

FIRST PRINT

STATE BANK (CORPORATISATION) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to establish a State owned corporation, within the context of the State Owned Corporations Act 1989, in relation to State banking.

The Bill provides for the establishment of the State Bank of New South Wales Limited ("the Corporation") as a SOC.

The Bill also provides for the transfer of assets, rights and liabilities of the State Bank to the Corporation, the repeal of the State Bank Act 1981, and the dissolution of the State Bank in its present form.

The Bill amends the State Owned Corporations Act 1989 and certain other Acts.

The Bill contains other provisions, as described below.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 contains definitions used in the proposed Act, and also provides that words and expressions used in the proposed Act have the same meanings as they have in the State Owned Corporations Act 1989.

PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATION

Clause 4 provides for the insertion of the name of State Bank of New South Wales Limited in Schedule 1 to the State Owned Corporations Act 1989. This action is

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contemplated by the State Owned Corporations Act, and has the effect of making the Corporation a SOC.

PART 3 - PROVISIONS APPLYING TO THE CORPORATION

Clause 5 provides that the Corporation is constituted as a bank, and is an agency through which the State engages in State banking. The clause further provides that the Corporation is an agency through which the State engages in State insurance, so far as such insurance is incidental to its banking functions. The clause states that its provisions will not affect section 9 of the State Owned Corporations Act 1989, which provides that a SOC does not represent the State (except by agreement with voting shareholders), is not exempt from rates, taxes, duties and other imposts (except where this is specifically provided for by legislation) and cannot render the State liable for its debts.

Clause 6 provides that section 11 (which empowers a Minister, with approval of the Treasurer, to require a SOC to provide goods or services in non-commercial circumstances) and section 19 (9) (which restricts the power of a SOC to dispose of assets) of the State Owned Corporations Act 1989 do not apply to the Corporation or a subsidiary of the Corporation.

Clause 7 provides that information with respect to the affairs of an individual customer, or information obtained on a confidential basis from any person, is not to be disclosed to the voting shareholders under section 29 of the State Owned Corporations Act 1989, except as authorised by the customer or person.

Clause 8 provides that the Treasurer may enter into an arrangement or agreement, termed a special arrangement, with the Corporation in connection with the issue of securities, termed special capital notes, by the Corporation. A special arrangement, and the special capital notes to which it relates, may impose obligations and liabilities on the Treasurer (as to payments to the capital reserves of the Corporation, purchase of notes and payment of interest and other amounts due to note holders), the State (as to honouring of notes from the Consolidated Fund in case of default by the Corporation), the Corporation (as to redemption of notes) and otherwise as the Treasurer considers appropriate.

The clause also makes provision as to the treatment of notes for accounting purposes, the acquisition of notes by the State or a State authority and issue of evidentiary certificates as to securities by the Treasurer. The clause provides that a special arrangement under section 21A of the State Bank Act 1981 (relating to issue of special capital notes by the Bank) is to be taken to be a special arrangement under the proposed section.

PART 4 - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Clause 9 empowers the Minister to direct the transfer of the business undertaking of the State Bank to the Corporation. On the direction taking effect, the assets of the Bank vest in the Corporation and the rights and liabilities of the Bank become those of the Corporation.

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SCHEDULE 1 - AMENDMENT OF ACTS

PART 3 - PROVISIONS APPLYING TO THE CORPORATION

Status of the Corporation

5. (1) The Corporation is constituted by this Act as a bank, and is an agency through which the State of New South Wales engages in State banking.

(2) The Corporation is an agency through which the State of New South Wales engages in State insurance, so far as such insurance is incidental to its banking functions.

(3) Nothing in this section affects section 9 of the State Owned Corporations Act 1989.

Non-commercial activities; disposal of assets

6. Sections 11 and 19 (9) of the State Owned Corporations Act 1989 do not apply to the Corporation or a subsidiary of the Corporation.

Non-disclosure of certain confidential information

7. (1) Information with respect to the affairs of an individual customer of either the Corporation or a subsidiary of the Corporation is not to be disclosed to the voting shareholders pursuant to section 29 of the State Owned Corporations Act 1989, except to the extent that such disclosure is authorised by the customer.

(2) Information obtained on a confidential basis from a person by the Corporation or a subsidiary of the Corporation in the course of its commercial operations is not to be disclosed to the voting shareholders pursuant to section 29 of the State Owned Corporations Act 1989, except to the extent that such disclosure is authorised by the person.

Capital reserves of Corporation - special capital notes

8. (1) In this section:

"security" includes a capital note or other instrument issued by the Corporation, whether secured or not and whether for a fixed or an indefinite term;

"**special arrangement**" means an agreement or arrangement under subsection (2);

"**special capital note**" means a security issued by the State Bank or the Corporation that is the subject of a special arrangement.

(2) The Treasurer may, on behalf of the State, enter into an agreement or arrangement, to which the Corporation is a party or at the Corporation's request, in connection with the issue of securities by the Corporation.

(3) A special arrangement, and the special capital notes to which it relates, may:

- (a) require (in specified circumstances) the Treasurer, on behalf of the State, to pay to the Corporation for crediting to the capital reserves of the Corporation an amount calculated by reference to the interest and other amounts paid by the Corporation to the holders of the notes; and
- (b) require (in specified circumstances) the Treasurer, on behalf of the State, to purchase all or any of the notes and release the Corporation from its obligations and liabilities under the notes so purchased; and
- (c) provide that (in specified circumstances) the Treasurer may, on behalf of the State, pay all or any of the interest or other amounts due to the holders of the notes and assume any obligations or liabilities of the Corporation under the notes; and
- (d) provide that the obligations and liabilities of the Corporation under the notes may be enforced only against the State in the case of any default by the Corporation; and
- (e) provide for the redemption of all or any of the notes by the Corporation; and
- (f) make any other provision that the Treasurer considers appropriate.

(4) Any liability of the State arising under a special arrangement or special capital note is to be met out of the Consolidated Fund, which is appropriated accordingly.

(5) Unless the board otherwise determines, the principal amount of each special capital note, is, for accounting purposes, to be treated as a subscription of capital.

(6) Nothing in this section prevents the State or an authority of the State from purchasing or otherwise acquiring special capital notes

without releasing the Corporation from its obligations and liabilities under the notes.

- (7) A certificate signed by the Treasurer and stating:
- (a) that any specified security or specified class of securities issued by the Corporation is the subject of a special arrangement; or
 - (b) that any such security has been issued in accordance with the special arrangement; or
 - (c) that a special arrangement does or does not make provision of a specified kind,

is conclusive evidence, in favour of any person other than the State or the Corporation, of the matters stated in the certificate.

(8) A special arrangement made under section 21A of the State Bank Act 1981 is to be taken to be a special arrangement under this section.

PART 4 - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Direction to transfer business undertaking

9. (1) The Minister may, by order in writing, direct that the business undertaking of the State Bank be transferred to the Corporation, upon such consideration as is specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

(3) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets of the State Bank comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the State Bank comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation;
- (c) all proceedings relating to the business undertaking commenced before the transfer by or against the State Bank or a predecessor of the State Bank and pending immediately before the transfer are to be taken to be proceedings pending by or against the Corporation;

- (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the State Bank is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the Corporation;
 - (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the State Bank or a predecessor of the State Bank is, subject to regulations under section 22 (2), to be read as, or as including, a reference to the Corporation.
- (4) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) No attornment to the Corporation by a lessee from the State Bank is required.
- (6) Assets, rights or liabilities may not be transferred under this section to the Corporation unless it is a State owned corporation.

PART 5 - DISSOLUTION OF STATE BANK

Repeal of State Bank Act 1981 No. 89

10. The State Bank Act 1981 and all regulations and by-laws under that Act are repealed.

Dissolution of State Bank and State Bank Board

- 11. (1) The State Bank is dissolved.
- (2) The State Bank Board is dissolved.
- (3) A person holding office as a director of the State Bank Board immediately before its dissolution:

- (a) ceases to hold that office; and
- (b) except as provided by subsection (4), is not entitled to any remuneration or compensation because of the loss of that office.

(4) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a director of the State Bank Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

Government guarantees

12. (1) Until a day to be appointed by the Governor by proclamation for the purposes of this section, the payment of all money due by the Corporation is guaranteed by the Government of New South Wales.

(2) On and from the day appointed under subsection (1), the guarantee created by that subsection ceases, except in relation to:

- (a) money standing to the credit of current accounts with the Corporation immediately before that day; and
- (b) term deposits made with the State Bank or the Corporation, or other term liabilities incurred by the State Bank or the Corporation, before that day; and
- (c) securities issued by the State Bank or the Corporation before that day; and
- (d) money that becomes due by the Corporation on or after that day on account of a renewal or roll-over of special capital notes issued by the State Bank or the Corporation before that day (being special capital notes that were the subject of a special arrangement under section 21A of the State Bank Act 1981 or section 8 of this Act); and
- (e) (without limiting the above) liabilities, including contingent liabilities, of the Corporation arising under arrangements entered into by the State Bank or the Corporation before that day.

(3) The payment of any money due by a subsidiary of the Corporation is not guaranteed under this section.

(4) The guarantee under this section is to be taken to be the subject of an agreement between the board and the voting shareholders of the

Corporation, as referred to in section 16 of the State Owned Corporations Act 1989, and that section applies to the guarantee accordingly.

Provisions relating to debenture and inscribed stock continue for previous issues

13. (1) Sections 22-26, 28 and 29 of the State Bank Act 1981, and any by-laws under that Act relating to the issue of debentures and inscribed stock by the State Bank, continue to have effect in respect of debentures or inscribed stock issued before the repeal of those sections or issued pursuant to warrants in any such debentures or inscribed stock.

(2) Subsection (1) has effect despite the repeal of those sections and by-laws by the State Bank (Amendment) Act 1986, and despite the repeal of clause 10 of Schedule 2 to the State Bank Act 1981 by this Act.

Bank dividend and tax

14. The repeal of section 30 of the State Bank Act 1981 does not affect any liability under that section in respect of any period before the repeal.

Power to vary interest

15. The powers conferred on the State Bank by section 33 of the State Bank Act 1981 may be exercised by the Corporation in connection with loans made before the repeal of that Act.

Government agencies

16. (1) Any agency under Part 4 of the State Bank Act 1981 held by the State Bank immediately before the commencement of this section is to continue as an agency of the Corporation.

(2) Until such an agency expires or otherwise ceases to be operative or until an agreement or arrangement is made by the Corporation in substitution for such an agency, the agency is to continue to be governed by the provisions of the State Bank Act 1981 that applied to it immediately before the commencement of this section.

(3) Nothing in this section affects any power of the Corporation to enter into any agency agreement.

Crown lands legislation etc.

17. Sections 61-67 of the State Bank Act 1981 continue to apply to and in relation to any loans made or given before the repeal of that Act.

Investment of trust funds etc.

18. The repeal of section 68 of the State Bank Act 1981 does not affect any investment made before the repeal of that Act, and any such investment is to be regarded as an investment in a security authorised by the Trustee Act 1925.

PART 6 - MISCELLANEOUS

Alteration of names

19. References in this Act to a company by a specified name include references to the company under any altered name.

Provisions relating to certain staff

20. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the State Bank is an authority to which that Schedule applies.

Provisions relating to subsidiaries

21. Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, to be taken to be altered:

- (a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the Corporation";
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

(9) Shares may not be issued except with the prior written approval of the voting shareholders of the Corporation, and shares held by eligible Ministers or by or on behalf of the Corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

Regulations

22. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required

or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the State Bank or any member or employee of the State Bank or to the State Bank Act 1981 or any provision of that Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the State Bank or any authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State, the Corporation, the State Bank or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Amendment of Acts

23. The Acts specified in Schedule 1 are amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENT OF ACTS

(Sec. 23)

Grain Handling Authority (Corporatisation) Act 1989 No. 135:

Section 16A:

After section 16, insert:

Provisions relating to certain staff

16A. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Grain Handling Authority of New South Wales is an authority to which that Schedule applies, with effect from the commencement of this Act.

Independent Commission Against Corruption Act 1988 No. 35:

Section 23 (**Power to enter public premises**):

- (a) From section 23 (2), omit "the State Bank or".
- (b) From section 23 (2), omit "Bank or" where secondly occurring.

New South Wales Retirement Benefits Act 1972 No. 70:

Omit the matter relating to the State Bank from Schedule 2.

Public Authorities Superannuation Act 1985 No. 41:

Schedule 3 (**Employers**):

Omit "The State Bank of New South Wales." from Part 2 of Schedule 3.

Public Finance and Audit Act 1983 No. 152:

- (1) Section 9 (**Treasurer's directions**):
Omit section 9 (4) (a).
- (2) Schedule 2 (**Statutory bodies**):
Omit "State Bank of New South Wales."

SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

Rural Assistance Act 1989 No. 97:

Schedule 3 (Savings, transitional and other provisions):

In clause 18, after "State Bank" wherever occurring, insert "or State Bank of New South Wales Limited".

State Authorities Superannuation Act 1987 No. 211:

Schedule 1 (Employers):

Omit "State Bank of New South Wales (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)" from Part 1 of Schedule 1.

State Development and Industries Assistance Act 1966 No. 10:

Section 34 (Agreements or arrangements between the Ministerial Corporation and the State Bank):

Omit the section.

State Owned Corporations Act 1989 No. 134:

(a) After section 7, insert:

Ministerial direction

7A. For the purposes of or incidental to the transfer from an authority to a State owned corporation of any assets, rights or liabilities under this Act or under the Act by which its name is inserted in Schedule 1, the authority is, in the exercise of its functions, subject to the control and direction of the Minister.

(b) **Section 17 (State taxation):**

In paragraph (d) of the definition of "exempt matter" in section 17 (1), after "assets", insert ", rights".

(c) **Section 33 (Operation of Act):**

After section 33 (2), insert:

(3) A requirement of this Act that provisions be inserted in the memorandum or articles of association of a company does not have effect to the extent that the requirement or

SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

the provisions are inconsistent with a law of a place (other than New South Wales), where the company is a subsidiary of a State owned corporation and the company is or is to be incorporated under the law of that place.

(d) Schedule 2 (**Provisions to be included in memorandum or articles of association of State owned corporations**):

In clause 1 (5) of Part 2, after "Minister", insert ", and the Corporation is required to register the transfer".

(e) Schedule 3 (**Provisions to be included in memorandum or articles of association of subsidiaries**):

In clause 1 (4) of Part 2, after "Minister" where secondly occurring, insert ", and the subsidiary is required to register the transfer".

State Public Service Superannuation Act 1985 No. 45:

Schedule 3 (**Employers**):

Omit "State Bank of New South Wales." from Schedule 3.

Superannuation Act 1916 No. 28:

Omit "State Bank of New South Wales." from Schedule III.

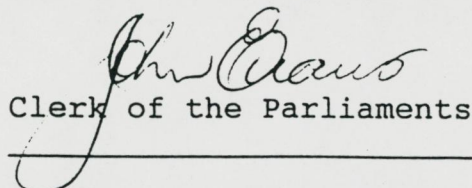
Tourism Commission Act 1984 No. 46:

Section 15 (**Agency agreements with the State Bank**):

Omit the section.

STATE BANK (CORPORATISATION) BILL

Schedule of the amendment referred to in Message of 5
December 1989.


Clerk of the Parliaments

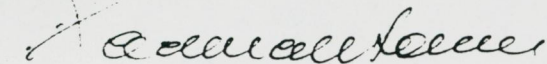
Page 10. After clause 23, insert:

Elected director

24. Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards the Corporation, to be taken to be altered by inserting after clause 1 (6) the following subclause:

(6A) One of the directors is to be an employee of the corporation holding a senior management position and elected by employees of the corporation. Procedures for identifying senior management positions and for the conduct of elections are to be as determined by the voting shareholders.

Examined



Chairman of Committees

STATE BANK (CORPORATISATION) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to establish a State owned corporation in relation to State banking and certain other matters; to provide for the transfer of assets, rights and liabilities of the State Bank; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the State Bank Act 1981; and for other purposes.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the State Bank (Corporatisation) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

"**board**" means the board of directors of the Corporation;

"**business undertaking**" means all assets, rights and liabilities of the State Bank;

"**Corporation**" means State Bank of New South Wales Limited;

"**instrument**" means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

"**State Bank**" means the State Bank of New South Wales, constituted under the State Bank Act 1981;

"**State banking**" means State banking as referred to in section 51 (xiii) of the Commonwealth Constitution;

"**State insurance**" means State insurance as referred to in section 51 (xiv) of the Commonwealth Constitution.

PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATION

Establishment of company as SOC

4. The State Owned Corporations Act 1989 is amended by inserting at the end of Schedule 1 the words "State Bank of New South Wales Limited".

State Bank (Corporatisation) 1989

PART 5 - DISSOLUTION OF STATE BANK

Clause 10 repeals the State Bank Act 1981 and all regulations and by-laws in force under that Act.

Clause 11 provides for the dissolution of the State Bank and the State Bank Board. Directors of the State Bank cease to hold office on its dissolution. Compensation is payable under Part 8 of the Public Sector Management Act 1988 to a full-time person so affected, unless the person is appointed to the service of the Corporation or a subsidiary.

Clause 12 provides that until an appointed day, money due by the Corporation is guaranteed by the State. On and from the appointed day, the guarantee ceases except in relation to money already in current accounts, term deposits already made, securities already issued, renewals or roll-overs of special capital notes already issued and other liabilities arising under arrangements already entered into. The guarantee is taken to be the subject of an agreement between the board and voting shareholders so as to ensure that the obligations of the Corporation are covered by section 16 of the State Owned Corporations Act 1989.

Clause 13 provides that repealed sections (sections 22-26, 28 and 29) of the State Bank Act 1981 and by-laws under that Act relating to debentures and inscribed stock which were issued before the repeal continue to have effect despite that repeal and the repeal of the State Bank Act 1981.

Clause 14 provides that the repeal of section 30 of the State Bank Act 1981 dealing with disposition of the State Bank's profits does not affect any accrued liability thereunder.

Clause 15 provides that the power conferred on the State Bank to vary interest rates by section 33 of the State Bank Act 1981 may be exercised by the Corporation in connection with loans made before the repeal of that Act.

Clause 16 provides for the continuance by the Corporation of Government agencies held by the State Bank under Part 4 of the State Bank Act 1981.

Clause 17 provides that sections 61-67 of the State Bank Act 1981 dealing with loans over Crown land tenures will continue to apply to loans made before the repeal of that Act.

Clause 18 specifies that the repeal of section 68 of the State Bank Act 1981, which deals with investment of trust funds, will continue to apply to investments made before the repeal of that Act.

PART 6 - MISCELLANEOUS

Clause 19 deals with any changes of name that might occur for the Corporation.

Clause 20 declares that the State Bank is an authority to which Schedule 4 of the State Owned Corporations Act 1989 applies so as to provide protection of superannuation and other entitlements of eligible employees. This declaration is contemplated by clause 1 of the Schedule.

State Bank (Corporatisation) 1989

Clause 21 modifies the required articles of association for a subsidiary of the Corporation, so that the prior approval of the voting shareholders for the appointment of directors is needed only for directors appointed by or on behalf of the Corporation, and for the transfer of shares is needed only for shares held by Ministers or held by or on behalf of the Corporation.

Clause 22 empowers the Governor-in-Council to make regulations for the purposes of the proposed Act, including regulations of a savings or transitional nature.

Clause 23 is a formal provision giving effect to the amendments set out in Schedule 1.

SCHEDULE 1 - AMENDMENT OF ACTS

References to the State Bank are removed from the Independent Commission Against Corruption Act 1988 and the Public Finance and Audit Act 1983 (section 36 of the State Owned Corporations Act 1989 already deals with the operation of those Acts in relation to State owned corporations).

References to the State Bank are removed from certain Acts dealing with superannuation (the rights of existing contributors are preserved by Schedule 4 to the State Owned Corporations Act 1989).

The State Owned Corporations Act 1989 is amended to include a provision identical in effect to section 9 of the Grain Handling Authority (Corporatisation) Act 1989 (relating to ministerial direction of organisations in connection with the transfer of assets, rights and liabilities), to include a reference to rights to promote consistency of language in the Act, to deal with inconsistency of laws where a subsidiary is incorporated elsewhere than in New South Wales, and to formally require a State owned corporation or subsidiary to register certain transfers of shares held by Ministers.

The Grain Handling Authority (Corporatisation) Act 1989 is amended to include a provision identical in effect to clause 20 of the Bill.

The Rural Assistance Act 1989 is amended to insert a reference to the Corporation in a clause that deals with the preservation of rights of persons transferred from the service of the State Bank to the service of the Rural Assistance Authority within 12 months after the commencement of that Act.

The State Development and Industries Assistance Act 1966 and the Tourism Commission Act 1984 are amended to remove provisions relating to agency agreements or arrangements with the State Bank.

STATE BANK (CORPORATISATION) ACT 1989 No. 195

NEW SOUTH WALES



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STATE BANK (CORPORATISATION) ACT 1989 No. 195

NEW SOUTH WALES



Act No. 195, 1989

An Act to establish a State owned corporation in relation to State banking and certain other matters; to provide for the transfer of assets, rights and liabilities of the State Bank; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the State Bank Act 1981; and for other purposes. [Assented to 21 December 1989]

State Bank (Corporatisation) 1989

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the State Bank (Corporatisation) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

"board" means the board of directors of the Corporation;

"business undertaking" means all assets, rights and liabilities of the State Bank;

"Corporation" means State Bank of New South Wales Limited;

"instrument" means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

"State Bank" means the State Bank of New South Wales, constituted under the State Bank Act 1981;

"State banking" means State banking as referred to in section 51 (xiii) of the Commonwealth Constitution;

"State insurance" means State insurance as referred to in section 51 (xiv) of the Commonwealth Constitution.

PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATION

Establishment of company as SOC

4. The State Owned Corporations Act 1989 is amended by inserting at the end of Schedule 1 the words "State Bank of New South Wales Limited".



PART 3 - PROVISIONS APPLYING TO THE CORPORATION

Status of the Corporation

5. (1) The Corporation is constituted by this Act as a bank, and is an agency through which the State of New South Wales engages in State banking.

(2) The Corporation is an agency through which the State of New South Wales engages in State insurance, so far as such insurance is incidental to its banking functions.

(3) Nothing in this section affects section 9 of the State Owned Corporations Act 1989.

Non-commercial activities; disposal of assets

6. Sections 11 and 19 (9) of the State Owned Corporations Act 1989 do not apply to the Corporation or a subsidiary of the Corporation.

Non-disclosure of certain confidential information

7. (1) Information with respect to the affairs of an individual customer of either the Corporation or a subsidiary of the Corporation is not to be disclosed to the voting shareholders pursuant to section 29 of the State Owned Corporations Act 1989, except to the extent that such disclosure is authorised by the customer.

(2) Information obtained on a confidential basis from a person by the Corporation or a subsidiary of the Corporation in the course of its commercial operations is not to be disclosed to the voting shareholders pursuant to section 29 of the State Owned Corporations Act 1989, except to the extent that such disclosure is authorised by the person.

Capital reserves of Corporation - special capital notes

8. (1) In this section:

"security" includes a capital note or other instrument issued by the Corporation, whether secured or not and whether for a fixed or an indefinite term;

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"**special arrangement**" means an agreement or arrangement under subsection (2);

"**special capital note**" means a security issued by the State Bank or the Corporation that is the subject of a special arrangement.

(2) The Treasurer may, on behalf of the State, enter into an agreement or arrangement, to which the Corporation is a party or at the Corporation's request, in connection with the issue of securities by the Corporation.

(3) A special arrangement, and the special capital notes to which it relates, may:

- (a) require (in specified circumstances) the Treasurer, on behalf of the State, to pay to the Corporation for crediting to the capital reserves of the Corporation an amount calculated by reference to the interest and other amounts paid by the Corporation to the holders of the notes; and
- (b) require (in specified circumstances) the Treasurer, on behalf of the State, to purchase all or any of the notes and release the Corporation from its obligations and liabilities under the notes so purchased; and
- (c) provide that (in specified circumstances) the Treasurer may, on behalf of the State, pay all or any of the interest or other amounts due to the holders of the notes and assume any obligations or liabilities of the Corporation under the notes; and
- (d) provide that the obligations and liabilities of the Corporation under the notes may be enforced only against the State in the case of any default by the Corporation; and
- (e) provide for the redemption of all or any of the notes by the Corporation; and
- (f) make any other provision that the Treasurer considers appropriate.

(4) Any liability of the State arising under a special arrangement or special capital note is to be met out of the Consolidated Fund, which is appropriated accordingly.

(5) Unless the board otherwise determines, the principal amount of each special capital note, is, for accounting purposes, to be treated as a subscription of capital.

(6) Nothing in this section prevents the State or an authority of the State from purchasing or otherwise acquiring special capital notes

without releasing the Corporation from its obligations and liabilities under the notes.

- (7) A certificate signed by the Treasurer and stating:
- (a) that any specified security or specified class of securities issued by the Corporation is the subject of a special arrangement; or
 - (b) that any such security has been issued in accordance with the special arrangement; or
 - (c) that a special arrangement does or does not make provision of a specified kind,

is conclusive evidence, in favour of any person other than the State or the Corporation, of the matters stated in the certificate.

(8) A special arrangement made under section 21A of the State Bank Act 1981 is to be taken to be a special arrangement under this section.

PART 4 - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Direction to transfer business undertaking

9. (1) The Minister may, by order in writing, direct that the business undertaking of the State Bank be transferred to the Corporation, upon such consideration as is specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

(3) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets of the State Bank comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the State Bank comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation;
- (c) all proceedings relating to the business undertaking commenced before the transfer by or against the State Bank or a predecessor of the State Bank and pending immediately before the transfer are to be taken to be proceedings pending by or against the Corporation;

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- (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the State Bank is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the Corporation;
 - (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the State Bank or a predecessor of the State Bank is, subject to regulations under section 22 (2), to be read as, or as including, a reference to the Corporation.
- (4) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) No attornment to the Corporation by a lessee from the State Bank is required.
- (6) Assets, rights or liabilities may not be transferred under this section to the Corporation unless it is a State owned corporation.

PART 5 - DISSOLUTION OF STATE BANK

Repeal of State Bank Act 1981 No. 89

10. The State Bank Act 1981 and all regulations and by-laws under that Act are repealed.

Dissolution of State Bank and State Bank Board

- 11. (1) The State Bank is dissolved.
- (2) The State Bank Board is dissolved.
- (3) A person holding office as a director of the State Bank Board immediately before its dissolution:

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- (a) ceases to hold that office; and
- (b) except as provided by subsection (4), is not entitled to any remuneration or compensation because of the loss of that office.

(4) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a director of the State Bank Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

Government guarantees

12. (1) Until a day to be appointed by the Governor by proclamation for the purposes of this section, the payment of all money due by the Corporation is guaranteed by the Government of New South Wales.

(2) On and from the day appointed under subsection (1), the guarantee created by that subsection ceases, except in relation to:

- (a) money standing to the credit of current accounts with the Corporation immediately before that day; and
- (b) term deposits made with the State Bank or the Corporation, or other term liabilities incurred by the State Bank or the Corporation, before that day; and
- (c) securities issued by the State Bank or the Corporation before that day; and
- (d) money that becomes due by the Corporation on or after that day on account of a renewal or roll-over of special capital notes issued by the State Bank or the Corporation before that day (being special capital notes that were the subject of a special arrangement under section 21A of the State Bank Act 1981 or section 8 of this Act); and
- (e) (without limiting the above) liabilities, including contingent liabilities, of the Corporation arising under arrangements entered into by the State Bank or the Corporation before that day.

(3) The payment of any money due by a subsidiary of the Corporation is not guaranteed under this section.

(4) The guarantee under this section is to be taken to be the subject of an agreement between the board and the voting shareholders of the

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Corporation, as referred to in section 16 of the State Owned Corporations Act 1989, and that section applies to the guarantee accordingly.

Provisions relating to debenture and inscribed stock continue for previous issues

13. (1) Sections 22-26, 28 and 29 of the State Bank Act 1981, and any by-laws under that Act relating to the issue of debentures and inscribed stock by the State Bank, continue to have effect in respect of debentures or inscribed stock issued before the repeal of those sections or issued pursuant to warrants in any such debentures or inscribed stock.

(2) Subsection (1) has effect despite the repeal of those sections and by-laws by the State Bank (Amendment) Act 1986, and despite the repeal of clause 10 of Schedule 2 to the State Bank Act 1981 by this Act.

Bank dividend and tax

14. The repeal of section 30 of the State Bank Act 1981 does not affect any liability under that section in respect of any period before the repeal.

Power to vary interest

15. The powers conferred on the State Bank by section 33 of the State Bank Act 1981 may be exercised by the Corporation in connection with loans made before the repeal of that Act.

Government agencies

16. (1) Any agency under Part 4 of the State Bank Act 1981 held by the State Bank immediately before the commencement of this section is to continue as an agency of the Corporation.

(2) Until such an agency expires or otherwise ceases to be operative or until an agreement or arrangement is made by the Corporation in substitution for such an agency, the agency is to continue to be governed by the provisions of the State Bank Act 1981 that applied to it immediately before the commencement of this section.

(3) Nothing in this section affects any power of the Corporation to enter into any agency agreement.

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Crown lands legislation etc.

17. Sections 61-67 of the State Bank Act 1981 continue to apply to and in relation to any loans made or given before the repeal of that Act.

Investment of trust funds etc.

18. The repeal of section 68 of the State Bank Act 1981 does not affect any investment made before the repeal of that Act, and any such investment is to be regarded as an investment in a security authorised by the Trustee Act 1925.

PART 6 - MISCELLANEOUS

Alteration of names

19. References in this Act to a company by a specified name include references to the company under any altered name.

Provisions relating to certain staff

20. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the State Bank is an authority to which that Schedule applies.

Provisions relating to subsidiaries

21. Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, to be taken to be altered:

- (a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the Corporation";
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

(9) Shares may not be issued except with the prior written approval of the voting shareholders of the Corporation, and shares held by eligible Ministers or by or on behalf of the Corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

Regulations

22. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required

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or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the State Bank or any member or employee of the State Bank or to the State Bank Act 1981 or any provision of that Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the State Bank or any authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State, the Corporation, the State Bank or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Amendment of Acts

23. The Acts specified in Schedule 1 are amended as set out in that Schedule.

Elected director

24. Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards the Corporation, to be taken to be altered by inserting after clause 1 (6) the following subclause:

(6A) One of the directors is to be an employee of the corporation holding a senior management position and elected by employees of the corporation. Procedures for identifying senior management positions and for the conduct of elections are to be as determined by the voting shareholders.

SCHEDULE 1 - AMENDMENT OF ACTS

(Sec. 23)

Grain Handling Authority (Corporatisation) Act 1989 No. 135:

Section 16A:

After section 16, insert:

Provisions relating to certain staff

16A. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Grain Handling Authority of New South Wales is an authority to which that Schedule applies, with effect from the commencement of this Act.

Independent Commission Against Corruption Act 1988 No. 35:

Section 23 (Power to enter public premises):

- (a) From section 23 (2), omit "the State Bank or".
- (b) From section 23 (2), omit "Bank or" where secondly occurring.

New South Wales Retirement Benefits Act 1972 No. 70:

Omit the matter relating to the State Bank from Schedule 2.

Public Authorities Superannuation Act 1985 No. 41:

Schedule 3 (Employers):

Omit "The State Bank of New South Wales." from Part 2 of Schedule 3.

Public Finance and Audit Act 1983 No. 152:

- (1) Section 9 (Treasurer's directions):
 - Omit section 9 (4) (a).
- (2) Schedule 2 (Statutory bodies):
 - Omit "State Bank of New South Wales."

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SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

Rural Assistance Act 1989 No. 97:

Schedule 3 (Savings, transitional and other provisions):

In clause 18, after "State Bank" wherever occurring, insert "or State Bank of New South Wales Limited".

State Authorities Superannuation Act 1987 No. 211:

Schedule 1 (Employers):

Omit "State Bank of New South Wales (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)" from Part 1 of Schedule 1.

State Development and Industries Assistance Act 1966 No. 10:

Section 34 (Agreements or arrangements between the Ministerial Corporation and the State Bank):

Omit the section.

State Owned Corporations Act 1989 No. 134:

(a) After section 7, insert:

Ministerial direction

7A. For the purposes of or incidental to the transfer from an authority to a State owned corporation of any assets, rights or liabilities under this Act or under the Act by which its name is inserted in Schedule 1, the authority is, in the exercise of its functions, subject to the control and direction of the Minister.

(b) Section 17 (State taxation):

In paragraph (d) of the definition of "exempt matter" in section 17 (1), after "assets", insert ", rights".

(c) Section 33 (Operation of Act):

After section 33 (2), insert:

(3) A requirement of this Act that provisions be inserted in the memorandum or articles of association of a company does not have effect to the extent that the requirement or

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SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

the provisions are inconsistent with a law of a place (other than New South Wales), where the company is a subsidiary of a State owned corporation and the company is or is to be incorporated under the law of that place.

(d) Schedule 2 (**Provisions to be included in memorandum or articles of association of State owned corporations**):

In clause 1 (5) of Part 2, after "Minister", insert ", and the Corporation is required to register the transfer".

(e) Schedule 3 (**Provisions to be included in memorandum or articles of association of subsidiaries**):

In clause 1 (4) of Part 2, after "Minister" where secondly occurring, insert ", and the subsidiary is required to register the transfer".

State Public Service Superannuation Act 1985 No. 45:

Schedule 3 (**Employers**):

Omit "State Bank of New South Wales." from Schedule 3.

Superannuation Act 1916 No. 28:

Omit "State Bank of New South Wales." from Schedule III.

Tourism Commission Act 1984 No. 46:

Section 15 (**Agency agreements with the State Bank**):

Omit the section.

[*Minister's second reading speech made in -
Legislative Assembly on 15 November 1989
Legislative Council on 5 December 1989*]

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PART 6 - MISCELLANEOUS

19. Alteration of names
20. Provisions relating to certain staff
21. Provisions relating to subsidiaries
22. Regulations
23. Amendment of Acts
24. Elected director

SCHEDULE 1 - AMENDMENT OF ACTS
