

(Reprint No. 2)

SOUTH AUSTRALIA

STATE BANK OF SOUTH AUSTRALIA ACT, 1983

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 3 December 1992.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SCHEDULES

STATE BANK OF SOUTH AUSTRALIA ACT, 1983

being

State Bank of South Australia Act, 1983, No. 105 of 1983 [Assented to 22 December 1983]¹

as amended by

State Bank of South Australia Act Amendment Act, 1984, No. 27 of 1984 [Assented to 10 May 1984]

State Bank of South Australia (Investigations) Amendment Act 1991 No. 9 of 1991 [Assented to 28 March 1991]

State Bank of South Australia (Investigations) Amendment Act 1992 No. 86 of 1992 [Assented to 3 December 1992]²

An Act to provide for the amalgamation of The Savings Bank of South Australia and the State Bank of South Australia and the formation, by the amalgamation, of a new Bank; to repeal the Savings Bank of South Australia Act, 1929, and the State Bank Act, 1925; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

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

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.
(2) A proclamation shall not be made under subsection (1) unless the Governor is satisfied that legislative provision has been made in relation to the rights and interests of the officers of the Bank.

Interpretation

3. 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:

¹Came into operation 1 July 1984; *Gaz.* 7 June 1984, p. 1526.

²Came into operation (except s. 3) on assent: s. 2(1); s. 3 came into operation 28 March 1991: s. 2(2).

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“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 constituted under this Act:

“bill of exchange” means—

(a) a cheque or other order for the payment of money;

(b) a promissory note;

or

(c) any other instrument for the payment of money:

“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:

“housing loan” means a loan for the purchase, construction, renovation or improvement of a dwelling-house:

“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.

Repeal and transitional provisions

4. (1) The following Acts are repealed:

(a) the *Savings Bank of South Australia Act, 1929*;

(b) the *State Bank Act, 1925*.

(2) The provisions of the first schedule to this Act are incorporated with, and shall be read as part of, this Act.

Act binds Crown

5. This Act binds the Crown.

PART II

CONSTITUTION AND ADMINISTRATION OF THE BANK

DIVISION I—ESTABLISHMENT OF THE BANK

Establishment of the Bank

6. (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 holds its property for and on behalf of the Crown.
- (4) Notwithstanding that the Bank is an instrumentality of the Crown, the Bank is liable to rates, taxes and other imposts under the law of the State as if it were not such an instrumentality.
- (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.

DIVISION II—THE BOARD OF DIRECTORS

Membership of the Board

7. (1) There shall be a Board of Directors of the Bank.
- (2) The Board shall consist of not less than six nor more than nine 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.

Term of office

8. (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.
- (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.

Casual vacancies

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

- (c) he resigns his office by notice addressed to the Governor;
 - or
 - (d) he is removed from office under subsection (2).
- (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;
 - (b) he is convicted of an indictable offence;
 - (c) he is guilty of neglect of duty;
 - (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.

Directors' remuneration

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

Disclosure of interest

11. (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 IV 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 III—PROCEEDINGS OF THE BOARD

Proceedings of the Board

12. (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.

Validity of acts of the Board

13. 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 IV—FUNCTIONS AND POLICIES OF THE BOARD

Powers and functions of the Board

14. (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.

Policies of the Board

15. (1) In its administration of the Bank's affairs, the Board shall act with a view to promoting—

(a) the balanced development of the State's economy;

and

(b) the maximum advantage to the people of the State,

and shall pay due regard to the importance both to the State's economy and to the people of the State of the availability of housing loans.

(2) The Board shall administer the Bank's affairs in accordance with accepted principles of financial management and with a view to achieving a profit.

(3) The Board and the Treasurer shall, at the request of either, consult together, either personally or through appropriate representatives, in relation to any aspect of the policies or administration of the Bank.

(4) The Board shall consider any proposals made by the Treasurer in relation to the administration of the Bank's affairs and shall, if so requested, report to the Treasurer on any such proposals.

DIVISION V—STAFF OF THE BANK

The Chief Executive Officer

16. (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.

Appointment of officers

17. (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 *Public Service Act, 1967*.

(3) The provisions of the second schedule to this Act (which are incorporated with, and shall be read as part of, this Act) shall apply to officers appointed under this section.

DIVISION VI—DELEGATION

Delegation by the Board and the Chief Executive Officer

18. (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;

(b) is revocable at will;

and

(c) does not derogate from the powers of the delegator.

PART III

THE OPERATIONS OF THE BANK

General functions of the Bank

19. (1) The Bank shall carry on the general business of banking and is vested with all such powers as are necessary for that purpose.

(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.

(4) The Bank may establish branches and agencies within and outside the State.

(5) The Bank may provide insurance in respect of land mortgaged, or to be mortgaged, as security for a loan made by the Bank and may continue to provide such insurance notwithstanding repayment of the loan and discharge of the mortgage.

(6) The Bank may provide, or arrange for the provision of, life insurance on the life of any person who is indebted to the Bank.

(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.

Advances by the Treasurer

20. (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.

(3) Where moneys are advanced to the Bank by way of grant—

(a) those moneys shall, for the purposes of the accounts of the Bank, be treated as a subscription of capital;

and

(b) they shall not be repayable except upon resolution of both Houses of Parliament.

Guarantee

21. (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.

Payment to be made to General Revenue

22. (1) Where it appears from the audited accounts of the Bank that an operating surplus has been achieved by the Bank in respect of a financial year, the Bank shall, within three months after presentation to the Governor of the Bank's audited account for that financial year, pay to the Treasurer, for the credit of the General Revenue of the State—

(a) a sum equal to the income tax for which the Bank would have been liable under the law of the Commonwealth assuming that it were a public company liable to income tax under that law;

and

(b) such further sum (if any) as the Treasurer, having regard to the profitability of the Bank and the adequacy of its capital and reserves, determines to be an appropriate return on the capital of the Bank.

(2) The Board shall, as soon as practicable after the audited accounts in respect of a financial year have been presented to the Governor, submit a recommendation to the Treasurer as to the amount of the payment (if any) to be made under subsection (1)(b) in respect of the financial year to which the accounts relate and the Treasurer shall in making a determination under that subsection have due regard to the recommendation.

(3) Any divergence between the recommendation of the Board and the determination of the Treasurer shall be reported in the annual report of the Board.

PART IV
ACCOUNTS AND AUDIT

Accounts and accounting records

23. (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;
 - (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.
- (3) The Board shall, as soon as practicable after the accounts prepared under subsection (2) have been audited, forward to the Governor 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.

Audit

24. (1) Within the first three months of each financial year, the Board shall appoint two or more auditors of the Bank for that financial year.
- (2) An auditor appointed under subsection (1) must be a registered company auditor or a firm of registered company auditors.
- (3) It is the duty of the auditors to report on the Bank's accounting records and on the accounts to be laid before Parliament in respect of the financial year for which they are appointed as auditors of the Bank.
- (4) The auditors shall, in a report under this section, state—
- (a) whether the accounts are, in their opinion, properly drawn up in accordance with this Act and so as to give a true and fair view of the matters to which they relate;
- and
- (b) whether the accounting records of the Bank have been, in their opinion, properly kept in accordance with the provisions of this Act.
- (5) In the course of formulating their report, the auditors shall form an opinion as to—
- (a) whether there is any defect or irregularity in the accounts or any omission to deal adequately with a matter without regard to which a true and fair view of the matters to which the accounts relate would not be obtained;
 - (b) whether returns received from branch offices of the Bank are adequate;

(c) whether they have obtained all the information and explanations that they required,

and any deficiency, failure or shortcoming in respect of any of the above matters shall be mentioned in the report.

(6) The auditors have a right of access at all reasonable times to the accounting and other records of the Bank and are entitled to require from any officer of the Bank such information and explanations as they think necessary for the purposes of the audit.

(7) An auditor of the Bank incurs no liability in defamation for any statement made by him in the course of his duties as auditor.

Investigations

25. (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 authorized persons have the same powers as the Auditor-General and authorized officers have under Division III of Part III 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 authorized person were the Auditor-General or an authorized 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 authorized 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 authorized person under this section.

(13) In this section—

“authorized person”, in relation to an investigation under this section, means a person authorized 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.

PART V
MISCELLANEOUS

Powers in relation to moneys and securities of customers who have died or become of unsound mind

26. (1) Where a customer of the Bank dies, the Bank may, at its discretion and without production of probate of the will, or letters of administration of the estate, of the deceased, apply moneys standing to the credit of an account in the name of the deceased in one or both of the following ways:

- (a) in payment of the funeral expenses and just debts of the deceased;
- (b) in payment to any person or persons who are, in the opinion of the Bank, entitled to those moneys,

but the total amount applied under this subsection from an account or accounts in the name of any one deceased person must not exceed the prescribed maximum.

(2) Where—

- (a) the Bank holds securities on behalf of a customer for safe custody;
- (b) the total value of the securities does not exceed the prescribed maximum;

and

- (c) the customer dies,

the Bank may, at its discretion and without production of probate of the will, or letters of administration of the estate, of the deceased, deliver the securities to any person or persons who are, in the opinion of the Bank, entitled to those securities.

(3) Where a customer of the Bank becomes of unsound mind and it appears to the Bank that moneys standing to his credit in an account at the Bank are reasonably required for the maintenance of the customer, or the maintenance, education or advancement of a member of his family, the Bank may apply the moneys for those purposes, but the total amount applied under this subsection from an account or accounts of any one person must not exceed the prescribed maximum.

(4) No action lies against the Bank in respect of any act, or failure to act, under this section.

The Customers Unclaimed Moneys Account

27. (1) Where a customer of the Bank has not operated an account for a period of six years or more, the Bank may close the account and transfer the balance to an account entitled the "Customers Unclaimed Moneys Account".

(2) Moneys transferred to the Customers Unclaimed Moneys Account under subsection (1) shall be paid out on application by a person who satisfies the Bank that he is entitled to those moneys.

(3) Interest does not accrue on moneys standing to the credit of the Customers Unclaimed Moneys Account except (if at all) to an extent determined by the Bank.

Minor may give effective receipt and discharge for the payment of money

28. A receipt given by a minor for the payment of money standing to the credit of an account of the minor shall be a complete discharge to the Bank for the payment of that money.

Immunity of Directors and officers

29. (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.

Confidentiality of information supplied to employees

29a. No person who is or has been employed by the Bank shall disclose information as to the affairs of a customer acquired by him in the course of his employment unless—

(a) the disclosure is made in the normal course of the business of the Bank;

(b) he has the customer's approval to do so;

or

(c) he is authorised or required by any Act or other law to do so.

Penalty: Two thousand dollars.

Bank not affected by notice of trust

30. The Bank is not affected by notice of any express or implied trust to which moneys deposited or invested with the Bank are subject, unless the Bank has expressly assumed the obligations of a trustee in relation to those moneys.

Regulations

31. (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.

FIRST SCHEDULE
TRANSITIONAL PROVISIONS**Vesting of property, rights, etc., in the Bank**

1. (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).

Provisions applicable to land under the Real Property Act, 1886

2. (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).

Certain specified instruments, etc., preserved

3. (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.

Advances under section 9(1) of State Bank Act, 1935

4. 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.

Accounts of the amalgamating banks

5. (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 IV 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.

Officers

6. 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.

SECOND SCHEDULE

PROVISIONS RELATING TO THE EMPLOYMENT OF OFFICERS

PRELIMINARY

Interpretation

1. In this schedule, unless the contrary intention appears—

“classified office” means an office in the Bank classified by the Board pursuant to this Act but does not include a prescribed office:

“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:

“prescribed office” means an office declared to be a prescribed office by the Board:

“the Union” means the Australian Bank Employees' Union S.A. & N.T. Division.

CONDITIONS OF EMPLOYMENT AND CLASSIFICATION OF OFFICES

Conditions of employment and dismissal

2. Subject to this Act, the Board may—

(a) employ officers and other persons subject to such conditions as it thinks fit;

(b) transfer an officer from one office to another office having the same classification;

and

(c) terminate the employment of an officer or employee.

Prescribed offices

3. (1) The Board may declare any office in the Bank to be a prescribed office.

(2) The Board shall give written notice to the officers of the Bank of a declaration under subclause (1).

Classification of offices

4. (1) The Board may, pursuant to this clause, classify an office in the Bank (other than a prescribed office) by reference to the level of salary payable in respect of that office.

(2) One or more classification committees may be established in accordance with this clause to advise the Board on the classification of offices pursuant to this clause.

(3) A classification committee shall be constituted of three members of whom—

(a) one (who shall be the chairman of the committee) shall be a person, who is neither an officer of the Bank nor an official of the Union, appointed by the Board with the approval of the Union;

(b) one shall be an officer appointed by the Board;

and

(c) one shall be appointed by the Union.

(4) The matters to be considered by a classification committee pursuant to this clause shall be determined by the Board.

(5) The Board shall give written notice to the officers of the Bank of the classification under this clause of an office in the Bank.

APPEALS AGAINST PROMOTION

Board may invite applications for appointment to office

5. Where the Board wishes to make an appointment to an office it may invite applications for that appointment.

Appeal to Promotion Appeals Committee

6. (1) An officer who is aggrieved by the proposed appointment of another officer to an office in the Bank may, subject to this clause, appeal to the Promotion Appeals Committee against the appointment.

(2) An appeal shall not be instituted under subclause (1) unless—

(a) the classification of the office to which the appointment is to be made is higher than the classification of—

(i) the office presently held by the proposed appointee;

and

(ii) the office presently held by the appellant;

and

(b) in the case of an officer who was invited by the Board to apply for appointment to the vacant office, he applied in response to that invitation.

(3) Where the Board proposes to appoint a person to an office the Board shall notify every officer, who is entitled to appeal against the proposed appointment, of the appointment it proposes to make.

(4) An officer who wishes to appeal to the Promotion Appeals Committee under this clause must—

(a) in the case of an officer who was invited by the Board to apply for appointment to the vacant office—not later than seven days after he was notified of the proposed appointment under subclause (3);

or

(b) in any other case—not later than fourteen days after he was notified of the proposed appointment under subclause (3),

to lodge notice of his appeal with the Committee.

(5) The Board shall, for the purposes of this clause, be deemed—

(a) to have invited an officer to apply for appointment to a vacant office;

or

(b) to have notified an officer of a proposed appointment,

if it has taken steps that are reasonably practicable to bring the invitation or the proposed appointment to his attention.

(6) An officer may not appeal under this clause against the appointment of a person to a prescribed office.

The Promotion Appeals Committee

7. (1) There shall be a committee entitled the "Promotion Appeals Committee".

(2) There shall be six members of the Committee of whom—

(a) one (who shall be the chairman of the Committee) shall be a person, who is neither an officer of the Bank nor an official of the Union, appointed by the Board with the approval of the Union;

(b) two shall be officers appointed by the Board;

and

(c) three shall be officers appointed by the Union of whom—

(i) one shall be employed at the head office of the Bank;

and

(ii) one shall be the manager of a branch of the Bank.

(3) For the purpose of considering an appeal the Committee shall be constituted of—

(a) the chairman of the Committee;

(b) one of the officers appointed by the Board who has been selected by the Board for the purpose of considering the appeal;

and

(c) one of the members appointed by the Union.

(4) The appellant shall select one of the members appointed by the Union to be a member of the Committee for the purpose of considering his appeal and if there is more than one appellant and they cannot agree on the selection of the member, the chairman of the Committee shall make the selection.

(5) A question arising before the Committee shall be determined in accordance with the opinion of the majority of the members constituting the Committee.

(6) In determining an appeal the Committee shall take into account the capacity demonstrated by the proposed appointee and by the appellant to undertake the duties of the office in question and whether it is likely that they will develop the further capacity to undertake the duties of offices classified at a higher level than the office in question.

(7) The fact that, on a previous occasion, an officer had refused appointment to an office of higher classification than the office that he then held shall not be taken into account to his prejudice by the Committee when determining an appeal in which he is a party.

(8) The Committee shall give to the appellant, the proposed appointee and the Bank reasonable notice of the time and place at which it intends to conduct the proceedings and shall afford to the parties a reasonable opportunity to provide it with documentary evidence and to make submissions to it.

(9) If the Committee invites the parties to appear before it, it shall, in the case of the appellant and the proposed appointee, permit them to be represented by officials of the Union and shall permit the Bank to be represented by an officer.

Recommendation by Committee

8. (1) The Committee may, on considering an appeal—

(a) allow the appeal and recommend that the Board appoint the appellant, or one of the appellants, to the contested office;

or

(b) dismiss the appeal and confirm the appointment proposed by the Board.

(2) The Board may comply with a recommendation made by the Committee under subclause (1).

LONG SERVICE LEAVE

Long service leave

9. (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

Entitlement of fixed establishment officers to superannuation

10. (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.

DISCIPLINE

Inquiry by Board into conduct of officer

11. (1) If, after making a full inquiry, the Board is satisfied that an officer is guilty of misconduct it may impose one or more of the following penalties:

(a) it may reprimand the officer;

(b) it may transfer him to another office in the Bank at a lower classification;

(c) it may reduce the salary or allowances payable to him;

(d) it may suspend him from office with or without pay for a period fixed by the Board;

or

(e) it may dismiss him.

(2) Where the conduct of an officer is the subject of an inquiry by the Board or the Chief Executive Officer proposes to submit a report to the Board recommending that the Board inquire into the conduct of an officer, the Chief Executive Officer may suspend the officer concerned from office.

(3) An officer suspended under subclause (2) may be suspended with or without pay and the suspension shall not operate after the matter has been finally determined by the Board or by the Disciplinary Appeals Tribunal or after the Board has decided not to inquire into the matter, as the case requires.

The Disciplinary Appeals Tribunal

12. (1) There shall be a tribunal entitled the "Disciplinary Appeals Tribunal".

(2) There shall be six members of the Tribunal of whom—

(a) one (who shall be the chairman of the Tribunal) shall be a member of the Industrial Commission of South Australia appointed by the President of the Industrial Court of South Australia;

(b) two shall be officers (employed at different branches of the Bank) appointed by the Board;

and

(c) three shall be officers appointed by the Union of whom—

(i) one shall be employed at the head office of the Bank;

and

(ii) one shall be the manager of a branch of the Bank.

(3) For the purpose of hearing an appeal the Tribunal shall be constituted of—

(a) the chairman of the Tribunal;

(b) one of the officers appointed by the Board (not being an officer who is employed at the same branch of the Bank as the appellant) who has been selected by the Board for the purpose of hearing the appeal;

and

(c) one of the members appointed by the Union who has been selected by the appellant for the purpose of hearing his appeal.

(4) A question arising before the Tribunal shall be determined in accordance with the opinion of the majority of the members constituting the Tribunal.

(5) In subclause (2)(b) and subclause (3)—

“branch of the Bank” means a branch or section of the Bank and includes the head office of the Bank.

Appeal by officer

13. (1) An officer who is aggrieved by a decision of the Board pursuant to clause 11 (other than a decision to reprimand him) may appeal to the Tribunal.

(2) An appeal must be instituted within fourteen days of the decision appealed against, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal be instituted within that time.

(3) The Tribunal may, on hearing an appeal, affirm, vary or quash the penalty imposed by the Board or impose any penalty that should have been imposed in the first instance.

(4) Where a penalty has been imposed by the Board and the Board or the Tribunal is satisfied that an appeal against the decision has been instituted, or is intended, the Board or the Tribunal may suspend the operation of the decision until the determination of the appeal.

(5) Where the operation of a decision has been suspended by the Board or the Tribunal under subclause (4) that suspension may be terminated by the Board or the Tribunal (as the case requires).

(6) The appellant and the Board shall be entitled to appear and be heard on an appeal under this clause and may be represented before the Tribunal by a legal practitioner or other agent.

(7) The Tribunal shall give to all parties to proceedings before it reasonable notice of the time and place at which it intends to conduct the proceedings and shall afford to the parties a reasonable opportunity to call and give evidence and to make submissions to the Tribunal.

(8) If a party to whom notice has been given under subclause (7) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the appeal in the absence of that party.

(9) The Tribunal shall, at the request of a party to proceedings before it, provide that party with written reasons for its decision.

(10) The Board may pay the reasonable costs incurred by an appellant in an appeal under this clause.

APPENDIX

LEGISLATIVE HISTORY

Special Provisions

(Special provision from the State Bank of South Australia (Investigations) Amendment Act 1992, s. 4)

4. (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.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4(2):	amended by 27, 1984, s. 2
Section 17(3):	inserted by 27, 1984, s. 3
Section 25(2):	substituted by 9, 1991, s. 2; 86, 1992, s. 3(a)
Section 25(2a):	inserted by 86, 1992, s. 3(a)
Section 25(3):	substituted by 9, 1991, s. 2; 86, 1992, s. 3(b)
Section 25(4):	inserted by 9, 1991, s. 2; amended by 86, 1992, s. 3(c)
Section 25(5):	inserted by 9, 1991, s. 2; amended by 86, 1992, s. 3(d)
Section 25(6):	inserted by 9, 1991, s. 2; repealed by 86, 1992, s. 3(e)
Section 25(7):	inserted by 9, 1991, s. 2
Section 25(7a) and (7b):	inserted by 86, 1992, s. 3(f)
Section 25(8) - (15):	inserted by 9, 1991, s. 2
Section 29a:	inserted by 27, 1984, s. 4
Schedule	
Heading:	amended by 27, 1984, s. 5(a)
Clause 1(2):	amended by 27, 1984, s. 5(b)
Second Schedule:	inserted by 27, 1984, s. 6