

State Bank Act 1988

No. 29 of 1988

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Victoria

No. 29 of 1988

State Bank Act 1988

[Assented to 17 May 1988]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

1. The purpose of this Act is to re-enact the law relating to the State Bank of Victoria.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Definitions.

3. In this Act—

“Bank” means the State Bank of Victoria established by this Act.

“Board” means the Board of Directors of the Bank.

“Books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document.

“Chairperson” means Chairperson of the Board.

“Chief executive officer” means chief executive officer of the Bank.

“Director” means director of the Board.

“Officer” means officer or employee of the Bank and includes the chief executive officer and deputy chief executive officer.

“Related corporation”, in relation to the Bank, means a corporation that would be deemed to be related to the Bank by virtue of section 7 (5) of the *Companies (Victoria) Code* if the Bank were incorporated under that Code.

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

Act to bind the Crown.

4. This Act binds the Crown not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—STATE BANK OF VICTORIA

Division 1—Establishment of the Bank

State Bank of Victoria.

5. (1) There shall be a bank to be known as the “State Bank of Victoria”.

(2) The Bank—

(a) is a body corporate with perpetual succession; and

(b) shall have an official seal; and

(c) is capable in law of suing and being sued; and

(d) may acquire, hold, manage, transfer, dispose of, assign, exchange, lease, hire, take or lease or hire, mortgage, charge or otherwise encumber or otherwise deal in or with real or personal property; and

(e) may do or suffer all other acts and things which a body corporate may by law do or suffer.

(3) The official seal of the Bank must be kept in such custody as the Board directs and must not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Bank affixed to a document and shall presume that it was duly affixed.

(5) If a document appears to bear the official seal of the Bank, all courts, judges and persons acting judicially shall presume, in the absence of evidence to the contrary, that the document was duly executed by the Bank.

Bank to represent Crown.

6. (1) The Bank represents, and shall be taken to be part of, the Crown.

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

(3) Sub-sections (1) and (2) do not—

(a) limit the right of the Bank to sue or be sued in its own name; or

(b) affect any right to enforce a judgment against the Bank; or

(c) give the Bank or the Crown any priority of right to payment of money owing to the Bank.

Objective of the Bank.

7. The objective of the Bank is to provide State banking, financial and related services in a profitable, efficient and competitive manner for the economic development and welfare of the people of Victoria.

Division 2—Board of Directors**Board of directors.**

8. (1) There shall be a board of directors of the Bank.

(2) The Board shall consist of not less than eight and not more than nine directors appointed by the Governor in Council on the recommendation of the Minister of whom one shall be appointed as Chairperson of the Board, one as Deputy Chairperson and one as a representative of the Treasurer.

(3) The Chairperson or Deputy Chairperson may be referred to as the Chairman or Chairwoman or Deputy Chairman or Deputy Chairwoman, as the case requires.

(4) The chief executive officer of the Bank is eligible for appointment as a director but is not eligible for appointment as Chairperson or Deputy Chairperson.

(5) An officer of the Bank, other than the chief executive officer, is not eligible for appointment as a director.

(6) A director is not, in respect of the office of director, subject to the provisions of the *Public Service Act 1974*.

Terms and conditions of appointment.

9. (1) A director, other than the representative of the Treasurer, holds office for such period, not exceeding five years, as is specified in the instrument of appointment of the director, but is eligible for re-appointment.

(2) A director appointed as the representative of the Treasurer holds office until the Treasurer, in writing given to the Governor in Council, declares the office vacant.

(3) If the chief executive officer is appointed as a director, he or she holds office for such period, not exceeding his or her term of office as chief executive officer, specified in the instrument of appointment as director, but is eligible for re-appointment.

(4) Except in accordance with the approval of the Minister under sub-section (5), a person who has attained the age of 65 years must not be appointed as a director and a person must not be appointed as a director for a period that extends beyond the day on which the person will attain the age of 65 years.

(5) The Minister, after consultation with the Board, may approve the appointment as a director of a person who has attained or will, during the period of appointment, attain, the age of 65 years.

Acting Chairperson.

10. (1) The Deputy Chairperson shall act as Chairperson during any period when the Chairperson is unable, whether by reason of illness, absence or otherwise, to perform the duties of the office or when the office of Chairperson is vacant.

(2) The Deputy Chairperson, while acting as Chairperson, has and may exercise all the powers and shall perform all the duties of the Chairperson.

(3) The Governor in Council, on the recommendation of the Treasurer, may appoint a director to act in the place of the Chairperson, if—

(a) the Chairperson is unable, whether by reason of illness, absence or otherwise, to perform the duties of the office or the office of Chairperson is vacant; and

(b) the Deputy Chairperson is unable, whether by reason of illness, absence or otherwise, to perform the duties of the office or the office of Deputy Chairperson is vacant.

(4) A person appointed under sub-section (3) to act in the place of the Chairperson, while so acting—

(a) has and may exercise all the powers and shall perform all the duties of the Chairperson; and

(b) must be paid—

- (i) such remuneration as is fixed from time to time by the Governor in Council; and
- (ii) such travelling and other allowances as are fixed from time to time by the Governor in Council.

(5) A person appointed under sub-section (3) to act as Chairperson is not, in respect of that appointment, subject to the provisions of the *Public Service Act 1974*.

Acting directors.

11. (1) If a director is unable to perform the duties of the office, the Governor in Council may appoint a person to act in the place of that director during the period of inability.

(2) A person appointed under this section to act in the place of a director, while so acting—

- (a) has and may exercise all the powers and shall perform all the duties of the director for whom he or she is acting; and
- (b) is entitled to be paid such remuneration, travelling and other allowances as are from time to time fixed by the Governor in Council.

(3) The Governor in Council may, at any time, terminate an appointment under sub-section (1).

(4) If a person has been appointed under this section to act in the place of a director during a period of inability of that director and that director ceases to hold office without having resumed the performance of the duties of the office, the period of appointment of the person so appointed shall be deemed to continue until the appointment is terminated by the Governor in Council or until the expiration of the period of twelve months after the date on which the director for whom he or she is acting ceases to hold office, whichever first occurs.

(5) A person appointed to act as director is not, in respect of that appointment, subject to the provisions of the *Public Service Act 1974*.

Remuneration and allowances.

12. A director (other than the chief executive officer) must be paid—

- (a) such remuneration as is fixed from time to time by the Governor in Council; and
- (b) such allowances as are fixed from time to time by the Governor in Council.

Resignation.

13. A director may resign from the office of director by writing signed by the director and given to the Governor in Council.

Termination of appointment.

14. (1) The Governor in Council may at any time remove a director from office.

(2) If a director—

- (a) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent from three consecutive meetings of the Board without leave granted by the Board; or
- (c) fails, without reasonable excuse, to comply with section 16—

the Governor in Council must remove the director from office.

(3) If a director is removed from office under this section, the Minister must cause a statement setting out the grounds of removal to be laid before each House of Parliament before the expiration of the seventh sitting day of that House after the removal.

Offices of profit.

15. The offices of director, chief executive officer and deputy chief executive officer are offices or places of profit under the Crown within the meaning of Division 8 of Part II of the *Constitution Act 1975*.

Disclosure of interests.

16. (1) A director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board or in any other matter in which the Bank is concerned must as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under sub-section (1) must be recorded in the minutes of the meeting of the Board and the director must not, unless the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(3) For the purposes of sub-section (1), a general notice given to the Board by a director to the effect that he or she is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as having a pecuniary interest in any matter in which, after the date of the notice, the Bank may be concerned with that corporation or firm shall be deemed to be a sufficient disclosure of interest in relation to any matter so considered or proposed to be considered if—

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm; and
 - (b) when the question of considering the matter is first taken into consideration, the extent of the interest in the corporation or firm is not greater than is stated in the notice; and
 - (c) the notice is given at a meeting of the Board or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the Board after it is given.
- (4) A notice under sub-section (3) must be recorded in the minutes of the meeting of the Board and the director must not, unless the Board otherwise determines—
- (a) be present during any deliberation of the Board with respect to the specified corporation or firm; or
 - (b) take part in any decision of the Board with respect to that corporation or firm.
- (5) A director who makes a disclosure or gives a notice in accordance with this section and complies with this section—
- (a) is not in breach of any duty owed by him or her to the Bank by reason of the interest disclosed; and
 - (b) is not liable to account for any profit accruing to the director from the interest.
- (6) This section does not apply if the interest of a director consists only of—
- (a) being a member of the governing body of a body (not being a Royal Commission, municipality or school council) established by or under an Act for a public purpose that has an interest in a contract or proposed contract with the Bank or in any other matter in which the Bank is concerned; or
 - (b) being a member of a body which acts for a client that has an interest in a contract or proposed contract with the Bank or any other matter in which the Bank is concerned, if the director does not act personally for the client in respect of that contract proposed contract or matter; or
 - (c) being an officer or employee of the public service of Victoria or of an agency or instrumentality of the Crown; or
 - (d) being a member or creditor of a body corporate that has an interest in a contract or proposed contract with the Bank or in any other matter in which the Bank is concerned if the interest of the director may properly be regarded as not being a material interest; or
 - (e) holding an office or position to which he or she was nominated or appointed by the Bank in a body which the Bank controls or in which it has a material interest; or

- (f) being a customer of the Bank in common with other customers of the Bank.

Penalty: 10 penalty units or imprisonment for three months or both.

Loan to directors.

17. (1) The Bank must not provide financial accommodation to a director or the spouse of a director except in accordance with this section.

(2) The Bank may provide financial accommodation to a director or the spouse of a director on the same terms and conditions as those on which it provides financial accommodation to customers of the Bank.

(3) If a person who is the chief executive officer or who was an officer of the Bank is appointed a director, the Bank may provide to that person or the spouse of that person any financial accommodation to which the person or spouse would have been entitled if the person had not been so appointed.

Register of directors.

18. (1) The Bank must keep a register of its directors, chief executive officers and deputy chief executive officers.

(2) The register must specify with respect to each director, chief executive officer or deputy chief executive officer—

- (a) the present christian or given name and surname, any former christian or given name or surname, the date and place of birth, the usual residential address and the business occupation of the director or officer; and
- (b) particulars of directorships held by the director or officer in any corporation that, under the law of a State or Territory, is a public company or a subsidiary of a public company.

(3) If a person is a director of one or more subsidiaries of the same holding company within the meaning of the *Companies (Victoria) Code*, it is sufficient compliance with sub-section (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall be kept at the head office of the Bank and shall be open for inspection during ordinary banking hours.

Division 3—Meetings**Meetings of the Board.**

19. (1) The Board shall meet at such times and places—

- (a) as it determines; or
- (b) as the Chairperson directs; or
- (c) as the secretary of the Board, acting on the request of two or more directors, determines.

(2) A meeting of the Board must be held at least once in each calendar month.

(3) The Chairperson shall preside at any meeting of the Board at which he or she is present.

(4) If the Chairperson is not present at the time fixed for the commencement of a meeting of the Board, the Deputy Chairperson shall preside at that meeting and, if neither the Chairperson nor Deputy Chairperson is present, a director chosen by the directors present shall preside at that meeting.

(5) A majority of directors shall constitute a quorum at a meeting of the Board.

(6) A question arising at a meeting of the Board shall be determined by a majority of votes of the directors present and voting on that question and, in the event of an equality of votes, the Chairperson or other director presiding at the meeting shall have a casting vote in addition to his or her first vote.

(7) If all directors entitled to vote on a proposed resolution express, in writing, their concurrence in the proposed resolution, it becomes a resolution of the Board even though it has not been passed at a meeting of the Board.

(8) If the chief executive officer is not a director—

- (a) the Chairperson must give the chief executive officer notice of the time and place of each meeting of the Board; and
- (b) the chief executive officer is entitled to be present and sit with the Board and take part in the meetings of the Board but is not entitled to vote on any question.

(9) Subject to this Act, the Board may regulate its own proceedings.

Minutes of proceedings.

20. (1) The Board must—

- (a) cause minutes of all proceedings of meetings of its directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose; and

- (b) cause those minutes to be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting; and
- (c) cause a copy of the minutes of each meeting to be given to the Minister and the Treasurer within five days after the meeting at which they are so signed.

(2) Any minute that is so entered and purports to be signed as provided by sub-section (1) (b) is evidence of the proceedings to which it relates.

(3) If minutes have been so entered and signed, then, unless the contrary is proved—

- (a) the meeting shall be deemed to have been duly held and convened; and
- (b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
- (c) a resolution recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

Validity of acts and decisions.

21. An act or decision of the Board is not invalid by reason only—

- (a) of a vacancy in the office of a director, including a vacancy arising because of a failure to appoint an original director; or
- (b) of any defect or irregularity in or in connection with the appointment of a director; or
- (c) in the case of a person acting or appointed to act as Chairperson, Deputy Chairperson or director, that the occasion for so acting had not arisen or had ceased; or
- (d) that a director had failed to comply with section 16; or
- (e) of the absence of the chief executive officer from a meeting of the Board.

Division 4—Delegation

Delegation.

22. (1) The Board may, by instrument under its official seal, delegate to the chief executive officer or to any other officer of the Bank or to any other person or to the holder of an office or position, any function or power of the Board, other than this power of delegation.

(2) A person to whom a function or power has been delegated under sub-section (1) may, subject to and in accordance with the approval of the Board given generally or in a particular case, by instrument or, if a body corporate, by instrument under seal, authorise

another person to perform the function or exercise the power so delegated.

(3) An authority given by a delegate of the Board under sub-section (2) may be revoked at any time by the delegate by instrument in writing and, if a delegation under which the authority was given is revoked, the authority is revoked.

(4) Any act or thing done in the performance of a function or the exercise of a power by a person authorised by a delegate of the Board under sub-section (2) to perform that function or exercise that power has the same force or effect as if it had been done by the Board.

(5) If the performance of a function or the exercise of a power by the Board is dependent on the opinion, belief or state of mind of the Board in relation to the matter and that function or power has been delegated under sub-section (1), that function or power may be performed or exercised by the delegate or by a person authorised by the delegate under sub-section (2) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.

(6) The giving of an authority under sub-section (2) does not prevent the performance of the function or exercise of the power by the person by whom the authority was given.

(7) The giving of an authority under sub-section (2) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers to which it relates or as to time or circumstance as is specified in the authority.

Appointment of agents etc.

23. The Board may appoint agents, brokers or attorneys.

Division 5—Staff

Chief executive officer.

24. (1) There shall be a chief executive officer of the Bank who, under the direction of the Board, is responsible for the management of the Bank.

(2) The chief executive officer shall be appointed by the Board with the approval of the Minister, on such terms and conditions as it thinks fit.

(3) The Board may appoint a deputy chief executive officer of the Bank, with the approval of the Minister, on such terms and conditions as it thinks fit.

(4) The chief executive officer and the deputy chief executive officer shall be paid such remuneration by the Board as is determined by the Governor in Council.

(5) Except in accordance with the approval of the Minister under sub-section (6)—

- (a) a person who has attained the age of 65 years must not be appointed as chief executive officer or deputy chief executive officer; and
- (b) a person must not be so appointed for a period that extends beyond the day on which the person will attain the age of 65 years.

(6) The Minister, after consultation with the Board, may approve the appointment as chief executive officer or deputy chief executive officer of a person who has attained or will, during the period of appointment, attain the age of 65 years.

(7) If the chief executive officer or deputy chief executive officer—

- (a) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- (b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit—

the Board must remove the officer from office.

(8) If the chief executive officer or deputy chief executive officer—

- (a) becomes incapable of performing the duties of the office; or
- (b) is guilty of wilful misconduct—

the Board may remove the officer from office.

Acting chief executive officer.

25. (1) If the chief executive officer is unable, whether by reason of illness, absence or otherwise, to perform the duties of the office or the office of chief executive officer is vacant—

- (a) the deputy chief executive officer shall act as chief executive officer; or
- (b) if the deputy chief executive officer is unable, whether by reason of illness, absence or otherwise, to act in the place of the chief executive officer or if there is no deputy chief executive officer, the Board may, with the approval of the Minister appoint an officer of the Bank (not being a director) to act in the place of the chief executive officer.

(2) A person appointed under this section to act in another person's place, while so acting, has all the powers and may perform all the duties of the person for whom he or she is acting.

Other staff.

26. (1) The Board may, on such terms and conditions as it thinks fit, appoint a secretary of the Bank and such other officers as are necessary to enable the Bank to perform its functions and exercise its powers.

(2) The Board may remove or suspend from office any officer of the Bank.

PART 3—OPERATIONS OF THE BANK**Functions and powers of the Bank.**

27. (1) The Bank shall carry on the general business of State banking and the provision of financial and related services and has all such powers as are necessary for that purpose.

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

(3) Without limiting the generality of the foregoing, the Bank may do any one or more of the following:

- (a) Receive money on current account or deposit or in any other manner;
- (b) Borrow or raise money or otherwise obtain financial accommodation;
- (c) Lend money or otherwise provide financial accommodation;
- (d) Issue, draw, buy, sell, accept, discount, re-discount, indorse or otherwise deal in or with instruments including bills of exchange, treasury bills, bonds, promissory notes and other notes, certificates of deposit and other certificates;
- (e) Buy, sell or otherwise deal in foreign currency or precious metals;
- (f) Establish credits or provide guarantees or indemnities;
- (g) Exchange or assume obligations or liabilities;
- (h) Issue, acquire, subscribe for, dispose of, mortgage, charge or otherwise encumber or otherwise deal in or with securities or units in trusts or any other obligations, liabilities or interests;
- (i) Underwrite loans or other financial accommodation or issues of securities, units in trusts or other interests;
- (j) Issue drafts or effect transfers of money;
- (k) Provide facilities for the safe custody of documents or valuables;
- (l) Establish or manage trusts or funds;
- (m) Provide financial advice, investment management services or other services of a like kind;

- (n) Provide financial processing or other administrative services;
 - (o) Establish or administer registers of securities, units in trusts or other interests;
 - (p) Erect, alter, develop or maintain buildings, structures or improvements;
 - (q) Act as trustee or appoint trustees;
 - (r) Charge fees, costs or disbursements, including legal fees, costs and disbursements, for work carried out by, for or on behalf of the Bank;
 - (s) Appoint agents, brokers or attorneys or act as agent, broker or attorney;
 - (t) Anything incidental to any of its powers.
- (4) The Bank may invest or otherwise apply money of or held by the Bank for such purposes of the business of the Bank as the Board determines.
- (5) The Bank may grant or otherwise deal in annuities.
- (6) If the Board considers that it is advantageous, relevant or incidental to carrying on the business of the Bank to do so, the Bank may—
- (a) enter into any agreement or arrangement; or
 - (b) promote, form, establish or participate in the promotion, formation or establishment of any body corporate, trust or partnership; or
 - (c) subscribe for or otherwise acquire, hold, dispose of or otherwise deal with any securities of a body corporate or units in trusts; or
 - (d) become a member of a body corporate, trust, partnership or joint venture.
- (7) The exercise of any power by the Bank is subject to such terms and conditions, if any, applicable to the exercise of that power as the Board determines from time to time.
- (8) The Board must consult the Minister before entering upon a course of action that, in the opinion of the Board or the Minister, constitutes a major initiative.

Functions and powers of the Board.

28. (1) The Board is the governing body of the Bank.
- (2) Anything done by the Board in the direction of the Bank's affairs is binding on the Bank.
- (3) The Board must direct the Bank's affairs in accordance with the objective of the Bank.

Policies and prudential standards of the Board.

29. (1) The Board must, annually or at such other intervals as the Minister determines, inform the Minister of its banking policy, its prudential standards and any other policy matters of which the Minister requests the Board to keep the Minister informed.

(2) If the Minister considers that any policy or prudential standards of the Board are inconsistent with the objective of the Bank, the Minister must consult with the Board with a view to reaching agreement on the policy or standards.

(3) If the Minister and the Board do not reach agreement, the Minister may, in writing, determine the policy or standards to be adopted by the Board and inform the Board that the Government accepts responsibility for the adoption by the Board of that policy or those standards.

(4) The Board must ensure that effect is given to the policy or standards determined by the Minister.

(5) If the Minister determines policy or standards under sub-section (3), the Board—

- (a) may cause that policy or those standards to be published in the *Government Gazette*; and
- (b) must publish that policy or those standards in its next annual report.

Branches.

30. The Bank may establish, and may close, branches and agencies of the Bank within or outside Victoria.

Capital.

31. (1) The capital of the Bank is the sum of—

- (a) the amount of the capital of the Commissioners of the State Bank of Victoria immediately before the commencement of this section; and
- (b) such other amounts as are from time to time in accordance with this Act paid or transferred to or declared to form part of the capital of the Bank.

(2) The part of the capital of the Bank consisting of amounts paid to the Commissioners of the State Bank of Victoria pursuant to section 27B (1) (a) of the *State Bank Act 1958* shall bear such rate of return accruing at such intervals and payable at such time or times and in such manner as is determined by the Treasurer after consultation with the Bank.

Share capital.

32. (1) The capital of the Bank, other than any part or parts of the capital to which sub-section (2) applies, is share capital.

(2) Capital of the Bank is not share capital if—

(a) it consists of amounts paid or transferred to or amounts declared with the approval of the Treasurer to form part of the capital of the Bank under section 31 (1) (b) which, before the amounts were so paid, transferred or declared, the Board, with the approval of the Treasurer, determined would not be share capital; or

(b) it consists of capital raised before the commencement of this section which is declared by the Board, with the approval of the Treasurer, not to be share capital.

(3) The share capital of the Bank is divided into shares of such amounts and in such currencies and of such classes as are determined by the Board with the approval of the Treasurer.

(4) The Bank, with the approval of the Treasurer, may allot and issue shares to the State of Victoria or to an agency or instrumentality of, or to any other body that is an emanation of, the Crown.

(5) A share is not transferable except as provided in sub-section (6).

(6) A share is transferable, with the approval of the Treasurer, to the State of Victoria or to an agency or instrumentality of, or to any other body that is an emanation of, the Crown.

(7) Except as provided in a determination under section 36 (2), the only right attached to a share in the share capital of the Bank is the right to such dividends as may from time to time be declared by the Bank in respect of shares of the same class as that share.

Transfers to capital.

33. The Board may, with the approval of the Treasurer, transfer to the capital of the Bank amounts from profits, accumulated profits, reserves or funds of the Bank.

Certain receipts paid to capital.

34. The Board, with the approval of the Treasurer, may receive money for payment to the capital of the Bank.

Amount equal to certain liabilities to form part of capital.

35. The Board may, with the approval of the Treasurer, declare that specified amounts form part of the capital of the Bank.

Raising capital.

36. (1) The Board, with the approval of the Treasurer, may raise amounts for payment to the capital of the Bank.

(2) The raising of amounts for payment to capital shall be carried out in such form and manner and in accordance with such terms and conditions as the Board, with the approval of the Treasurer, determines by General Order.

(3) The Board must not, in making a determination under sub-section (2), attach a voting right to a share in the share capital of the Bank.

Capital not repayable.

37. (1) The capital of the Bank is not repayable except as provided in sub-section (2).

(2) Capital of the Bank is repayable—

(a) insofar as the Bank, with the approval of the Treasurer, determines it to be repayable; and

(b) insofar as it consists of amounts paid to the Commissioners of the State Bank of Victoria by the Treasurer pursuant to section 27B (1) (a) of the *State Bank Act* 1958, to the Treasurer when demanded by the Treasurer.

(3) Before repaying amounts to the Treasurer under sub-section (2) (b), the Bank must transfer from the funds of the Bank to the capital of the Bank an amount equal to the amounts to be so repaid.

Application of profits.

38. (1) In respect of each financial year, the Bank must at such time or times and in such manner as is determined by the Treasurer after consultation with the Board, distribute the profits of the Bank in the following manner and order of priority:

(a) First, by paying to the Treasurer for payment to the Consolidated Fund an amount equal to the total amount of income tax that would have been payable in respect of that year by the Bank by or under an Act of the Commonwealth if the Bank had been a public company carrying on the business of banking;

(b) Secondly, by paying such amount, if any, by way of interest, dividend or other amount in respect of instruments or classes of instruments issued by the Bank and held otherwise than by the State of Victoria as is determined by the Board after consultation with the Treasurer;

(c) Thirdly, by paying such amount, if any, by way of dividend or dividends on shares or classes of shares held otherwise

than by the State of Victoria as is determined by the Board after consultation with the Treasurer;

- (d) Fourthly, by paying to the Treasurer for payment to the Consolidated Fund such amount, if any, by way of dividend, including a dividend or dividends on shares held by the State of Victoria as the Treasurer determines after consultation with the Board;
- (e) Fifthly, by paying to the reserves of the Bank such amount as the Board, with the approval of the Treasurer, determines;
- (f) Sixthly, by transferring any remaining profits to the capital of the Bank.

(2) The Bank may, during a financial year, make such payments on account of its obligations under sub-section (1) (a), (b), (c) or (d) as the Treasurer approves.

Insurance.

39. (1) The Bank may provide insurance in respect of any property—

- (a) owned by the Bank or in which the Bank has an interest;
- (b) that is, or is to be, or in the preceding 12 months was, security for financial accommodation provided by the Bank.

(2) Insurance under sub-section (1) may be provided—

- (a) on such terms and conditions as the Board determines; and
- (b) in relation to loss or damage in respect of the property or liability arising out of the ownership, occupation, possession or use of the property.

(3) The Bank may provide insurance indemnifying a person—

- (a) to whom the Bank provides financial accommodation against liability with respect to any contract, mortgage or charge or financial accommodation entered into with, or provided by, the Bank; or
- (b) providing financial accommodation against liability or loss with respect to any contract for financial accommodation or mortgage relating to financial accommodation.

(4) The Bank may issue, and undertake liability under, policies insuring payment of money on the death of a person who is under any obligation or liability to the Bank in respect of financial accommodation provided by the Bank.

(5) Insurance under sub-section (3) or (4) may be provided on such terms and conditions and, in the case of insurance under sub-section (3), in respect of such risks as the Board determines.

Statutory guarantee.

40. (1) The due satisfaction of amounts payable by the Bank as a result of or in connection with liabilities, including contingent liabilities, of the Bank including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction, is guaranteed by the Government of Victoria.

(2) Sub-section (1) does not apply in relation to any liabilities—

- (a) in respect of which a guarantee, indemnity or other support under section 41 is in force; or
- (b) that (whether or not at the direction of the Treasurer) were declared in writing by the Bank before they were incurred to be liabilities to which sub-section (1) would not apply.

(3) In each year beginning on 1 January, the Bank must, in respect of the guarantee under this section, pay to the Treasurer for payment into the Consolidated Fund a fee equal to the prescribed percentage of the amount by which the liabilities to which this section applies as at the end of the period of 12 months ending on the preceding 30 June exceeded the liabilities of that kind as at the beginning of that period.

(4) The amount required to be paid under sub-section (3) must be paid in such instalments and at such times as are prescribed.

Treasurer may execute certain guarantees etc.

41. At the request of the Board, the Treasurer, on behalf of the Government of Victoria, by instrument on such terms and conditions (including payment of fees) as the Treasurer determines—

- (a) may guarantee, indemnify or otherwise support the performance, satisfaction or discharge of obligations or liabilities of the Bank or a related corporation; and
- (b) may assume any obligation or liability of the Bank or a related corporation.

Liability of Government.

42. A guarantee under section 40 may be enforced against the Crown by a proceeding under Part II of the *Crown Proceedings Act 1958*.

Appropriation for guarantee etc.

43. (1) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee, indemnity or other support by or on behalf of the Government of Victoria provided by or given under this Act shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

(2) Any sums received or recovered by the Treasurer from the Bank or otherwise in respect of sums paid by the Treasurer under a guarantee, indemnity or other support shall be paid into the Consolidated Fund.

Board to provide information.

44. The Board must give to the Treasurer such information as the Treasurer requires from time to time about the liabilities and obligations of the Bank to which a guarantee provided by or given under this Act applies.

PART 4—ACCOUNTS AND AUDIT

Accounts and records.

45. (1) The Board must ensure that there are kept proper accounts and records of the transactions and affairs of the Bank and its related corporations and such other records as sufficiently explain the financial operations and financial position of the Bank and its related corporations.

(2) The Board must direct the Bank in accordance with principles of financial and risk management generally accepted for a bank.

Annual report.

46. (1) The Board must, in respect of each financial year, prepare an annual report containing—

- (a) a report of the operations of the Bank and its related corporations during the financial year; and
- (b) consolidated financial statements for the Bank and its related corporations for the financial year—

and submit the report to the Minister not later than 30 September next following the financial year.

(2) The report of operations referred to in sub-section (1) (a)—

- (a) must be prepared in a form and contain information determined by the Board to be appropriate including, unless the Treasurer otherwise directs, the information required under section 270 of the *Companies (Victoria) Code* to be included in the report of a company within the meaning of that Code; and

- (b) must contain any further information required by the Treasurer.

(3) The financial statements referred to in sub-section (1) (b)—

- (a) must comply with accounting standards generally accepted in commercial practice; and
- (b) must contain information determined by the Treasurer to be appropriate; and

- (c) must be prepared in a manner and form approved by the Treasurer; and
- (d) must present fairly the results of the financial transactions of the Bank and its related corporations during the financial year to which the statements relate and the financial position of the Bank and its related corporations as at the end of that year; and
- (e) must be signed by the chief executive officer and by the principal accounting officer (by whatever name called) of the Bank and by the Chairperson and another member of the Board who shall—
 - (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Bank and its related corporations during the financial year to which they relate and whether they sufficiently explain the financial position of the Bank and its related corporations as at the end of the financial year; and
 - (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and
- (f) be audited as required by section 47.

(4) The Minister must cause each annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

- (5) If the Bank fails to submit an annual report to the Minister—
- (a) if an extension has not been granted under sub-section (7)—by 30 September in any year; or
 - (b) if such an extension has been granted—by the date to which the extension was granted—

the Minister must report or cause to be reported that failure and the reasons for the failure to each House of Parliament.

(6) The Bank may apply in writing to the Minister for an extension of the date by which an annual report is to be submitted to the Minister.

(7) The Minister may in writing grant to the Bank an extension to such date as the Minister determines.

(8) The Minister must advise or cause to be advised each House of the Parliament of each extension granted under this section and the reasons for the extension.

Audit.

47. (1) The financial statements referred to in section 46 must be audited by a registered company auditor appointed by the Board with the approval of the Auditor-General.

(2) The registered company auditor appointed under sub-section (1) holds office until—

(a) the auditor resigns by notice in writing given to the Board; or

(b) the Board with approval of the Treasurer, revokes the appointment.

(3) The registered company auditor appointed under sub-section (1)—

(a) has right of access at all times to the books of the Bank; and

(b) may require from an officer of the Bank any information, assistance and explanations necessary for the performance of the duties of the auditor in relation to the audit.

PART 5—GENERAL***Freedom of Information Act 1982 not to apply.***

48. The Bank is not a prescribed authority for the purposes of the *Freedom of Information Act 1982*.

Immunity of directors and officers.

49. (1) No liability attaches to a director or officer of the Bank, or a director of a related corporation who is nominated or appointed to the office by the Bank, for any act or omission done or made, in good faith, and in carrying out, or purporting to carry out, the duties of his or her office.

(2) Any liability that would, but for sub-section (1), attach to a director or officer of the Bank shall attach instead to the Bank.

Notice of trusts.

50. The Bank is not affected by notice of any express or implied trust to which money deposited or invested with the Bank is subject, unless the Bank has expressly assumed the obligations of a trustee in relation to that money.

Validity of acts and transactions.

51. The validity of an act or transaction of the Bank or the Board shall not be called in question in any legal proceedings on the ground that any provision of this Act has not been complied with.

General Orders.

52. (1) The Board may make General Orders for or with respect to—

- (a) the management and operation of the Bank; and
- (b) the performance or exercise of any function or power conferred or imposed on the Bank; and
- (c) the custody and use of the official seal of the Bank; and
- (d) the terms and conditions of employment of officers by the Bank; and
- (e) the establishing of tribunals with powers relating to the discipline of officers, including powers to fine, demote, transfer, suspend, dismiss, or confirm the dismissal of, officers; and
- (f) superannuation and retirement and other benefits for officers and their dependants; and
- (g) any matter or thing required or permitted by this Act to be made by General Order or necessary to be so made to give effect to this Act.

(2) In sub-section (1), “officer” does not include the chief executive officer or the deputy chief executive officer.

(3) General Orders under this Act—

- (a) may be of general or of specially limited application; and
- (b) may differ according to differences in time, place or circumstance.

(4) General Orders under this Act are statutory rules within the meaning of the *Subordinate Legislation Act 1962*.

Regulations.

53. The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

PART 6—TRANSITIONAL PROVISIONS, REPEALS AND AMENDMENTS**Transitional provisions.**

54. (1) The Bank is the same body as the corporation established and constituted under the *State Bank Act 1958* as in force immediately before the commencement of this section and known as “The Commissioners of the State Bank of Victoria”.

(2) On and after the commencement of this section, unless the context otherwise requires—

- (a) a reference in any Act or law or in any document to the *State Savings Bank Act 1958* or to the *State Bank Act 1958* shall be deemed to be a reference to the *State Bank Act 1988*; and
- (b) a reference in any Act or law or in any document to—
 - (i) the Commissioners of the State Savings Bank of Victoria; or
 - (ii) the Commissioners of the State Bank of Victoria— shall be deemed to be a reference to the Bank; and
- (c) a reference in any Act or law or in any document to a Commissioner of—
 - (i) the Commissioners of the State Savings Bank of Victoria; or
 - (ii) the Commissioners of the State Bank of Victoria— shall be deemed to be a reference to a director of the Board; and
- (d) a reference in any Act or law or in any document to an officer or an agent of—
 - (i) the Commissioners of the State Savings Bank of Victoria; or
 - (ii) the Commissioners of the State Bank of Victoria— shall be deemed to be a reference to the corresponding officer or agent of the Bank.

(3) A person who, immediately before the commencement of this section, was a Commissioner of the State Bank of Victoria becomes, on that commencement, a director of the Bank and shall be deemed to have been appointed such a director for the remainder of the term (whether or not it exceeds five years) for which he or she was appointed under the *State Bank Act 1958*.

(4) A person who, immediately before the commencement of this section, was an officer or employee of the Commissioners of the State Bank of Victoria becomes, on that commencement, an officer of the Bank with the same rights and entitlements as those to which he or she was entitled immediately before that commencement.

(5) General Orders and rules made by the Commissioners of the State Bank of Victoria that—

- (a) are in force immediately before the commencement of this section; and
- (b) could be as General Orders made under this Act—

have effect, and may be amended or revoked, as if they had been made under this Act.

(6) Sub-section (4) of section 28 of the *State Bank Act 1958* continues, despite its repeal, to apply to guarantees given by or under

that section and, for that purpose, the reference in that sub-section to the Commissioners shall be deemed to be a reference to the Bank.

Repeal of *State Bank Act 1958*.

55. (1) The *State Bank Act 1958* is repealed.

(2) Any funds of the Commissioners subject to a charge by reason of section 28 (5) of the *State Bank Act 1958* immediately before the commencement of this section cease, upon that commencement, to be subject to any such charge.

Amendment of *Stamps Act 1958*.

56. (1) After section 3 of the *Stamps Act 1958*, before the heading to Part I, insert—

Act binds State Bank.

“3A. This Act binds the State Bank of Victoria.”.

(2) In section 60B (4) (b) of the *Stamps Act 1958* for “Commonwealth of Australia or the State of Victoria” substitute “State of Victoria otherwise than by the State Bank of Victoria”.

(3) The Third Schedule to the *Stamps Act 1958* is amended as follows:

- (a) In Heading IV in exemption (5) (e) for “or of the Commonwealth of Australia)” substitute “otherwise than to the State Bank of Victoria”;
- (b) In Heading VI in exemption (2) for “or of the Commonwealth of Australia)” substitute “otherwise than to the State Bank of Victoria”;
- (c) In Heading VIII in exemption (2) for “or of the Commonwealth of Australia)” substitute “otherwise than to the State Bank of Victoria”;
- (d) In Heading XXII, in exemption (4), after “public statutory body” insert “(other than the State Bank of Victoria)”;
- (e) In Heading XXIV in exemption (2) after “use” insert “otherwise than to or for the use of the State Bank of Victoria”.

Consequential amendments.

57. (1) In section 34 (4) (b) of the *Alpine Resorts Act 1983* for “section 50 of the *State Bank Act 1958*” substitute “the *State Bank Act 1988*”.

(2) In section 23 (1) (d) of the *Benefit Associations Act 1958* omit “Savings”.

(3) In section 82 (4) of the *Country Fire Authority Act 1958* for "The Commissioners of the State Bank of Victoria are authorised or directed to invest pursuant to the *State Bank Act 1958*" substitute "the State Bank of Victoria may invest".

(4) In section 38 (2) (b) of the *Dandenong Valley Authority Act 1968* omit "Savings".

(5) In section 5 (1) (b) of the *Estate Agents Act 1980* for "the Commissioners of the State Bank of Victoria" substitute "the State Bank of Victoria".

(6) In section 58A of the *Evidence Act 1958* omit "Savings".

(7) In section 21 (3) of the *Fruit and Vegetables Act 1958* for "the Commissioners of the State Bank of Victoria under Division Three of Part III of the *State Bank Act 1958*" substitute "the State Bank of Victoria".

(8) In section 19 of the *Gas and Fuel Corporation Act 1958* for "The Commissioners of the State Bank of Victoria are authorised or directed to invest pursuant to the *State Bank Act 1958*" substitute "the State Bank of Victoria may invest".

(9) In the *Grain Elevators Act 1958*—

(a) in section 43 (10) for "The Commissioners of the State Bank of Victoria are authorised or directed to invest pursuant to the *State Bank Act 1958*" substitute "the State Bank of Victoria may invest"; and

(b) in section 50 (iii) omit "Savings".

(10) In the *Legal Profession Practice Act 1958*—

(a) in section 39 (1) (definition of "Bank") omit "Savings";

(b) in section 88 (2) (a) for "Commissioners of the State Savings Bank of Victoria" substitute "State Bank of Victoria";

(c) in section 93 (2) for "Commissioners of the State Savings Bank of Victoria" substitute "State Bank of Victoria".

(11) In section 172 (b) of the *Magistrates (Summary Proceedings) Act 1975* omit "Savings".

(12) In section 190 of the *Melbourne and Metropolitan Board of Works Act 1958* omit "Commissioners of the".

(13) In section 50 of the *Metropolitan Fire Brigades Act 1958* for "The Commissioners of the State Bank of Victoria are authorised or directed to invest pursuant to the *State Bank Act 1958*" substitute "the State Bank of Victoria may invest".

(14) In section 22 (a) of the *Patriotic Funds Act 1958* omit "Savings".

(15) In section 14 (8) of the *Probate Duty Act 1962* omit "Savings".

(16) In section 23 (2) of the *Rural Finance and Settlement Commission Act 1961* omit "the Commissioners of".

(17) In section 92 (4) of the *State Electricity Commission Act 1958* for "The Commissioners of the State Bank of Victoria are authorised or directed to invest pursuant to the *State Bank Act 1958*" substitute "the State Bank of Victoria may invest".

(18) In the *Trustee Act 1958*—

(a) in the definition of "Bank" in section 3 (1), omit "Savings";

(b) in section 4 (1) (e) (iii), omit "Savings";

(c) in section 78—

(i) omit "the Commissioners of"; and

(ii) for "said Commissioners" substitute "the Bank".

(19) In section 15 (2) of the *Victorian Fishing Industry Council Act 1979* omit "Savings".

(20) In section 13 (4) of the *Victorian Solar Energy Council Act 1980* omit "Savings".

(21) In section 302 of the *Water Act 1958*, sub-section (3) is repealed.

(22) In section 32 (c) of the *West Moorabool Water Board Act 1968* omit "Savings".

(23) In section 17 (5) of the *Wire Netting Act 1958* for "the Commissioners of the State Bank of Victoria" substitute "the State Bank of Victoria".

NOTES

1. *Minister's second reading speech*—

Legislative Assembly: 3 March 1988

Legislative Council: 3 May 1988

2. The long title for the Bill for this Act was "A Bill to re-enact the law relating to the State Bank of Victoria and for other purposes."