

Act 1994 No. 47

**STATE BANK OF SOUTH AUSTRALIA (TRANSFER OF
UNDERTAKING) BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to provide for the transfer of part of the undertaking of the State Bank of South Australia (“SBSA”) to the Bank of South Australia Limited (“BSAL”—a company formed to carry on the business of banking under the Corporations Law) by:

- providing for the transfer of assets and liabilities in New South Wales from the State Bank of South Australia to the Bank of South Australia Limited, without the usual written documents; and
- providing for certain exemptions from New South Wales taxes, including stamp duty, financial institutions duty and debits tax; and
- requiring the New South Wales Registrar-General and other relevant authorities to register certain transactions where the transferor is not the registered proprietor.

Clause 1 specifies the short title of the Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 defines words and expressions used in the proposed Act.

Clause 4 states that the proposed Act binds the Crown.

Clause 5 empowers the Treasurer, with the concurrence of the South Australian Treasurer, to transfer assets and liabilities of SBSA or a SBSA subsidiary to BSAL. This is to be done by order in writing made within the transfer period (a period of six months or less from the appointed day, as defined in clause 3).

An order may be varied or revoked by the Treasurer by further order in writing made, with the concurrence of the South Australian Treasurer, before the order takes effect. The clause declares that the transfer of a liability operates to discharge the body

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corporate from which the liability was transferred from the liability. It further declares that a transfer of an asset or liability operates by force of the proposed Act and despite the provisions of any other law or instrument.

Clause 6 provides for the transfer of assets and liabilities under the proposed Act to have effect on the conditions fixed by the South Australian Treasurer under the South Australian Act (these conditions of transfer may free transferred property from a trust (if each beneficiary is SBSA or a SBSA subsidiary) and may FIX the value of transferred assets and liabilities and impose a liability on the transferee reflecting that value: see section 8 of the South Australian Act).

Clause 7 contains a series of transitional provisions related to transferred assets and liabilities. The general purpose of the provisions is to put BSAL in the same legal position as SBSA or the SBSA subsidiary from which assets or liabilities are transferred.

Clause 8 provides that an instruction, order or mandate given to a bank or other financial institution for payments to be made to an account at SBSA or a SBSA subsidiary continues to operate so that the payments are made to the account when transferred to BSAL under the proposed Act or a corresponding law (as defined in clause 3).

Clause 9 requires the Registrar-General, and any other registering authority, to register or record in the appropriate manner the transfer to BSAL of any transferred asset or liability and to register an instrument in registrable form, executed by BSAL, relating to property that is a transferred asset even though BSAL is not registered as the proprietor of the property.

The Registrar-General or other registering authority is authorised by the clause to register a dealing with property by SBSA or the SBSA subsidiary in whose name the property is registered or by BSAL without being concerned to inquire whether the property is or is not a transferred asset.

Clause 10 relieves a person dealing with SBSA or a SBSA subsidiary or with BSAL of any obligation to inquire whether property to which the transaction relates is or is not a transferred asset.

Further, the clause provides that if SBSA or a SBSA subsidiary was entitled to property before the appointed day (to be appointed by proclamation under the South Australian Act), and after that day, SBSA or the SBSA subsidiary, or BSAL, purports to deal with the property as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.

This will not, however, validate a transaction if the party dealing with SBSA, the SBSA subsidiary or BSAL has actual notice of the deficiency of title or acts fraudulently.

Clause 11 authorises the Treasurer to re-transfer assets or liabilities (or both) from BSAL to SBSA or a SBSA subsidiary. Again, this is to be by order in writing with the concurrence of the South Australian Treasurer. A re-transfer may only be made during the transfer period.

Clause 12 provides an exemption from stamp duty, financial institutions duty or debits tax in respect of any transfer effected by order of the Treasurer under the proposed Act or any application or entry made, or receipt given or anything else done for a purpose connected with, or arising out of, such a transfer.

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Clause 13 provides for a certificate issued by the South Australian Treasurer to be evidence as to whether an asset or liability is or is not a transferred asset or liability.

Clause 14 provides for the transfer of staff from the employment of SBSA or a SBSA subsidiary to the employment of BSAL by order of the Treasurer made with the concurrence of the South Australian Treasurer.

The clause declares that such a transfer does not affect remuneration, leave rights or continuity of service and does not constitute a retrenchment or redundancy. It further declares that such a transfer is not to give rise to any right to damages or compensation.

Clause 15 is designed to ensure that the proposed Act has effect despite the provisions of any other law.

Clause 16 declares that nothing done or allowed under the proposed Act is to:

- constitute a breach of, or default under, an Act or other law; or
 - constitute a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - constitute a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
 - constitute a civil or criminal wrong; or
 - terminate an agreement or obligation, or fulfil any condition that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or
 - release a surety or other obligee wholly or in part from an obligation.
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