

# State Bank (Privatisation) Act 1994 No 73

[1994-73]



New South Wales

## Status Information

### Currency of version

Current version for 3 December 1999 to date (accessed 24 November 2024 at 21:30)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 23 December 1999

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# State Bank (Privatisation) Act 1994 No 73



New South Wales

An Act to authorise the sale of State Bank of New South Wales Limited; to amend the [State Owned Corporations Act 1989](#) and certain other Acts; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [State Bank \(Privatisation\) Act 1994](#).

### 2 Commencement

This Act commences on the date of assent.

### 3 Definitions

In this Act:

**appointed day** means the day appointed for the purposes of section 9.

**approved person** has the meaning given by section 7.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Bank** means State Bank of New South Wales Limited.

**business day** means a day on which banks are open for business generally in New South Wales.

**completion date** has the meaning given by clause 1 of the Share Sale Agreement.

**demand deposit** means any liability of the Bank to make a payment in respect of a deposit that is withdrawable on demand, at call or on a period of notice not exceeding 2 business days, but does not include any bond entered into on terms whereby the person holding the benefit of the bond may require the Bank to repay the amount of the bond before its final maturity.

**deposit** has the meaning given by section 4.

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed, registered or stamped in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means liabilities, debts and obligations (whether present or future and whether vested or contingent).

**Memorandum** means the memorandum dated 11 October 1994 between the Premier and the Treasurer for and on behalf of the State, Emerald Holding Company Limited and The Colonial Mutual Life Assurance Society Limited.

**modify** means modify, amend, add to or otherwise vary.

**retail deposit** means a deposit denominated in Australian dollars, including, without limitation:

- (a) money standing to the credit of a cheque account, whether or not it is interest bearing, and
- (b) money standing to the credit of accounts entitled State Saver, State One, State Super Rate, State Maximiser, State Money Wise, State Money Market and State All In One, and
- (c) retail State Bank bonds, money market deposits and certificates of deposit, and
- (d) any money or thing of a class specified by proclamation,

but excluding a deposit that is owing to a body corporate authorised to carry on banking business in Australia under the [Banking Act 1959](#) of the Commonwealth.

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**SBSBS** means the State Bank Superannuation Benefit Scheme, referred to in the definition of **Superannuation Funds** in clause 1 of the Share Sale Agreement.

**Share Sale Agreement** means the agreement dated 29 September 1994 between the Premier and the Treasurer for and on behalf of the State, Emerald Holding Company Limited and The Colonial Mutual Life Assurance Society Limited (as amended by the Memorandum), as in force from time to time.

**specified liability** means any liability of the Bank to make a payment in relation to:

- (a) any financial accommodation provided to the Bank that is required by any applicable accounting standards or principles to be recorded as a liability on the balance sheet of the Bank, or
- (b) retail deposits, or

- (c) any financial commitments of the Bank that are not required by any applicable accounting standards or principles to be recorded as a liability on the balance sheet of the Bank, including guarantees, assets sold with recourse, standby letters of credit, bill endorsements and written put options, documentary letters of credit and performance related contingencies, sale and repurchase agreements, outright forward purchases and forward deposits, underwriting facilities and any other financial commitments of a class specified by proclamation, or
- (d) any forward exchange contracts, hedge contracts, currency swap agreements, currency futures agreements, currency options, forward rate agreements, interest rate swap agreements, interest rate futures agreements, interest rate options agreements, gold contracts, gold futures contracts, gold options, stock price futures agreements, stock price options, spot foreign exchange transactions, basis swap transactions, interest rate caps, collar or floor transactions, cross-currency rate swap transactions or any other transactions of a class specified by proclamation.

**the State** includes the Crown in right of New South Wales and the Government of New South Wales.

**Transaction Documents** means the documents (as modified from time to time) identified as such in clause 1 of the Share Sale Agreement, but does not include the Share Sale Agreement.

**transitional period** means the period commencing on the day appointed by proclamation under section 12 (1) of the [State Bank \(Corporatisation\) Act 1989](#) and ending on and including the day preceding the third anniversary of that day.

**voting shareholders** means voting shareholders (as defined in the [State Owned Corporations Act 1989](#)) in relation to the Bank.

#### 4 Meaning of “deposit”

- (1) In this Act, **deposit** means a sum of money paid to the Bank on terms:
  - (a) under which the Bank is obliged to repay the money, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the Bank, and
  - (b) which are not referable to the provision of property or services or the giving of security.
- (2) For the purposes of paragraph (b) of the definition of **deposit**, money is paid on terms that are referable to the provision of property or services if, and only if:
  - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided, or

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss that may result from the non-performance of a contract, or

(c) without limiting paragraph (b) of this subsection, it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) For the purposes of this section, **security** does not include any right of set-off or counterclaim.

## **5 Territorial application of Act**

(1) This Act applies both within and outside New South Wales.

(2) This Act applies outside New South Wales to the full extent of the extra-territorial legislative power of Parliament.

(3) Without affecting the generality of subsections (1) and (2), it is intended that this Act applies in relation to the following:

(a) land situated outside New South Wales, whether within or outside Australia,

(b) things situated outside New South Wales, whether within or outside Australia,

(c) acts, transactions and matters done, entered into or occurring outside New South Wales, whether within or outside Australia,

(d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a place outside New South Wales, whether within or outside Australia.

## **Part 2 Authorisation of sale**

### **6 Authorisation of sale**

The Bank may be sold to an approved person in accordance with this Act.

### **7 Approved persons**

For the purposes of this Act, an approved person is The Colonial Mutual Life Assurance Society Limited (ACN 004 021 809) or a wholly-owned subsidiary of that company.

### **8 Negotiations and agreements for sale of Bank**

(1) The Premier and the Treasurer (or either of them) are authorised to negotiate, enter into and carry out on behalf of the State:

(a) the Share Sale Agreement, and

(b) each of the Transaction Documents.

- (2) The Ministers who are shareholders in the Bank are authorised to transfer their shares to an approved person in accordance with the terms of the Share Sale Agreement and to enter into and carry out agreements for the transfer of their shares to an approved person.
- (3) Any such negotiations conducted before the date of assent to this Act are validated to the extent of any invalidity.
- (4) The Share Sale Agreement and any of the Transaction Documents may be entered into before, on or after the date of assent to this Act, and if entered into before that date are validated to the extent of any invalidity.
- (5) However, any such transfer of shares does not take effect before the appointed day.
- (6) Any modification made or purporting to be made to the Share Sale Agreement after 11 October 1994, being a modification that materially alters the substance of that agreement, is of no force or effect.
- (7) Subsection (6) does not apply to:
  - (a) any of the exhibits to the Share Sale Agreement, or
  - (b) a modification that is approved by resolutions of both Houses of Parliament, passed before or after the modification is made.

## **9 Amendment of [State Owned Corporations Act 1989 No 134](#)**

On a day to be appointed by proclamation for the purposes of this section, the [State Owned Corporations Act 1989](#) is amended by omitting from Schedule 1 the words “State Bank of New South Wales Limited”.

## **10 Application of [State Owned Corporations Act](#) from appointed day**

The [State Owned Corporations Act 1989](#) does not apply to the Bank or any subsidiary of the Bank on and after the appointed day. This section has effect subject to any express provisions of this Act.

## **11 Amendment of memorandum and articles of association**

- (1) The Ministers who are the voting shareholders of the Bank are authorised to take steps before the appointed day to make alterations and additions to the memorandum and articles of association of the Bank or a subsidiary of the Bank, being alterations and additions contemplated by the Share Sale Agreement, whether or not some or all of them are or may be inconsistent with the requirements of the [State Owned Corporations Act 1989](#) or the [State Bank \(Corporatisation\) Act 1989](#) or both.
- (2) However, any such inconsistent alterations or additions do not take effect before the appointed day.



- (3) Despite section 172 of the *Corporations Law*, subsection (6) of that section does not apply in relation to any alteration or addition referred to in subsection (1) of this section.

## **Part 3 Guarantees**

### **12 Transitional guarantee**

- (1) During the transitional period, and subject to subsection (5), the payment of all money due by the Bank in respect of specified liabilities incurred by the Bank during the transitional period is guaranteed by the Government of New South Wales.
- (2) On and from the day immediately following the expiry of the transitional period, the guarantee created by subsection (1) ceases, except in relation to specified liabilities (other than demand deposits) incurred by the Bank during the transitional period.
- (3) The guarantee of any liability that continues after the expiry of the transitional period pursuant to subsection (2) ceases immediately if:
- (a) the terms or conditions of the arrangements giving rise to the relevant specified liability are amended or varied, or
  - (b) any right to extend the relevant specified liability is exercised by the Bank,
- unless the Treasurer agrees in writing that the guarantee is to continue despite any such amendment, variation or extension. Any agreement may be given in respect of particular amendments, variations or extensions or in respect of any class of amendments, variations or extensions.
- (4) The payment of any money due by a subsidiary of the Bank is not guaranteed under this section.
- (5) The payment of money due by the Bank in respect of a specified liability incurred by the Bank during the transitional period is not guaranteed under this section if:
- (a) the document or instrument containing the terms and conditions of the specified liability contains a statement to the effect that the obligations of the Bank in respect of the specified liability are not guaranteed by the Government of New South Wales, or
  - (b) the person who would otherwise have had the benefit of the guarantee has by written agreement with the Bank acknowledged that the specified liability, or a class of specified liabilities of which it is one, is not guaranteed by the Government of New South Wales.

### **13 Indemnity**

- (1) The State has the same rights of indemnity and subrogation in relation to the

guarantee referred to in section 12 of this Act and the guarantee referred to in section 12 of the *State Bank (Corporatisation) Act 1989*, and the Bank has the same defences in relation to those rights, that they would have if the guarantees were contractual and not statutory.

- (2) Without affecting the generality of this section, the State's rights of indemnity and subrogation continue despite completion of the sale of the Bank, the fact that any documentation relating to the sale of the Bank ceases to be effective or any other act, matter or thing that would terminate or limit those rights. However, nothing in this subsection prevents the State and the Bank from entering into agreements that would terminate or limit those rights.
- (3) Without prejudice to the State's rights of subrogation, the State is taken to have waived all rights of indemnity in respect of any claims against the Bank that are guaranteed by the State (either by the guarantee referred to in section 12 of this Act or by the guarantee referred to in section 12 of the *State Bank (Corporatisation) Act 1989*) and that are expressed to be subordinated to other claims against the Bank.

## **Part 4 Post-sale provisions**

### **14 Staff**

- (1) An employee of the Bank or of a subsidiary of the Bank retains any rights to annual leave, extended leave or sick leave accrued or accruing by virtue of clause 3 of Schedule 4 to the *State Owned Corporations Act 1989*.
- (2) An employee of the Bank or of a subsidiary of the Bank retains any rights to annual leave, extended leave and sick leave accrued or accruing on or after 14 May 1990 and before the appointed day.
- (3) Neither the contract of employment nor the period of employment of each employee of the Bank or of a subsidiary of the Bank is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that employee.

### **15 Members of State Superannuation Fund**

- (1) Before the completion date, the trustee of SBSBS is required to amend the trust deed governing SBSBS to create a division of membership that provides the same level of benefits as are provided by membership of the State Superannuation Fund as at that day.
- (2) On the completion date, contributors to the State Superannuation Fund who are employees of the Bank on that day become, by force of this section, members of the division of membership of SBSBS that provides the same level of benefits as are provided by membership of the State Superannuation Fund as at that day. Without affecting this section, those employees cease to be contributors to the State

Superannuation Fund on the completion date.

- (3) Such a contributor is taken to have elected to take the benefit of Division 3A of Part 4 of the *Superannuation Act 1916* on the completion date and is entitled to have the actuarially calculated lump sum value of the benefit paid to SBSBS in accordance with subsection (4).
- (4) The State Authorities Superannuation Board is required, on the day on which it receives the payment referred to in clause 11.6 of the Share Sale Agreement, to pay the total amount of the preserved benefits in the State Superannuation Fund of the persons who are employees of the Bank on the completion date to the trustee of SBSBS.
- (5) Section 64 and section 65 (2) and (3) of the *Superannuation Act 1916* apply in relation to the Bank, as if the omission by this Act of the name of the Bank from Schedule 3 to that Act had been effected by an order under section 62 of that Act after the Minister administering that Act had certified that the removal is a consequence of a Government privatisation initiative affecting the Bank.

## **16 Members of State Authorities Superannuation Fund**

- (1) Before the completion date, the trustee of SBSBS is required to amend the trust deed governing SBSBS so that membership of Division B of SBSBS will provide, to persons who become members of that Division by force of this section, the same level of benefits as are provided by membership of the State Authorities Superannuation Fund as at that date.
- (2) On the completion date, contributors to the State Authorities Superannuation Fund who are employees of the Bank on that day become, by force of this section, members of Division B of SBSBS. Without affecting this section, those employees cease to be contributors to the State Authorities Superannuation Fund on the completion date.
- (3) Such a contributor is taken to have made provision for a preserved benefit under section 43 of the *State Authorities Superannuation Act 1987* on the completion date and is entitled to have the benefit paid to SBSBS in accordance with subsection (4).
- (4) The State Authorities Superannuation Board is required, on the day on which it receives the payment referred to in clause 11.6 of the Share Sale Agreement, to pay the total amount of the preserved benefits in the State Authorities Superannuation Fund of the persons who are employees of the Bank on the completion date to the trustee of SBSBS.
- (5) Section 46AC and section 46AD (2) and (3) of the *State Authorities Superannuation Act 1987* apply in relation to the Bank, as if the omission by this Act of the name of the Bank from Schedule 1 to that Act had been effected by an order under section 46AA of that Act after the Minister administering that Act had certified that the

removal is a consequence of a Government privatisation initiative affecting the Bank.

### **17 Obligations during period following completion**

Neither the validity nor the enforceability of clause 12 of the Share Sale Agreement is affected by any law (whether written or unwritten) relating to the alienability of property or restraint of trade.

## **Part 5 Payments**

### **18 Proceeds of sale**

- (1) Any amounts received for the sale of the Bank must be paid into the Consolidated Fund or the Special Deposits Account.
- (2) There may be deducted from those amounts before payment into the Consolidated Fund or the Special Deposits Account such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale of the Bank.
- (3) It is the intention of Parliament that the proceeds of the sale of the Bank (less any deductions under subsection (2)) will, subject to any contractual obligations and subject to proper legislative appropriation of the Consolidated Fund, be used to retire State debt.

### **19 Appropriation**

- (1) Any amounts required in fulfilling any obligation of the State or satisfying any liability of the State arising under:
  - (a) the Share Sale Agreement or a Transaction Document, or
  - (b) any other agreement, or any guarantee or other arrangement, under or referred to in:
    - (i) this Act, or
    - (ii) the Share Sale Agreement or a Transaction Document,are to be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.
- (2) Without limiting subsection (1), any liability arising from a guarantee under section 12 of this Act or section 12 of the *State Bank (Corporatisation) Act 1989* is to be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.

## **Part 6 Amendments**

### **20, 21 (Repealed)**

## **Part 7 Termination of sale and purchase**

### **22 Operation of this Part**

- (1) This Part takes effect if:
  - (a) the Share Sale Agreement is terminated for any reason by any one or more of the parties, or
  - (b) the sale and purchase of the Bank is terminated for any reason by any one or more of the parties to the Share Sale Agreement.
- (2) This Part does not itself confer a right of termination.

### **23 Termination of authorisation to sell Bank**

If this Part takes effect, the Bank may not be sold by or on behalf of the State to any person (including an approved person) without further authorisation by an Act of Parliament.

### **24 Re-establishment of Bank as a SOC**

- (1) If this Part takes effect on or after the appointed day, the Governor may by proclamation appoint a date on which subsections (2) and (3) operate. Such a proclamation may be made only if the Minister certifies to the Governor that:
  - (a) all the shares in the Bank are held by or on behalf of the State, and
  - (b) the memorandum and articles of association of the Bank and its subsidiaries conform to the relevant requirements of the *State Owned Corporations Act 1989* or will conform to them when the proclamation takes effect.
- (2) On the date so appointed, the *State Owned Corporations Act 1989* is amended by inserting at the end of Schedule 1 the words "State Bank of New South Wales Limited". That Act then applies to the Bank and any subsidiary of the Bank.
- (3) On the date so appointed, such of the amendments set out in Schedules 1 and 2 to this Act as are specified in the proclamation are revoked. Revocation of such an amendment has the effect of restoring an amended Act to its form as it was before the amendment.

## **Part 8 Miscellaneous**

### **25 Protection of contractual and other obligations**

- (1) This section applies to the following:
  - (a) the operation of this Act,
  - (b) the sale of the Bank as authorised by this Act,

- (c) the transfer of a Minister's shares in the Bank in accordance with the Share Sale Agreement,
  - (d) the Share Sale Agreement or the performance of the Share Sale Agreement,
  - (e) a Transaction Document or the performance of a Transaction Document,
  - (f) any other agreement, or any guarantee or other arrangement, under or referred to in this Act or entered into for purposes connected with this Act,
  - (g) a disclosure of information made for the purposes of the sale or proposed sale of the Bank (including a disclosure in any memorandum of information given to persons expressing an interest in the sale or a disclosure in any response to an inquiry made by a prospective purchaser),
  - (h) a disclosure of information made pursuant to the Share Sale Agreement.
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information.
- (3) None of the matters or things referred to in subsection (1) are to be regarded:
- (a) as a breach of contract or another instrument or as requiring any act to be done under an instrument, or
  - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or
  - (c) as an event of default under an instrument, or
  - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.
- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, any of the following:
- (a) the Share Sale Agreement or a Transaction Document,
  - (b) any other agreement, or any guarantee or other arrangement, under or referred to in this Act or entered into for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act.
- (6) Subsection (3) (d) has effect despite section 205 of the *Corporations Law*.

## **26 Operation of this Act**

- (1) This Act binds the Crown in right of New South Wales and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

- (2) This Act has effect despite anything in:
- (a) the *State Owned Corporations Act 1989*, or
  - (b) the *State Bank (Corporatisation) Act 1989*, or
  - (c) the memorandum or articles of association of the Bank or any subsidiary of the Bank.

## **27 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, containing provisions of a savings or transitional nature consequent on the enactment or operation of this Act.
- (2) Any such savings or transitional provision cannot operate so as:
- (a) to affect the rights of an approved person, the Bank or a subsidiary of the Bank prejudicially, or
  - (b) to impose liabilities on an approved person, the Bank or a subsidiary of the Bank.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, but subject to subsection (2), 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.
- (5) If Part 7 takes effect and the Bank again becomes a State owned corporation:
- (a) subsection (2) ceases to apply to the Bank and subsidiaries of the Bank, and
  - (b) subsection (4) applies to the Bank and subsidiaries of the Bank in the same way as it applies to authorities of the State.

## **Schedules 1, 2 (Repealed)**