

STATE BANK (AMENDMENT) ACT 1986 No. 169

NEW SOUTH WALES



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STATE BANK (AMENDMENT) ACT 1986 No. 169

NEW SOUTH WALES



Act No. 169, 1986

An Act to amend the State Bank Act 1981 with respect to the powers of the State Bank to carry on business, the contribution by the Bank to the Treasury and the members of the Board of the Bank, and for other purposes.
[Assented to 17 December 1986]

State Bank (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "State Bank (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 89, 1981

3. The State Bank Act 1981 is amended in the manner set forth in Schedules 1 and 2.

Repeal of Act No. 90, 1981

4. The Miscellaneous Acts (State Bank) Repeal and Amendment Act 1981 is repealed.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE STATE BANK ACT 1981

- (1) Section 5 (**Interpretation**)—

- (a) Section 5 (1), definition of "elected director" —

After the definition of "director", insert:

"elected director" means the part-time director referred to in section 8 (3) (b):

State Bank (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(b) Section 5 (1), definition of “subsidiary corporation”—

After the definition of “regulation”, insert:

“subsidiary corporation” means a body corporate—

- (a) that is a corporation within the meaning of the Companies (New South Wales) Code and that would, if the Bank were such a corporation, be deemed, for the purposes of that Code, to be a subsidiary of the Bank; or
- (b) that would, if it and the Bank were corporations within the meaning of the Companies (New South Wales) Code, be deemed, for the purposes of that Code, to be a subsidiary of the Bank,

whether or not the objects of the body corporate are or are incidental to the business of banking.

(2) Section 8 (**Constitution of the Board**)—

Section 8 (2), (3)—

Omit the subsections, insert instead:

(2) The Board shall consist of not less than 7 and not more than 9 directors appointed by the Governor.

(3) Of the directors—

- (a) 2 shall, in and by the instruments of appointment, be appointed as full-time directors;
- (b) 1 shall be a person elected in the manner prescribed by the regulations made under clause 3 of Schedule 1 and shall, in and by the instrument of appointment, be appointed as a part-time director; and
- (c) the remainder shall be persons nominated for appointment as directors by the Minister and shall, in and by the instruments of appointment, be appointed as part-time directors.

SCHEDULE 1—*continued*
AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(3) Section 9 (**Functions of the Board**)—

Section 9 (5)—

After section 9 (4), insert:

(5) The Minister and the Board shall, at the request of either, consult together, either personally or through appropriate representatives, in relation to any aspect of the policy or management of the Bank.

(4) Section 13 (**General banking business**)—

(a) Section 13 (4) (o)—

Omit “and” where lastly occurring.

(b) Section 13 (4) (p)–(s)—

Omit section 13 (4) (p), insert instead:

(p) to issue securities (whether or not at a discount or premium), including debentures, inscribed stock, promissory notes, unsecured notes, capital notes and subordinated debt;

(q) with the approval of the Minister—

(i) to promote or establish, or to participate in the promotion or establishment of, subsidiary corporations; and

(ii) to acquire interests in bodies corporate so that, as a result of the acquisition, the bodies corporate become subsidiary corporations;

(r) to carry on a business or an activity of any kind approved by the Minister, whether or not it is or is incidental to the business of banking; and

(s) to do anything incidental to any of its powers.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(c) Section 13 (5)—

After section 13 (4), insert:

(5) Any of the functions of the Bank (including its functions under Part IV) may be exercised—

- (a) by the Bank itself;
- (b) by a subsidiary corporation; or
- (c) by the Bank or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

(5) Section 15—

Omit the section, insert instead:

Prime assets ratio

15. (1) The Bank shall hold at least 12 per cent (or such other percentage as may be approved by the Treasurer) of its total Australian assets in the form of—

- (a) notes and coins;
- (b) balances with the Reserve Bank;
- (c) Treasury notes or any other securities issued by the Government of the Commonwealth or any State or the Northern Territory;
- (d) securities issued by a public authority constituted by or under an Act of the Parliament of the Commonwealth, a State or the Northern Territory, being securities guaranteed by the Government of the Commonwealth, a State or the Northern Territory;
- (e) loans to money market dealers authorised by the Reserve Bank, being loans secured against securities referred to in paragraph (c) or (d); or
- (f) such other investments as may be approved by the Treasurer.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(2) In this section—

“Australian assets” means assets in Australian currency within Australia, other than such amounts as may be approved by the Treasurer.

(6) Section 16 (**Payment guaranteed**)—

(a) Section 16 (1)—

Omit “in respect of its general banking business”, insert instead “(whether or not in respect of its general banking business)”.

(b) Section 16 (3), (4)—

After section 16 (2), insert:

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

(4) The Treasurer may, after consultation with the Board, fix charges to be paid by the Bank in respect of the guarantee under this section, in so far as it relates to specified securities issued by the Bank.

(7) Section 21A—

After section 21, insert:

Capital reserves of Bank—special capital notes

21A. (1) In this section—

“security” means an instrument issued by the Bank under section 13 (4) (p), whether secured or not and whether for a fixed or an indefinite term;

“special arrangement” means an agreement or arrangement under subsection (2);

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SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

“special capital note” means a security issued by the Bank that is the subject of a special arrangement.

(2) The Treasurer may, on behalf of the Government of New South Wales, enter into an agreement or arrangement, to which the Bank is a party or at the Bank’s request, in connection with the issue of securities by the Bank.

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

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(4) Any liability of the Government of New South Wales arising under a special arrangement or special capital note shall be met out of the Consolidated Fund, which is hereby appropriated accordingly.

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

(6) Nothing in this section prevents the Government of New South Wales or an authority of the State from purchasing or otherwise acquiring special capital notes without releasing the Bank 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 Bank is the subject of a special arrangement;
- (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.

shall be conclusive evidence, in favour of any person other than the Government of New South Wales or the Bank, of the matters stated in the certificate.

(8) Section 22 (**Bank's borrowing powers**)—

Omit the section.

(9) Section 23 (**Application of loans**)—

Omit the section.

(10) Section 24 (**Replacement of lost, etc., debentures**)—

Omit the section.

(11) Section 25 (**Guarantee**)—

Omit the section.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*(12) Section 26 (**Indemnity**)—

Omit the section.

(13) Section 28 (**Exchange of securities**)—

Omit the section.

(14) Section 29 (**Payment of interest on debentures**)—

Omit the section.

(15) Section 30 (**Disposition of Bank's profits**)—

(a) Section 30 (1), definition of "dividend"—

Omit the definition of "capital-cost contribution", insert instead:

"dividend", in relation to the net profits of the Bank in a financial year, means such part, if any, of the amount of those profits (after deduction of the taxation-equivalent contribution calculated in respect of those profits) as the Treasurer determines, after consultation with the Board, having regard to the profitability of the Bank and the adequacy of its capital and reserves;

(b) Section 30 (1), definition of "taxation-equivalent contribution"—

Omit the definition, insert instead:

"taxation-equivalent contribution", in relation to the net profits of the Bank in a financial year, means the amount that would be payable under a law of the Commonwealth as income tax in respect of the income represented by those profits—

- (a) if the Bank were a public company liable to income tax under that law; and

SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(b) if that income were taxable income within the meaning of that law,

less the following amounts:

(c) the amount of income tax payable in respect of that financial year by a subsidiary corporation or, if it is not a wholly owned subsidiary corporation, such proportion of the amount of that income tax as the Treasurer determines after consultation with the Board;

(d) the amount of income tax payable in respect of that financial year by the Bank in any country outside Australia in connection with the carrying on of the business of the Bank in that country,

subject to any deduction under paragraph (c) not exceeding the amount contributed by the relevant subsidiary corporation to those net profits and any deduction under paragraph (d) not exceeding the amount contributed to those net profits by the operations of the Bank in the relevant country.

(c) Section 30 (2)—

Omit “capital-cost contribution”, insert instead “dividend”.

(16) Section 38 (**Agencies**)—

Section 38 (3) (c)—

Omit the paragraph, insert instead:

(c) such money as may be borrowed under section 38A.

(17) Section 38A—

After section 38, insert:

Borrowing of money by Bank for agency

38A. (1) The Bank may, with the approval of the Treasurer, borrow money for the purposes of an agency.

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(2) The liabilities of the Bank in respect of any such loan shall be met out of the funds of the agency concerned.

(3) The Bank shall be deemed to be indemnified by the Crown against any liability in respect of securities issued for money borrowed for the purposes of an agency to the extent to which the liability is not recoverable from the assets of the agency.

(18) Section 40 (**Accounts for each agency**)—

Section 40 (4) (a) (v)—

Omit the subparagraph, insert instead:

(v) such money as may be borrowed under section 38A for the purposes of the agency; and

(19) Section 68 (**Investment of trust funds, etc.**)—

(a) Section 68 (1)—

Omit “in debentures or inscribed stock issued by the Bank”, insert instead “in securities issued by the Bank”.

(b) Section 68 (2)—

Omit “a debenture, coupon or inscribed stock”, insert instead “a security”.

(20) Section 72 (**Financial dealings and pecuniary interests of directors**)—

(a) Section 72 (2)—

Omit “The provisions of subsection (1) do not apply to a director referred to in clause 2 (1) (a) or (c) of Schedule 1”, insert instead “Subsection (1) does not apply to a full-time director”.

(b) Section 72 (2A)—

After section 72 (2), insert:

(2A) Subsection (1) does not apply to the elected director in respect of a loan made by the Bank to the director for any purpose for which loans are made to employees of the Bank.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

- (c) Section 72 (3), (4)—
Omit “director referred to in clause 2 (1) (a) or (c) of Schedule 1” wherever occurring, insert instead “full-time director or the elected director”.
- (d) Section 72 (7)—
Omit “director referred to in clause 2 (1) (b) of Schedule 1”, insert instead “part-time director (other than the elected director)”.
- (21) Section 74 (**Medical benefits scheme**)—
- (a) Section 74 (1) (a)—
Omit “directors referred to in clause 2 (1) (a) or (c) of Schedule 1”, insert instead “to a full-time director or the elected director”.
- (b) Section 74 (1) (b)—
Omit “retired directors referred to in clause 2 (1) (a) or (c) of that Schedule”, insert instead “retired full-time directors or retired elected directors”.
- (22) Section 80—
After section 79, insert:
Savings and transitional provisions
80. Schedule 2 has effect.
- (23) Schedule 1 (**Provisions relating to directors and procedure of the Board**)—
- (a) Clause 1—
Omit the clause.
- (b) Clause 2—
Omit the clause, insert instead:
Age of directors
2. (1) A person of or above the age of 65 years is not eligible to be appointed as a full-time director or the elected director.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(2) A person of or above the age of 70 years is not eligible to be appointed as a part-time director.

(c) Clause 3 (1)—

Omit the subclause.

(d) Clause 3 (5) (c)—

Omit the paragraph.

(e) Clause 4—

Omit the clause, insert instead:

Chairman and deputy chairman of the Board

4. (1) Of the part-time directors (other than the elected director)—

(a) one shall, in and by the instrument of appointment or by another instrument executed by the Governor, be appointed as chairman of the Board; and

(b) another shall, in and by the instrument of appointment or by another instrument executed by the Governor, be appointed as deputy chairman of the Board.

(2) The chairman or deputy chairman may be referred to as—

(a) the chairperson or chairwoman; or

(b) the deputy chairperson or deputy chairwoman,

as the case may require.

(f) Clause 6 (1)—

Omit the subclause, insert instead:

(1) The Governor may, from time to time, appoint a person to act in the office of a director during—

(a) the illness or absence of the director; or

(b) a vacancy in the office of the director.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(g) Clause 6 (2)—

Omit the subclause.

(h) Clause 6 (4)—

Omit “, (2)”.

(i) Clause 6 (5)—

Omit “chairman of the Board, of”.

(j) Clause 6 (6)—

Omit the subclause. insert instead:

(6) For the purposes of subclause (5), a person while acting in the office of a director who is the chairman or deputy chairman of the Board, shall have the functions of chairman or deputy chairman as well as those of a director.

(k) Clause 7 (2)—

Omit “the director elected in the manner prescribed by regulations made under clause 3 (2)”, insert instead “the elected director”.

(l) Clause 9 (1)—

Omit “except while he is absent from duty on leave granted by the Minister under clause 11 (1) (c)”, insert instead “except as permitted by this Act or except with the consent of the Minister”.

(m) Clause 10A—

After clause 10, insert:

Filling of vacancies

10A. (1) If the office of a director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

(2) The office of a part-time director (other than the elected director) is not required to be filled if there are at least 7 remaining directors.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(n) Clause 11 (1) (c)—

Omit “any period”, insert instead “14 days in total in any period of 12 months”.

(o) Clause 11 (1) (g) (i)—

Omit “a part-time director referred to in clause 2 (1) (c)”, insert instead “the elected director”.

(p) Clause 11 (1) (g) (ii), (l)—

Omit “referred to in clause 2 (1) (b)” wherever occurring, insert instead “(other than the elected director)”.

(q) Clause 11 (1) (i), (k)—

Omit “given under subclause (4)”, wherever occurring.

(r) Clause 11 (1) (j)—

Omit “part-time director referred to in clause 2 (1) (c)”, insert instead “elected director”.

(s) Clause 11 (4)—

Omit the subclause.

(t) Clause 14 (3)—

Omit the subclause, insert instead:

(3) The chairman of the Board or, in the absence of the chairman, the deputy chairman of the Board or, in the absence of both the chairman and the deputy chairman, another part-time director elected as chairman for the meeting by the directors present shall preside at a meeting of the Board.

(u) Clause 14 (4)—

Omit “Four directors”, insert instead “A majority of the directors”.

State Bank (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(v) Clause 14 (8)—

Omit “the chairman of the Board or the director acting as chairman at that next meeting”, insert instead “the person acting as chairman at that next meeting”.

(24) Schedule 2—

After Schedule 1, insert:

SCHEDULE 2

(Sec. 80)

SAVINGS AND TRANSITIONAL PROVISIONS

PART 1

PRELIMINARY

Interpretation

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified under section 2 (2);

“Rural Bank Act” means the Rural Bank of New South Wales Act 1932;

“Savings Bank Act” means the Government Savings Bank Act 1906.

Regulations

2. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of the following Acts:

This Act.

Miscellaneous Acts (State Bank) Repeal and Amendment Act 1981.

State Bank (Amendment) Act 1986.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of assent to the Act concerned or a later day.

*State Bank (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

(3) To the extent to which a provision referred to in subclause (1) takes effect on and from 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 or an 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 or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other provision of this Schedule.

Interpretation Act 1897

3. The savings contained in this Schedule do not limit any saving in the Interpretation Act 1897.

PART 2

SAVINGS AND TRANSITIONAL PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT AND THE MISCELLANEOUS ACTS (STATE BANK) REPEAL AND AMENDMENT ACT 1981

Continuity of body corporate

4. The corporation constituted under section 7 with the corporate name of the "State Bank of New South Wales" is a continuation of, and the same legal entity as, the corporation constituted by section 6 of the Savings Bank Act, as in force immediately before the appointed day, with the corporate name of the "Rural Bank of New South Wales".

Construction of references

5. On and from the appointed day, a reference in any other Act, any instrument made under any Act or in any other instrument or document of any kind—

(a) to the Rural Bank of New South Wales or the Commissioners of the Government Savings Bank of New South Wales shall be construed as a reference to the Bank;

(b) to the commissioners of the Rural Bank of New South Wales shall be construed as a reference to the Bank;

(c) to the General Bank Department, the Rural Bank Department, the Advances for Homes Department and the Personal Loans Department of the Rural Bank of New South Wales shall be construed as a reference to the Bank in relation to its general banking business; or

*State Bank (Amendment) 1986*SCHEDULE I—*continued*AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

- (d) to the Government Agency Department of the Rural Bank of New South Wales shall be construed as a reference to the Bank in relation to its agency business.

Employees, etc., of the Bank

6. (1) Any officers, servants or employees of the Rural Bank of New South Wales who held office in the service of the Rural Bank of New South Wales immediately before the appointed day shall be deemed to be employees of the Bank.

(2) Any valuers or agents of the Rural Bank of New South Wales who held office as such immediately before the appointed day shall be deemed to be valuers or agents of the Bank and to hold office as such on the same terms and conditions as those that applied to them immediately before the appointed day.

(3) Any person who becomes an employee of the Bank under subclause (1)—

- (a) shall retain all rights and privileges which immediately before the appointed day were accruing or had accrued to the person in his or her capacity as an officer, servant or employee of the Rural Bank of New South Wales as if those rights and privileges had been conferred on the person in his or her capacity as an employee of the Bank;
- (b) shall be paid remuneration, until it is subsequently varied by or in accordance with law, at a rate not lower than that at which the person was paid, and be subject to the same conditions of employment as those to which the person was subject, immediately before the appointed day; and
- (c) is not, in respect of the same period of service, entitled to claim a benefit under any other provisions of this Act and under this clause.

Medical benefits scheme

7. (1) The medical benefits scheme established under section 35B of the Savings Bank Act shall be deemed to be the scheme referred to in section 74 of this Act until it is varied by the Bank.

(2) The reference in section 74 to retired full-time directors includes a reference to a retired commissioner, other than a nominated commissioner, of the Rural Bank of New South Wales.

State Bank (Amendment) 1986

SCHEDULE 1—*continued*
 AMENDMENTS TO THE STATE BANK ACT 1981—*continued*

PART 3

SAVINGS AND TRANSITIONAL PROVISIONS CONSEQUENT ON
 ENACTMENT OF STATE BANK (AMENDMENT) ACT 1986

Appointments to Board not affected

8. Nothing in the State Bank (Amendment) Act 1986 affects the appointment of a director who was holding office immediately before the commencement of Schedule 1 (2) to that Act.

Repeal of by-laws relating to debentures and inscribed stock

9. Any by-laws in force or deemed to be in force immediately before the repeal of section 22, being by-laws relating to the issue of debentures and inscribed stock by the Bank, are repealed.

Provisions relating to debentures and inscribed stock continue for previous issues

10. Notwithstanding the repeal of sections 22-26, 28 and 29 and the repeal of the by-laws referred to in clause 9, those sections and by-laws continue to have effect in respect of debentures or inscribed stock issued before their repeal.

Amendments preserved

11. The repeal of the Miscellaneous Acts (State Bank) Repeal and Amendment Act 1981 does not affect any amendment made or preserved by that Act.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE STATE BANK ACT 1981 BY WAY OF STATUTE LAW
 REVISION

(1) Section 4 (**Arrangement**)—

Omit the section.

(2) Sections 16 (2), 30 (8), 44 (a)—

Omit "Consolidated Revenue Fund" wherever occurring, insert instead "Consolidated Fund".

State Bank (Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE STATE BANK ACT 1981 BY WAY OF STATUTE LAW
REVISION—*continued*

(3) Section 76—

Omit the section, insert instead:

Proceedings for offences

76. Proceedings for an offence against this Act, the regulations or the by-laws shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
