

Act 1994 No. 73

STATE BANK (PRIVATISATION) 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 permit the sale of the State Bank, which is at present a State owned corporation.

The Bill permits the sale of the shares in State Bank of New South Wales Limited, removes the name of the Bank from Schedule 1 to the State Owned Corporation Act 1989, and removes impediments to the sale and transfer of the Bank's issued shares imposed by that Act.

Removal of the name of a SOC from Schedule 1 to the State Owned Corporations Act 1989 has the effect of terminating the corporation's status as a SOC. The State Owned Corporations Act 1989 provides that this can be done only by an Act of Parliament.

PART I—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent. However, key provisions will operate from a day to be proclaimed under clause 9.

Clause 3 defines certain expressions used in the proposed Act. Among the expressions defined are "appointed day" (meaning the day appointed by proclamation under clause 9 for the Bank to cease to be a SOC), and "approved person" (meaning the company specified in clause 7 or a wholly owned subsidiary).

Clause 4 contains a definition of "deposit".

Clause 5 provides that the proposed Act is to apply both within and outside New South Wales.

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PART 2—AUTHORISATION OF SALE

Clause 6 authorises the sale of the Bank in accordance with the proposed Act.

Clause 7 specifies The Colonial Mutual Life Assurance Society Limited or a wholly-owned subsidiary as an approved person to whom the Bank may be sold.

Clause 8 authorises the negotiation, entry into and carrying out of agreements by the Premier and the Treasurer for the sale of the Bank. Any transfer of shares in the Bank is not to occur before the appointed day. Any material modification to the principal agreement after 11 October 1994 is to be of no force or effect, unless approved by both Houses of Parliament.

Clause 9 provides for the omission of the name of the State Bank from Schedule 1 to the State Owned Corporations Act 1989 on the appointed day. This is the means by which the Bank ceases to be a State owned corporation.

Clause 10 specifically states that, on and after the appointed day, the State Owned Corporations Act 1989 will not apply to the Bank or any subsidiary of the Bank except as otherwise expressly provided by the Act.

Clause 11 authorises the making, before the appointed day, of alterations and additions to the memorandum and articles of association of the Bank or any subsidiary of the Bank. Such alterations and additions will not have effect before the appointed day.

PART 3—GUARANTEES

Clause 12 provides that, during the “transitional period”, the payment of certain money due by the Bank in respect of “specified liabilities” incurred by the Bank during the transitional period has the benefit of a Government guarantee. The “transitional period” is the period of 3 years commencing on the day proclaimed under section 12 of the State Bank (Corporatisation) Act 1989 in relation to the State guarantee provided under that Act. The “specified liabilities” guaranteed by the clause cover liabilities of the Bank to make payments in relation to:

- (a) financial accommodation provided to the Bank that is required by accounting standards or principles to be recorded as a liability on the balance sheet of the Bank; and
- (b) retail deposits (including for example money in cheque accounts, money in State All In One accounts, and retail State Bank bonds); and
- (c) financial commitments of the Bank that are not required by accounting standards or principles to be recorded as a liability on the balance sheet of the Bank (including for example guarantees and standby letters of credit); and
- (d) various treasury transactions including forward exchange contracts and interest swap agreements.

This guarantee ceases at the end of the transitional period, except as regards specified liabilities (other than demand deposits) incurred during the transitional period. This continuing guarantee ceases to apply to a liability as soon as it is amended, varied or extended, unless the Treasurer agrees that the guarantee should continue.

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The clause does not provide for the guarantee of money due by a subsidiary of the Bank.

The guarantee provided during the transitional period can in effect be waived by the parties to a particular arrangement.

Clause 13 makes it clear that the State has rights of indemnity and subrogation in relation to guarantees under the proposed Act and the State Bank (Corporatisation) Act 1989.

PART 4—POST-SALE PROVISIONS

Clause 14 deals with accrued rights of employees of the Bank or subsidiaries of the Bank to annual leave, extended leave or sick leave, and ensures that there is continuity of employment.

Clause 15 deals with Bank employees who are contributors to the State Superannuation Fund on the date of completion of the sale. The clause requires a division to be set up in the State Bank Superannuation Benefit Scheme before the completion date. The new division must provide the same level of benefits as are provided by membership of the State Superannuation Fund. These existing contributors to the State superannuation Fund will be automatically transferred to this division on the completion date. The clause provides for the transfer of the contributors' preserved benefits to the State Bank Scheme. The clause also applies provisions of the Superannuation Act 1916, which provide for the adjustment of the Bank's net liability under that Act, and for the vesting in the Crown of liability for payment of certain pensions and other liabilities.

Clause 16 deals with Bank employees who are contributors to the State Authorities Superannuation Fund on the date of completion of the sale. The clause requires alterations to be made to the trust deed governing the State Bank Superannuation Benefit Scheme so that membership of Division B will provide (to existing Bank employees who become members of the Division) the same level of benefits as are provided by membership of the State Authorities Superannuation Fund. These existing contributors to the Fund will be automatically transferred to Division B on the completion date. The clause provides for the transfer of the contributors' preserved benefits to the State Bank Scheme. The clause also applies provisions of the State Authorities Superannuation Act 1987, which provide for the adjustment of the Bank's net liability under that Act, and for the vesting in the Crown of liability for payment of certain pensions and other liabilities.

Clause 17 provides that certain provisions of the agreement for the sale of the Bank are valid and enforceable despite laws that might apply to strike down contractual provisions preventing property being transferred or for restraint of trade. This covers provisions restricting the transfer of Bank shares by the purchaser, and provisions preventing the State from carrying on retail banking.

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PART 5—PAYMENTS

Clause 18 provides that amounts received for the sale of the Bank are to be paid into the Consolidated Fund or the Special Deposits Account, subject to deduction of reasonable expenses. The clause states that it is Parliament's intention that the proceeds of the sale are to be used to retire State debt.

Clause 19 provides an automatic appropriation for liabilities arising under the agreements or the legislation.

PART 6—AMENDMENTS

Clause 20 is a formal provision giving effect to the Schedule of amendments to the State Bank (Corporatisation) Act 1989.

Clause 21 is a formal provision giving effect to the Schedule of amendments to other Acts.

PART 7—TERMINATION OF SALE AND PURCHASE

Clause 22 provides that Part 7 is to apply if the sale of the Bank is terminated by any of the parties.

Clause 23 stipulates that termination has the effect of preventing the sale of the Bank to any person (including an approved person) without further statutory authorisation.

Clause 24 provides a mechanism to re-instate Bank as a State owned corporation and to reverse the effect of amendments made by the proposed Act.

PART 8—MISCELLANEOUS

Clause 25 deals with certain possible effects of the proposed Act, the agreements for the sale of the Bank and other matters connected with the sale, so that they will not trigger automatic termination of agreements, or provide grounds for termination of agreements, or have other similar consequences.

Clause 26 states that the proposed Act binds the Crown, and has effect despite anything in the State Owned Corporations Act 1989, the State Bank (Corporatisation) Act 1989, or the memorandum and articles of association of the Bank or any subsidiary of the Bank.

Clause 27 enables regulations to be made containing savings and transitional provisions.

**SCHEDULE 1—AMENDMENT OF STATE BANK (CORPORATISATION)
ACT 1989**

Schedule 1 omits various provisions that will no longer be relevant to the privatised Bank, including an amendment of section 5 that made the Bank an agency through which the State engages in State banking.

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The Schedule amends section 12, which deals with Government guarantees of Bank liabilities under that section. That section already contains a provision (subsection (2)) that limits the guarantee from a day to be appointed by proclamation—the guarantee is to be limited to certain liabilities incurred before that appointed day.

The Bill will add additional provisions that will further limit the guarantee after a period of 3 years after that appointed day. (This period will co-incide with the transitional period referred to in clause 12 above.) The guarantee will then only apply to liabilities that are similar to those described in paragraphs (a)–(d) of the note on clause 12 above, except that the liabilities relate only to liabilities incurred before that appointed day. This continuing guarantee ceases to apply to a liability as soon as it is amended, varied or extended, unless the Treasurer agrees that the guarantee should continue.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Schedule 2 amends various Acts to omit references to the Bank that would not be appropriate to it as a privatised body, and makes other consequential amendments.
