation or use of land, neither of the amalgamating banks shall be regarded as having parted with possession of land by virtue of the fact that the Bank succeeds to its rights of occupation.

4—Advances under section 9(1) of *State Bank Act 1935*

Any moneys advanced by the Treasurer in pursuance of section 9(1) of the *State Bank Act 1935* shall be regarded as a grant to the Bank subject to the provisions of section 20.

5—Accounts of the amalgamating banks

- (1) The Board is responsible to ensure that accounts in respect of the amalgamating banks for the 1983–1984 financial year are prepared, audited and presented to the Governor.
- (2) Subject to subsection (3), the provisions of Part 4 apply with necessary exclusions and adaptations in respect of the accounts referred to in subsection (1).
- (3) The Auditor-General shall audit the accounts of the State Bank of South Australia in respect of the 1983–1984 financial year.
- (4) The Bank shall pay to the Treasurer for the credit of the General Revenue of the State—
 - (a) one-half of a sum arrived at by subtracting \$202 000 from the profit for the 1983–1984 financial year shown in the audited accounts of The Savings Bank of South Australia; and
 - (b) one-half of the profit for the 1983–1984 financial year shown in the audited accounts of the State Bank of South Australia.
- (5) The amount referred to in subsection (4)(a) shall be paid as soon as practicable after the end of the 1983–1984 financial year and the amount referred to in subsection (4)(b) shall be paid on or before the thirty-first day of March, 1985.

6—Officers

A person who was, immediately before the commencement of this Act, an officer or employee of either of the amalgamating banks becomes an officer of the Bank on the commencement of this Act—

- (a) without reduction of remuneration; and
- (b) without prejudice to the continuity of his service or his accrued rights in respect of annual leave, sick leave, long service leave, leave of any other kind, retiring allowances and superannuation.

Schedule 2—Provisions relating to the employment of officers

Preliminary

1—Interpretation

In this Schedule, unless the contrary intention appears—

employee means a person in the employment of the Bank who is not an officer;

fixed establishment officer means an officer who was declared under the *Savings Bank of South Australia Act 1929* to be, or to have been, on the fixed establishment of The Savings Bank of South Australia as from a date prior to the second day of July, 1959, and who continued on the staff of that Bank from the date of the declaration until the commencement of this Act;

misconduct means—

- (a) a contravention of or failure to comply with a code of conduct laid down by the Board;
- (b) a contravention of or failure to comply with any instruction or order given by a person who has authority to give the instruction or order;
- (c) any other breach of discipline;

office means an office in the Bank;

officer means the holder of an office in the Bank.

Long service leave

9—Long service leave

- (1) The entitlement of an officer or employee to long service leave shall be determined as follows:
 - (a) an officer or employee who was, immediately before the commencement of this Act, an officer or employee of the State Bank of South Australia established by the *State Bank Act 1925* and who had, at that time, seven years or more continuous service with that Bank shall be entitled to long service leave in accordance with the provisions of the *Public Service Act 1967* and the provisions of that Act relating to long service leave shall apply *mutatis mutandis* for the benefit of that officer or employee;
 - (b) an officer or employee who is not an officer or employee referred to in paragraph (a) shall be entitled to long service leave in accordance with the provisions of the *Long Service Leave Act 1967* and the provisions of that Act shall apply *mutatis mutandis* for his benefit.
- (2) The Board may, on giving an officer or employee three months notice, require him to take long service leave to which he is entitled.
- (3) The entitlement to long service leave of an officer or employee who was, immediately before the commencement of this Act, an officer or employee of either of the amalgamating banks shall be determined on the basis that his service with the bank concerned was service with the Bank.

Superannuation entitlement of fixed establishment officers

10—Entitlement of fixed establishment officers to superannuation

- (1) Subject to subclause (3), where—
 - (a) a fixed establishment officer has attained the age of sixty years or has completed a total of forty years service or more with The Savings Bank of South Australia and the Bank and, in either case, his employment with the Bank ceases for any reason other than misconduct; or

- (b) a fixed establishment officer resigns from the Bank with the approval of the Board by reason of his physical or mental incapacity,

the Bank shall pay to the officer an amount determined in accordance with the following formula:

$$S = \frac{115}{100} \left(MS \times Y + MS \times \frac{D}{365} \right)$$

Where—

S = the amount payable;

MS = the monthly salary of the officer determined in accordance with subclause (4);

Y = the number of whole years that the officer has been a fixed establishment officer;

D = the number of days in addition to the number of years that the officer has been a fixed establishment officer.

- (2) Subject to subclause (3), where a fixed establishment officer has completed a total of twenty years service or more with The Savings Bank of South Australia and the Bank and his employment with the Bank ceases for any reason other than misconduct, the Bank shall pay to the officer an amount determined in accordance with the following formula:

$$S = MS \times Y + MS \times \frac{D}{365}$$

Where—

S = the amount payable;

MS = the monthly salary of the officer determined in accordance with subclause (4);

Y = the number of whole years that the officer has been a fixed establishment officer;

D = the number of days in addition to the number of years that the officer has been a fixed establishment officer.

- (3) No payment shall be made under this clause to, or in relation to, a person who, at any time after he was declared to be a fixed establishment officer, was a contributor to the South Australian Superannuation Fund.
- (4) For the purposes of subclauses (1) and (2) the monthly salary of an officer shall be one thirty-sixth of the total salary that would have been payable to him in the period of three years immediately preceding the cessation of his employment with the Bank if, during that period, he had been paid at the level of salary applying at the time of the cessation of his employment in respect of—
- (a) the offices in the Bank that he held on a permanent basis during that period; and
 - (b) where he held an office on a permanent basis in The Savings Bank of South Australia during that period or where an office that he held on a permanent basis in the Bank during that period no longer exists—an office in the Bank that, in the opinion of the Board, equates, or most nearly equates, that office.

- (5) For the purposes of subclauses (1) and (2) an officer shall be deemed to have been a fixed establishment officer for the period from the date from which he was declared to be, or to have been, on the fixed establishment of The Savings Bank of South Australia until the cessation of his employment with the Bank less any period during that period that he was absent from his employment on leave without pay and that, in the opinion of the Board, should not be taken into account when determining the period for which he is deemed to have been a fixed establishment officer.
- (6) Where the employment of a fixed establishment officer ceases by virtue of his death, the Bank may pay to one or more of his dependants or to his legal personal representative in such shares as it thinks fit an amount not exceeding the amount that would have been payable to the officer if, with the approval of the Board, he had retired on the day of his death by reason of his physical or mental incapacity.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Repeal of Act

The *State Bank of South Australia Act 1983* will be repealed by s 37 of the *Statutes Amendment and Repeal (Budget 2012) Act 2012*.

Legislation repealed by principal Act

The *State Bank of South Australia Act 1983* repealed the following:

Savings Bank of South Australia Act 1929

State Bank Act 1925

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1983	105	<i>State Bank of South Australia Act 1983</i>	22.12.1983	1.7.1984 (<i>Gazette</i> 7.6.1984 p1526)
1984	27	<i>State Bank of South Australia Act Amendment Act 1984</i>	10.5.1984	10.5.1984
1991	9	<i>State Bank of South Australia (Investigations) Amendment Act 1991</i>	28.3.1991	28.3.1991
1992	86	<i>State Bank of South Australia (Investigations) Amendment Act 1992</i>	3.12.1992	3.12.1992 except s 3—28.3.1991: s 2
1993	70	<i>State Bank of South Australia (Investigator's Records and Preparation for Restructuring) Amendment Act 1993</i>	10.9.1993	1.1.1993 except s 3—10.9.1993: s 2
1994	17	<i>State Bank (Corporatisation) Act 1994</i>	12.5.1994	Sch 3 (cl 14)—12.5.1994 (<i>Gazette</i> 12.5.1994 p1186); Sch 3 (cll 1—13 & 15—25)—1.7.1994 (<i>Gazette</i> 23.6.1994 p1784)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	substituted by 17/1994 Sch 3 cl 2	1.7.1994
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
the Bank	substituted by 17/1994 Sch 3 cl 3(a)	1.7.1994
<i>bill of exchange</i>	<i>deleted by 17/1994 Sch 3 cl 3(b)</i>	<i>1.7.1994</i>
<i>housing loan</i>	<i>deleted by 17/1994 Sch 3 cl 3(b)</i>	<i>1.7.1994</i>
s 4		
<i>s 4(1)</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4(2)	amended by 27/1984 s 2	10.5.1984
Pt 2		
Pt 2 Div 1	heading substituted by 17/1994 Sch 3 cl 4	1.7.1994
s 6		
s 6(3)	amended by 17/1994 Sch 3 cl 5(a)	1.7.1994
<i>s 6(4)</i>	<i>deleted by 17/1994 Sch 3 cl 5(b)</i>	<i>1.7.1994</i>
s 6A	inserted by 17/1994 Sch 3 cl 6	1.7.1994
Pt 2 Div 2		
s 7		
s 7(2)	amended by 17/1994 Sch 3 cl 7	1.7.1994
s 8		
s 8(2a)	inserted by 17/1994 Sch 3 cl 8	1.7.1994
s 9		
s 9(1)	amended by 17/1994 Sch 3 cl 9(a)	1.7.1994
s 9(3)	inserted by 17/1994 Sch 3 cl 9(b)	1.7.1994
Pt 2 Div 4		
s 15	substituted by 17/1994 Sch 3 cl 10	1.7.1994
Pt 2 Div 5		
s 17		
s 17(2)	amended by 17/1994 Sch 3 cl 11(a)	1.7.1994
s 17(3)	inserted by 27/1984 s 3	10.5.1984
s 17(4)	inserted by 17/1994 Sch 3 cl 11(b)	1.7.1994
Pt 3		
s 19		
s 19(1)	substituted by 17/1994 Sch 3 cl 12(a)	1.7.1994
s 19(1a)	inserted by 17/1994 Sch 3 cl 12(a)	1.7.1994
<i>s 19(4)—(6)</i>	<i>deleted by 17/1994 Sch 3 cl 12(b)</i>	<i>1.7.1994</i>

State Bank of South Australia Act 1983—1.7.1994 to 16.1.2013

Legislative history

s 20		
s 20(3)	<i>deleted by 17/1994 Sch 3 cl 13</i>	1.7.1994
s 20A	inserted by 17/1994 Sch 3 cl 14	12.5.1994
s 22	substituted by 17/1994 Sch 3 cl 15	1.7.1994
Pt 4		
s 23		
s 23(2a)	inserted by 17/1994 Sch 3 cl 16(a)	1.7.1994
s 23(3)	amended by 17/1994 Sch 3 cl 16(b)	1.7.1994
s 24	<i>deleted by 17/1994 Sch 3 cl 17</i>	1.7.1994
s 25		
s 25(2)	substituted by 9/1991 s 2	28.3.1991
	substituted by 86/1992 s 3(a)	28.3.1991
s 25(2a)	inserted by 86/1992 s 3(a)	28.3.1991
s 25(3)	substituted by 9/1991 s 2	28.3.1991
	substituted by 86/1992 s 3(b)	28.3.1991
s 25(4)	inserted by 9/1991 s 2	28.3.1991
	amended by 86/1992 s 3(c)	28.3.1991
s 25(5)	inserted by 9/1991 s 2	28.3.1991
	amended by 86/1992 s 3(d)	28.3.1991
s 25(6)	<i>inserted by 9/1991 s 2</i>	28.3.1991
	<i>deleted by 86/1992 s 3(e)</i>	28.3.1991
s 25(7)	inserted by 9/1991 s 2	28.3.1991
s 25(7a) and (7b)	inserted by 86/1992 s 3(f)	28.3.1991
s 25(8)—(15)	inserted by 9/1991 s 2	28.3.1991
s 25A	inserted by 70/1993 s 3	10.9.1993
s 26	<i>deleted by 17/1994 Sch 3 cl 18</i>	1.7.1994
Pt 5		
s 27	substituted by 17/1994 Sch 3 cl 18	1.7.1994
s 28	<i>deleted by 17/1994 Sch 3 cl 18</i>	1.7.1994
s 29A	<i>inserted by 27/1984 s 4</i>	10.5.1984
	<i>deleted by 17/1994 Sch 3 cl 19</i>	1.7.1994
s 30	substituted by 17/1994 Sch 3 cl 19	1.7.1994
Pt 6	inserted by 70/1993 s 4	1.1.1993
	heading substituted by 17/1994 Sch 3 cl 20	1.7.1994
s 32		
s 32(1)		
BSAL	inserted by 17/1994 Sch 3 cl 21	1.7.1994
s 34		
s 34(1)	amended by 17/1994 Sch 3 cl 22(a)	1.7.1994
s 34(2)	amended by 17/1994 Sch 3 cl 22(b)	1.7.1994
s 34(3)	substituted by 17/1994 Sch 3 cl 22(c)	1.7.1994
	may expire by proclamation: Sch 3 cl 25 <i>State Bank (Corporatisation) Act 1994</i>	

s 34(4)	amended by 17/1994 Sch 3 cl 22(d) may expire by proclamation: Sch 3 cl 25 <i>State Bank (Corporatisation) Act 1994</i>	1.7.1994
s 34(5) and (6)	deleted by 17/1994 Sch 3 cl 22(e)	1.7.1994
s 35	substituted by 17/1994 Sch 3 cl 23	1.7.1994
s 35A	inserted by 17/1994 Sch 3 cl 23	1.7.1994
Sch	heading amended by 27/1984 s 5(a)	10.5.1984
cl 1		
cl 1(2)	amended by 27/1984 s 5(b)	10.5.1984
Sch 2	inserted by 27/1984 s 6	10.5.1984
cl 1		
<i>classified office</i>	deleted by 17/1994 Sch 3 cl 24(a)	1.7.1994
<i>prescribed office</i>	deleted by 17/1994 Sch 3 cl 24(a)	1.7.1994
<i>the Union</i>	deleted by 17/1994 Sch 3 cl 24(a)	1.7.1994
<i>heading preceding cl 2</i>	deleted by 17/1994 Sch 3 cl 24(b)	1.7.1994
<i>cl 2—4</i>	deleted by 17/1994 Sch 3 cl 24(b)	1.7.1994
<i>heading preceding cl 5</i>	deleted by 17/1994 Sch 3 cl 24(b)	1.7.1994
<i>cl 5—8</i>	deleted by 17/1994 Sch 3 cl 24(b)	1.7.1994
<i>heading preceding cl 11</i>	deleted by 17/1994 Sch 3 cl 24(c)	1.7.1994
<i>cl 11—13</i>	deleted by 17/1994 Sch 3 cl 24(c)	1.7.1994

Transitional etc provisions associated with Act or amendments

State Bank of South Australia (Investigations) Amendment Act 1992

4—Validation and exclusion of judicial review

- (1) This section applies only in relation to the investigation by the Auditor-General in pursuance or purportedly in pursuance of the instrument of appointment issued by the Governor and published in the Gazette of 28 March 1991 at page 1046, as varied from time to time.
- (2) A person authorised, or purportedly authorised, by the Auditor-General to exercise all or any of the powers vested in the Auditor-General pursuant to section 34(1) of the *Public Finance and Audit Act 1987* in respect of the investigation will be taken to be and always to have been an authorised person for the purposes of section 25 of the *State Bank of South Australia Act 1983* in relation to the investigation.
- (3) No decision, determination or other act or proceeding of the Auditor-General or an authorised person or act or omission or proposed act or omission by the Auditor-General or an authorised person may, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, *certiorari*, or in any other manner whatsoever.

Historical versions

Reprint No 1—15.1.1992

Reprint No 2—3.12.1992

Reprint No 3—10.9.1993

Reprint No 4—12.5.1994