



# STATE BANK (CORPORATISATION) ACT 1994

No. 17 of 1994

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**ELIZABETHAE II REGINAE**

A.D. 1994

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No. 17 of 1994

An Act to provide for the transfer of part of the undertaking of the State Bank of South Australia to a company formed to carry on the business of banking under the law of the Commonwealth; to make consequential amendments to the State Bank of South Australia Act 1983; to make consequential amendments to the Commercial and Private Agents Act 1986, the Government Financing Authority Act 1982, the Industrial Relations Act (S.A.) 1972, the Land Agents, Brokers and Valuers Act 1973, the Legal Practitioners Act 1981, the Local Government Act 1934, the Oaths Act 1936, the Public Finance and Audit Act 1987, the State Supply Act 1985 and the Trustee Act 1936; and for other purposes.

[Assented to 12 May 1994]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *State Bank (Corporatisation) Act 1994*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. (1) In this Act—

“appointed day” means a day fixed as the appointed day by proclamation under this section;

“asset” means property including property held in a fiduciary capacity;

“BSAL” means the public company with the name “Bank of South Australia Limited” formed under the *Corporations Law*;

“CEO” of BSAL means the chief executive officer of BSAL (however described) or a delegate of the chief executive officer;

**“corresponding law”** means a law of another State or a Territory providing for the transfer of assets and liabilities between—

- (a) SBSA or SBSA subsidiaries; and
- (b) BSAL;

**“document”** includes any disc, tape or other medium in which information is stored;

**“guarantee”** includes indemnity;

**“instrument”** includes a legislative instrument and a judgment, order or process of a court;

**“land”** includes an estate or interest in land;

**“legal proceedings”** includes an arbitration and an administrative proceeding;

**“liability”** means a present, future or contingent liability (arising either at law or in equity) and includes a duty or non-pecuniary obligation;

**“property”** means real or personal property and includes—

- (a) a chose in action; and
- (b) a present, future or contingent right, privilege, interest or power;

**“SBSA”** means the State Bank of South Australia or, according to the context, that body as continued in existence under the name the “South Australian Asset Management Corporation”;

**“SBSA subsidiary”** or **“subsidiary”** means—

- (a) a company specified in Schedule 1; and
- (b) any company classified by proclamation under this section as an SBSA subsidiary;

**“security”** means—

- (a) a mortgage, charge, lien, or pledge; or
- (b) a guarantee; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability;

**“transfer period”** means the period beginning on the commencement of this Act and ending when no further order for the transfer of assets or liabilities may be made under this Act (*see section 7(2)*);

**“transferred asset”** means an asset transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under Part 4 or a corresponding law;

**“transferred liability”** means a liability transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under Part 4 or a corresponding law.

(2) The Governor may, by proclamation—

- (a) fix a day as the appointed day for the purposes of this Act; and
- (b) classify a company as an SBSA subsidiary for the purposes of this Act; and
- (c) vary or revoke a proclamation under this subsection.

*Note: For definition of divisional penalties see Appendix.*

#### **Territorial application of Act**

4. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

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**PART 2**  
**PROVISION OF CAPITAL TO BSAL**

**Capital subscription, etc.**

5. (1) The Treasurer may—

- (a) subscribe capital to BSAL; or
- (b) advance loan capital to BSAL; or
- (c) transfer non-pecuniary assets of the Crown to BSAL.

(2) Except as otherwise determined by the Treasurer, capital subscriptions and advances are to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(3) The Treasurer may exercise any of the above powers on conditions the Treasurer considers appropriate, which may, for example, include conditions providing for the issue of shares to the Treasurer.

(4) An instrument to give effect to a transaction under this section is exempt from stamp duty.

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**PART 3**  
**BSAL'S RELATIONSHIP WITH CROWN**

**Relationship with Crown**

**6. BSAL—**

- (a)* is not an instrumentality or agency of the Crown; and
- (b)* does not have the privileges and immunities of the Crown; and
- (c)* does not represent the Crown; and
- (d)* is not a public or government authority.

**PART 4**  
**TRANSFER OF ASSETS AND LIABILITIES TO BSAL**

**Transfer of assets and liabilities to BSAL**

7. (1) The Treasurer may, by order in writing, transfer assets or liabilities (or both) of SBSA or an SBSA subsidiary to BSAL.

(2) An order under this section must be made before, or within the period of six months beginning on, the appointed day (but this period may be reduced by proclamation under this section).

(3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.

(4) An order under this section may be varied or revoked by the Treasurer by further order in writing made before the order takes effect.

(5) A transfer of an asset or liability under this section operates by force of this Act and despite the provisions of any other law or instrument.

(6) The transfer of a liability under this section operates to discharge the body corporate from which the liability was transferred from the liability.

(7) The Governor may, by proclamation, reduce the period within which an order under this section must be made.

**Conditions of transfer**

8. (1) The Treasurer may, by order in writing, fix the conditions on which assets or liabilities are transferred to BSAL under this Act or a corresponding law.

(2) An order under this section must be made within the transfer period and may be varied or revoked by the Treasurer by further order in writing made within that period.

(3) The conditions of transfer may, for example, do one or more of the following:

- (a) where a transferred asset is trust property each beneficiary of which is SBSA or an SBSA subsidiary, provide that the property is transferred to BSAL free of the trust;
- (b) assign a value to particular transferred assets, or transferred assets of a particular class;
- (c) assign a value to particular transferred liabilities, or transferred liabilities of a particular class;
- (d) assign a net value to particular transferred assets and liabilities, or transferred assets and liabilities of particular classes;
- (e) impose on the transferee of assets, or assets and liabilities, a liability (in terms set out in the order) to the body from which transfer is made reflecting the value or net value assigned by the Treasurer to the assets, or the assets and liabilities.



**Transferred assets free of statutory trust in favour of Crown**

9. A transferred asset is not subject to any statutory trust in favour of the Crown arising under the *State Bank of South Australia Act 1983*.

**Indemnity if transfer and discharge of liability not recognised under other law**

10. If—

- (a) the transfer of a transferred liability to BSAL and the consequent discharge from the liability is not recognised under the law of a place outside South Australia; and
- (b) the body corporate from which the liability is transferred is required under the law of that place to make a payment in satisfaction of the liability,

the body is entitled to be indemnified by BSAL for the payment.

**Transitional provisions**

11. The following transitional provisions apply in relation to transferred assets and liabilities:

- (a) if an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the instrument or other document or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability)—
  - (i) a reference to SBSA or an SBSA subsidiary is to be construed as a reference to BSAL; and
  - (ii) a reference to a branch, office, or agency of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding branch, office, or agency of BSAL, or a branch, office or agency designated by the CEO of BSAL as the corresponding branch, office or agency; and
  - (iii) a reference to an officer of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding officer of BSAL or an officer designated by the CEO of BSAL as the corresponding officer; and
- (b) the relationship of banker and customer existing between SBSA and a customer in relation to a transferred asset or liability immediately before the transfer took effect continues between BSAL and the customer after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer; and
- (c) an instruction, order, mandate, authority or notice given to SBSA or an SBSA subsidiary before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to BSAL; and
- (d) if a security held by SBSA or an SBSA subsidiary is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability—

- (i) the security is available to BSAL as security for the discharge of the liabilities to which it relates including, where the security extends to future liabilities, any such liabilities incurred after the transfer; and
  - (ii) BSAL is entitled to the same rights and priorities and subject to the same liabilities in relation to the security as those to which SBSA or the SBSA subsidiary would have been entitled or subject if there had been no transfer; and
- (e) BSAL is entitled to possession of all documents to which SBSA or an SBSA subsidiary was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other asset or liability that is not transferred; and
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by SBSA, is (if SBSA's liability under the instrument or order is a transferred liability) payable by BSAL in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by BSAL; and
- (g) a cheque drawn on an account transferred to BSAL is, although expressed to be drawn on the account formerly at SBSA, taken to have been drawn on the account at BSAL; and
- (h) if an account in respect of which a credit or debit card was issued by SBSA or an SBSA subsidiary is transferred, the card is taken to have been issued by BSAL and to be the property of BSAL; and
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, BSAL may exercise those rights without giving rise to any liability on the part of the body corporate from which the asset was transferred for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (j) BSAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from SBSA or an SBSA subsidiary as SBSA or the SBSA subsidiary would have had if there had been no transfer; and
- (k) legal proceedings in respect of a transferred asset or liability commenced by or against SBSA or an SBSA subsidiary must (subject to discontinuance) be continued and completed by or against BSAL; and
- (l) in legal proceedings relevant to a transferred asset or liability—
- (i) BSAL will have the same rights and privileges as SBSA or the SBSA subsidiary would have had if there had been no transfer; and
  - (ii) a document that could have been given in evidence by or against SBSA or an SBSA subsidiary if there had been no transfer may be given in evidence by or against BSAL; and

- (m) BSAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the name of the body corporate from which the asset or liability was transferred to BSAL.

#### **Direct payment orders to accounts transferred to BSAL**

12. An instruction, order or mandate given to a bank or other financial institution for payments to be made from an account at the bank or other institution to an account at SBSA or an SBSA subsidiary is, if the account at SBSA or the SBSA subsidiary is transferred to BSAL under this Act or a corresponding law, taken to be an instruction, order or mandate for the payments to be made to the account at BSAL.

#### **Registering authorities to note transfer**

13. (1) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions—

- (a) must, on the application of BSAL, register or record in the appropriate manner the transfer to BSAL of any transferred asset or liability; and
- (b) must register an instrument in registrable form, executed by BSAL, relating to property that is a transferred asset even though BSAL is not registered as the proprietor of the property.

(2) If property is registered in the name of SBSA or an SBSA subsidiary, the Registrar-General or other registering authority may register a dealing with the property by the body corporate in whose name the property is registered or by BSAL without being concerned to enquire whether the property is or is not a transferred asset.

#### **Exclusion of obligation to enquire**

14. (1) A person dealing with SBSA or an SBSA subsidiary is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.

(2) A person dealing with BSAL is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.

(3) If SBSA or an SBSA subsidiary was entitled to property before the appointed day, and after that day, SBSA or the SBSA subsidiary, or BSAL, purports to deal with the property as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.

(4) However, this section does not validate a transaction if the party dealing with SBSA, the SBSA subsidiary or BSAL has actual notice of the deficiency of title, or acts fraudulently.

#### **Caveat in respect of land not transferred to BSAL**

15. (1) SBSA or an SBSA subsidiary may lodge with the Registrar-General a caveat in respect of land under the provisions of the *Real Property Act 1886* that—

- (a) is land of which that body is the registered proprietor; and
- (b) is not a transferred asset.

(2) A caveat lodged under this section in respect of land may forbid the registration of any dealing with the land by BSAL without the consent in writing of SBSA or the SBSA subsidiary concerned.

(3) Section 191 of the *Real Property Act 1886* applies to a caveat lodged under this section but subject to the provisions of this section.

#### **Re-transfer of assets or liabilities**

16. (1) The Treasurer may, by order in writing, re-transfer assets or liabilities (or both) from BSAL to SBSA or an SBSA subsidiary.

(2) An order under this section must be made within the transfer period.

(3) The re-transfer of a liability under this section operates to discharge BSAL from the liability.

(4) The provisions of this Act relating to transferred assets or liabilities apply in a reciprocal way in relation to assets or liabilities re-transferred under this section with such modifications and exclusions as are necessary in the context and such further modifications and exclusions as are prescribed by regulation.

#### **Stamp and other duties or taxes**

17. (1) No stamp duty, financial institutions duty or debits tax is payable under a law of the State in respect of—

- (a) any transfer effected by order of the Treasurer under this Act; or
- (b) any other transfer or assignment of assets or liabilities by SBSA or an SBSA subsidiary to BSAL; or
- (c) an application or entry made, or receipt given or anything else done for a purpose connected with, or arising out of, such a transfer or assignment.

(2) No person has an obligation under the *Stamp Duties Act 1923*, the *Financial Institutions Duty Act 1983* or the *Debits Tax Act 1990*—

- (a) to lodge a statement or return relating to a matter referred to in subsection (1); or
- (b) to include in a statement or return a record or information relating to such a matter.

#### **Evidence**

18. (1) A certificate issued by the Treasurer certifying that an asset or liability is or is not a transferred asset or liability is to be accepted in any legal proceedings as conclusive evidence of the matter so certified.

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

**PART 5  
STAFF**

**Transfer of staff**

19. (1) The Treasurer may, by order in writing, transfer an employee of SBSA or an SBSA subsidiary to a position or another position in the employment of BSAL or SBSA.

(2) An order under this section must be made before, or within the period of six months beginning on, the appointed day (but this period may be reduced by proclamation under this section).

(3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.

(4) An order under this section may be varied or revoked by the Treasurer by further order in writing made before the order takes effect.

(5) A transfer under this section does not—

(a) affect the employee's remuneration; or

(b) interrupt continuity of service; or

(c) constitute a retrenchment or redundancy.

(6) A transfer under this section must not involve—

(a) any reduction in the employee's status; or

(b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or

(c) any change in the employee's place of employment unless the new place of employment is within reasonable commuting distance from the employee's former place of employment.

(7) For the purposes of subsection (6), responsibility for the same or similar business operations that are smaller in scope as a result of a reduction of the business operations, or responsibility for a lesser number of staff, does not, of itself, constitute a reduction in status.

(8) A person who is transferred from one body corporate to another under this section is taken to have accrued as an employee of the body to which the person is transferred an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the body from which he or she was transferred.

(9) A transfer under this section does not give rise to a right to any remedy or entitlement arising from cessation or change of employment.

(10) For the purposes of construing a contract applicable to a transferred employee, a reference to the body from which the person is transferred is to be construed as a reference to the body to which the person is transferred.

(11) The Treasurer may, by order in writing, re-transfer employees from the employment of BSAL to SBSA or any SBSA subsidiary.

(12) An order under subsection (11) must be made within the period referred to in subsection (2).

(13) The provisions of this Act relating to transferred employees (including the provisions relating to superannuation) apply in a reciprocal way in relation to employees re-transferred under subsection (11) with such modifications and exclusions as are necessary in the context and such further modifications and exclusions as are prescribed by regulation.

(14) The Governor may, by proclamation, reduce the period within which an order under this section must be made.

(15) In this section "employee" includes officer.

**PART 6  
GUARANTEE**

**Government guarantee**

20. (1) The Treasurer guarantees that BSAL will satisfy—
- (a) liabilities of BSAL on deposits, being deposits at call or on a period of notice, transferred from SBSA to BSAL together with interest accrued on the deposits up to the transfer and further interest accrued on the deposits up to the end of the guarantee period; and
  - (b) liabilities of BSAL on deposits, being deposits at call or on a period of notice, made with BSAL within the guarantee period, but only to the extent of \$1 000 000 in respect of any one account together with interest accrued on the deposits (to the extent that they are guaranteed) up to the end of the guarantee period; and
  - (c) liabilities of BSAL on term deposits transferred from SBSA to BSAL together with interest accrued on the deposits up to the transfer and further interest accrued on the deposits until payment or satisfaction; and
  - (d) liabilities of BSAL on term deposits maturing no later than 30 June 1999 made with BSAL within the guarantee period, but only to the extent of \$1 000 000 in respect of any one account together with interest accrued on the deposits (to the extent that they are guaranteed) until payment or satisfaction; and
  - (e) transferred liabilities arising on negotiable instruments, bank guarantees or letters of credit; and
  - (f) such other transferred liabilities and liabilities incurred by BSAL within the guarantee period as are specified by the Treasurer, by notice published in the *Gazette* within the transfer period, on terms and conditions fixed in the notice.
- (2) Any money required under the guarantee is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).
- (3) Subject to subsections (4) and (5), the guarantee expires on 1 July 1999.
- (4) If a written demand is made not later than 30 June 1999 for payment of a guaranteed liability falling due on or before that date, the guarantee continues in relation to the liability.
- (5) If a written demand is made for payment of a guaranteed liability not later than six months after the liability falls due, the guarantee continues in relation to the liability even though—
- (a) the demand is made on or after 1 July 1999; or
  - (b) the liability falls due on or after 1 July 1999.

(6) For the purposes of subsections (4) and (5)—

- (a) a guaranteed liability is taken to fall due when the person in whose favour the liability exists first becomes entitled to require payment in discharge of the liability; and
- (b) where a guaranteed liability falls due by virtue of service of a written notice or demand, that notice or demand constitutes a written demand for payment of the liability.

(7) The Treasurer may, after consultation with the board of directors of BSAL, by order in writing made within the transfer period—

- (a) fix charges to be paid by BSAL in respect of the guarantee as it relates to specified liabilities of BSAL;
- (b) impose restrictions binding on BSAL as to—
  - (i) the acceptance of deposits by BSAL within the guarantee period; or
  - (ii) the variation by agreement at any time of the terms or conditions governing any guaranteed liability.

(8) BSAL may agree with a depositor that a deposit is not to be subject to the guarantee and, in that event, this section does not apply to the deposit.

(9) For the purposes of this section, payments or transfers of money from an account at BSAL containing a deposit guaranteed under this section are taken to diminish the guaranteed liability before any liability not so guaranteed.

(10) If the Treasurer makes a payment to a person under the guarantee, the Treasurer is subrogated, to the extent of the payment, to the person's rights (including rights of priority as a creditor in a winding-up) in respect of the liability guaranteed.

(11) In this section—

“**deposits**” includes money on current account and the bonds known as *Term Bonds* issued from time to time by SBSA or BSAL, but does not include any other bond issue, note issue or other raising in the capital markets;

“**the guarantee period**” means the period of eight months beginning on the appointed day, or, if a longer period is fixed by regulation as the guarantee period, that period.



**PART 7**  
**REFERENCE OF BANKING POWER TO COMMONWEALTH**

**Reference of banking power to Commonwealth**

**21. (1)** The matter of State banking is referred to the Parliament of the Commonwealth, but only so that the reference operates—

- (a)* in relation to the banking business of BSAL to the extent (if any) that it constitutes State banking and is not otherwise included in the legislative power of the Parliament of the Commonwealth; and
- (b)* for a period from the commencement of this section until a day fixed by proclamation under this section as the day on which the reference is to terminate.

**(2)** However, this section does not confer power on the Parliament of the Commonwealth—

- (a)* to prohibit BSAL from carrying on banking business without holding an authority under the law of the Commonwealth or to provide for the granting of such an authority to BSAL; or
- (b)* to impose a restriction affecting the name in which BSAL may carry on business; or
- (c)* to provide for the sale or disposal of BSAL or any part of its undertaking, or for the merger or amalgamation of BSAL or any part of its undertaking; or
- (d)* to provide for the reconstruction of BSAL.

**(3)** If the Governor so declares by proclamation, the limitations imposed on the reference by subsection (2), or any such limitations as are specified in the proclamation, terminate on a day fixed by the proclamation for the purpose.

**(4)** The Governor may, by proclamation—

- (a)* fix a day as the day on which the reference under this section is to terminate; and
- (b)* declare that the limitations on the reference imposed by subsection (2), or any such limitations as are specified in the proclamation, are to terminate on a day fixed by the proclamation.

**PART 8  
MISCELLANEOUS**

**Exemption from stamp duty, etc.**

22. (1) The Treasurer may, by notice published in the *Gazette*, grant an exemption from stamp duty, financial institutions duty or debits tax in respect of—

- (a) a transaction involved in the winding up of a trust in which SBSA or an SBSA subsidiary is a beneficiary or discretionary object; or
- (b) the assignment of the beneficial interest, or a part of the beneficial interest, in a trust by or to SBSA or an SBSA subsidiary; or
- (c) a transaction involved in the winding up of a partnership of which SBSA or an SBSA subsidiary is a member; or
- (d) the assignment of an interest in a partnership by or to SBSA or an SBSA subsidiary; or
- (e) any assignment or other transaction involved in the winding up of the affairs of SBSA and the SBSA subsidiaries; or
- (f) an application or entry made, or receipt given, or anything else done for a purpose connected with, or arising out of, such an assignment or other transaction.

(2) No person has an obligation under the *Stamp Duties Act 1923*, the *Financial Institutions Duty Act 1983* or the *Debits Tax Act 1990*—

- (a) to lodge a statement or return relating to a matter referred to in subsection (1) in respect of which an exemption has been granted under that subsection; or
- (b) to include in a statement or return a record or information relating to such a matter.

**Dissolution of SBSA subsidiaries**

23. (1) The Governor may, by proclamation, dissolve an SBSA subsidiary.

(2) If an SBSA subsidiary is dissolved under this section, its assets and liabilities, as they existed immediately before the time of dissolution, are vested in SBSA.

**Act overrides other laws**

24. This Act has effect despite the provisions of the *Real Property Act 1886* or any other law.

**Effect of things done or allowed under Act**

25. Nothing done or allowed under this Act—

- (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, understanding or undertaking; or

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- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
  - (d) constitutes a civil or criminal wrong; or
  - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
  - (f) releases a surety or other obligee wholly or in part from an obligation.

**Regulations**

26. The Governor may make such regulations as are contemplated by this Act or necessary or expedient for the purposes of this Act.

**SCHEDULE 1**  
*SBSA subsidiaries*

Aleppo Pty Ltd	Leasefin Corporation Ltd
Altake Pty Ltd	Leipa Pty Ltd
Altav Pty Ltd	Malary Pty Ltd
Altheme Pty Ltd	Maybank Pty Ltd
Altrans Carpark Pty Ltd	Maywood Pty Ltd
Aquamarine Mortgage Ltd	Mindarie Keys Pty Ltd
ARM Equipment Finance Pty Ltd	Miraloma Pty Ltd
ARM Wholesale Finance Ltd	Mortgage Acceptance Nominees Pty Ltd
Asset Risk Management Ltd	NAFA Fleet Management Pty Ltd
Balhi Pty Ltd	Namtok Pty Ltd
Beachmont Pty Ltd	NCSB Resource Finance Ltd
Beacon Credit Corporation Ltd	91 King William Street (No1) Pty Ltd
Beneficial Finance Corporation Ltd	91 King William Street (No2) Pty Ltd
Beneficial Leasing Pty Ltd	Ninety Seven King William Street (No1) Pty Ltd
Beneficial Securities Pty Ltd	Ollago Pty Ltd
Biddenham Pty Ltd	Pacific Rim Leisure Pty Ltd
Bloodstock Management International Pty Ltd	Pazadore Finance Pty Ltd
Bluefile Pty Ltd	Pazadore Pty Ltd
Bondi Investments Pty Ltd	Pegasus Leasing Ltd
Brinim Ltd	Pukka Ltd
Bulwark Pty Ltd	Porterstan Nominees Pty Ltd
Campbell Capital Ltd	Ravlick Holdings Ltd
Campbell Capital Investors Pty Ltd	Sanyasi Pty Ltd
Campbell Capital Nominees Pty Ltd	SBSA Leasing Pty Ltd
Campbell Capital Properties Pty Ltd	SBSA Management Services Ltd
Carcoar Pty Ltd	SBSA Training Systems Pty Ltd
Centrelease Equipment Finance Pty Ltd	SGIC Finance Pty Ltd
Centrelease Equipment Rentals Ltd	South State Finance Pty Ltd
Centrelease Finance Corporation Pty Ltd	Southstate Corporate Holdings Ltd.
Collins St. Properties Pty Ltd	Southstate Investments Ltd
Cordington Pty Ltd	Southstate Leasing Ltd
DPI Pty Ltd	Southstate Properties Ltd
Dubete Pty Ltd	Springwood Pty Ltd
Dynour Pty Ltd	Sturt Finance Pty Ltd
Eloin Pty Ltd	Tacking Point Downs Pty Ltd
Export Park Pty Ltd	The Finance Company of SA Ltd
Fortina Pty Ltd	Tynjang Pty Ltd
Gaimop Pty Ltd	Village Resort Ltd
Gallian Pty Ltd	Village Resort Management Ltd
Gumflower Pty Ltd	Village Resort Vacations Ltd
Hudson and Wallace (Trading) Pty Ltd	Western Acceptance Holdings Ltd
Kabani Pty Ltd	Westralian Finance Corp Ltd
	Zanzibar Investment Pty Ltd

**SCHEDULE 2**  
*Superannuation*

**Definitions****1. In this schedule—**

"**age of retirement**" has the same meaning in relation to a State Scheme contributor as in the *Superannuation Act 1988*;

"**BFC Fund**" means the Beneficial Finance Corporation Limited Staff Superannuation Fund No. 2 constituted by the trust deed dated 30 July 1971 made between Beneficial Finance Corporation Limited and the then trustee of the Fund, as amended from time to time and in particular by the trust deed dated 29 May 1989 made by Beneficial Finance Corporation Limited;

"**BSAL Fund**" means the SBSA Fund as renamed by this schedule the "Bank of South Australia Superannuation Fund";

"**complying superannuation fund**" means a complying superannuation fund within the meaning of Part IX of the *Income Tax Assessment Act 1936* of the Commonwealth, as amended from time to time, other than the Fund under the *Superannuation Act 1988*;

"**date of retrenchment**", in relation to an employee, means the date on which the employee's employment ceases on account of retrenchment;

"**employee**" includes officer;

"**fixed establishment officer**" has the same meaning as in the Second Schedule of the *State Bank of South Australia Act 1983*;

"**interim period**" means the period beginning on the appointed day and ending on 30 June 1999;

"**packaged officer**" means an officer of SBSA or BSAL (as the case may be) who has agreed as part of the terms and conditions of his or her employment to be remunerated by reference to a total remuneration package reflecting the cost to the employer of cash salary, nominated benefits and associated fringe benefits tax;

**"SAAMC Fund"** means the BFC Fund as renamed by this schedule the "South Australian Asset Management Corporation Superannuation Fund";

**"salary"** of a contributor or employee means—

- (a) in the case of a State Scheme contributor (except a contributor whose accrued superannuation benefits are preserved)—the contributor's salary for the purpose of calculating contributions under the *Superannuation Act 1988* (expressed as an annual amount); or
- (b) in any other case—the employee's salary for the purposes of the trust deed governing the BSAL Fund or the SAAMC Fund, whichever of those Funds is the Fund of which the employee is a member (expressed as an annual amount);

**"SBSA Fund"** means the State Bank Superannuation Fund constituted by the trust deed dated 15 December 1987 made by SBSA;

**"State Scheme"** means the Scheme within the meaning of the *Superannuation Act 1988*;

**"State Scheme contributor"** means a contributor within the meaning of the *Superannuation Act 1988*;

**"Superannuation Board"** means the South Australian Superannuation Board;

**"transferred"** means transferred under Part 5 or a corresponding law.

#### **Bank of South Australia Superannuation Fund**

2. (1) On and from the appointed day—

- (a) the SBSA Fund is to have the name "Bank of South Australia Superannuation Fund" subject to any further change of name made by amendment of the trust deed governing the Fund; and
- (b) BSAL replaces SBSA as the Employer for the purposes of the governing rules of the BSAL Fund and will perform all the obligations that would have fallen due for performance by SBSA under the governing rules on or after the appointed day; and
- (c) a reference in the governing rules to SBSA is taken as a reference to BSAL.

(2) Nothing done by or under this Act constitutes an event bringing about the operation of clause 15 of the governing rules of the BSAL Fund.

**South Australian Asset Management Corporation Superannuation Fund**

3. (1) On and from the appointed day—

- (a) the BFC Fund is to have the name "South Australian Asset Management Corporation Superannuation Fund" subject to any further change of name made by amendment of the trust deed governing the Fund; and
- (b) BSAL is taken to be an Associated Employer within the meaning of the trust deed governing the SAAMC Fund and the provisions of the trust deed apply as if BSAL had been duly admitted as an Associated Employer under clause 8.01 of the trust deed.

**BSAL Fund members not transferred to BSAL**

4. (1) On the appointed day, an employee who—

- (a) is a member of the BSAL Fund; and
- (b) is not transferred to a position in the employment of BSAL,

is taken to have become a member of the SAAMC Fund if not already a member of that Fund.

(2) As soon as practicable after the appointed day, the trustee of the BSAL Fund must transfer the interest of the employee referred to in subclause (1) in the BSAL Fund (as determined by the trustee) to the SAAMC Fund for the benefit of the employee.

(3) On the transfer of the interest under subclause (2)—

- (a) the trustee of the BSAL Fund is discharged from its obligations as trustee of the BSAL Fund in respect of the employee concerned; and
- (b) the employee ceases to have any entitlement to a benefit from the BSAL Fund.

**SAAMC Fund members transferred to BSAL**

5. (1) An employee who—

- (a) is a member of the SAAMC Fund; and
- (b) is transferred to a position in the employment of BSAL,

is, on a day fixed by the Treasurer by order in writing, taken to have become a member of the BSAL Fund if not already a member of that Fund.

(2) As soon as practicable after the day referred to in subclause (1), the trustee of the SAAMC Fund must transfer the value of the employee's accrued benefit in the SAAMC Fund (as determined by the trustee), together with such additional amount as may be determined by SBSA, to the BSAL Fund for the benefit of the employee.

(3) On the transfer of the amount or amounts under subclause (2)—

(a) the trustee of the SAAMC Fund is discharged from its obligations as trustee of the SAAMC Fund in respect of the employee concerned; and

(b) the employee ceases to have any entitlement to a benefit from the SAAMC Fund.

#### **Fixed establishment officers**

6. (1) As soon as practicable after the appointed day, SBSA must transfer the accrued entitlement under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* of an employee who—

(a) is a fixed establishment officer; and

(b) has not been transferred to a position in the employment of BSAL,

to the SAAMC Fund for the benefit of the employee.

(2) As soon as practicable after the transfer of an employee who is a fixed establishment officer to a position in the employment of BSAL, SBSA must transfer the accrued entitlement of the employee under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* to the BSAL Fund for the benefit of the employee.

(3) On the transfer of the entitlement under subclause (1) or (2)—

(a) SBSA is discharged from its obligations under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* in respect of the employee concerned; and

(b) the employee ceases to have any further entitlement under clause 10 of that Schedule.

#### **Superannuation Act and State Scheme contributors**

7. (1) An employee of BSAL who, immediately before becoming an employee of BSAL, was a State Scheme contributor, may continue as a State Scheme contributor during the interim period.



(2) The Treasurer must, by order in writing, specify arrangements under which the employees of BSAL may continue as State Scheme contributors during the interim period and the Treasurer may, at any time, with the agreement of BSAL, vary the order by further order in writing.

(3) An order under subclause (2) is taken to be an arrangement between the Superannuation Board and BSAL under section 5(1) of the *Superannuation Act 1988* and, as such, may modify the provisions of that Act as authorised by section 5(1a) of that Act.

(4) The following provisions apply in relation to any arrangement under section 5(1) of the *Superannuation Act 1988* between the Superannuation Board and SBSA or BSAL (including an order under subclause (2)):

- (a) no such arrangement may have an effect that is inconsistent with the provisions of this schedule;
- (b) no variation of such an arrangement may have an effect that is inconsistent with the provisions of this schedule;
- (c) despite section 5(3) of the *Superannuation Act 1988*, no declaration may be made under that provision that benefits will cease accruing to State Scheme contributors in respect of employment with SBSA or BSAL.

(5) At any time during the interim period, an employee of SBSA or BSAL who is a State Scheme contributor may elect, by notice in writing to the Superannuation Board, that benefits under the *Superannuation Act 1988* cease accruing in respect of the State Scheme contributor and that either—

- (a) his or her accrued superannuation benefits under the *Superannuation Act 1988* will be preserved; or
- (b) his or her accrued superannuation benefits under the *Superannuation Act 1988* will be carried over to a complying superannuation fund nominated by him or her.

(6) On the making of an election under subclause (5)(a), the State Scheme contributor—

- (a) is taken, for the purposes of the *Superannuation Act 1988* (but for no other purpose), to have resigned from his or her employment and to have elected under section 28 or 39 of that Act (whichever may apply to the contributor) to preserve his or her accrued benefits; and
- (b) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—
  - (i) in the case of an employee of SBSA—a member of the SAAMC Fund; or
  - (ii) in the case of an employee of BSAL—a member of the BSAL Fund.

(7) On the making of an election under subclause (5)(b), a payment must be made as if it were a benefit under the *Superannuation Act 1988* on behalf of the State Scheme contributor to a complying superannuation fund nominated by the contributor of an amount calculated in accordance with clause 8.

(8) On a payment being made under subclause (7), the State Scheme contributor—

- (a) ceases to be a State Scheme contributor; and
- (b) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—
  - (i) in the case of an employee of SBSA—a member of the SAAMC Fund; or
  - (ii) in the case of an employee of BSAL—a member of the BSAL Fund; and
- (c) ceases to have any further entitlement under the *Superannuation Act 1988*.

(9) Subject to subclause (10), at the end of the interim period, an employee referred to in subclause (5) who has not made an election under that subclause—

- (a) ceases to accrue benefits under the *Superannuation Act 1988*; and
- (b) is taken, for the purposes of the *Superannuation Act 1988* (but for no other purpose), to have resigned from his or her employment and to have elected under section 28 or 39 of the *Superannuation Act 1988* (whichever may apply to the contributor) to preserve his or her accrued benefits; and

(c) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—

- (i) in the case of an employee of SBSA—a member of SAAMC Fund; or
- (ii) in the case of an employee of BSAL—a member of the BSAL Fund.

(10) Where at the end of the interim period an employee referred to in subclause (5) who has not made an election under that subclause is receiving a disability pension under section 30 or 36 of the *Superannuation Act 1988*, subclause (9) only applies to that employee on the day after the disability pension ceases, but does not apply at all where the disability pension ceases on or immediately before the termination of the employee's employment on the ground of invalidity.

**Amount of payment on behalf of State Scheme contributor to complying superannuation fund**

8. (1) The amount of the payment to be made on behalf of a State Scheme contributor under clause 7(7) as a result of an election under clause 7(5)(b) is to be calculated in accordance with this clause.

(2) Where the State Scheme contributor is a new scheme contributor under the *Superannuation Act 1988*, the amount is equal to the greater of the following:

- (a) the amount of the payment that would have been made had the contributor resigned at the date of his or her election under clause 7(5)(b) and had section 28(5) of the *Superannuation Act 1988* applied;
- (b) the amount calculated as the sum of—
  - (i) an employee component equivalent to the amount standing to the credit of the contributor's contribution account; and

(ii) the employer component calculated as follows:

$$\text{ERN} = (\text{K} \times \text{EC} \times \text{DF}) + \text{PSESS}$$

Where—

ERN is the employer component

**K** is-

(a) where the election under clause 7(5)(b) is made on or before 31 December 1994—1.2;

(b) in any other case—1.0

**EC** is the employer component that would have been calculated in terms of section 28(4) of the *Superannuation Act 1988*—

(a) had the contributor—

(i) resigned at the date of his or her election under clause 7(5)(b);  
and

(ii) elected to preserve his or her superannuation benefits under section 28 of the *Superannuation Act 1988*; and

(b) had a superannuation payment been made in accordance with section 28(2)(a) of the *Superannuation Act 1988* at the date of the contributor's election under clause 7(5)(b) as if he or she had reached the age of 60 years at that date

**DF** is the amount of 1 discounted at the rate of 3 per cent per annum for the number of years (including any fraction of a year measured in days) in the period from—

(a) the date of the election under clause 7(5)(b);

to

(b) the date of the employee's sixtieth birthday

**PSESS** is the amount standing to the credit of the contributor's account under section 32a(6) of the *Superannuation Act 1988*.

(3) Where the State Scheme contributor is an old scheme contributor under the *Superannuation Act 1988*, the amount is equal to the greater of the following:

(a) the amount calculated as follows:

$$TV = K \times CF \times 26.1 \times P \times DF$$

Where—

TV is the amount

K is—

(a) where the election under clause 7(5)(b) is made on or before 31 December 1994—1.2;

(b) in any other case—1.0

CF is—

(a) where the contributor's age of retirement is 60 years—10.5;

(b) where the contributor's age of retirement is 55 years—11.5

P is the amount of the pension (expressed as an amount per fortnight) that would have been payable—

(a) had the contributor—

(i) resigned at the date of his or her election under clause 7(5)(b); and

(ii) elected to preserve his or her accrued superannuation benefits under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is more than 120 months; and

(b) had a retirement pension commenced being paid in accordance with section 39(5)(a) of the *Superannuation Act 1988* from the date of the contributor's election under clause 7(5)(b) as if he or she had reached his or her age of retirement at that date

DF is the amount of 1 discounted at the rate of 3 per cent per annum for the number of years (including any fraction of a year measured in days) in the period from—

(a) the date of the election under clause 7(5)(b);

to

(b) the date on which the employee would reach his or her age of retirement;

(b) the amount that would have been calculated in accordance with section 39(3) and (4) of the *Superannuation Act 1988*—

(i) had the contributor—

(A) resigned at the date of his or her election under clause 7(5)(b); and

(B) elected to preserve his or her accrued superannuation benefits under section 39(2) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is less than 120 months; and

(ii) had a superannuation payment been made in accordance with section 39(2)(a) of the *Superannuation Act 1988* at the date of his or her election under clause 7(5)(b) as if he or she had reached the age of 60 years at that date.

**Supplementary contribution where State Scheme contributor elects prior to 31 December 1994**

9. (1) Where a State Scheme contributor who is not a packaged officer makes an election under clause 7(5)(b) on or before 31 December 1994—

(a) in the case of an employee of SBSA—he or she is entitled to receive an additional credit in the SAAMC Fund equal to the amount of the supplementary contribution determined in accordance with subclause (2); or

(b) in the case of an employee of BSAL—BSAL must make a supplementary contribution to the BSAL Fund for his or her benefit of an amount determined in accordance with subclause (2).

(2) The amount of the supplementary contribution will be equal to 20 per cent of the contributor's salary as at the date of the election under clause 7(5)(b).

**Retrenchment benefits for State Scheme contributors**

10. (1) This clause applies to an employee of SBSA or BSAL—

(a) who, at any time after the commencement of this Act, is or was a State Scheme contributor; and

(b) whose employment is terminated by retrenchment on or before 30 June 1999.

(2) Neither section 29 nor 35 of the *Superannuation Act 1988* applies to an employee to whom this clause applies.

(3) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is a new scheme contributor under the *Superannuation Act 1988*,

the employee may elect, by notice in writing to the Superannuation Board—

(c) to preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 28 of the *Superannuation Act 1988* as if he or she had resigned from employment; or

(d) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable in respect of the employee had the employee made an election under clause 7(5)(b) at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)(b) at the date of retrenchment.

(4) An employee referred to in subclause (3) who fails to make an election under that subclause (3) within three months after the date of retrenchment is taken to have made an election under subclause (3)(c).

(5) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has not reached the age of 45 years at the date of retrenchment,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 39 of the *Superannuation Act 1988* as if he or she had resigned from employment; or

(e) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable in respect of the employee had the employee made an election under clause 7(5)(b) at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)(b) at the date of retrenchment.

(6) An employee referred to in subclause (5) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (5)(d).



(7) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to receive a retrenchment pension in accordance with clause 11; or

(e) to—

(i) preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 39 of the *Superannuation Act 1988* as if he or she had resigned from employment (whether or not he or she is under 55 years of age); and

(ii) receive an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL; or

(f) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable on behalf of the employee had the employee made an election under clause 7(5)(b) at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)(b) at the date of retrenchment; and

(iii) an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL.

(8) An employee referred to in subclause (7) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (7)(e).

(9) Where an employee to whom this clause applies—

(a) has made an election under clause 7(5)(a); and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to forego his or her preserved benefits under the State Scheme and, in their place, to receive a retrenchment pension in accordance with clause 11; or

(e) to—

(i) retain his or her preserved superannuation benefits under the State Scheme; and

(ii) receive an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL.

(10) An employee referred to in subclause (9) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (9)(e).

(11) Where an employee to whom this clause applies—

- (a) has made an election under clause 7(5)(b); and
- (b) was prior to making that election an old scheme contributor under the *Superannuation Act 1988*; and
- (c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee is entitled to receive an additional retrenchment lump sum in accordance with clause 12—

- (d) in the case of an employee of SBSA—from SBSA; or
- (e) in the case of an employee of BSAL—from BSAL.

#### **Retrenchment pension for old scheme State Scheme contributors**

11. (1) This clause applies where a retrenchment pension is payable as a result of an election by a State Scheme contributor under clause 10(7)(d) or 10(9)(d).

(2) A retrenchment pension commences on a date determined by taking the date of retrenchment and adding to that date—

- (a) the number of days in the period of any entitlement to recreation leave in lieu of which a lump sum is paid on retrenchment to the contributor; and
- (b) the number of days in the period of notice in lieu of which a lump sum is paid on retrenchment to the contributor; and
- (c) the number of days in the period in respect of which a lump sum is paid to the contributor under a redeployment or redundancy agreement.

(3) Where, before the retrenchment pension commences, the contributor—

- (a) dies; or

- (b) satisfies the Superannuation Board that he or she has become totally and permanently incapacitated for work,

the benefits payable will be the benefits that would have been payable had the retrenchment pension commenced immediately before the contributor died or became totally and permanently incapacitated for work.

(4) Where a retrenchment pension is payable as a result of an election under clause 10(7)(d), the amount of the retrenchment pension is the same as the amount of the pension that would have been payable—

(a) had the contributor—

- (i) resigned at the date determined by taking the date of retrenchment and adding to that date the number of days in the period of any entitlement to recreation leave in lieu of which a lump sum is paid on retrenchment to the contributor; and
- (ii) elected to preserve his or her accrued superannuation benefits under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is more than 120 months; and

(b) had a retirement pension commenced being paid in accordance with section 39(5)(a) of the *Superannuation Act 1988* from the date on which the retrenchment pension first became payable as if the contributor had reached his or her age of retirement at that date.

(5) Where a retrenchment pension is payable as a result of an election under clause 10(9)(d), the amount of the retrenchment pension is the same as the amount of the pension that would have been payable—

(a) had the preserved benefits under the State Scheme in accordance with clause 7(6) not been foregone as part of the election under clause 10(9)(d); and

(b) had those preserved benefits been provided under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period of the contributor is more than 120 months; and

(c) had a retirement pension commenced being paid in accordance with section 39(5)(a) of the *Superannuation Act 1988* from the date on which the retrenchment pension first became payable as if the contributor had reached his or her age of retirement at that date.

(6) A retrenchment pension will be indexed.

(7) The *Superannuation Act 1988*, apart from section 35, applies to a retrenchment pension as if it were payable under section 35 of that Act.

**Additional retrenchment lump sum for old scheme State Scheme contributors**

**12. (1) This clause applies where—**

- (a) an additional retrenchment lump sum is payable as a result of an election by an employee under clause 10(7)(e), 10(7)(f) or 10(9)(e); or
- (b) an additional retrenchment lump sum is payable under clause 10(11).

(2) The additional retrenchment lump sum is calculated as follows:

$$\text{ALS} = 0.2 \times n \times \text{FS}$$

Where—

ALS is the additional retrenchment lump sum

n is the number of years (including any fraction of a year measured in days) in the period from—

(a) the date determined by taking the date of retrenchment and adding to that date—

- (i) the number of days in the period of notice in lieu of which a lump sum is paid on retrenchment to the employee; and
- (ii) the number of days in the period in respect of which a lump sum is paid to the employee under a redeployment or redundancy agreement;

to

(b) the date the employee would reach his or her age of retirement

FS is the employee's salary as at the date of retrenchment.

**Extra lump sum payable on retrenchment of State Scheme contributors before 30 June 1997**

**13. (1) This clause applies to an employee of SBSA or BSAL—**

- (a) who, at any time after the commencement of this Act, is or was a State Scheme contributor; and**
- (b) whose employment is terminated by retrenchment on or before 30 June 1997.**

**(2) An employee to whom this clause applies is entitled to receive an extra retrenchment lump sum—**

- (a) in the case of an employee of SBSA—from SBSA; or**
- (b) in the case of an employee of BSAL—from BSAL,**

**calculated as follows:**

$$\text{ELS} = K \times \text{FSM}$$

**Where—**

**ELS is the extra retrenchment lump sum**

**K is—**

- (a) where the date of retrenchment is on or before 30 June 1995—0.2;**
- (b) where the date of retrenchment is after 30 June 1995 but on or before 30 June 1996—0.15;**
- (c) where the date of retrenchment is after the 30 June 1996 but on or before 30 June 1997—0.1.**

**FSM is the employee's salary as at the date of retrenchment, subject to a maximum of \$75 000.**

**Non-entitlement to receive immediate benefit****14. Neither—**

- (a) a transfer or re-transfer under Part 5 or a corresponding law; nor
- (b) anything done under clauses 1 to 9 (inclusive) of this schedule,

gives rise to an entitlement on the part of an employee to receive an immediate payment of a benefit under the BSAL Fund, the SAAMC Fund or the State Scheme or to receive payment of an entitlement under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983*.

**SCHEDULE 3***Consequential amendments to State Bank of South Australia Act 1983***Interpretation****1.** In this schedule—

“the principal Act” means the *State Bank of South Australia Act 1983*.

**Substitution of long title****2.** The long title of the principal Act is repealed and the following long title is substituted:

**An Act to continue the State Bank of South Australia in existence as the South Australian Asset Management Corporation with the function of managing certain assets; and for other purposes.**

**Amendment of s. 3—Interpretation****3.** Section 3 of the principal Act is amended—

(a) by striking out the definition of “the Bank” and substituting the following definition:

“the Bank” means the State Bank of South Australia, or, according to the context, that body as continued in existence under the name the “South Australian Asset Management Corporation”;

(b) by striking out the definitions of “bill of exchange” and “housing loan”.

**Substitution of heading to Division I Part II****4.** The heading to Division I of Part II of the principal Act is repealed and the following heading is substituted:**DIVISION I—THE BANK AND CHANGE OF CORPORATE NAME****Amendment of s. 6—Establishment of the Bank****5.** Section 6 of the principal Act is amended—

(a) by inserting in subsection (3) “is an instrumentality of the Crown and” after “The Bank”;

(b) by striking out subsection (4).

**Insertion of s. 6A****6.** The following section is inserted after section 6 of the principal Act:**Change of corporate name**

**6A.** (1) The Bank continues in existence as a body corporate under the name the “South Australian Asset Management Corporation”.

(2) Despite the change of name, the Bank may, with the approval of the Treasurer, carry on business under the name “State Bank of South Australia” on such terms and conditions as the Treasurer specifies.



**Amendment of s. 7—Membership of the Board**

7. Section 7 of the principal Act is amended by striking out from subsection (2) "six nor more than nine" and substituting "four nor more than six".

**Amendment of s. 8—Term of office**

8. Section 8 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) If a person is at the time of appointment as a Director an employee in the Public Service of the State, the person's term of office as Director expires on the person ceasing to be an employee in the Public Service.

**Amendment of s. 9—Casual vacancies**

9. Section 9 of the principal Act is amended—

- (a) by inserting in subsection (1)(d) "or (3)" after "subsection (2)";
- (b) by inserting after subsection (2) the following subsection:

(3) If a person is at the time of appointment as a Director an employee in the Public Service of the State, the Governor may remove the person from office as a Director while the person remains so employed for any reason the Governor considers sufficient.

**Substitution of s. 15**

10. Section 15 of the principal Act is repealed and the following section is substituted:

**Control and direction by the Treasurer**

15. The Board is subject to the control and direction of the Treasurer.

**Amendment of s. 17—Staff of Bank**

11. Section 17 of the principal Act is amended—

- (a) by striking out from subsection (2) "*Public Service Act, 1967*" and substituting "*Government Management and Employment Act 1985*";
- (b) by inserting after subsection (3) the following subsection:

(4) The Bank may, with the approval of the Minister administering an administrative unit of the Public Service of the State, on terms mutually arranged, make use of the services of persons employed in the administrative unit.

**Amendment of s. 19—General functions of the Bank**

12. Section 19 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsections:

(1) The Bank's functions are to manage, realise and otherwise deal with its remaining assets and liabilities and, with the approval of the Treasurer, other assets and liabilities of the Crown or an instrumentality of the Crown, to the best advantage

of the State.;

(1a) For the purpose of performing its functions, the Bank may carry on the general business of banking.

(b) by striking out subsections (4), (5) and (6).

**Amendment of s. 20—Advances by the Treasurer**

13. Section 20 of the principal Act is amended by striking out subsection (3).

**Insertion of s. 20A**

14. The following section is inserted after section 20 of the principal Act:

**Capital or advances provided by SAFA**

20A. (1) The Treasurer may determine that capital or advances provided to the Bank by the South Australian Government Financing Authority, or a specified part of any such capital or advances, is to be treated as capital or advances provided to the Bank by the Treasurer.

(2) The Treasurer may make a determination under subsection (1) on terms and conditions the Treasurer considers appropriate, which may, for example, include the provision of compensation to the South Australian Government Financing Authority in respect of the determination.

(3) The Bank must, if so required by the Treasurer, repay to the Treasurer the capital or advances referred to in subsection (1), or a specified part of any such capital or advances.

(4) An amount payable to the South Australian Government Financing Authority as compensation under this section may be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(5) The Treasurer may not make a requirement under subsection (3) before the appointed day within the meaning of the *State Bank (Corporatisation) Act 1994*.

**Substitution of s. 22**

15. Section 22 of the principal Act is repealed and the following section is substituted:

**Surplus funds**

22. Any surplus of funds remaining after the costs of the Bank have been met in any financial year must be paid into the Consolidated Account or otherwise dealt with as the Treasurer may determine.

**Amendment of s. 23—Accounts and audit**

16. Section 23 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

(2a) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts of the Bank.;

- (b) by striking out from subsection (3) "Governor" and substituting "Treasurer".

#### Repeal of s. 24

17. Section 24 of the principal Act is repealed.

#### Substitution of ss. 26, 27 and 28

18. Sections 26, 27 and 28 of the principal Act are repealed and the following section is substituted:

##### Customers Unclaimed Moneys Account

27. (1) The Bank must administer the Customers Unclaimed Moneys Account as in existence under this Part immediately before the commencement of this section.

(2) Interest does not accrue on money standing to the credit of the Account except to the extent (if any) determined by the Bank.

(3) The Bank must pay to a person from the Account any amount to which the person satisfies the Bank that he or she is entitled.

(4) The *Unclaimed Moneys Act 1891* does not apply to money held in the Account.

#### Substitution of ss. 29a and 30

19. Sections 29a and 30 of the principal Act are repealed and the following section is substituted:

##### Validity of transactions of Bank

30. No contract or transaction purportedly entered into by the Bank before the commencement of this section is invalid by reason of any deficiency in the capacity of the Bank to enter into or carry out the contract or transaction.

#### Substitution of heading to Part VI

20. The heading to Part VI of the principal Act is repealed and the following heading is substituted:

### PART VI

#### RESTRUCTURING OF BANK GROUP UNDERTAKING AND DISPOSAL OF BSAL

##### Amendment of s. 32—Definitions

21. Section 32 of the principal Act is amended by inserting after the definition of "Bank Group undertaking" in subsection (1) the following definition:

"BSAL" means the public company with the name "Bank of South Australia Limited" formed under the *Corporations Law*;

##### Amendment of s. 34—Restructuring and disposal

22. Section 34 of the principal Act is amended—

- (a) by inserting after paragraph (c) of subsection (1) the following paragraph:

- (d) the disposal, or preparation for the disposal, of assets of, or shares in, BSAL.;
- (b) by inserting in subsection (2) "or BSAL" after "the Bank" wherever it occurs;
- (c) by striking out subsection (3) and substituting the following subsection:
- (3) The directors and staff of the Bank and its subsidiaries and the directors and staff of BSAL must, despite 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 of directors of BSAL,
- access to information in the possession or control of the Bank or its subsidiaries or BSAL that is reasonably required for, or in connection with, the carrying out of the authorised project; and
- (b) provide any other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.;
- (d) by inserting in subsection (4) "or BSAL" after "subsidiary of the Bank";
- (e) by striking out subsections (5) and (6);

#### **Substitution of s. 35**

23. Section 35 of the principal Act is repealed and the following sections are substituted:

#### **Confidentiality**

35. (1) A person who, through membership of the Board or staff of the Bank or involvement in the authorised project, has acquired information about the affairs of some other person who is or was a customer of the Bank must not disclose or make use of the information unless—

- (a) the disclosure or use of the information is reasonably required for, or in connection with, the carrying out of the authorised project or the proper conduct of the business of the Bank or BSAL; or
- (b) the other person approves the disclosure or use of the information; or

- (c) the disclosure or use of the information is authorised or required by or under some other Act or law.

Penalty: If the offender is a natural person—\$5 000.  
If the offender is a body corporate—\$50 000.

(2) Despite subsection (1), information may be provided to the Treasurer about a transaction of the Bank or a subsidiary of the Bank if any of the following occurs or has occurred (before or after the commencement of this section) in respect of the transaction, or in respect of another party to the transaction who is in default:

- (a) the Bank or subsidiary of the Bank commences legal proceedings to recover an amount due or to enforce a security in respect of the transaction;
- (b) the Bank or subsidiary of the Bank gives notice of intention to sell property given as security in respect of the transaction;
- (c) the Bank or subsidiary of the Bank enters into possession as mortgagee in respect of property given as security in respect of the transaction;
- (d) the Bank or subsidiary of the Bank acquires an interest of the other party in property given as security in respect of the transaction, or takes possession or control of such property;
- (e) the other party, being a body corporate, becomes an externally administered body corporate (within the meaning of the *Corporations Law*), or, being an individual, becomes bankrupt, or the affairs of the other party are dealt with under Part X of the *Bankruptcy Act 1966*;
- (f) the Board of the Bank resolves that it has formed the opinion on reasonable grounds that there is a strong probability of any of the above occurring in the near future in respect of the transaction, or in respect of the other party.

(3) Where confidential information is provided to the Treasurer under subsection (2), the Treasurer must observe confidentiality in respect of the information except to the extent (if any) that the duties of his or her office otherwise require.

#### Protection for disclosure and use of information, etc.

35a. (1) In this section—

"authorised action" means—

- (a) the disclosure or use of information in the possession or control of—

- (i) the Bank or a subsidiary of the Bank or BSAL; or
- (ii) a current or former member of the board of directors or staff of the Bank or a subsidiary of the Bank or BSAL; or
- (iii) a person involved in the authorised project,  
as reasonably required for, or in connection with, the carrying out of the authorised project or the proper conduct of the business of the Bank or BSAL; or

(b) anything done or allowed under this Part.

(2) No authorised action—

- (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, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

#### **Amendment of second schedule**

24. The second schedule of the principal Act is amended—

- (a) by striking out from clause 1 the definitions of "classified office", "prescribed office" and "the Union";
- (b) by striking out clauses 2 to 8 (inclusive) and the headings above those clauses;
- (c) by striking out clauses 11, 12 and 13 and the heading above those clauses.

#### **Expiry of certain provisions**

25. (1) Subsections (3) and (4) of section 34 of the principal Act expire on a day fixed by proclamation for the purpose.

(2) The Governor may, by proclamation, fix a day as the day on which the provisions referred to in subsection (1) are to expire.

**SCHEDULE 4**  
*Consequential amendments to other Acts*

**Amendment of Commercial and Private Agents Act 1986**

1. The *Commercial and Private Agents Act 1986* is amended by striking out from section 4 the definition of "bank".

**Amendment of Government Financing Authority Act 1982**

2. The *Government Financing Authority Act 1982* is amended by striking out paragraphs (a) and (b) from section 16(2) and the passage "either of the following authorities:" and substituting "the Local Government Financing Authority of South Australia".

**Amendment of Industrial Relations Act (S.A.) 1972**

3. The *Industrial Relations Act (S.A.) 1972* is amended by striking out from section 6(1) the definition of "prime bank rate" and substituting the following definition:

"prime bank rate", for a particular financial year, means the published indicator rate for prime corporate lending of the Commonwealth Bank of Australia at the commencement of the financial year.

**Amendment of Land Agents, Brokers and Valuers Act 1973**

4. The *Land Agents, Brokers and Valuers Act 1973* is amended by striking out from section 6(1) the definition of "bank".

**Amendment of Legal Practitioners Act 1981**

5. The *Legal Practitioners Act 1981* is amended by striking out from section 5 the definition of "bank".

**Amendment of Local Government Act 1934**

6. The *Local Government Act 1934* is amended by striking out from section 5(1) the definition of "prime bank rate" and substituting the following definition:

"prime bank rate", for a particular financial year, means the published indicator rate for prime corporate lending of the Commonwealth Bank of Australia at the commencement of the financial year.

**Amendment of Oaths Act 1936**

7. The *Oaths Act 1936* is amended by striking out from section 32 the definition of "bank".

**Amendment of Public Finance and Audit Act 1987**

8. The *Public Finance and Audit Act 1987* is amended—

- (a) by striking out subsections (3) and (4) of section 4;
- (b) by striking out paragraph (c) of section 11;
- (c) by striking out from section 18(4) "State Bank of South Australia" and substituting "South Australian Asset Management Corporation".

**Amendment of State Supply Act 1985**

9. The *State Supply Act 1985* is amended by striking out paragraph (b) of section 5.

**Amendment of Trustee Act 1936**

10. The *Trustee Act 1936* is amended by striking out paragraph (c) of section 5(1) and substituting the following paragraph:

- (c) on deposit with—
- (i) any bank within the meaning of the *Banking Act 1959* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth passed in substitution for that Act, or a body authorised to carry on the business of banking by a law of a State or Territory;
  - (ii) a prescribed building society;
- or
- (iii) any body corporate carrying on life insurance business under the *Life Insurance Act 1945* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth passed in substitution for that Act;.

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

ROMA MITCHELL Governor