



# State Bank of South Australia Act, 1983

No. 105 of 1983

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ANNO TRICESIMO SECUNDO

# ELIZABETHAE II REGINAE

A.D. 1983

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No. 105 of 1983

**An Act to provide for the amalgamation of The Savings Bank of South Australia and the State Bank of South Australia and the formation, by the amalgamation, of a new Bank; to repeal the Savings Bank of South Australia Act, 1929, and the State Bank Act, 1925; and for other purposes.**

*[Assented to 22 December 1983]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

## PART I

### PRELIMINARY

1. This Act may be cited as the "State Bank of South Australia Act, 1983". Short title.

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) A proclamation shall not be made under subsection (1) unless the Governor is satisfied that legislative provision has been made in relation to the rights and interests of the officers of the Bank.

3. In this Act and the schedules, unless the contrary intention appears— Interpretation.

"accounting records" means all financial records necessary for the preparation of proper accounts and includes working papers and other documents necessary to explain the methods and calculations by which accounts are made up:

"accounts" means, according to context—

(a) customers' accounts;

or

(b) statements of income and expenditure and balance sheets, including notes (other than reports of the Board or the auditors of the Bank) attached to, or intended to be read with, any such accounts:

“the amalgamating banks” means The Savings Bank of South Australia established by The Savings Bank Act of 1875 and the State Bank of South Australia established by the State Bank Act, 1925:

“the Bank” means the State Bank of South Australia constituted under this Act:

“bill of exchange” means—

(a) a cheque or other order for the payment of money;

(b) a promissory note;

or

(c) any other instrument for the payment of money:

“the Board” means the Board of the Bank:

“the Chief Executive Officer” means the person holding or acting in the office of chief executive officer of the Bank:

“customer” means a person who has an account with the Bank, or who avails himself of any service provided by the Bank:

“housing loan” means a loan for the purchase, construction, renovation or improvement of a dwelling-house:

“land” includes any estate or interest in land:

“officer” means an officer or employee of the Bank:

“securities” includes shares, stock, debentures, bonds and unsecured notes.

Repeal and transitional provisions.

4. (1) The following Acts are repealed:

(a) the Savings Bank of South Australia Act, 1929;

(b) the State Bank Act, 1925.

(2) The provisions of the schedule to this Act are incorporated with, and shall be read as part of, this Act.

Act binds Crown.

5. This Act binds the Crown.

## PART II

### CONSTITUTION AND ADMINISTRATION OF THE BANK

#### DIVISION I—ESTABLISHMENT OF THE BANK

Establishment of the Bank.

6. (1) There shall be a Bank entitled the “State Bank of South Australia”.

(2) The Bank—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued in its corporate name;

(c) shall have the powers and functions conferred or assigned by or under this Act.

(3) The Bank holds its property for and on behalf of the Crown.

(4) Notwithstanding that the Bank is an instrumentality of the Crown, the Bank is liable to rates, taxes and other imposts under the law of the State as if it were not such an instrumentality.

(5) Where a document appears to bear the common seal of the Bank, the document shall be presumed in legal proceedings, in the absence of evidence to the contrary, to have been duly executed by the Bank.

#### DIVISION II—THE BOARD OF DIRECTORS

7. (1) There shall be a Board of Directors of the Bank.

Membership of  
the Board.

(2) The Board shall consist of not less than six nor more than nine persons appointed by the Governor as Directors of the Bank.

(3) The Chief Executive Officer of the Bank is eligible for appointment as a Director of the Bank.

(4) One of the Directors shall be appointed by the Governor as the Chairman, and another shall be appointed as the Deputy Chairman, of the Board.

8. (1) Subject to this section, a Director of the Bank shall be appointed for such term of office (not exceeding five years), and upon such conditions, as are specified in the instrument of his appointment.

Term of office.

(2) If the Chief Executive Officer is appointed as a Director of the Bank, his term of office as Director is not subject to the limitation prescribed by subsection (1) but shall not exceed his term of office as Chief Executive Officer.

(3) At the expiration of a term of office, a Director is eligible for re-appointment as such.

(4) A person who is to fill a casual vacancy in the office of a Director shall be appointed only for the balance of the term of his predecessor.

9. (1) The office of a Director becomes vacant if—

Casual vacancies.

(a) he dies;

(b) his term of office expires;

(c) he resigns his office by notice addressed to the Governor;

or

(d) he is removed from office under subsection (2).

(2) The Governor may remove a Director from office if—

(a) he becomes mentally or physically incapable of carrying out satisfactorily the duties of his office;

(b) he is convicted of an indictable offence;

(c) he is guilty of neglect of duty;

(d) he becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors;

or

(e) he contravenes a condition of his appointment.

Directors' remuneration.

10. A Director (not being the Chief Executive Officer) shall be entitled to such remuneration as may be determined by the Governor.

Disclosure of interest.

11. (1) Subject to subsection (2), a Director who has a direct or indirect pecuniary interest in a proposal before the Board—

(a) shall, as soon as he becomes aware of the proposal, disclose the nature of his interest to the Board;

and

(b) shall not take part in any deliberations or decision of the Board with respect to that proposal.

(2) No disclosure is required under subsection (1)—

(a) in respect of an interest that arises by virtue of the fact that the Director is a customer of the Bank (being an interest that is shared in common with other customers of the Bank);

or

(b) in respect of an interest—

(i) that arises by virtue of the fact that the Director has a shareholding (not being a substantial shareholding within the meaning of Division 4 of Part IV of the *Companies (South Australia) Code*) in a public company;

and

(ii) that is shared in common with the other shareholders in that company.

(3) A Director who fails to comply with subsection (1) is guilty of a summary offence and liable to a penalty not exceeding five thousand dollars.

(4) A disclosure made under this section shall be recorded in the minutes of the Board.

(5) Where a Director discloses his interest in a transaction under this section, or his interest in a transaction is not such as need be disclosed under this section—

(a) the transaction is not liable to be avoided on any ground arising from the fiduciary relationship between the Director and the Bank;

and

(b) the Director is not liable to account for profits derived from the transaction.

### DIVISION III—PROCEEDINGS OF THE BOARD

Proceedings of the Board.

12. (1) A meeting of the Board may be convened by—

(a) the Chairman;

or

(b) the Chief Executive Officer acting at the request of any two or more Directors.

(2) The Chairman shall preside at any meeting of the Board at which he is present and, in the absence of the Chairman, the Deputy Chairman

shall preside and, in the absence of both Chairman and Deputy Chairman, a Director chosen from amongst their own number by the Directors present at the meeting shall preside.

(3) No business shall be transacted at a meeting of the Board unless a number of Directors that exceeds one-half of the total number of Directors is present at the meeting.

(4) Each Director present at a meeting of the Board shall be entitled to one vote on any question arising for decision at that meeting and, in the event of an equality of votes, the person presiding at the meeting shall be entitled to a second, or casting, vote.

(5) The Board shall cause accurate minutes to be kept of its proceedings.

(6) If all Directors entitled to vote on a proposed resolution express, in writing, their concurrence in the proposed resolution, it shall become a resolution of the Board notwithstanding that it has not been passed at a meeting of the Board.

13. No act or proceeding of the Board is invalid on the ground of a vacancy in the office, or a defect in the appointment, of a member of the Board.

Validity of acts of the Board.

#### DIVISION IV—FUNCTIONS AND POLICIES OF THE BOARD

14. (1) The Board is the governing body of the Bank and has full power to transact any business of the Bank.

Powers and functions of the Board.

(2) Anything done by the Board in the administration of the Bank's affairs is binding on the Bank.

15. (1) In its administration of the Bank's affairs, the Board shall act with a view to promoting—

Policies of the Board.

(a) the balanced development of the State's economy;

and

(b) the maximum advantage to the people of the State,

and shall pay due regard to the importance both to the State's economy and to the people of the State of the availability of housing loans.

(2) The Board shall administer the Bank's affairs in accordance with accepted principles of financial management and with a view to achieving a profit.

(3) The Board and the Treasurer shall, at the request of either, consult together, either personally or through appropriate representatives, in relation to any aspect of the policies or administration of the Bank.

(4) The Board shall consider any proposals made by the Treasurer in relation to the administration of the Bank's affairs and shall, if so requested, report to the Treasurer on any such proposals.

#### DIVISION V—STAFF OF THE BANK

16. (1) There shall be a Chief Executive Officer of the Bank.

The Chief Executive Officer.

(2) The Chief Executive Officer is, subject to the control of the Board, responsible for the management of the Bank.

(3) The Chief Executive Officer shall be appointed by the Board.

Appointment of officers.

17. (1) The Board may appoint such officers of the Bank as it thinks necessary for the effective operation of the Bank.

(2) The officers of the Bank are not subject to the provisions of the Public Service Act, 1967.

#### DIVISION VI—DELEGATION

Delegation by the Board and the Chief Executive Officer.

18. (1) The Board may delegate any of its powers or functions under this Act.

(2) The Chief Executive Officer may delegate any of his powers or functions under this Act.

(3) A delegation under this section—

(a) may be absolute or conditional;

(b) is revocable at will;

and

(c) does not derogate from the powers of the delegator.

### PART III

#### THE OPERATIONS OF THE BANK

General functions of the Bank.

19. (1) The Bank shall carry on the general business of banking and is vested with all such powers as are necessary for that purpose.

(2) The business of the Bank may be carried on within or outside the State.

(3) Without limiting the generality of the foregoing, the Bank may—

(a) receive money on current account, fixed deposit, or otherwise;

(b) borrow and lend money;

(c) issue, buy, sell, accept, discount, endorse and otherwise deal with bills of exchange;

(d) establish credits and give guarantees;

(e) issue bank drafts and effect transfers of money;

(f) buy, sell and otherwise deal in foreign currency and precious metals;

(g) provide facilities for the safe custody of documents and valuables;

(h) issue, buy, sell and otherwise deal with securities (including debentures and inscribed stock);

(i) underwrite the issue of securities;

(j) establish and administer registers of securities;

(k) appoint agents and define their respective powers;

(l) act as an agent;

- (m) act as a trustee;
- (n) acquire, hold, deal with, and dispose of, real and personal property;
- (o) erect buildings and structures;
- (p) hire out chattels in pursuance of hiring agreements, chattel leasing agreements or hire-purchase agreements and conduct any other business involving the hiring or leasing of property;
- (q) do anything incidental to the foregoing.

(4) The Bank may establish branches and agencies within and outside the State.

(5) The Bank may provide insurance in respect of land mortgaged, or to be mortgaged, as security for a loan made by the Bank and may continue to provide such insurance notwithstanding repayment of the loan and discharge of the mortgage.

(6) The Bank may provide, or arrange for the provision of, life insurance on the life of any person who is indebted to the Bank.

(7) The Bank shall not acquire more than ten per centum of the issued shares of a body corporate without the approval of the Treasurer.

20. (1) The Treasurer may, out of moneys provided by Parliament for the purpose, advance moneys to the Bank by way of grant or loan.

Advances by the Treasurer.

(2) The terms of an advance under subsection (1) shall be as agreed between the Bank and the Treasurer.

(3) Where moneys are advanced to the Bank by way of grant—

(a) those moneys shall, for the purposes of the accounts of the Bank, be treated as a subscription of capital;

and

(b) they shall not be repayable except upon resolution of both Houses of Parliament.

21. (1) The liabilities of the Bank are guaranteed by the Treasurer.

Guarantee.

(2) A liability of the Treasurer arising by virtue of a guarantee under subsection (1) shall be satisfied out of the General Revenue of the State, which is appropriated to the necessary extent.

(3) Subject to subsection (4), the Treasurer may, after consultation with the Board, fix charges to be paid by the Bank in respect of the guarantee provided by him under this section, insofar as it relates to specified liabilities of the Bank.

(4) The Treasurer may not fix charges under subsection (3) in respect of the guarantee provided by him under this section in such a manner that they relate, in effect, to all the liabilities of the Bank.

22. (1) Where it appears from the audited accounts of the Bank that an operating surplus has been achieved by the Bank in respect of a financial year, the Bank shall, within three months after presentation to the Governor of the Bank's audited account for that financial year, pay to the Treasurer, for the credit of the General Revenue of the State—

Payment to be made to General Revenue.



(a) a sum equal to the income tax for which the Bank would have been liable under the law of the Commonwealth assuming that it were a public company liable to income tax under that law;

and

(b) such further sum (if any) as the Treasurer, having regard to the profitability of the Bank and the adequacy of its capital and reserves, determines to be an appropriate return on the capital of the Bank.

(2) The Board shall, as soon as practicable after the audited accounts in respect of a financial year have been presented to the Governor, submit a recommendation to the Treasurer as to the amount of the payment (if any) to be made under subsection (1) (b) in respect of the financial year to which the accounts relate and the Treasurer shall in making a determination under that subsection have due regard to the recommendation.

(3) Any divergence between the recommendation of the Board and the determination of the Treasurer shall be reported in the annual report of the Board.

#### PART IV

#### ACCOUNTS AND AUDIT

Accounts and  
accounting  
records.

23. (1) The Board shall cause accounting records to be kept in such a manner as to—

(a) record correctly and explain the transactions and financial position of the Bank;

(b) enable true and fair accounts of the Bank to be prepared from time to time;

and

(c) enable the accounts of the Bank to be conveniently and properly audited.

(2) Within three months after the end of a financial year, the Board shall cause the following accounts to be prepared:

(a) an account giving a true and fair view of the income and expenditure of the Bank for the financial year and of any surplus or deficit relating to the financial year;

and

(b) a balance sheet giving a true and fair view of the state of affairs of the Bank as at the end of the financial year.

(3) The Board shall, as soon as practicable after the accounts prepared under subsection (2) have been audited, forward to the Governor a report on the operations of the Bank during the financial year to which the accounts relate together with a copy of the audited accounts.

(4) Copies of the report and the audited accounts shall be laid before each House of Parliament.

Audit.

24. (1) Within the first three months of each financial year, the Board shall appoint two or more auditors of the Bank for that financial year.

(2) An auditor appointed under subsection (1) must be a registered company auditor or a firm of registered company auditors.

(3) It is the duty of the auditors to report on the Bank's accounting records and on the accounts to be laid before Parliament in respect of the financial year for which they are appointed as auditors of the Bank.

(4) The auditors shall, in a report under this section, state—

(a) whether the accounts are, in their opinion, properly drawn up in accordance with this Act and so as to give a true and fair view of the matters to which they relate;

and

(b) whether the accounting records of the Bank have been, in their opinion, properly kept in accordance with the provisions of this Act.

(5) In the course of formulating their report, the auditors shall form an opinion as to—

(a) whether there is any defect or irregularity in the accounts or any omission to deal adequately with a matter without regard to which a true and fair view of the matters to which the accounts relate would not be obtained;

(b) whether returns received from branch offices of the Bank are adequate;

(c) whether they have obtained all the information and explanations that they required,

and any deficiency, failure or shortcoming in respect of any of the above matters shall be mentioned in the report.

(6) The auditors have a right of access at all reasonable times to the accounting and other records of the Bank and are entitled to require from any officer of the Bank such information and explanations as they think necessary for the purposes of the audit.

(7) An auditor of the Bank incurs no liability in defamation for any statement made by him in the course of his duties as auditor.

25. (1) The Governor may appoint—

(a) the Auditor-General;

or

(b) some other suitable person,

to make an investigation and report under this section.

(2) A person so appointed shall investigate such matters relating to the operations and financial position of the Bank as are determined by the Governor and shall report to the Governor on the results of his investigations.

(3) For the purposes of an investigation under this section, the investigator shall have, in relation to the accounts, accounting records and officers of the Bank, the same powers as are vested in the Auditor-General by the Audit Act, 1921, in relation to public accounts and accounting officers.

PART V  
MISCELLANEOUS

Powers in relation to moneys and securities of customers who have died or become of unsound mind.

26. (1) Where a customer of the Bank dies, the Bank may, at its discretion and without production of probate of the will, or letters of administration of the estate, of the deceased, apply moneys standing to the credit of an account in the name of the deceased in one or both of the following ways:

- (a) in payment of the funeral expenses and just debts of the deceased;
- (b) in payment to any person or persons who are, in the opinion of the Bank, entitled to those moneys,

but the total amount applied under this subsection from an account or accounts in the name of any one deceased person must not exceed the prescribed maximum.

(2) Where—

- (a) the Bank holds securities on behalf of a customer for safe custody;
- (b) the total value of the securities does not exceed the prescribed maximum;

and

- (c) the customer dies,

the Bank may, at its discretion and without production of probate of the will, or letters of administration of the estate, of the deceased, deliver the securities to any person or persons who are, in the opinion of the Bank, entitled to those securities.

(3) Where a customer of the Bank becomes of unsound mind and it appears to the Bank that moneys standing to his credit in an account at the Bank are reasonably required for the maintenance of the customer, or the maintenance, education or advancement of a member of his family, the Bank may apply the moneys for those purposes, but the total amount applied under this subsection from an account or accounts of any one person must not exceed the prescribed maximum.

(4) No action lies against the Bank in respect of any act, or failure to act, under this section.

The Customers Unclaimed Moneys Account.

27. (1) Where a customer of the Bank has not operated an account for a period of six years or more, the Bank may close the account and transfer the balance to an account entitled the "Customers Unclaimed Moneys Account".

(2) Moneys transferred to the Customers Unclaimed Moneys Account under subsection (1) shall be paid out on application by a person who satisfies the Bank that he is entitled to those moneys.

(3) Interest does not accrue on moneys standing to the credit of the Customers Unclaimed Moneys Account except (if at all) to an extent determined by the Bank.

Minor may give effective receipt and discharge for the payment of money.

28. A receipt given by a minor for the payment of money standing to the credit of an account of the minor shall be a complete discharge to the Bank for the payment of that money.

**29. (1)** No liability attaches to a Director or other officer of the Bank for an act or omission done or made, in good faith, and in carrying out, or purporting to carry out, the duties of his office.

Immunity of  
Directors and  
officers.

**(2)** Any liability that would, but for subsection (1), attach to a Director or other officer of the Bank shall attach instead to the Bank.

**30.** The Bank is not affected by notice of any express or implied trust to which moneys deposited or invested with the Bank are subject, unless the Bank has expressly assumed the obligations of a trustee in relation to those moneys.

Bank not affected  
by notice of trust.

**31. (1)** The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

Regulations.

**(2)** A regulation made under this section may provide for the imposition of a penalty, not exceeding one thousand dollars, for contravention of, or non-compliance with, the regulation by which the penalty is imposed or any other regulation.

Section 4 (2).

## SCHEDULE

## TRANSITIONAL PROVISIONS

Vesting of property, rights, etc., in the Bank.

1. (1) The Bank succeeds to all the property, rights, powers, liabilities and obligations of the amalgamating banks.

(2) A reference in any instrument to either of the amalgamating banks shall be read and construed as a reference to the Bank.

(3) No liability to stamp duty or any other tax or charge attaches to the Bank or its property, by virtue of the vesting of property in the Bank under subsection (1).

Provisions applicable to land under the Real Property Act, 1886.

2. (1) The Registrar-General shall, on the application of the Bank, register the Bank as the proprietor of land (being land under the provisions of the Real Property Act, 1886) that has vested in the Bank in pursuance of this schedule.

(2) An instrument relating to land (being land under the provisions of the Real Property Act, 1886) that has vested in the Bank in pursuance of this schedule shall, if the instrument is executed by the Bank and is otherwise in registrable form, be registered by the Registrar-General notwithstanding that the Bank has not been registered as the proprietor of the land in pursuance of subsection (1).

Certain specified instruments, etc., preserved.

3. (1) Without prejudice to the foregoing provisions of this schedule—

(a) any guarantee that was given by the Treasurer, or arose by operation of law, in respect of a liability of either of the amalgamating banks remains in full force notwithstanding that the liability becomes a liability of the Bank in pursuance of this schedule;

(b) an instruction, mandate or authority given to either of the amalgamating banks shall be deemed to have been given to the Bank;

(c) a security held by either of the amalgamating banks shall be available to the Bank as security for the discharge of the debt or liability to which it relates and, where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities to the Bank incurred after the commencement of this Act; and the Bank shall be entitled to all rights and priorities and shall be subject to all liabilities to which the bank by which the security was formerly held would have been entitled or subject if this Act had not been enacted;

(d) all rights and obligations of the amalgamating banks as bailees of documents and chattels are transferred to the Bank;

(e) a negotiable instrument drawn on, given to, or endorsed or accepted by, either of the amalgamating banks has effect as if drawn on, given to, or endorsed or accepted by, the Bank;

(f) legal proceedings commenced by or against either of the amalgamating banks may be continued by or against the Bank.

(2) For the purposes of a lease, licence or other agreement relating to the occupation or use of land, neither of the amalgamating banks shall be regarded as having parted with possession of land by virtue of the fact that the Bank succeeds to its rights of occupation.

Advances under section 9 (1) of State Bank Act, 1935.

4. Any moneys advanced by the Treasurer in pursuance of section 9 (1) of the State Bank Act, 1935, shall be regarded as a grant to the Bank subject to the provisions of section 20.

Accounts of the amalgamating banks.

5. (1) The Board is responsible to ensure that accounts in respect of the amalgamating banks for the 1983-1984 financial year are prepared, audited and presented to the Governor.

(2) Subject to subsection (3), the provisions of Part IV apply with necessary exclusions and adaptations in respect of the accounts referred to in subsection (1).

(3) The Auditor-General shall audit the accounts of the State Bank of South Australia in respect of the 1983-1984 financial year.

(4) The Bank shall pay to the Treasurer for the credit of the General Revenue of the State—

(a) one-half of a sum arrived at by subtracting \$202 000 from the profit for the 1983-1984 financial year shown in the audited accounts of The Savings Bank of South Australia;

and

(b) one-half of the profit for the 1983-1984 financial year shown in the audited accounts of the State Bank of South Australia.

(5) The amount referred to in subsection (4) (a) shall be paid as soon as practicable after the end of the 1983-1984 financial year and the amount referred to in subsection (4) (b) shall be paid on or before the thirty-first day of March, 1985.

6. A person who was, immediately before the commencement of this Act, an officer or employee of either of the amalgamating banks becomes an officer of the Bank on the commencement of this Act—

(a) without reduction of remuneration;

and

(b) without prejudice to the continuity of his service or his accrued rights in respect of annual leave, sick leave, long service leave, leave of any other kind, retiring allowances and superannuation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor