

# State Bank (Corporatisation) Act 1989 No 195

[1989-195]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Authorisation

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# State Bank (Corporatisation) Act 1989 No 195



New South Wales

An Act to establish a State owned corporation in relation to State banking and certain other matters; to provide for the transfer of assets, rights and liabilities of the State Bank; to amend the *State Owned Corporations Act 1989* and certain other Acts; to repeal the *State Bank Act 1981*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *State Bank (Corporatisation) Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) Words and expressions used in this Act have the same meanings as they have in the *State Owned Corporations Act 1989*.

(2) In this Act:

**board** means the board of directors of the Corporation.

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

**business undertaking** means all assets, rights and liabilities of the State Bank.

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

**demand deposit** means any liability of the Corporation 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 Corporation to repay the amount of the bond before its final maturity.

**deposit** has the meaning given by section 3A.

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

**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,

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.

**State Bank** means the State Bank of New South Wales, constituted under the [State Bank Act 1981](#).

**State banking** means State banking as referred to in section 51 (xiii) of the [Commonwealth Constitution](#).

**State insurance** means State insurance as referred to in section 51 (xiv) of the [Commonwealth Constitution](#).

### 3A Meaning of “deposit”

- (1) In this Act, **deposit** means a sum of money paid to the Corporation on terms:
  - (a) under which the Corporation 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 Corporation, 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.

## **Part 2**

### **4 (Repealed)**

## **Part 3 Provisions applying to the Corporation**

### **5 Status of the Corporation**

(1) The Corporation is constituted by this Act as a bank.

(2), (3) (Repealed)

### **6, 7 (Repealed)**

### **8 Capital reserves of Corporation—special capital notes**

(1) In this section:

**security** includes a capital note or other instrument issued by the Corporation, whether secured or not and whether for a fixed or an indefinite term.

**special arrangement** means an agreement or arrangement under subsection (2).

**special capital note** means a security issued by the State Bank or the Corporation that is the subject of a special arrangement.

(2) The Treasurer may, on behalf of the State, enter into an agreement or arrangement, to which the Corporation is a party or at the Corporation's request, in connection with the issue of securities by the Corporation.

(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 State, to pay to the Corporation for crediting to the capital reserves of the Corporation an amount calculated by reference to the interest and other amounts paid by the Corporation to the holders of the notes, and

(b) require (in specified circumstances) the Treasurer, on behalf of the State, to purchase all or any of the notes and release the Corporation from its obligations and liabilities under the notes so purchased, and

(c) provide that (in specified circumstances) the Treasurer may, on behalf of the State, 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 Corporation under the notes, and

(d) provide that the obligations and liabilities of the Corporation under the notes may be enforced only against the State in the case of any default by the Corporation, and

(e) provide for the redemption of all or any of the notes by the Corporation, and

(f) make any other provision that the Treasurer considers appropriate.

(4) Any liability of the State arising under a special arrangement or special capital note is to be met out of the Consolidated Fund, which is appropriated accordingly.

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

(6) Nothing in this section prevents the State or an authority of the State from purchasing or otherwise acquiring special capital notes without releasing the Corporation 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 Corporation is the subject of a special arrangement, or

(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, is conclusive evidence, in favour of any person other than the State or the Corporation, of the matters stated in the certificate.

(8) A special arrangement made under section 21A of the [State Bank Act 1981](#) is to be taken to be a special arrangement under this section.

## **Part 4 Transfer of assets, rights and liabilities**

### **9 Direction to transfer business undertaking**

(1) The Minister may, by order in writing, direct that the business undertaking of the State Bank be transferred to the Corporation, upon such consideration as is specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

(3) On the commencement of the order, the following provisions have effect (subject to

the order):

- (a) the assets of the State Bank comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the State Bank comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation,
  - (c) all proceedings relating to the business undertaking commenced before the transfer by or against the State Bank or a predecessor of the State Bank and pending immediately before the transfer are to be taken to be proceedings pending by or against the Corporation,
  - (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the State Bank is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the Corporation,
  - (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the State Bank or a predecessor of the State Bank is, subject to regulations under section 22 (2), to be read as, or as including, a reference to the Corporation.
- (4) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) No attornment to the Corporation by a lessee from the State Bank is required.
- (6) Assets, rights or liabilities may not be transferred under this section to the Corporation unless it is a State owned corporation.

## **Part 5 Dissolution of State Bank**

### **10 Repeal of [State Bank Act 1981 No 89](#)**

The [State Bank Act 1981](#) and all regulations and by-laws under that Act are repealed.

### **11 Dissolution of State Bank and State Bank Board**

- (1) The State Bank is dissolved.



- (2) The State Bank Board is dissolved.
- (3) A person holding office as a director of the State Bank Board immediately before its dissolution:
  - (a) ceases to hold that office, and
  - (b) except as provided by subsection (4), is not entitled to any remuneration or compensation because of the loss of that office.
- (4) Part 8 of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as a director of the State Bank Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

#### **11A Corporation to be same legal entity as State Bank**

On and from the dissolution of the State Bank, the Corporation is for all purposes a continuation of and the same legal entity as the State Bank.

#### **12 Government guarantees**

- (1) Until a day to be appointed by the Governor by proclamation for the purposes of this section, the payment of all money due by the Corporation is guaranteed by the Government of New South Wales.
- (2) On and from the day appointed under subsection (1), the guarantee created by that subsection ceases, except in relation to:
  - (a) money standing to the credit of current accounts with the Corporation immediately before that day, and
  - (b) term deposits made with the State Bank or the Corporation, or other term liabilities incurred by the State Bank or the Corporation, before that day, and
  - (c) securities issued by the State Bank or the Corporation before that day, and
  - (d) money that becomes due by the Corporation on or after that day on account of a renewal or roll-over of special capital notes issued by the State Bank or the Corporation before that day (being special capital notes that were the subject of a special arrangement under section 21A of the *State Bank Act 1981* or section 8 of this Act), and
  - (e) (without limiting the above) contracts, agreements or arrangements entered into by the State Bank or the Corporation before that day.
- (2A) On and from the third anniversary of the day appointed under subsection (1), the guarantee created by that subsection in relation to the matters listed in subsection (2) ceases, except in relation to:

- (a) any financial accommodation provided to the Corporation (other than demand deposits) that is required by any applicable accounting standards or principles to be recorded as a liability on the balance sheet of the Corporation, and
  - (b) retail deposits (other than demand deposits), and
  - (c) any financial commitments of the Corporation that are not required by any applicable accounting standards or principles to be recorded as a liability on the balance sheet of the Corporation, 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, and underwriting facilities, and
  - (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, or cross-currency rate swap transactions, and
  - (e) any liabilities, other than contingent liabilities, if a claim or demand is made on the Government of New South Wales in respect of any such liability before the third anniversary of the day appointed under subsection (1).
- (2B) The guarantee of any liability that continues after the third anniversary of the day appointed under subsection (1) pursuant to subsection (2A) ceases immediately if:
- (a) the terms or conditions of the arrangements giving rise to the relevant liability are amended or varied, or
  - (b) any right to extend the relevant 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.
- (3) The payment of any money due by a subsidiary of the Corporation is not guaranteed under this section.
  - (4) (Repealed)

### **13 Provisions relating to debenture and inscribed stock continue for previous issues**

- (1) Sections 22–26, 28 and 29 of the [State Bank Act 1981](#), and any by-laws under that Act

relating to the issue of debentures and inscribed stock by the State Bank, continue to have effect in respect of debentures or inscribed stock issued before the repeal of those sections or issued pursuant to warrants in any such debentures or inscribed stock.

- (2) Subsection (1) has effect despite the repeal of those sections and by-laws by the *State Bank (Amendment) Act 1986*, and despite the repeal of clause 10 of Schedule 2 to the *State Bank Act 1981* by this Act.

#### **14-17 (Repealed)**

#### **18 Investment of trust funds etc**

The repeal of section 68 of the *State Bank Act 1981* does not affect any investment made before the repeal of that Act, and any such investment is taken to be an investment made in accordance with the *Trustee Act 1925*.

### **Part 6 Miscellaneous**

#### **19 Alteration of names**

References in this Act to a company by a specified name include references to the company under any altered name.

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

#### **22 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the State Bank or any member or employee of the State Bank or to the *State Bank Act 1981* or any provision of that Act).
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect on 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, the Corporation, the State Bank or any 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, the Corporation, the

State Bank or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**23, 24 (Repealed)**

**Schedule 1 Savings, transitional and other provisions**

**1 Corporation may act in own name or in name of State Bank**

(1) On and from:

- (a) the commencement of the order under section 9 transferring the business undertaking of the State Bank to the Corporation, and
- (b) the dissolution of the State Bank,

the Corporation may, in connection with that business undertaking, act in its own name as the universal successor of the State Bank or (if necessary) act in the name of the State Bank.

- (2) Subclause (1) applies for all purposes, including for the purpose of the rules of private international law.
- (3) Without limiting subclause (1), the Corporation may act in the name of the State Bank if it is necessary to do so under the law of any country to perfect the transfer of any asset, right or liability comprised in the business undertaking or to take legal proceedings in connection with any such asset, right or liability.
- (4) For the purposes of this clause, the Corporation is authorised to use the seal of the State Bank.

**2 Preservation of full-time director's superannuation rights**

(1) This clause applies to a full-time director of the Corporation who, immediately before becoming such a director:

- (a) was a full-time director of the State Bank, or
- (b) was an employee of the Corporation who, immediately before becoming such an employee, was an officer or employee of the State Bank.

(2) A full-time director to whom this clause applies:

- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming such a director, and
- (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as a full-time

director with the Corporation.

- (3) Such service with the Corporation is to be taken to be service as an officer in his or her previous employment (under which the entitlement to contribute to the scheme arose) for the purposes of any law under which the full-time director continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The full-time director is to be regarded as an officer or employee, and the Corporation is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the full-time director if he or she becomes a contributor to another superannuation scheme, but the director is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) A full-time director is not entitled to claim, under both this clause and any Act, dual benefits of the same kind for the same period of service.
- (7) This clause applies to a full-time director referred to in subclause (1) (b) only if he or she was a contributor to the same superannuation scheme during the whole of the period during which he or she was an employee of the Corporation.
- (8) In this clause:

***superannuation scheme*** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

### **3 Transferred provisions to which [Interpretation Act 1987](#) applies**

Clauses 1 and 2 re-enact (with minor modifications) clauses 5 and 8 of the [State Bank \(Corporatisation\) Savings and Transitional Regulation 1990](#) and are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.