



**STATE BANK OF SOUTH AUSTRALIA
(INVESTIGATOR'S RECORDS AND PREPARATION
FOR RESTRUCTURING) AMENDMENT ACT 1993**

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PART VI

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ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 70 of 1993

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

[Assented to 10 September 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *State Bank of South Australia (Investigator's Records and Preparation for Restructuring) Amendment Act 1993*.

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

Commencement

2. (1) Subject to subsection (2), this Act will be taken to have come into operation on 1 January 1993.

(2) Section 3 of this Act will come into operation on the day on which this Act is assented to by the Governor.

Insertion of s. 25A

3. The following section is inserted after section 25 of the principal Act:

Custody and use of investigator's records

25A. (1) In this section—

"authorised person" has the same meaning as in section 25;

"investigation" means an investigation under section 25 conducted either before or after the enactment of this section;

"investigator" means the person by whom an investigation is or was conducted;

"investigator's record", in relation to an investigation, means—

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- (a) evidentiary material produced voluntarily or under compulsion to the investigator or an authorised person in the course, or for the purposes, of the investigation; or
 - (b) any record of evidence or submissions made for the purposes of the investigation; or
 - (c) any record (including an expert's report) made or prepared by, or on behalf or at the request of, the investigator or an authorised person for the purposes of the investigation;

"prosecuting authority" means—

- (a) the Director of Public Prosecutions of the State or the Commonwealth; or
- (b) the Australian Securities Commission; or
- (c) any other authority of the State, another State or a Territory of the Commonwealth, or the Commonwealth that undertakes responsibility for the prosecution of offences.

(2) Subject to this section, at the conclusion of an investigation, the Attorney-General is entitled to the custody and control of all the investigator's records to the exclusion of the rights of any other person.

(3) Despite subsection (2), the investigator retains a right of access to and may make copies of the investigator's records.

(4) If a person would, but for subsection (2), have been entitled to possession of a record at the conclusion of the investigation, the record is to be delivered to the person as soon as the Attorney-General is satisfied that there is no need to retain the record for the purpose of any civil or criminal proceedings.

(5) If an obligation arose, or an undertaking was given, that a particular record or particular information gained in the course of the investigation be kept confidential, the following provisions apply:

- (a) the obligation or undertaking is binding on the Attorney-General;
- (b) the obligation or undertaking does not prevent disclosure of the record or information to—
 - (i) the Crown, its officers or its legal advisers; or
 - (ii) a prosecuting authority;
- (c) if such a disclosure is made, the obligation or undertaking becomes binding on the person to whom the disclosure is made.

(6) No objection may be taken to the use of an investigator's record or information gained in the course of an investigation for the purposes of, or as evidence in, civil or criminal proceedings merely because of disclosure of the record or information to—

- (a) the Crown, its officers or its legal advisers; or
- (b) a prosecuting authority.

(7) No civil or criminal liability arises from disclosure of an investigator's record or information gained in the course of an investigation to—

- (a) the Crown, its officers or its legal advisers; or
- (b) a prosecuting authority.

(8) This section does not affect the operation of section 34 (3) of the *Public Finance and Audit Act 1987* (relating to the admissibility in criminal proceedings of answers to questions put by an investigator or authorised person) as applied by section 25 (7) of this Act.

(9) This section—

- (a) applies both within and outside the State; and
- (b) applies outside the State to the full extent of the extra-territorial legislative capacity of the Parliament; and
- (c) is to be regarded as part of the substantive law of the State.

Insertion of Part VI

4. The following Part is inserted after section 31 of the principal Act:

PART VI PREPARATION FOR RESTRUCTURING OF BANK GROUP UNDERTAKING

Definitions

32. (1) In this Part—

“authorised project” —see section 34(1);

“Bank Group” means the Bank and the subsidiaries of the Bank;

“Bank Group undertaking” means the undertaking of the Bank and of its subsidiaries, or any part of that undertaking;

“subsidiary”, of the Bank, means—

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- (a) a body that is a subsidiary of the Bank according to Division 6 of Part 1.2 of the *Corporations Law* as modified in its application by subsection (2); or
 - (b) any other body or entity of which the Bank is the parent entity according to Division 4A of Part 3.6 of the *Corporations Law*.

(2) In applying Division 6 of Part 1.2 of the *Corporations Law* to determine whether a body is a subsidiary of the Bank—

- (a) the reference in section 46(a)(iii) of that Law to one-half of the issued share capital of a body is to be taken to be a reference to one-quarter of the issued share capital of the body; and
- (b) 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.

(3) In applying Division 4A of Part 3.6 of the *Corporations Law* to determine whether the Bank is the parent entity of some other body or entity, the Bank is to be taken to be a company to which that Division applies.

Territorial application of this Part

33. (1) This Part applies both within and outside the State.

(2) This Part applies outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

Action in preparation for restructuring, etc.

34. (1) The following action (collectively referred to as the "authorised project") is authorised:

- (a) determination of the most appropriate means of disposing of the Bank Group undertaking and, in particular, whether the Bank Group undertaking should be restructured by vesting the undertaking in a separate body corporate or separate bodies corporate in preparation for disposal;
- (b) examination of the Bank Group undertaking with a view to its restructuring and disposal;
- (c) any other action that the Treasurer authorises, after consultation with the Board, in preparation for restructuring and disposal of the Bank Group undertaking.

(2) The authorised project is to be carried out by—

- (a) persons employed by the Crown and assigned to work on the project; and
- (b) officers of the Bank assigned to work on the project; and
- (c) other persons whose services are engaged by the Crown or the Bank for the purpose of carrying out the project; and
- (d) any other person approved by the Treasurer whose participation or assistance is, in the opinion of the Treasurer, reasonably required for the purposes of the project.

(3) The directors and other officers of the Bank and its subsidiaries must, despite the provisions of section 29a and any other law—

- (a) allow—
 - (i) persons engaged on the authorised project; and
 - (ii) prospective purchasers and their agents, as authorised by the Treasurer after consultation with the Board,
access to information in the possession or control of the Bank or the subsidiary that is reasonably required for—
 - (iii) carrying out the authorised project; or
 - (iv) disposing of the Bank Group undertaking; and
- (b) provide any other co-operation, assistance and facilities that may be reasonably necessary for any of those purposes.

(4) The Treasurer may issue—

- (a) to a person who is engaged on the authorised project; or
- (b) to a prospective purchaser or an agent of a prospective purchaser authorised by the Treasurer to have access to information under subsection (3),

a certificate identifying the person as such and any person may be refused access to information to which access is sought under subsection (3) unless the person first produces that certificate for the inspection of an appropriate officer of the Bank or subsidiary of the Bank.

(5) The directors and other officers of the Bank and its subsidiaries are authorised, despite section 15 and any other law, to administer the Bank and the subsidiaries taking into account the authorised project and the objective of maximising the return to the

Government of the State from disposal of the Bank Group undertaking.

(6) Nothing done or allowed under this section—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement or understanding; or
- (c) constitutes a breach of any duty of confidence (whether arising by contract, at equity, by custom, or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- (e) fulfils any condition that allows a person to terminate any agreement or obligation; or
- (f) releases any surety or other obligee wholly or in part from any obligation.

Confidentiality

35. A person (other than a person who is or has been employed by the Bank) who acquires information as to the affairs of a customer of the Bank in consequence of this Part must not disclose or make use of the information unless—

- (a) the disclosure or use of the information is reasonably required for carrying out the authorised project; or
- (b) the customer approves the disclosure or use of the information; or
- (c) the disclosure or use of the information is authorised or required by some other Act or law.

Penalty: If the offender is a body corporate—\$50 000
In any other case—\$5 000.

Evidentiary provision

36. (1) In any legal proceedings, a certificate of the Treasurer certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, is to be accepted as proof of the matter so certified in the absence of proof to the contrary.

(2) An apparently genuine document purporting to be a certificate under subsection (1) is to be accepted as such in the absence of proof to the contrary.

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

ROMA MITCHELL Governor