

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 21 A 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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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.

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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.
