



STATE BANK OF SOUTH AUSTRALIA (INVESTIGATIONS) AMENDMENT ACT 1992

No. 86 of 1992

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendment of s. 25—Investigations
4. Validation and exclusion of judicial review



ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 86 of 1992

An Act to amend the State Bank of South Australia Act 1983, and for other purposes.

{Assented to 3 December 1992}

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *State Bank of South Australia (Investigations) Amendment Act 1992*.

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

Commencement

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.

(2) Section 3 will be taken to have come into operation when the *State Bank of South Australia (Investigations) Amendment Act 1991* came into operation.

Amendment of s. 25—Investigations

3. Section 25 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsections:

(2) An investigator so appointed—

-
- (a) must investigate such matters relating to the operations and financial position of the Bank or the Bank Group as are determined by the Governor, which matters may include—
- (i) any possible conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity on the part of a director or officer of the Bank or a subsidiary of the Bank; or
 - (ii) any possible failure to exercise proper care and diligence on the part of a director or officer of the Bank or a subsidiary of the Bank;
- (b) may investigate a matter of a kind referred to in subparagraph (i) or (ii) that the investigator has not been required by the Governor to investigate if, in his or her opinion, the matter should be investigated.
- (2a) The investigator must—
- (a) report to the Governor on the results of an investigation or investigations under subsection (2) and advise the Governor whether, in his or her opinion, any matter should be the subject of further action; and
 - (b) where, in the case of a matter referred to in subsection (2)(b), the investigator decided not to investigate or complete investigation of the matter—report on the matter to the Governor and advise whether, in his or her opinion, the matter should be the subject of any or further investigation or other action.;
- (b) by striking out subsection (3) and substituting the following subsection:
- (3) An investigator so appointed must comply with any directions of the Governor published in the *Gazette* as to the manner in which an investigation under subsection (2) is to be conducted and the manner in which the results of such an investigation are to be reported, including any direction requiring reports to be presented to a specified person or body in addition to the Governor.;
- (c) by striking out from subsection (4) "a person" and substituting "an investigator";

-
- (d) by striking out from subsection (5) "A person" and substituting "An investigator";
- (e) by striking out subsection (6);
- (f) by inserting after subsection (7) the following subsections:

(7a) Where, on the application of the investigator or an authorised person, the Supreme Court is satisfied on the balance of probabilities that a person—

- (a) who has been served with a summons to appear before the investigator or an authorised person failed, without reasonable excuse, to appear in obedience to the summons;
- (b) who has been served with a summons to produce relevant accounts, records or other documents failed, without reasonable excuse, to comply with the summons;
- (c) who has been required to provide information to the investigator or an authorised person—
- (i) failed, without reasonable excuse, to do so in the form directed by the investigator or authorised person; or
- (ii) provided information knowing it to be false or inaccurate in a material particular;
- (d) refused to be sworn or to affirm, or refused or failed to answer truthfully any relevant question, when required to do so by the investigator or an authorised person;
- (e) hindered or obstructed the investigator or an authorised person in the exercise of any powers under this section,

the Supreme Court may order the person to take such action, or to refrain from taking such action, as is necessary in the Court's opinion.

(7b) Where, in the opinion of the investigator, a person has contravened, or failed to comply with, a requirement imposed by or under this section, the investigator must, if in his or her opinion the matter is

sufficiently serious, prepare a report setting out details of the contravention or failure and deliver copies of the report to the Governor and the Economic and Finance Committee of the Parliament.

Validation and exclusion of judicial review

4. (1) This section applies only in relation to the investigation by the Auditor-General in pursuance or purportedly in pursuance of the instrument of appointment issued by the Governor and published in the *Gazette* of 28 March 1991 at page 1046, as varied from time to time.

(2) A person authorised, or purportedly authorised, by the Auditor-General to exercise all or any of the powers vested in the Auditor-General pursuant to section 34(1) of the *Public Finance and Audit Act 1987* in respect of the investigation will be taken to be and always to have been an authorised person for the purposes of section 25 of the *State Bank of South Australia Act 1983* in relation to the investigation.

(3) No decision, determination or other act or proceeding of the Auditor-General or an authorised person or act or omission or proposed act or omission by the Auditor-General or an authorised person may, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, *certiorari*, or in any other manner whatsoever.

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

ROMA MITCHELL Governor