

**COMMONWEALTH POWERS (STATE
BANKING) BILL 1992**

SECOND READING SPEECH

LEGISLATIVE COUNCIL

Mr President

The purpose of the Bill now before the House is to empower the Reserve Bank of Australia to undertake prudential supervision of the State Bank of New South Wales. This will replace the informal supervisory arrangement which has operated since 1964.

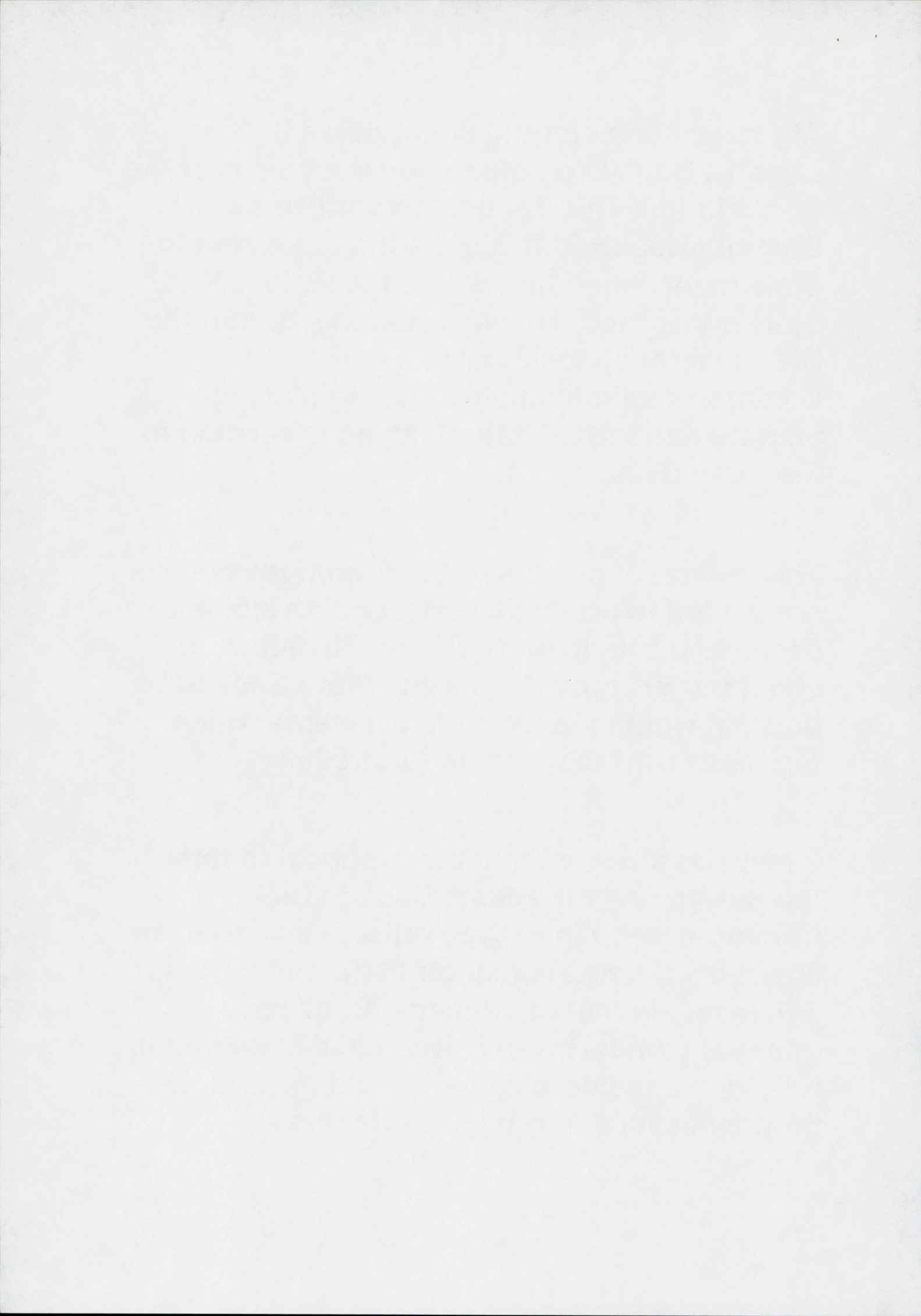
Under this informal arrangement, the State Bank has voluntarily conformed with the greater part of the Reserve Bank's requirements. However, it is important from the market and consumer point of view that the State Bank be seen to be subject to the formal supervision of the Reserve Bank.



At present such formal supervision by the Reserve Bank is precluded by Section 51 of the Constitution. This Section prevents the Commonwealth from legislating in relation to State banks operating within the limits of the State concerned. To overcome this barrier the Bill will refer specific powers to the Commonwealth to enable it to legislate for matters relating to State Banking in relation to the State Bank.

The referral of powers to the Commonwealth is not limited to prudential supervision alone because this in itself is difficult to define. In effect the Bill provides for the State Bank to be brought within the legislative scheme which regulates private banks in Australia.

It must be stressed that the proposal to refer top powers over the State Bank to the Commonwealth in no way reflects any concern about the financial position of the State Bank. The reality is that the Reserve Bank has informally undertaken a prudential supervision role for a considerable period of time and the proposal simply formalises this role.

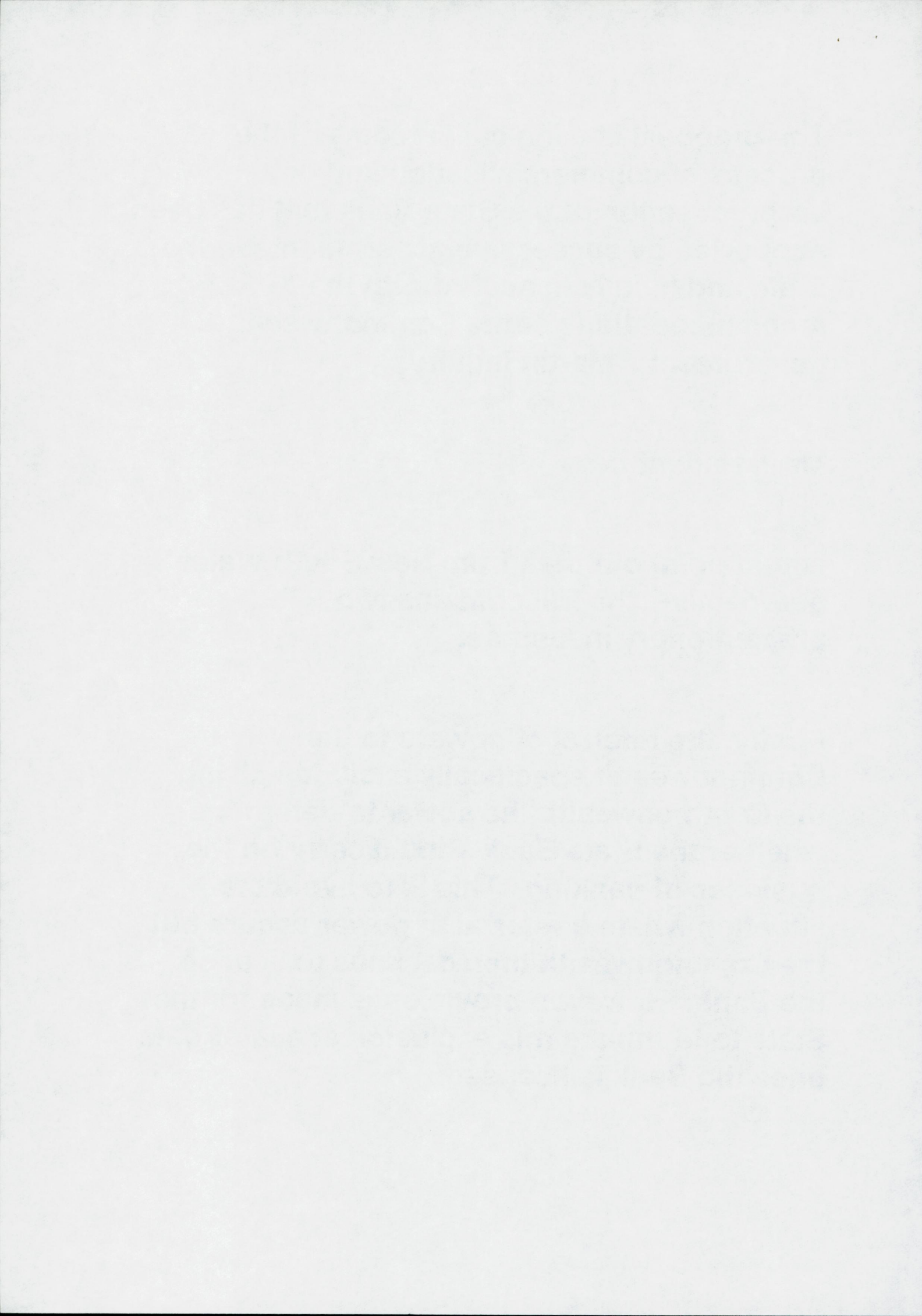


The proposal is a logical outcome of the process of commercialisation and corporatisation of the State Bank that has been supported by successive governments in the State and is fully in accord with the recommendations of the Commonwealth government's Martin Inquiry.

Mr President

I must point out that, from New South Wales' perspective, the Bill contains two precautionary measures.

Firstly, the referral of powers to the Commonwealth specifically excludes giving the Commonwealth the power to determine whether the State Bank should carry on the business of banking. This is to avoid the situation where a referral of power occurs but the Commonwealth then declines to license the Bank. However, provision is made for the State to terminate this exclusion at a later date once the Bank is licensed.



Secondly, the Bill provides for State to terminate the referral at any time by a proclamation from the Governor. While such a termination is not contemplated it is a precautionary device in the event that inappropriate use is made by the Commonwealth of the powers conferred upon it.

Mr President

The referral of powers under the Bill is designed to place the State Bank on the same footing as all licensed banks in Australia.

This approach is consistent with the findings of the Martin Inquiry into the Australian Banking Industry. The Inquiry recommended that such referral of powers take place. The South Australian and Western Australian Governments are both understood to have entered into formal agreements with the Reserve Bank in relation to their own state banks.

The advantages to New South Wales and to the State Bank of placing the State Bank under the prudential supervision of the Reserve Bank are twofold:

Firstly, it will enhance market and public confidence in the Bank by formalising the role of the Reserve Bank as the prudential supervisor.

Secondly, it will assist placing the State Bank on an equal footing with the licensed banks.

The State Bank in general conforms to the Reserve Bank prudential requirements. However, one area where there is not conformity is with respect to the requirement to hold non callable deposits with the Reserve Bank. This requirement will be phased in over a three year period.

The referral of power will not have any adverse effect on the State's interests.

The current system of financial monitoring of the performance of the bank, undertaken by the Government Trading Enterprises Monitoring Unit will be continued. Indeed the formalisation of the Reserve's Bank prudential supervision role should enhance the financial monitoring.

The referral of powers will not have any effect on the State Bank's current exemption from Commonwealth income tax. The status of the State Bank as a public authority is in no way affected by the referral and hence the exemption under the Income Tax Assessment Act will remain in force.

The proposed legislation is a logical extension of the commercialisation and corporatisation of the State Bank and I commend the Bill to the House.

FIRST PRINT

COMMONWEALTH POWERS (STATE BANKING) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to empower the Commonwealth Parliament to make laws with respect to State banking within New South Wales (but only in so far as it applies in relation to State Bank Limited) by referring the power to the Commonwealth Parliament under section 51 (xxxvii) of the Commonwealth Constitution. That provision authorises the Commonwealth Parliament to make laws with respect to:

“(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law”.

This referral is necessary to overcome constitutional restrictions which prevent the Commonwealth Parliament from legislating with respect to State banking within the limits of a State. Section 51 (xiii) of the Commonwealth Constitution contains the banking power and authorises the Commonwealth Parliament to make laws with respect to:

“(xiii) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money”.

The High Court has considered the meaning of “State banking” for the purposes of section 51 (xiii). It decided in the case of *Melbourne Corporation v. The Commonwealth* (1947) 74 CLR 31 that “State banking” is the business of banking engaged in by a State as banker and does not include transactions between a State as customer and a bank.

In the later case of *Bourke and Ors v. State Bank of New South Wales* (1990) 170 CLR 276, the High Court further decided that “State banking” is the business of banking conducted by a bank owned or controlled by a State. The Court concluded in *Bourke's case* that the banking operations of the State Bank amounted to State banking. (State Bank Limited is a continuation of and the same legal entity as the State Bank.)

Commonwealth Powers (State Banking) 1992

The effect of this Bill will be to enable State Bank Limited to be brought within the legislative scheme that regulates private banks in Australia.

Excluded from the referral is the power to legislate with respect to the licensing or authorising of State Bank Limited to carry on banking business. However, this has been included as a transitional measure and provision is made for the State to terminate this exclusion on a day appointed by proclamation.

The Bill provides that the State may at any time terminate the referral on a day appointed by proclamation.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 specifies the object of the proposed Act.

Clause 4 defines certain terms used in the proposed Act.

Clause 5 makes the referral described above.

Clause 6 makes the exclusion described above.

Clause 7 enables the referral to be terminated by proclamation.

Clause 8 declares that the proposed Act will bind the Crown.

FIRST PRINT

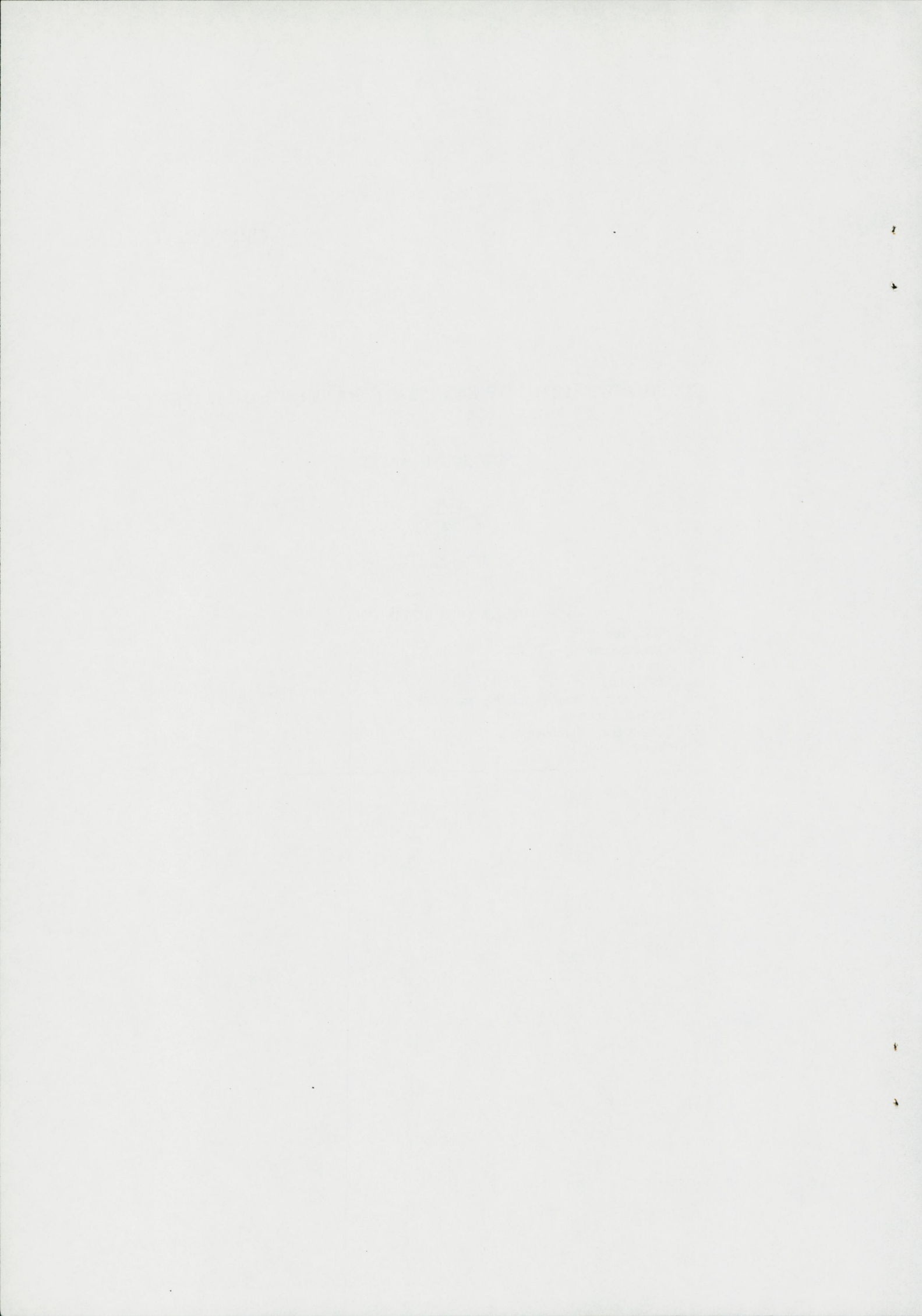
COMMONWEALTH POWERS (STATE BANKING) BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Object
 4. Definitions
 5. Reference of matters relating to the Bank
 6. Excluded matters
 7. Termination of reference
 8. Crown bound
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COMMONWEALTH POWERS (STATE BANKING) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to refer to the Parliament of the Commonwealth certain matters relating to State Bank Limited.

Commonwealth Powers (State Banking) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Commonwealth Powers (State Banking) Act 1992.

5 Commencement

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

Object

3. The object of this Act is to remove the constitutional barrier which prevents the Parliament of the Commonwealth from legislating with respect to State banking carried on within the limits of the State by State Bank Limited or a subsidiary of that company.

Definitions

4. In this Act:

15 "Bank" means State Bank Limited, and includes a subsidiary of that company (within the meaning of the Corporations Law) and also includes that company under any altered name;

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

Reference of matters relating to the Bank

20 5. The matter of State banking (but only in so far as it applies in relation to the Bank), to the extent to which it is not otherwise included in the legislative powers of the Parliament of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 7, as the day on which the reference under this Act is to terminate, but no longer.

Excluded matters

30 6. (1) The reference under section 5 does not include any matter so far as it would confer powers to make provision for or with respect to all or any of the following matters:

(a) prohibiting the Bank (whether specifically or as part of a provision of more general application) from carrying on banking business unless it is in possession of an authority (however described) to do so under a law of the Commonwealth;

Commonwealth Powers (State Banking) 1992

(b) granting, suspending, cancelling or otherwise dealing with such an authority in relation to the Bank.

(2) Subsection (1) ceases to have effect on a day to be appointed by proclamation for the purposes of this section.

Termination of reference

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7. The Governor may, at any time, by proclamation, fix a day as the day on which the reference under this Act is to terminate.

Crown bound

8. This Act binds the Crown.



COMMONWEALTH POWERS (STATE BANKING) ACT 1992
No. 104

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Object
 4. Definitions
 5. Reference of matters relating to the Bank
 6. Excluded matters
 7. Termination of reference
 8. Crown bound
-



COMMONWEALTH POWERS (STATE BANKING) ACT 1992
No. 104

NEW SOUTH WALES



Act No. 104, 1992

An Act to refer to the Parliament of the Commonwealth certain matters relating to State Bank Limited. [Assented to 8 December 1992]

Commonwealth Powers (State Banking) Act 1992 No. 104

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Commonwealth Powers (State Banking) Act 1992.

Commencement

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

Object

3. The object of this Act is to remove the constitutional barrier which prevents the Parliament of the Commonwealth from legislating with respect to State banking carried on within the limits of the State by State Bank Limited or a subsidiary of that company.

Definitions

4. In this Act:

“**Bank**” means State Bank Limited, and includes a subsidiary of that company (within the meaning of the Corporations Law) and also includes that company under any altered name;

“**State banking**” means State banking as referred to in section 51 (xiii) of the Commonwealth Constitution.

Reference of matters relating to the Bank

5. The matter of State banking (but only in so far as it applies in relation to the Bank), to the extent to which it is not otherwise included in the legislative powers of the Parliament of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 7, as the day on which the reference under this Act is to terminate, but no longer.

Excluded matters

6. (1) The reference under section 5 does not include any matter so far as it would confer powers to make provision for or with respect to all or any of the following matters:

- (a) prohibiting the Bank (whether specifically or as part of a provision of more general application) from carrying on banking business unless it is in possession of an authority (however described) to do so under a law of the Commonwealth;

Commonwealth Powers (State Banking) Act 1992 No. 104

(b) granting, suspending, cancelling or otherwise dealing with such an authority in relation to the Bank.

(2) Subsection (1) ceases to have effect on a day to be appointed by proclamation for the purposes of this section.

Termination of reference

7. The Governor may, at any time, by proclamation, fix a day as the day on which the reference under this Act is to terminate.

Crown bound

8. This Act binds the Crown.

*[Minister's second reading speech made in—
Legislative Assembly on 18 November 1992
Legislative Council on 27 November 1992]*

