



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 9 of 1991

An Act to amend the State Bank of South Australia Act 1983.

[Assented to 28 March 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *State Bank of South Australia (Investigations) Amendment Act 1991*.

(2) The *State Bank of South Australia Act 1983* is referred to in this Act as “the principal Act”.

## Investigations

2. Section 25 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

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

(3) A person so appointed must comply with any directions of the Governor published in the *Gazette* as to the manner in which the investigation is to be conducted and the manner in which the results of the investigation are to be reported, including any direction requiring reports to be presented to a specified person or body in addition to the Governor.

(4) Subject to any directions of the Governor, a person so appointed may, if he or she sees fit to do so in connection with the investigation, make public statements as to the nature and conduct of the investigation and may invite and receive information or submissions as to any matter relevant to the investigation from such persons as he or she thinks fit.

(5) A person so appointed must, when presenting to the Governor any report that the person considers need not remain confidential, also present copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly who must in turn, not later than the first sitting day after receipt of the reports, lay them before their respective Houses.

(6) Where the investigator forms the belief or suspicion while undertaking any investigation under this section that there has been in connection with any transaction entered into in the course of the operations of the Bank or the Bank Group—

(a) any conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity on the part of a director or officer of the Bank or a subsidiary of the Bank;

or

(b) any failure to exercise proper care and diligence on the part of a director or officer of the Bank or a subsidiary of the Bank,

the investigator may, if practicable, investigate the matter (whether or not it falls within the matters determined by the Governor to be the subject of the investigation), and must in any event report on the matter to the Governor and advise whether, in his or her opinion, the matter should be the subject of further or other investigation or action.

(7) For the purposes of an investigation under this section, the investigator and authorized persons have the same powers as the Auditor-General and authorized officers have under Division III of Part III of the *Public Finance and Audit Act 1987* for an audit or examination under that Act, and the provisions of that Division (including section 34 (2) and (3)) apply in relation to the investigation and the exercise of those powers as if the investigator or authorized person were the Auditor-General or an authorized officer exercising those powers under that Division.

(8) Without limiting the effect of any other provisions of this section, a magistrate may, on application by the investigator—

(a) if satisfied that there are reasonable grounds to believe that a person has knowledge of matters, or possession or control of books, documents or records, relevant to the investigation, issue a summons requiring the person to appear before the investigator and answer questions or produce the books, documents or records;

(b) if satisfied that a person has been served with such a summons and paid or tendered a reasonable sum for the person's expenses but has failed (without reasonable excuse) to appear or produce books, documents or records in obedience to the summons, issue a warrant directed to all members of the police force for the person to be apprehended and brought before the investigator.

(9) The grounds of an application for a summons or warrant must be verified by affidavit.

(10) A person who—

(a) is served with a summons under this section and paid or tendered a reasonable sum for the person's expenses;

but

(b) fails (without reasonable excuse) to obey the summons,

is guilty of a summary offence.

Penalty: \$5 000 or three months imprisonment.

(11) An investigator or authorized person incurs no civil or criminal liability for an act or omission in good faith in the exercise or purported exercise of a power conferred by this section.

(12) A person incurs no civil or criminal liability for anything done in good faith in compliance or purported compliance with a requirement of an investigator or authorized person under this section.

(13) In this section—

“authorized person”, in relation to an investigation under this section, means a person authorized by the investigator to exercise the powers conferred by this section for the purposes of the investigation:

“the Bank Group” means the Bank and its subsidiaries:

“operations” of the Bank or Bank Group includes, in relation to an investigation specified by regulation, any operations carried out by a specified company or entity or pursuant to a specified trust scheme, partnership, joint venture or other scheme or arrangement and declared by regulation to form part of the operations of the Bank or Bank Group for the purposes of that investigation:

“record” includes—

(a) information stored or recorded by a computer or any other means;

and

(b) a computer tape or disk or any other device on or by which information is stored or recorded.

(14) In this section, a reference to a subsidiary of the Bank is a reference to a body that would be a subsidiary of the Bank according to the provisions of the *Corporations Law* assuming for that purpose that there were substituted in section 46 (a) (iii) of that Law for the words “one-half of the issued share capital” the words “one-quarter of the issued share capital”.

(15) In determining whether a body is a subsidiary of the Bank, any shares held, or powers exercisable by, the Bank or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the Bank is an instrumentality of the Crown and holds its property for and on behalf of the Crown.

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

ROMA MITCHELL Governor