



Banking (State Bank of South Australia and Other Matters) Act 1994

No. 69 of 1994

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Banking (State Bank of South Australia and Other Matters) Act 1994

No. 69 of 1994

An Act relating to banking

[Assented to 9 June 1994]

The Parliament of Australia enacts:

CHAPTER 1—PRELIMINARY

Short title

1. This Act may be cited as the *Banking (State Bank of South Australia and Other Matters) Act 1994*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 2.1 (other than subsections 5(2) and 6(2)) commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the *State Bank (Corporatisation) Act 1994* of South Australia commences.

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(3) If the provisions referred to in subsection (2) do not commence within the period of 6 months beginning on the day on which the *State Bank (Corporatisation) Act 1994* of South Australia commences, they commence on the first day after the end of that period.

(4) Subsections 5(2) and 6(2) commence on a day to be fixed by Proclamation.

**CHAPTER 2—PROVISIONS TO FACILITATE THE
RESTRUCTURING OF THE STATE BANK OF SOUTH
AUSTRALIA**

PART 2.1—AMENDMENT OF THE BANKING ACT 1959

Object of Part

3. The object of this Part is to facilitate the restructuring of the State Bank of South Australia by subjecting the successor of that Bank (Bank of South Australia Limited) to regulation under the *Banking Act 1959*.

Principal Act

4. In this Part, “**Principal Act**” means the *Banking Act 1959*¹.

Interpretation

5.(1) Section 5 of the Principal Act is amended by inserting in the definition of “bank” in subsection (1) “Bank of South Australia Limited,” after “includes”.

(2) Section 5 of the Principal Act is amended by omitting from the definition of “bank” in subsection (1) “Bank of South Australia Limited,”.

Application of Act

6.(1) Section 6 of the Principal Act is amended:

- (a) by omitting from subsection (1) “subsection (1A)” and substituting “subsections (1A) and (1B)”;
- (b) by inserting after subsection (1A) the following subsection:

“(1B) Part II (other than Division 1), Part V and sections 61, 62, 64, 65, 68 and 69 apply to Bank of South Australia Limited.

Note: The matter of State banking in so far as it applies to Bank of South Australia Limited has been referred to the Parliament of the Commonwealth by the Parliament of South Australia.”.

(2) Section 6 of the Principal Act is amended:

- (a) by omitting from subsection (1B) “Part II (other than Division 1), Part” and substituting “Parts II and”;
- (b) by inserting in subsection (1B) “63,” after “62,”.

PART 2.2—AMENDMENT OF THE CORPORATIONS LAW

Division 1—Corporations Law

Corporations Law

7. In this Part, “**Corporations Law**” means the Corporations Law set out in section 82 of the *Corporations Act 1989*.

Division 2—Modification of rules relating to assignment of charges

Object of Division

8. The object of this Division is to facilitate the restructuring of the State Bank of South Australia by modifying the rules relating to notification of the assignment of registrable charges.

Insertion of new section

9. After section 268 of the Corporations Law the following section is inserted:

Assignment of charges under the State Bank (Corporatisation) Act 1994 of South Australia

Application of section

“268A.(1) This section applies if:

- (a) after one or more registrable charges on property of a company have been created, a person other than the original chargee becomes the holder of the charges; and
- (b) the person is the State Bank of South Australia or Bank of South Australia Limited; and
- (c) the person becomes the holder of the charges as a result of the operation of:
 - (i) section 7 or 23 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
 - (ii) a corresponding provision of a law of another State or of a Territory.

Lodgment of notice with Commission

“(2) The person may lodge a notice stating that it has become the holder of the charges.

Notice to be in a form approved by Commission

“(3) The notice must be in a form approved by the Commission.

Time within which notice must be lodged

“(4) The notice must be lodged within:

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- (a) 6 months after the commencement of the *State Bank (Corporatisation) Act 1994* of South Australia (the ‘initial period’);
or
- (b) such longer period as the Commission allows.

When Commission may allow longer period for lodgment of notice

“(5) The Commission may only allow a longer period under paragraph (4)(b) if:

- (a) the person applies in writing to the Commission within the initial period; and
- (b) the Commission is satisfied that, having regard to the nature of the charges involved, it would not be practicable for the person to lodge a notice in relation to those charges within the initial period.

Effect of notice

“(6) A person who lodges a notice under subsection (2) in respect of one or more charges on property of a company is taken, for the purposes of this Law and the Corporations (Fees) Regulations:

- (a) to have lodged a separate notice in accordance with subsection 268(1) in respect of each of those charges; and
- (b) to have given a copy of each of those notices to the company in accordance with that subsection.

Debentures

“(7) If:

- (a) a charge is constituted by a debenture or debentures; and
- (b) there is a trustee for debenture holders;

a reference in this section to the chargee in relation to a charge is a reference to that trustee.”.

***Division 3—Deregistration of defunct companies dissolved under the
State Bank (Corporatisation) Act 1994 of South Australia***

Object of Division

10. The object of this Division is to facilitate the restructuring of the State Bank of South Australia by modifying the rules about deregistration of companies.

Insertion of new section

11. After section 574 of the Corporations Law the following section is inserted:

Deregistration of companies dissolved under the *State Bank (Corporatisation) Act 1994* of South Australia

Application of section

“574A.(1) This section applies if the Minister of the Crown of South Australia responsible for the administration of the *State Bank (Corporatisation) Act 1994* of South Australia notifies the Commission in writing that a company has been dissolved under section 23 of that Act.

Cancellation of registration by notice in Gazette

“(2) The Commission must, by notice published in the *Gazette*, cancel the registration of the company, but:

- (a) the liability (if any) of every officer and members of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection affects the power of the Court to wind up a company the registration of which has been cancelled.

Effect of notice under subsection (2)

“(3) This Law (other than subsection 574(1)) has effect as if a notice under subsection (2) of this section were a notice of cancellation published under subsection 574(1).

Vesting of property of company

“(4) Subsection 576(1) of this Law only applies to property of the company to the extent (if any) to which that property is not vested in the State Bank of South Australia under subsection 23(2) of the *State Bank (Corporatisation) Act 1994* of South Australia.”

**PART 2.3—MODIFICATIONS OF THE PRIVACY ACT 1988
RELATING TO THE RESTRUCTURING OF THE STATE BANK
OF SOUTH AUSTRALIA**

Division 1—Preliminary

Object of Part

12. The object of this Part is to facilitate the restructuring of the State Bank of South Australia by modifying the effect of the *Privacy Act 1988*.

Interpretation

13. An expression used in this Part and in the *Privacy Act 1988* has the same meaning in this Part as it has in that Act.

Definitions

14. In this Part:

“**account**” includes a deposit or loan;

“appointed day” has the same meaning as in the *State Bank (Corporatisation) Act 1994* of South Australia;

“borrower” has a meaning corresponding to “loan”;

“designated subsidiary of the State Bank of South Australia” means a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia;

“eligible customer”, in relation to a person, means:

- (a) an individual who is, or has sought to become:
 - (i) a customer of the person within the ordinary meaning of that expression; or
 - (ii) a depositor with the person; or
 - (iii) a borrower from the person; or
- (b) a guarantor or prospective guarantor of an individual who is, or has sought to become, a borrower from the person;

“re-transfer provision” means:

- (a) section 16 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory;

“transfer provision” means:

- (a) section 7 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory.

State banking

15.(1) Section 12A of the *Privacy Act 1988* has effect as if the provisions of this Part were provisions of that Act.

(2) A reference in the *Privacy Act 1988* to State banking does not include a reference to State banking to the extent to which the matter of State banking has been referred to the Parliament under section 21 of the *State Bank (Corporatisation) Act 1994* of South Australia.

Division 2—Transfers of loans—transferee bank deemed to have provided credit

Transfers to Bank of South Australia Limited

16.(1) This section applies if:

- (a) a loan or prospective loan is transferred on a particular day (the **“transfer day”**) under a transfer provision to Bank of South Australia Limited from:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia;
- and

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(b) immediately before the transfer, the loan or prospective loan was credit provided by the State Bank of South Australia or the designated subsidiary, as the case may be.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the loan or prospective loan were credit provided by Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case requires.

Re-transfers to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia

17.(1) This section applies if:

(a) a loan or prospective loan is transferred on a particular day (the “**re-transfer day**”) under a re-transfer provision from Bank of South Australia Limited to:

- (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia;
- and

(b) immediately before the transfer, the loan or prospective loan was credit provided by Bank of South Australia Limited.

(2) This Part and the *Privacy Act 1988* have effect, on and after the re-transfer day, as if the loan or prospective loan were credit provided by the State Bank of South Australia or by the designated subsidiary, as the case requires, instead of by Bank of South Australia Limited.

Division 3—Disclosure of reports

Subdivision A—Transfers to Bank of South Australia Limited

Disclosure of information about transferred eligible customers

18.(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:

(a) the disclosure is by:

- (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia;
- or

(iii) an agent of a body covered by subparagraph (i) or (ii); and

(b) the report or information is disclosed to:

- (i) Bank of South Australia Limited; or
- (ii) an agent of Bank of South Australia Limited; and

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- (c) the report or information relates to the affairs of an individual who:
 - (i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and
 - (ii) became an eligible customer of Bank of South Australia Limited as a result of the operation of a transfer provision; and
 - (d) the report or information is disclosed for the purposes of facilitating the operation of a transfer provision in relation to the individual.
- (2) The disclosure does not breach:
- (a) the *Privacy Act 1988*; or
 - (b) the Code of Conduct.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

Disclosure of information where account is re-transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

19.(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:

- (a) the disclosure is by:
 - (i) Bank of South Australia Limited; or
 - (ii) an agent of Bank of South Australia Limited; and
 - (b) the report or information is disclosed to:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia;
or
 - (iii) an agent of a body covered by subparagraph (i) or (ii); and
 - (c) the report relates to the affairs of an eligible customer of the State Bank of South Australia or of the designated subsidiary, as the case requires, whose account was transferred to that Bank or subsidiary from Bank of South Australia Limited as a result of the operation of a re-transfer provision; and
 - (d) the report or information is disclosed for the purposes of facilitating the operation of the re-transfer provision in relation to the eligible customer.
- (2) The disclosure does not breach:
- (a) the *Privacy Act 1988*; or
 - (b) the Code of Conduct.

Subdivision C—Management of accounts by Bank of South Australia Limited

Disclosure of information where Bank of South Australia Limited manages the account of an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia

20.(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:

- (a) the disclosure is by:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; or
 - (iii) an agent of a body covered by subparagraph (i) or (ii); and
 - (b) the report or information is disclosed to Bank of South Australia Limited; and
 - (c) the report or information relates to the affairs of an eligible customer of the State Bank of South Australia or of the designated subsidiary, as the case may be; and
 - (d) an account of the eligible customer is being managed by Bank of South Australia Limited as agent for the State Bank of South Australia or the designated subsidiary, as the case may be; and
 - (e) the report or information is disclosed for the purposes of facilitating the management of the account.
- (2)** The disclosure does not breach:
- (a) the *Privacy Act 1988*; or
 - (b) the Code of Conduct.

Subdivision D—Dissolution of designated subsidiaries of the State Bank of South Australia

Disclosure of information where a designated subsidiary of the State Bank of South Australia is about to be dissolved

21.(1) This section applies if:

- (a) a designated subsidiary of the State Bank of South Australia is proposed to be dissolved under subsection 23(1) of the *State Bank (Corporatisation) Act 1994* of South Australia; and
- (b) as a result of the dissolution, an account with the designated subsidiary will be vested in the State Bank of South Australia under subsection 23(2) of that Act.

(2) In applying paragraph 18N(1)(d) of the *Privacy Act 1988* to a disclosure that is relevant to that account, the designated subsidiary is taken to be related to the State Bank of South Australia.

Division 4—Authorities and notifications

Subdivision A—Transfers to Bank of South Australia Limited

Authorities relating to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to relate to Bank of South Australia Limited

22.(1) This section applies to an authority (however described) given under the *Privacy Act 1988* if:

- (a) the authority was given to:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; and
- (b) the authority authorised the State Bank of South Australia or the designated subsidiary, as the case may be, to disclose, use or receive:
 - (i) a credit report; or
 - (ii) any other information that has or has had any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity; and
- (c) the authority relates to the affairs of an individual who:
 - (i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and
 - (ii) became an eligible customer of Bank of South Australia Limited on a particular day (the “**transfer day**”) as a result of the operation of a transfer provision.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the authority had been given to, and had so authorised, Bank of South Australia Limited instead of the State Bank of South Australia or the designated subsidiary, as the case requires.

Notifications given by the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to have been given by Bank of South Australia Limited

23.(1) This section applies to a notification (however described) given under the *Privacy Act 1988* if:

- (a) the notification was given by:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; and
- (b) the notification was given to an individual who:
 - (i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and

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- (ii) became an eligible customer of Bank of South Australia Limited on a particular day (the “**transfer day**”) as a result of the operation of a transfer provision.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the notification had been given by Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case requires.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

Authorities relating to Bank of South Australia Limited deemed to relate to the State Bank of South Australia or the designated subsidiary concerned

24.(1) This section applies to an authority (however described) given under the *Privacy Act 1988* if:

- (a) the authority was given to Bank of South Australia Limited; and
- (b) the authority authorised Bank of South Australia Limited to disclose, use or receive:
 - (i) a credit report; or
 - (ii) any other information that has or has had any bearing on an individual’s credit worthiness, credit standing, credit history or credit capacity; and
- (c) the authority relates to the affairs of an individual who:
 - (i) was an eligible customer of Bank of South Australia Limited; and
 - (ii) became an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia on a particular day (the “**re-transfer day**”) as a result of the operation of a re-transfer provision.

(2) The *Privacy Act 1988* has effect, on and after the re-transfer day, as if the authority had been given to, and had so authorised, the State Bank of South Australia or the designated subsidiary, as the case requires, instead of Bank of South Australia Limited.

Notifications given by Bank of South Australia Limited deemed to have been given by the State Bank of South Australia or the designated subsidiary concerned

25.(1) This section applies to a notification (however described) given under the *Privacy Act 1988* if:

- (a) the notification was given by Bank of South Australia Limited; and

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- (b) the notification was given to an individual who:
- (i) was an eligible customer of Bank of South Australia Limited; and
 - (ii) became an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia on a particular day (the “**re-transfer day**”) as a result of the operation of a re-transfer provision.

(2) The *Privacy Act 1988* has effect, on and after the re-transfer day, as if the notification had been given by the State Bank of South Australia or the designated subsidiary, as the case requires, instead of by Bank of South Australia Limited.

Division 5—Deletion of information from credit information files

Subdivision A—Transfers to Bank of South Australia Limited

Credit reporting agencies that have been given information about overdue payments

26.(1) This section applies if:

- (a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia was a credit provider in relation to credit provided to an individual; and
- (b) as a result of the operation of a transfer provision, the individual’s account was transferred to Bank of South Australia Limited on a particular day (the “**transfer day**”); and
- (c) a credit reporting agency had been given information that the individual was overdue in making a payment in respect of the credit provided by the State Bank of South Australia or the designated subsidiary, as the case may be.

(2) This Division and subsection 18F(3) of the *Privacy Act 1988* have effect, on and after the transfer day, as if the credit reporting agency had been given information that the individual was overdue in making a payment in respect of credit provided by Bank of South Australia Limited.

Credit reporting agencies that have previously been informed about current credit provider status

27.(1) This section applies if:

- (a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia was a credit provider in relation to credit provided to an individual; and
- (b) as a result of the operation of a transfer provision, the individual’s account was transferred to Bank of South Australia Limited on a particular day (the “**transfer day**”); and

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- (c) a credit reporting agency had previously been informed that the State Bank of South Australia or the designated subsidiary, as the case may be, was a current credit provider in relation to the individual.

(2) This Division and subsection 18F(5) of the *Privacy Act 1988* have effect, on and after the transfer day, as if the credit reporting agency had previously been informed that Bank of South Australia Limited was a current credit provider in relation to the individual.

Credit provider ceasing to be current credit provider

28. An obligation is not imposed on the State Bank of South Australia, or a designated subsidiary of the State Bank of South Australia, under subsection 18F(5) of the *Privacy Act 1988* merely because of the operation of a transfer provision.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

Credit reporting agencies that have been given information about overdue payments

29.(1) This section applies if:

- (a) Bank of South Australia Limited was a credit provider in relation to credit provided to an individual; and
- (b) as a result of the operation of a re-transfer provision, the individual's account was transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia on a particular day (the “**re-transfer day**”); and
- (c) a credit reporting agency had been given information that the individual is overdue in making a payment in respect of the credit provided by Bank of South Australia Limited.

(2) Subsection 18F(3) of the *Privacy Act 1988* has effect, on and after the re-transfer day, as if the credit reporting agency had been given information that the individual was overdue in making a payment in respect of credit provided by the State Bank of South Australia or the designated subsidiary, as the case requires.

Credit reporting agencies that have previously been informed about current credit provider status

30.(1) This section applies if:

- (a) Bank of South Australia Limited was a credit provider in relation to credit provided to an individual; and

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- (b) as a result of the operation of a re-transfer provision, the individual's account was transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia on a particular day (the “**re-transfer day**”); and
- (c) a credit reporting agency had previously been informed that Bank of South Australia Limited was a current credit provider in relation to the individual.

(2) Subsection 18F(5) of the *Privacy Act 1988* has effect, on and after the re-transfer day, as if the credit reporting agency had previously been informed that the State Bank of South Australia or the designated subsidiary, as the case requires, was a current credit provider in relation to the individual.

Credit provider ceasing to be current credit provider

31. An obligation is not imposed on Bank of South Australia Limited under subsection 18F(5) of the *Privacy Act 1988* merely because of the operation of a re-transfer provision.

*Division 6—Banks to publish information about the operation
of this Part*

Publication of information about the operation of this Part

32.(1) On or before the appointed day, or as soon as practicable after that day, the State Bank of South Australia or Bank of South Australia Limited must prepare a written statement setting out information about:

- (a) the kinds of reports and information that will be, or that have been, disclosed under section 18; and
- (b) the kinds of authorities and notifications that will be, or have been, affected by the operation of sections 22 and 23.

(2) The statement must not be prepared in a manner that is likely to enable the identification of a particular eligible customer.

(3) As soon as practicable after the preparation of the statement, the State Bank of South Australia or Bank of South Australia Limited, as the case requires, must make copies of the statement generally available to:

- (a) in any case—its eligible customers; and
- (b) if the statement is prepared by the State Bank of South Australia—the eligible customers of Bank of South Australia Limited.

(4) For the purposes of the *Privacy Act 1988*, a contravention of this section is taken to be a credit reporting infringement by the State Bank of South Australia and Bank of South Australia Limited.

Division 7—This Part to be disregarded in determining the meaning that a provision of the Privacy Act 1988 has apart from this Part

This Part to be disregarded in determining the meaning that a provision of the *Privacy Act 1988* has apart from this Part

33. In determining the meaning that a provision of the *Privacy Act 1988* has apart from this Part, this Part is to be disregarded.

**PART 2.4—MODIFICATIONS OF THE INCOME TAX LAW
RELATING TO THE RESTRUCTURING OF THE STATE BANK
OF SOUTH AUSTRALIA**

Division 1—Preliminary

Object of Part

34. The object of this Part is to facilitate the restructuring of the State Bank of South Australia by modifying the effect of the income tax law.

Interpretation

35. An expression used in this Part and in the *Income Tax Assessment Act 1936* has the same meaning in this Part as it has in that Act.

Definitions

36. In this Part:

“**designated subsidiary of the State Bank of South Australia**” means a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia;

“**re-transfer provision**” means:

- (a) section 16 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory;

“**transfer provision**” means:

- (a) section 7 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory.

Division 2—Bank of South Australia Limited to benefit from the post-26 February 1992 depreciation regime

Amendments to allow Bank of South Australia Limited to benefit from the post-26 February 1992 depreciation regime

37.(1) For the purposes of section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*, Bank of South Australia Limited is taken not to be, and never to have been, an associate of:

- (a) the State Bank of South Australia; or
- (b) a designated subsidiary of the State Bank of South Australia.

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(2) For the purposes of section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*, a unit of property that was acquired by Bank of South Australia Limited as a result of the operation of a transfer provision is taken to have been acquired by Bank of South Australia Limited under a contract entered into after 26 February 1992.

Division 3—Development allowance and general investment allowance

Development allowance and general investment allowance—acquisition or construction of property

38.(1) This section applies to a unit of property if:

- (a) the property was acquired, constructed or commenced to be constructed, by:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; and
- (b) the property was transferred to Bank of South Australia Limited as a result of the operation of a transfer provision.

(2) The provisions of Subdivisions B and BA of Division 3 of Part III of the *Income Tax Assessment Act 1936* apply, and are taken always to have applied, as if:

- (a) the property had been acquired, constructed, or commenced to be constructed, as the case may be, by Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case may be; and
- (b) expenditure of a capital nature incurred by the State Bank of South Australia or the designated subsidiary, as the case may be, in respect of the acquisition or construction of the property had been incurred instead by Bank of South Australia Limited; and
- (c) if the property was acquired by the State Bank of South Australia or the designated subsidiary, as the case may be, under a contract entered into at a particular time—the property had been acquired by Bank of South Australia Limited under a contract entered into at that time; and
- (d) if the property was constructed, or commenced to be constructed, by the State Bank of South Australia or the designated subsidiary, as the case may be—Bank of South Australia Limited had commenced to construct the property at the same time as the State Bank of South Australia or the designated subsidiary, as the case may be, had commenced to construct it.

Development allowance and general investment allowance—uncompleted contracts for the acquisition of property

39.(1) This section applies to a unit of property if:

- (a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia entered into a contract for the acquisition of the property; and
- (b) before the property was acquired by the State Bank of South Australia or the designated subsidiary, as the case may be, Bank of South Australia Limited acquired the rights under the contract as a result of the operation of a transfer provision; and
- (c) Bank of South Australia Limited acquired the property as a result of the performance of the contract.

(2) The provisions of Subdivisions B and BA of Division 3 of Part III of the *Income Tax Assessment Act 1936* apply, and are taken always to have applied, as if expenditure of a capital nature incurred by the State Bank of South Australia, or the designated subsidiary, as the case may be, under the contract in respect of the proposed acquisition of the property had been incurred instead by Bank of South Australia Limited.

Division 4—Transfer of tax file number information

Subdivision A—Transfers to Bank of South Australia Limited

When Subdivision applies

40. This Subdivision applies if:

- (a) an account or deposit with:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; is transferred, or is proposed to be transferred, to Bank of South Australia Limited under a transfer provision; and
- (b) the account or deposit is an investment to which Part VA of the *Income Tax Assessment Act 1936* applies; and
- (c) immediately before the transfer or proposed transfer, the investor's tax file number is or will be taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have been quoted to the State Bank of South Australia or the designated subsidiary, as the case requires, in connection with the investment.

Eligible tax file number information

41. For the purposes of this Division, information is **eligible tax file number information** in relation to an investment if the information is:

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- (a) if the investor actually quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires:
 - (i) the investor's tax file number; and
 - (ii) information connecting that number with the investor; or
- (b) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202DDA of the *Income Tax Assessment Act 1936*:
 - (i) the investment body remitter number of the interposed entity concerned; and
 - (ii) information connecting that number with the interposed entity concerned; or
- (c) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202DDB of the *Income Tax Assessment Act 1936*:
 - (i) the tax file number of the primary investor concerned; and
 - (ii) information connecting that number with the primary investor concerned; or
- (d) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202EB of the *Income Tax Assessment Act 1936*—information given by the investor as mentioned in subsection 202EB(1) of that Act; or
- (e) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202EC of the *Income Tax Assessment Act 1936*—information given by the investor as mentioned in subsection 202EC(1) of that Act.

Eligible tax file number information may be disclosed to Bank of South Australia Limited

42. The State Bank of South Australia or the designated subsidiary, as the case requires, may disclose eligible tax file number information in relation to the investment to Bank of South Australia Limited if:

- (a) at least 15 days before the disclosure, the State Bank of South Australia or the designated subsidiary, as the case may be, publishes notices under section 43 about the proposed disclosure; and
- (b) the investor does not object to the disclosure in accordance with either of the notices.

Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

43.(1) The State Bank of South Australia or a designated subsidiary of the State Bank of South Australia may cause to be published in both:

- (a) a newspaper circulating generally throughout Australia; and
- (b) a newspaper circulating generally throughout South Australia;

a notice, in a form approved by the Commissioner, that:

- (c) states that the State Bank of South Australia or the designated subsidiary, as the case may be, proposes to disclose specified kinds of eligible tax file number information to Bank of South Australia Limited; and
- (d) states that an investor concerned may give the State Bank of South Australia or the designated subsidiary, as the case requires, a written objection within 14 days after the publication of the notice; and
- (e) states that if an investor lodges such an objection, the information will not be disclosed to Bank of South Australia Limited; and
- (f) contains such additional information as is required by the form.

(2) Notices under subsection (1) that relate to the same proposal must be published on the same day.

Consequences of disclosure of eligible tax file number information to Bank of South Australia Limited

44.(1) If eligible tax file number information in relation to an investment is disclosed to Bank of South Australia Limited under this Subdivision, the investor is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*:

- (a) to have quoted his or her tax file number to Bank of South Australia Limited under Division 4 of that Part in connection with the investment; and
- (b) to have so quoted his or her tax file number at whichever is the later of the following times:
 - (i) the time when the disclosure of the eligible tax file number information occurred;
 - (ii) the time when the transfer of the investment occurred.

(2) For the purposes of subsection 202DG(2A) of the *Income Tax Assessment Act 1936*, if:

- (a) eligible tax file number information in relation to an investment is disclosed to Bank of South Australia Limited under this Subdivision; and

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(b) the eligible tax file number information is covered by paragraph 41(a);

the investor is taken to have actually quoted his or her tax file number under Division 4 of Part VA of that Act.

Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

45. If information covered by paragraph 41(e) is disclosed to Bank of South Australia Limited under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 42 of this Act.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

When Subdivision applies

46. This Subdivision applies if:

- (a) an account or deposit with Bank of South Australia Limited is transferred, or is proposed to be transferred, to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under a re-transfer provision; and
- (b) the account or deposit is an investment to which Part VA of the *Income Tax Assessment Act 1936* applies; and
- (c) immediately before the transfer or proposed transfer, the investor's tax file number is or will be taken, because of section 44, to have been quoted to Bank of South Australia Limited in connection with the investment for the purposes of Part VA of the *Income Tax Assessment Act 1936*; and
- (d) eligible tax file number information in relation to the investment was disclosed to Bank of South Australia Limited under Subdivision A.

Eligible tax file number information may be disclosed to the State Bank of South Australia

47.(1) This section applies if the investment is transferred, or is proposed to be transferred, to the State Bank of South Australia.

(2) Bank of South Australia Limited may disclose the eligible tax file number information in relation to the investment to the State Bank of South Australia if:

- (a) at least 22 days before the disclosure, Bank of South Australia Limited sends the investor a notice under section 49 about the proposed disclosure; and

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- (b) the investor does not object to the disclosure in accordance with the notice.

Eligible tax file number information may be disclosed to a designated subsidiary of the State Bank of South Australia

48.(1) This section applies if the investment is transferred, or is proposed to be transferred, to a designated subsidiary of the State Bank of South Australia.

(2) Bank of South Australia Limited may disclose the eligible tax file number information in relation to the investment to the designated subsidiary if:

- (a) at least 22 days before the disclosure, Bank of South Australia Limited sends the investor a notice under section 49 about the proposed disclosure; and
- (b) the investor does not object to the disclosure in accordance with the notice.

Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

49. Bank of South Australia Limited may send an investor a notice, in a form approved by the Commissioner, that:

- (a) states that Bank of South Australia Limited proposes to disclose specified kinds of eligible tax file number information to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia; and
- (b) states that the investor may give Bank of South Australia Limited a written objection within 21 days after:
 - (i) if the notice is sent by post—the day on which the notice is posted; or
 - (ii) if the notice is sent by being delivered to the investor personally—the day of delivery; or
 - (iii) if the notice is sent by being left at a particular place or address—the day on which the notice is left at that place or address; and
- (c) states that if the investor lodges such an objection, the information will not be disclosed to the State Bank of South Australia, or to the designated subsidiary, as the case requires; and
- (d) contains such additional information as is required by the form.

Note: Section 28A of the *Acts Interpretation Act 1901* sets out the methods of sending notices.

Consequences of disclosure of eligible tax file number information to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

50.(1) If eligible tax file number information in relation to an investment is disclosed to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under this Subdivision, the investor is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*:

- (a) to have quoted his or her tax file number to the State Bank of South Australia or to the designated subsidiary, as the case requires, under Division 4 of that Part in connection with the investment; and
- (b) to have so quoted his or her tax file number at whichever is the later of the following times:
 - (i) the time when the disclosure of the eligible tax file number information occurred;
 - (ii) the time when the transfer of the investment occurred.

(2) For the purposes of subsection 202DG(2A) of the *Income Tax Assessment Act 1936*, if:

- (a) eligible tax file number information in relation to an investment is disclosed to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under this Subdivision; and
- (b) the eligible tax number information was covered by paragraph 41(a); the investor is taken to have actually quoted his or her tax file number under Division 4 of Part VA of that Act.

Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

51.(1) If information covered by paragraph 41(e) is disclosed to the State Bank of South Australia under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 47 of this Act.

(2) If information covered by paragraph 41(e) is disclosed to a designated subsidiary of the State Bank of South Australia under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 48 of this Act.

Subdivision C—Common provisions

Division deemed to be a taxation law for the purposes of section 8WB of the *Taxation Administration Act 1953*

52. This Division is taken to be a taxation law for the purposes of section 8WB of the *Taxation Administration Act 1953*.

Disclosure of tax file number information under this Division taken not to be in breach of guidelines under the *Privacy Act 1988*

53. A disclosure of eligible tax file number information under this Division is taken not to breach guidelines issued under section 17 of the *Privacy Act 1988*.

Division 5—Reduction of deductions allowable to Bank of South Australia Limited, and associates of Bank of South Australia Limited, in respect of certain superannuation contributions and eligible termination payments

Reduction of deductions allowable to Bank of South Australia Limited, and associates of Bank of South Australia Limited, in respect of certain superannuation contributions and eligible termination payments

Reducible deductions

54.(1) For the purposes of this section, a deduction is a **reducible deduction** if:

- (a) apart from this section, the deduction is allowable to Bank of South Australia Limited, or an associate of Bank of South Australia Limited, under section 82AAC of the *Income Tax Assessment Act 1936* in respect of a contribution to a fund made before the Proclaimed day for the purposes of making provision for superannuation benefits for, or for dependants of, an ex-employee of:
 - (i) the State Bank of South Australia; or
 - (ii) a tax-exempt designated subsidiary of the State Bank of South Australia; or
- (b) apart from this section, the deduction is allowable to Bank of South Australia Limited, or an associate of Bank of South Australia Limited, under the *Income Tax Assessment Act 1936* in respect of so much of a designated ETP made before the Proclaimed day in consequence of the termination of the employment of an ex-employee of:
 - (i) the State Bank of South Australia; or

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(ii) a tax-exempt designated subsidiary of the State Bank of South Australia;

as is not an approved early retirement scheme payment or a bona fide redundancy payment.

Reduction of reducible deductions

(2) A reducible deduction that, apart from this section, is allowable to a taxpayer for a year of income is reduced by the percentage worked out using the formula:

$$\frac{\text{Pre-transfer amount for year}}{\text{Total reducible deductions for year}} \times 100$$

where:

“Pre-transfer amount for year” means so much of the aggregate of the reducible deductions allowable to taxpayers for the year of income apart from this section as is attributable to the current actuarial value of liabilities that had accrued on the last day on which the ex-employee or ex-employees concerned were employed by the State Bank of South Australia, or by the tax-exempt designated subsidiary or tax-exempt designated subsidiaries, as the case requires;

“Total reducible deductions for year” means the aggregate of the reducible deductions allowable to taxpayers for the year of income apart from this section.

No deduction unless taxpayer obtains an actuary's certificate

(3) In spite of subsection (2), a reducible deduction is not allowable to a taxpayer for a year of income unless the taxpayer obtains a certificate by an authorised actuary with respect to the operation of this section. The certificate must be in a form approved in writing by the Commissioner. The taxpayer must obtain the certificate:

- (a) before the date of lodgment of the taxpayer's return of income of the year of income; or
- (b) within such further time as the Commissioner allows.

Definitions

(4) In this section:

“approved early retirement scheme payment” has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*;

“associate” has the same meaning as in section 26AAB of the *Income Tax Assessment Act 1936*;

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“authorised actuary” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

“bona fide redundancy payment” has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*;

“designated ETP” means an eligible termination payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) that is covered by paragraph (a) or (aa) of the definition of “eligible termination payment” in section 27A of that Act;

“employment” includes the holding of an office;

“ex-employee”:

- (a) in relation to the State Bank of South Australia—means a person who is, or has at any time been, the subject of an order under section 19 of the *State Bank (Corporatisation) Act 1994* of South Australia and who was employed by that Bank immediately before the order was made; and
- (b) in relation to a tax-exempt designated subsidiary of the State Bank of South Australia—means a person who is, or has at any time been, the subject of an order under section 19 of the *State Bank (Corporatisation) Act 1994* of South Australia and who was employed by the designated subsidiary immediately before the order was made;

“in consequence of the termination of employment” has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*;

“Proclaimed day” means a day to be fixed by Proclamation for the purposes of this definition;

“tax-exempt designated subsidiary of the State Bank of South Australia” means a designated subsidiary of the State Bank of South Australia that is exempt from tax.

PART 2.5—MODIFICATION OF THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986 RELATING TO THE RESTRUCTURING OF THE STATE BANK OF SOUTH AUSTRALIA

Object of Part

55. The object of this Part is to facilitate the restructuring of the State Bank of South Australia by modifying the effect of provisions of the *Fringe Benefits Tax Assessment Act 1986* relating to car fringe benefits.

Car benefits

56.(1) For the purposes of section 9 of the *Fringe Benefits Tax Assessment Act 1986*, Bank of South Australia Limited is taken not to be, and never to have been, an associate of:

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- (a) the State Bank of South Australia; or
- (b) a designated subsidiary of the State Bank of South Australia.

(2) In this section:

“designated subsidiary of the State Bank of South Australia” means a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia.

CHAPTER 3—OTHER MATTERS

PART 3.1—AMENDMENT OF THE BANKING ACT 1959

Division 1—Principal Act

Principal Act

57. In this Part, **“Principal Act”** means the *Banking Act 1959*¹.

Division 2—Amendments relating to the restructuring of foreign banks

Objects of Division

58. The objects of this Division are:

- (a) to empower the Governor-General to revoke a banking authority granted to a restructured foreign bank if the Governor-General is satisfied that it would be contrary to the national interest for the bank to continue carrying on banking business in Australia; and
- (b) to require a foreign bank to give the Treasurer reasonable notice of a proposal to restructure the bank.

Authority to carry on banking business

59. Section 9 of the Principal Act is amended by inserting after subsection (8B) the following subsection:

“(8C) The Governor-General may, on the recommendation of the Treasurer, revoke the authority granted to a foreign bank if:

- (a) the bank:
 - (i) enters into, or proposes to enter into, an arrangement or agreement for:
 - (A) any sale or disposal of its business by amalgamation or otherwise; or
 - (B) the carrying on of business in partnership with another bank; or
 - (ii) effects, or proposes to effect, a reconstruction of the bank; and
- (b) the Governor-General is satisfied that it would be contrary to the national interest for the bank to continue carrying on banking business in Australia.”.

Restructuring of banks

60. Section 63 of the Principal Act is amended:

- (a) by inserting in subsection (1) “(other than a foreign bank)” after “bank” (first occurring);
- (b) by adding at the end the following subsection:

“(4) A foreign bank must give the Treasurer reasonable notice, in writing, of any proposal that involves the bank:

- (a) entering into an arrangement or agreement for:
 - (i) any sale or disposal of its business by amalgamation or otherwise; or
 - (ii) the carrying on of business in partnership with another bank; or
- (b) effecting a reconstruction of the bank.”.

Division 3—Amendment relating to prosecution of offences

Object of Division

61. The object of this Division is to abolish the rule requiring the Treasurer’s consent for the prosecution of offences against the Principal Act.

Repeal of section 70

62. Section 70 of the Principal Act is repealed.

PART 3.2—AMENDMENT OF THE FINANCIAL TRANSACTION REPORTS ACT 1988

Object of Part

63. The object of this Part is to facilitate the transfer of accounts between banks by requiring or authorising the transfer of certain records relating to those accounts.

Principal Act

64. In this Part, “**Principal Act**” means the *Financial Transaction Reports Act 1988*².

Insertion of new sections

65. After section 23 of the Principal Act the following sections are inserted:

Active bank accounts transferred to another bank—obligations of banks in relation to records of information

When section applies

“23A.(1) This section applies to a record of information if:

- (a) the record is in the possession of a bank (the ‘**transferor bank**’) in fulfilment of an obligation imposed on the transferor bank by subsection 23(1) or (7); and
- (b) the record relates wholly or partly to an account (the ‘**transferred account**’) that has been, or is proposed to be, transferred to another bank (the ‘**transferee bank**’) under:
 - (i) a law of the Commonwealth or of a State or Territory; or
 - (ii) an arrangement between the transferor bank and the transferee bank.

Transferor bank to give records to transferee bank

“(2) The transferor bank must comply with whichever of the following rules is applicable:

- (a) if the record relates wholly to the transferred account—the transferor bank must give the record to the transferee bank within the 120-day period beginning 30 days before the transfer;
- (b) if the record relates partly to the transferred account and partly to an account that is not so transferred or proposed to be so transferred—the transferor bank must:
 - (i) make a copy of so much of the record as relates to the transferred account; and
 - (ii) give the copy to the transferee bank;within the 120-day period beginning 30 days before the transfer.

Offence

“(3) A person who intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Transferor bank released from obligations under section 23

“(4) If the transferor bank complies with subsection (2) of this section in relation to the record, the transferor bank does not contravene section 23 in relation to so much of the record as relates to the transferred account.

Obligations of transferee bank—section 23

“(5) If the transferee bank is given a document under subsection (2) of this section, section 23 applies to the transferee bank in relation to the document as if the document were a record made or obtained by the transferee bank in the course of obtaining account information or signatory information about the transferred account.

*Certain records to be treated as identification records in the hands
of the transferee bank*

“(6) If the transferee bank is given a document under subsection (2) of this section, section 20A applies to the transferee bank in relation to the document as follows:

- (a) if the document (or its original) was covered by paragraph 20A(1)(a)—as if the document were an identification reference for the signatory to the transferred account;
- (b) if the document (or its original) was covered by subparagraph 20A(1)(b)(i)—as if:
 - (i) the transferee bank had carried out the prescribed verification procedure (within the meaning of that subparagraph) to identify the signatory to the transferred account; and
 - (ii) the document were a record of that procedure;
- (c) if the document (or its original) was covered by subparagraph 20A(1)(b)(ii)—as if:
 - (i) the transferee bank had carried out a verification procedure to identify the signatory to the transferred account; and
 - (ii) the procedure had been approved by the Director for the transferee bank; and
 - (iii) the document were a record of that procedure.

Definition

“(7) In this section:

‘**record**’ includes a copy of a record.

Closed bank accounts transferred to another bank—obligations of banks in relation to records of information

When section applies

“23B.(1) This section applies to a record of information if:

- (a) the record is in the possession of a bank (the ‘**transferor bank**’) in fulfilment of an obligation imposed on the transferor bank by subsection 23(1) or (7); and
- (b) the record relates wholly or partly to a closed account; and
- (c) the transferor bank complies with an obligation imposed on it under subsection 23A(2) in relation to another bank (the ‘**transferee bank**’) during the 120-day period mentioned in that subsection; and
- (d) the transferor bank and the transferee bank agree in writing that so much of the record as relates to the closed account should be transferred by the transferor bank to the transferee bank during that 120-day period.

Transferor bank may give records to transferee bank

“(2) The transferor bank may:

- (a) if the record relates wholly to the closed account—give the record to the transferee bank within that 120-day period; or
- (b) if the record relates partly to the closed account and partly to some other account (whether active or otherwise):
 - (i) make a copy of so much of the record as relates to the closed account; and
 - (ii) give the copy to the transferee bank;within that 120-day period.

Transferor bank released from obligations under section 23

“(3) If the transferor bank gives a document to the transferee bank under subsection (2) of this section, the transferor bank does not contravene section 23 in relation to so much of the document as relates to the closed account.

Obligations of transferee bank—section 23

“(4) If the transferee bank is given a document under subsection (2) of this section, section 23 applies to the transferee bank in relation to the document as if the document were a record made or obtained by the transferee bank in the course of obtaining account information or signatory information about the closed account.

Certain records to be treated as identification records in the hands of the transferee bank

“(5) If the transferee bank is given a document under subsection (2) of this section, section 20A applies to the transferee bank in relation to the document as follows:

- (a) if the document (or its original) was covered by paragraph 20A(1)(a)—as if the document were an identification reference for the signatory to the closed account;
- (b) if the document (or its original) was covered by subparagraph 20A(1)(b)(i)—as if:
 - (i) the transferee bank had carried out the prescribed verification procedure (within the meaning of that subparagraph) to identify the signatory to the closed account; and
 - (ii) the document were a record of that procedure;
- (c) if the document (or its original) was covered by subparagraph 20A(1)(b)(ii)—as if:

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- (i) the transferee bank had carried out a verification procedure to identify the signatory to the closed account; and
- (ii) the procedure had been approved by the Director for the transferee bank; and
- (iii) the document were a record of that procedure.

Definition

“(6) In this section:
‘record’ includes a copy of a record.”.

**PART 3.3—AMENDMENT OF THE PROCEEDS OF
CRIME ACT 1987**

Object of Part

66. The object of this Part is to facilitate the transfer of accounts between banks by requiring or authorising the transfer of certain documents relating to those accounts.

Principal Act

67. In this Part, **“Principal Act”** means the *Proceeds of Crime Act 1987*.

Insertion of new sections

68. After section 78 of the Principal Act the following sections are inserted:

Active bank accounts transferred to another bank—obligations of banks in relation to documents

When section applies

“78A.(1) This section applies to a document if:

- (a) the document is in the possession of a bank (the **‘transferor bank’**) in fulfilment of an obligation imposed on the transferor bank by subsection 77(1), (2) or (3) or 78(1); and
- (b) the document relates to an account (the **‘transferred account’**) that has been, or is proposed to be, transferred to another bank (the **‘transferee bank’**) under:
 - (i) a law of the Commonwealth or of a State or Territory; or
 - (ii) an arrangement between the transferor bank and the transferee bank.

Transferor bank to give documents to transferee bank

“(2) The transferor bank must give the document to the transferee bank within the 120-day period beginning 30 days before the transfer.

Offence

“(3) A person who intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Transferor bank released from obligations under sections 77 and 78

“(4) If the transferor bank complies with subsection (2) of this section in relation to the document, the transferor bank does not contravene section 77 or 78 in relation to the document.

Obligations of transferee bank—sections 77 and 78

“(5) If the transferee bank is given a document under subsection (2) of this section, this division applies to the transferee bank in relation to the document as follows:

- (a) if the document was covered by subsection 77(1) or 78(1)—as if the document were an essential customer generated financial transaction document in relation to the transferee bank;
- (b) if the document was covered by subsection 77(2)—as if the document were a customer generated financial transaction document in relation to the transferee bank and were not an essential customer generated financial transaction document;
- (c) if the document was covered by subsection 77(3)—as if the document were a financial transaction document in relation to the transferee bank and were a document:
 - (i) that is not a customer generated financial transaction document; and
 - (ii) whose retention is necessary to preserve a record of the financial transaction concerned;
- (d) in any case—as if the minimum retention period applicable to the document were the period of 7 years after the day on which the transferred account is closed.

Definition

“(6) In this section:

‘**document**’ includes a copy of a document.

Closed bank accounts transferred to another bank—obligations of banks in relation to documents

When section applies

“78B.(1) This section applies to a document if:

- (a) the document is in the possession of a bank (the ‘**transferor bank**’) in fulfilment of an obligation imposed on the transferor bank by subsection 77(1), (2) or (3) or 78(1); and

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- (b) the document relates to a closed account; and
- (c) the transferor bank complies with an obligation imposed on it under subsection 78A(2) in relation to another bank (the ‘**transferee bank**’) during the 120-day period mentioned in that subsection; and
- (d) the transferor bank and the transferee bank agree in writing that the document should be transferred by the transferor bank to the transferee bank during that 120-day period.

Transferor bank may give documents to transferee bank

“(2) The transferor bank may give the document to the transferee bank within that 120-day period.

Transferor bank released from obligations under sections 77 and 78

“(3) If the transferor bank gives a document to the transferee bank under subsection (2) of this section, the transferor bank does not contravene section 77 or 78 in relation to the document.

Obligations of transferee bank—sections 77 and 78

“(4) If the transferee bank is given a document under subsection (2) of this section, this division applies to the transferee bank in relation to the document as follows:

- (a) if the document was covered by subsection 77(1) or 78(1)—as if the document were an essential customer generated financial transaction document in relation to the transferee bank;
- (b) if the document was covered by subsection 77(2)—as if the document were a customer generated financial transaction document in relation to the transferee bank and were not an essential customer generated financial transaction document;
- (c) if the document was covered by subsection 77(3)—as if the document were a financial transaction document in relation to the transferee bank and were a document:
 - (i) that is not a customer generated financial transaction document; and
 - (ii) whose retention is necessary to preserve a record of the financial transaction concerned;
- (d) in any case—as if the minimum retention period applicable to the document were the period of 7 years after the day on which the closed account was closed.

Definition

“(5) In this section:
‘**document**’ includes a copy of a document.”.

PART 3.4—AMENDMENT OF THE RESERVE BANK ACT 1959

Object of Part

69. The object of this Part is to allow the Reserve Bank Board to grant leave of absence to a member of the Board.

Principal Act

70. In this Part, “**Principal Act**” means the *Reserve Bank Act 1959*⁴.

Termination of appointment

71. Section 18 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(d) “Treasurer” and substituting “Board in accordance with section 18A”;
- (b) by inserting in paragraph (1)(e) “subsection 18A(3) or” after “under”.

Insertion of new section

72. After section 18 of the Principal Act the following section is inserted:

Leave of absence

“18A.(1) This section applies to a member appointed under paragraph 14(1)(d).

“(2) The Board may grant to a member leave of absence from a meeting of the Board.

“(3) A member must not take part in a decision of the Board granting, or refusing to grant, leave to the member.”.

Application

73. The amendments made by this Part apply in relation to meetings of the Board held after the commencement of this section.

Transitional—pre-commencement grant of leave of absence

74.(1) This section applies if the Treasurer made a decision under paragraph 18(1)(d) of the Principal Act before the commencement of this section to grant leave of absence from a meeting to be held after the commencement of this section.

(2) The decision has effect, after the commencement of this section, as if it were a decision of the Board made under section 18A of the Principal Act as amended by this Act.

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NOTES

Banking Act 1959

1. No. 6, 1959, as amended. For previous amendments, see No. 127, 1965; No. 93, 1966; No. 84, 1967; Nos. 116, 193 and 216 (as amended by No. 20, 1974), 1973; No. 132, 1974; No. 156 (as amended by No. 78, 1978), 1977; No. 19, 1979; No. 80, 1982; No. 76, 1984; No. 166, 1986; No. 105, 1987; No. 129, 1989; No. 118, 1990; No. 210, 1991; and No. 193, 1992.

Financial Transaction Reports Act 1988

2. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990; Nos. 28, 122, 123 and 188, 1991; and No. 164, 1992.

Proceeds of Crime Act 1987

3. No. 87, 1987, as amended. For previous amendments, see No. 120, 1987; No. 120, 1988; Nos. 28, 120 and 123, 1991; and Nos. 164 and 166, 1992.

Reserve Bank Act 1959

4. No. 4, 1959, as amended. For previous amendments, see No. 96, 1965; No. 93, 1966; Nos. 118 and 216, 1973; No. 36, 1978; No. 155, 1979; No. 70, 1980; No. 122 (as amended by No. 193, 1985), 1981; Nos. 63 and 76, 1984; No. 65, 1985; No. 166, 1986; No. 23, 1988; No. 129, 1989; No. 118, 1990; and No. 193, 1992.

[*Minister's second reading speech made in—
Senate on 24 March 1994
House of Representatives on 8 June 1994*]