1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BANKING (STATE BANK OF SOUTH AUSTRALIA AND OTHER MATTERS) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Honourable Ralph Willis, MP)

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BANKING (STATE BANK OF SOUTH AUSTRALIA AND OTHER MATTERS) BILL 1994

GENERAL OUTLINE

The purpose of this Bill is to enact Commonwealth legislation to facilitate compliance with the conditions of the Commonwealth's special assistance package provided to South Australia that relate to the State Bank of South Australia (SBSA).

On 17 February 1993, the Prime Minister issued a press release stating that the Commonwealth Government was prepared to provide special assistance to South Australia with a net present value of $600 million, in order to help the State reduce its debt burden. In recognition of this assistance, South Australia undertook to meet certain conditions. The conditions relating to the SBSA were that:

the SBSA be sold as quickly as practicable consistent with achieving a fair market price;

the SBSA be brought into the Commonwealth's tax net free of tax losses from 1 July 1994; and

the SBSA be brought under the prudential supervision of the Reserve Bank of Australia no later than 1 July 1994 by legislation.

The process of preparing for the sale of the SBSA involves the creation of a new corporatised entity from 1 July 1994, to be named the Bank of South Australia Limited (BSAL), and the transfer of various assets of the SBSA to the new bank. The previous Commonwealth Treasurer undertook to facilitate South Australia's compliance with the above conditions through Commonwealth legislation where necessary or justified. In order to carry out this undertaking, the Bill:

amends the *Banking Act 1959* to accommodate the referral of banking powers over the State Bank to the Commonwealth; and

- amends the *Income Tax Assessment Act 1936* to facilitate the process of subjecting the bank to Commonwealth taxes.

The Bill also contains a number of other minor amendments to various Acts which are intended to streamline the transfer of assets from the SBSA to the new corporatised bank. These include amendments to:

- the *Corporations Law* - to allow bulk notification to the Australian Securities Commission (ASC) of the change of chargee of a group of registered company charges and to enable the ASC to deregister subsidiaries of SBSA which have been dissolved under South Australian legislation;

- the *Privacy Act 1988* - to provide relief from the provisions of the Privacy Act in relation to the passing of customer information from the SBSA to BSAL; and

the *Income Tax Assessment Act 1936*, the *Fringe Benefits Assessment Act 1986* and the *Taxation Laws Amendment Act (No.2) 1992* - dealing with transitional issues associated with the transfer of assets from the SBSA to the new bank and the imposition of Commonwealth taxes, including to enable SBSA customers' tax file numbers to be transferred to BSAL.

The amendments to the *Income Tax Assessment Act 1936* include provisions to deny deductions to BSAL for superannuation contributions or eligible termination payments in respect of unfunded liabilities accumulated as at 30 June 1994.

The Bill also includes a number of minor amendments to the *Banking Act 1959* and the *Reserve Bank Act 1959* to streamline their administration.

The amendments to the *Banking Act 1959* will:

require branches of foreign banks to notify the Treasurer of any proposed arrangements, agreements or reconstructions of a foreign bank. If the Treasurer and the Governor-General are satisfied that these arrangements would not be in the national interest, this amendment gives the Governor-General in Council power to revoke the foreign bank's licence; and

- remove the need for the Treasurer, under section 70, to formally agree to the institution of proceedings against an offence under the Act.

The amendments to the *Reserve Bank Act 1959*, pass the responsibility for granting leave of absence from Reserve Bank Board meetings from the Treasurer to the Reserve Bank Board and set out the rule that members must not take part in a decision of the Board granting, or refusing to grant, leave to that member. If the members break this rule their appointment shall be terminated.

FINANCIAL IMPACT STATEMENT

With the proposed tax amendments, Commonwealth revenue would be higher. The amendments for unfunded superannuation liabilities deny deductions worth about $45 million to ensure that these expenses, which are currently non-deductible to SBSA or a tax exempt subsidiary of SBSA, will remain non-deductible to BSAL. Compared with the current situation, the revenue impact would be neutral. The remaining tax provisions will not have a significant impact on revenue.

ABBREVIATIONS

The following abbreviations are used in this memorandum:

SBSA	State Bank of South Australia
BSAL	Bank of South Australia Limited
ITAA	Income Tax Assessment Act 1936
ASC	Australian Securities Commission
TFN	Tax File Number

NOTES ON CLAUSES

CHAPTER 1 - PRELIMINARY

Clause 1 - Short Title

This clause provides for the Act to be cited as the *Banking (State Bank of South Australia and Other Matters) Act 1994*.

Clause 2 - Commencement

The provisions of this legislation will commence on receipt of Royal Assent except for:

Part 2.1 (other than sub-clauses 5(2) and 6(2) which refer to transitional arrangements bringing BSAL under most of the provisions of the *Banking Act 1959*, once complementary legislation has been passed by the South Australian Parliament. The provisions will come into effect by Proclamation. The date of Proclamation will not precede commencement of the relevant State legislation and will not exceed six months after commencement of the State Act.

sub-clauses 5(2) and 6(2) which will bring BSAL under all remaining provisions of the *Banking Act 1959*, including Division 1 of Part II. Once the Reserve Bank of Australia has processed the BSAL's formal application for a banking authority and all prudential requirements have been met, clearing the way for BSAL to receive an authority under the *Banking Act 1959*, these provisions will come into effect by Proclamation. Notwithstanding these processes, BSAL is subject to Reserve Bank prudential supervision.

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

PART 2.1 - AMENDMENT OF THE BANKING ACT 1959

Clause 3 - Object of Part

The object of this part is to facilitate the restructuring of the SBSA by subjecting its successor, BSAL, to regulation under the *Banking Act 1959*.

Clause 4 - Principal Act

This clause is self-explanatory.

Clause 5 - Interpretation

This clause amends the definition of "bank" in the Principal Act to include "Bank of South Australia Limited" until BSAL receives an authority under section 9 of the Principal Act. At that time, the definition of "bank" will again be amended to exclude BSAL.

Clause 6 - Application of Act

Sub-clause 6(1) amends section 6 of the Principal Act by inserting a new subsection (1B) which provides that Part II (other than Division 1), Part V, and sections 61, 62, 64, 65, 68 and 69 of the Act apply to BSAL. The subsection is to come into force as set out in subclause 2(2). The new subsection 6(1B) is so drafted because the Commonwealth will have no legislative power to apply

Division 1 of Part II of the Act to BSAL for so long as subsection 21(2) of the proposed State Act referring State banking powers to the Commonwealth remains in force.

Subclause 6(2) amends subsection 6(1B) of the Act to provide that all of Part II and section 63 of the Act are to apply to BSAL. This subsection is expressed to come into force (see subclause 2(4)) on a day to be fixed by Proclamation. The subsection may not come into force before subsection 21(2)(a) of the proposed State Act ceases to have effect. As the proposed State Act has not yet been enacted, it is not possible in subclause 2(4) to relate the Proclamation date to the date on which subsection 21(2) of the proposed State Act will cease to have effect.

PART 2.2 - AMENDMENT OF THE CORPORATIONS LAW

Part 2.2 contains amendments to the Corporations Law to facilitate the sale of SBSA by:

modifying the application of the requirements in subsection 268(1) of the Corporations Law concerning the registration of charges; and

empowering the ASC to cancel the registration of certain companies which are subsidiaries of the State Bank of South Australia, upon receipt of notification that these companies have been declared to be dissolved under relevant provisions of the *State Bank (Corporatisation) Act 1994* (referred to in the following paragraphs as "the South Australian Act").

Division 1 - Corporations Law

Clause 7 - Corporations Law

Clause 7 provides that for the purposes of Part 2.2 of the Act, "Corporations Law" means the Corporations Law set out in section 82 of the *Corporations Act 1989*.

Division 2 - Modification of rules relating to the assignment of charges

Clause 8 - Object of Division

Clause 8 provides that the object of the Division is to facilitate the restructuring of the SBSA by modifying the rules relating to the notification of the assignment of registrable charges.

Clause 9 - Insertion of new section

Subsection 268(1) of the Corporations Law provides that, where a person other than the original chargee becomes the holder of a registered charge, he or she must notify the ASC within 45 days of becoming the holder of the charge and give the company a copy of that notice. The effect of this provision is that a person becoming the holder of multiple charges must lodge separate notices in the prescribed form (Form 311 of the Corporations Regulations) in respect of each charge. Regulation 42 of the Corporations (Fees) Regulations provides for the payment of a fee in respect of each notice lodged under subsection 268(1).

Given the significant number of charges which would need to be notified to the ASC, it is considered appropriate that the requirements of section 268 be relaxed in respect of the SBSA to enable "bulk" notification of relevant charges, rather than requiring a separate notice to be lodged with the ASC in respect of each charge.

Clause 9 provides for the insertion of proposed section 268A following section 268. Proposed section 268A provides for the relaxation of the requirements of section 268 in relation to the operations of the State Bank.

Proposed section 268A - assignment of charges under the *State Bank (Corporatisation) Act 1994* of South Australia

Subsection 268A(1) provides for the proposed section to apply where the SBSA or the BSAL become the holders of registrable charges on property as a result of sections 7 or 23 of the South Australian Act, or a corresponding law of another State or Territory.

The effect of proposed subsection 268A(2) is that the SBSA or the BSAL ("the person") may lodge a notice stating that it has become the holder of the charges.

Proposed subsection 268A(3) provides that the notice must be in a form approved by the ASC. Proposed subsection 268A(4) provides that the notice must be lodged within six months of the commencement of the South Australian Act ("the initial period") or such longer period as the ASC allows. Under proposed subsection 268A(5), the ASC may only allow a longer period for lodgement if an application is made for such an extension within the initial period, and the ASC is satisfied that having regard to the nature of the charges it would not be practicable for the notice to be lodged within the initial period.

Proposed subsection 268A(6) provides that a person (the SBSA or the BSAL) who lodges a notice under proposed subsection 268A(2) in respect of a number of charges, is taken, for the purposes of the Corporations Law and the Corporations (Fees) Regulations to have lodged a separate notice in respect of each charge in accordance with subsection 268(1), and to have given a copy of each of those notices to the company in accordance with that subsection.

Proposed subsection 268A(7) provides that if a charge is constituted by a debenture or debentures, and there is a trustee for debenture holders, a reference in proposed section 268A to the chargee is a reference to that trustee.

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

Clause 10 - Object of Division

Clause 10 provides that the object of the Division is to facilitate the restructuring of the SBSA by modifying the rules about the deregistration of companies.

Where the notice procedures in subsection 572(2) or (3) or subsection 573(5) of the Corporations Law have been complied with, subsection 574(1) of the Corporations Law enables the ASC to deregister a defunct company by publishing a notice in the Gazette. Subsection 574(1) also provides that a company deregistered by the ASC is taken to have been dissolved from that time, but that the dissolution of the company does not affect the liability of officers and members of the company and also does not affect the power of a Court to wind up the company.

The South Australian Act provides for the transfer of the assets and liabilities of the subsidiaries of the SBSA to the SBSA and for the Governor of South Australia, by proclamation, to dissolve certain of these subsidiaries vesting all of the assets and liabilities of such subsidiaries in the SBSA. These provisions in the South Australian Act providing for the transfer of all of the assets of the subsidiaries of the SBSA to the SBSA and for the making of a Proclamation declaring that those

subsidiaries are dissolved will provide public notice of the intended dissolution of those companies, such that an exemption would be warranted from the usual notice procedures in sections 572-574 of the Corporations Law. This Division provides a mechanism to ensure that those dissolved subsidiaries are effectively taken off the ASC's company register, and to deal with assets which may not have been transferred effectively by the South Australian Act (such as those outside that jurisdiction).

Clause 11 - Insertion of new section

Clause 11 provides that after section 574 of the Corporations Law is inserted proposed section 574A.

Proposed section 574A - Deregistration of companies dissolved under the *State Bank (Corporatisation) Act 1994* of South Australia

Proposed subsection 574A(1) provides that the section applies where the Minister of the Crown of South Australia responsible for the administration of the South Australian Act notifies the ASC in writing that a company has been dissolved under section 23 of that Act.

Proposed subsection 574A(2) provides that the ASC must, by notice published in the Gazette, cancel the registration of the company, subject to the safeguards that the liability (if any) of every officer and members of the company continues, and the continuation of the court's ability to wind up the company.

Proposed subsection 574A(3) provides that the Corporations Law has effect as though a notice under proposed subsection 574A(2) were a notice under subsection 574(1).

Proposed subsection 574A(4) provides that subsection 576(1) of the Corporations Law only operates to vest property of the dissolved company in the ASC to the extent (if any) to which the property is not vested in the SBSA under subsection 23(2) of the South Australian Act.

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

Division 1 - Preliminary

Clause 12 - Object of Part

This clause provides that the object of this Part is to modify the operation of the Privacy Act 1988 to facilitate the restructuring of the SBSA.

Clause 13 - Interpretation

This clause provides that an expression used in this Part and in the Privacy Act 1988 has the same meaning in this Part as it has in that Act.

Clause 14 - Definitions

This clause contains definitions of the following terms: account; appointed day; borrower; designated subsidiary of the SBSA; eligible customer; re-transfer provision; and, transfer provision. These terms are used in the operative provisions of Part 2.3.

Clause 15 - State banking

This clause is a constitutional provision. It ensures that the Bill does not purport to regulate intra State banking or insurance activities except where specific provision is made.

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

Clause 16 - Transfers to Bank of South Australia Limited

This clause provides that upon transfer of a loan or prospective loan from the SBSA, or a designated subsidiary of the SBSA, to BSAL, BSAL will become the credit provider for the purposes of the Privacy Act as if it were the original credit provider. The provision will ensure that a transferred loan that was "credit" provided by the SBSA or a designated subsidiary will be "credit" provided by BSAL.

Clause 17 - Re-transfers to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia

This clause provides that upon re-transfer of a loan or prospective loan from BSAL to the SBSA or a designated subsidiary, the SBSA or the designated subsidiary will become the credit provider for the purposes of the Privacy Act as if they were the original credit provider. The re-transfer provision is required in cases where an account, for one reason or another, has been mistakenly transferred to BSAL. For the purposes of sub-clause 17(1)(b) of the Bill, in most cases it would be expected that a loan or prospective loan will be credit provided by BSAL because of the operation of sub clause 16(2) of the Bill.

Division 3 - Disclosure of reports

Subdivision A - Transfers to Bank of South Australia Limited

Clause 18 - Disclosure of information about transferred eligible customers

This clause provides that the SBSA or a designated subsidiary or an agent of either, may disclose a report, or personal information derived from a report, to BSAL, or an agent of BSAL, without breaching the Privacy Act or Code of Conduct issued pursuant to that Act.

Sub-clauses 18(1)(a), (b), (c) and (d) set down the conditions for the disclosure of information. In essence, the disclosure will not breach section 18N of the Privacy Act where it is facilitating the transfer of on-going business from SBSA or a designated subsidiary, to BSAL. These conditions, of themselves, do not place limits on the subsequent use of the information by BSAL. This is because section 18N and clause 18 deal only with the act of disclosure by the SBSA or a designated subsidiary. It is anticipated that BSAL will use the information in its on-going business.

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

Clause 19 - Disclosure of information where account is re-transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia.

Where it is necessary to re-transfer an account to the SBSA or a designated subsidiary, this clause provides that BSAL, or an agent of BSAL, may disclose a report, or personal information derived from a report, to the SBSA or a designated subsidiary, or an agent of either, without breaching the

Privacy Act or Code of Conduct issued pursuant to that Act. As with clause 18, this provision will provide conditions for the disclosure. These conditions apply only to disclosure of the information and, of themselves, do not limit subsequent use.

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

Clause 20 - Disclosure of information where Bank of South Australia Limited manages the account of an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia.

This clause deals with the situation where BSAL manages the account of an eligible customer of the SBSA, or a designated subsidiary, as agent of that Bank or subsidiary. In such cases, disclosure of a report or personal information derived from a report, by the SBSA, a designated subsidiary, or an agent of either, to BSAL, will not amount to a breach of the Privacy Act or Code of Conduct issued pursuant to that Act.

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

Clause 21 - Disclosure of information where a designated subsidiary of the State Bank of South Australia is about to be dissolved.

Paragraph 18N(1)(d) of the Privacy Act allows for the disclosure of a report or information by a credit provider that is a corporation, to a related corporation. This clause provides that the SBSA is deemed to be a related corporation of a designated subsidiary where the designated subsidiary is about to be dissolved in accordance with section 23 of the South Australian *State Bank (Corporatisation) Act 1994*.

Division 4 - Authorities and notifications

Subdivision A - Transfers to Bank of South Australia Limited

Clause 22 - Authorities relating to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to relate to Bank of South Australia Limited

This clause deals with the situation where an eligible customer of the SBSA, or a designated subsidiary, has given an authority to disclose, use or receive a credit report or other information in relation to their affairs. In such cases, this clause deems that upon the transfer of an account from the SBSA, or a designated subsidiary, to BSAL, the authority will be taken to have been given to the BSAL. This will allow the BSAL to act on that authority without causing undue disruption to the provision of services. Examples of provisions under which authorities are given include subsection 18L(4) and paragraphs 18K(1)(b) and 18N(1)(b) of the Privacy Act.

Clause 23 - Notifications given by the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to have been given by the Bank of South Australia Limited

This clause provides that upon the transfer of an account from the SBSA or a designated subsidiary to BSAL, any notification given by the SBSA or a designated subsidiary, to an eligible customer, will be deemed to have been given by BSAL. Where, for example, the SBSA has informed eligible customers that disclosure of certain information to a person may take place, that notification will allow the BSAL to continue to disclose information in this manner. Examples of provisions under

which notifications are given include paragraph 18E(8)(c) and sub-subparagraph 18N(1)(bg)(ii)(C) of the Privacy Act.

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

Clause 24 - Authorities relating to Bank of South Australia Limited deemed to relate to the State Bank of South Australia or the designated subsidiary concerned

This clause deals with the situation where an eligible customer of BSAL has given an authority to BSAL to disclose, use or receive a credit report or other information in relation to their affairs, (including where the authority is taken to have been given to BSAL under clause 22). In such cases, this clause deems that upon the re-transfer of an account from BSAL, to the SBSA or a designated subsidiary, the authority will be taken to have been given to the SBSA or the designated subsidiary. This will allow the SBSA or designated subsidiary to act on that authority without causing undue disruption to the provision of services.

Clause 25 - Notifications given by the Bank of South Australia Limited deemed to have been given by the State Bank of South Australia or the designated subsidiary concerned

This clause provides that upon the re-transfer of an account from BSAL to the SBSA or a designated subsidiary, any notification given by BSAL to an eligible customer, (including where the notification is taken to have been given by BSAL under clause 23), will be deemed to have been given by the SBSA or the designated subsidiary. Where, for example, BSAL has informed eligible customers that disclosure of certain information to a person may take place, that notification will allow the SBSA to continue to disclose information in the same manner.

Division 5 - Deletion of information from credit information files

Subdivision A - Transfers to Bank of South Australia Limited

Clause 26 - Credit reporting agencies that have been given information about overdue payments

Subsection 18F(3) of the Privacy Act places an obligation on a credit provider in certain circumstances to notify a credit reporting agency of certain matters relating to overdue payments. Upon the transfer to BSAL of an account to which subsection 18F(3) applies, this clause will operate to place the reporting obligations on BSAL.

Clause 27 - Credit reporting agencies that have previously been informed about current credit provider status

Subsection 18F(5) of the Privacy Act places an obligation on a credit provider to notify, in certain circumstances, a credit reporting agency when it ceases to be a current credit provider in relation to an individual. Upon the transfer of an account to BSAL, this clause will deem that the relevant credit reporting agency had been informed that BSAL were the current credit provider in relation to the individual. BSAL will therefore assume the reporting obligations pursuant to subsection 18F(5).

Clause 28 - Credit provider ceasing to be current credit provider

This clause provides that the transfer of accounts from the SBSA or a designated subsidiary, to BSAL, such that the SBSA or a designated subsidiary ceases to be the current credit provider, will

not operate to invoke the reporting obligation under subsection 18F(5) of the Privacy Act. Under clause 27, BSAL assumes an obligation under subsection 18F(5) in relation to transferred accounts.

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

Clause 29 - Credit reporting agencies that have been given information about overdue payments

Subsection 18F(3) of the Privacy Act places an obligation on a credit provider in certain circumstances to notify a credit reporting agency of certain matters relating to overdue payments. Upon the re-transfer to SBSA or a designated subsidiary of an account to which subsection 18F(3) applies, this clause will operate to place the reporting obligations on the SBSA or the designated subsidiary.

Clause 30 - Credit reporting agencies that have previously been informed about current credit provider status

Subsection 18F(5) of the Privacy Act places an obligation on a credit provider to notify, in certain circumstances, a credit reporting agency when it ceases to be a current credit provider in relation to an individual. Upon the re-transfer of an account to the SBSA or a designated subsidiary, this clause will deem that the relevant credit reporting agency had been informed that the SBSA or the designated subsidiary was the current credit provider in relation to the individual. The SBSA or the designated subsidiary will therefore assume the reporting obligations pursuant to subsection 18F(5).

Clause 31 - Credit provider ceasing to be current credit provider

This clause provides that the re-transfer of accounts from BSAL to the SBSA or a designated subsidiary, such that BSAL ceases to be the current credit provider, will not operate to invoke the reporting obligation under subsection 18F(5) of the Privacy Act. Under clause 30, SBSA or the designated subsidiary assumes an obligation under subsection 18F(5) in relation to transferred accounts.

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

Clause 32 - Publication of information about the operation of this Part

This clause places an obligation on either the SBSA or BSAL to inform customers of the general effect of the modifications to the Privacy Act affecting the transfer of accounts from SBSA or a designated subsidiary, to BSAL. Notification will include a reference to the types of information disclosed and authorities and notifications to be transferred.

Subclause 32(4) provides that failure to comply with the obligation imposed under clause 32 will be taken to be a credit reporting infringement by SBSA and BSAL, and therefore be subject to investigation by the Privacy Commissioner under Division 1 of Part V of the Privacy Act.

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

Clause 33 - This Part to be disregarded in determining the meaning that a provision of the Privacy Act 1988 has apart from this Part

This clause provides that modifications to the operation of the Privacy Act designed to facilitate the corporatisation of the SBSA will not have any bearing on the interpretation of any sections of the Privacy Act except where provided by this Part of the Bill.

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

The purpose of Part 2.4 is to modify the application of the ITAA to facilitate the corporatisation of the BSAL in accordance with the conditions for the financial assistance package provided by the Commonwealth to South Australia.

Background to the Legislation

Depreciation

Section 55 of the ITAA, substituted by the *Taxation Laws Amendment Act (No. 2) 1992*, determines the diminishing value depreciation rate applicable to a unit acquired or constructed after 26 February 1992. Considering the more concessional nature of the new section 55, subsections 66(3) to (5) of the *Taxation Laws Amendment Act (No. 2) 1992* were inserted to prevent a taxpayer from converting pre-27 February 1992 property to post-26 February 1992 property by, for example, transferring pre-27 February 1992 property to an associate.

Prior to BSAL being fully privatised, those provisions will apply to deem BSAL to be an associate of the SBSA or a subsidiary of SBSA and BSAL will not be able to use the new section 55 depreciation rates to property transferred from SBSA or a subsidiary of SBSA.

Nevertheless, it is intended that the financial relationships and transactions between the SBSA group and BSAL will be conducted on an arm's length commercial basis and it would be consistent with that intention to allow BSAL to use the new depreciation rates.

The new provision will allow BSAL to depreciate property transferred from SBSA or a subsidiary of SBSA according to the post-26 February 1992 depreciation regime as if the property had been acquired from an unrelated party.

Development allowance and general investment allowance

A development allowance in the form of a tax deduction, in addition to depreciation, is available under Subdivision B of Division 3 of Part III of the ITAA. The deduction is available where a taxpayer incurs capital expenditure on or after 27 February 1992 in connection with the acquisition or construction of a new unit of eligible property.

A general investment allowance, also in the form of a tax deduction, in addition to depreciation, is available under Subdivision BA of Division 3 of Part III of the ITAA. The deduction is available where a taxpayer incurs capital expenditure on or after 9 February 1993 and before 1 July 1994 on the acquisition or construction of new plant costing at least $3,000.

Section 82AD of the ITAA allows a leasing company, by declaration in writing, to transfer to the lessee the benefit of the whole or a part of the deduction that the company would have been entitled to under Subdivision B or Subdivision BA.

However, a taxpayer may be disqualified from the development allowance in certain circumstances. For example, section 82AG of the ITAA provides that Subdivisions B and BA do not apply and shall be deemed never to have applied where the property is disposed of within 12 months after the property was first used, or installed ready for use, by the taxpayer. Consequently, a deduction that would have been allowable to a lessee under section 82AD will be denied unless the property was disposed of to the lessee.

The transfer of property to BSAL will constitute a disposal in the context of section 82AG. Consequently, a deduction for development allowance or general investment allowance will not be allowed in relation to relevant property transferred to BSAL within 12 months after the property was first used or installed ready for use.

The new provision will treat BSAL as the original taxpayer or original leasing company in place of SBSA or an SBSA subsidiary for the purposes of Subdivision B and Subdivision BA of Division 3 of Part III of the ITAA.

Accordingly, a lessee who became entitled to a deduction because of a declaration made by SBSA or a subsidiary of SBSA pursuant to section 82AD will continue to be allowed a deduction notwithstanding the transfer. Moreover, BSAL will be allowed the deduction in place of SBSA or a subsidiary of SBSA where a unit of eligible property acquired, constructed or commenced to be constructed by SBSA or a subsidiary of SBSA is transferred over and eventually installed ready for use.

Customer tax file numbers

Section 8WB of the *Taxation Administration Act 1953* (TAA) makes it an offence to record or divulge a person's TFN to a third person except to the extent required or permitted by or reasonably necessary to comply with a taxation law or a law of the Commonwealth as specified in section 202 of the ITAA. Also, paragraph 2 of the Tax File Number Guidelines 1992 issued under section 17 of the *Privacy Act 1988* prohibits TFN recipients from using or disclosing TFN information except for a purpose authorised under taxation or assistance agency law.

As part of the restructuring plan, SBSA customers will be transferred to BSAL. As a result, it will be necessary for those customers to quote their TFN to BSAL. Failure to quote a TFN means that BSAL must withhold an amount on account of tax from any income it pays which it becomes liable to pay in connection with the investment [subsection 221YHZC(1A)]. The amount of tax is calculated as the maximum personal marginal tax rate plus Medicare levy irrespective of when the investment was made.

Similarly, where a customer is exempted from quoting their TFN, nevertheless, it will be necessary for that customer to provide the required information to BSAL.

In the circumstances, it would be unreasonable to require customers whose accounts are transferred to BSAL to quote their TFN or, in the case of customers who are exempted from quoting their

TFNs, to provide the required information to BSAL (notwithstanding that the TFNs or the information has previously been provided to SBSA).

The new provision will enable SBSA or a subsidiary of SBSA to transfer the customer TFN information to BSAL, provided customers are given an opportunity to object to the transfer of this information. This will relieve customers from having to quote their TFN or provide the required information to BSAL if they have already provided that information to SBSA or a subsidiary of SBSA.

Superannuation payments

Section 82AAC of the ITAA allows an employer a deduction for superannuation contributions. Further, an eligible termination payment made by an employer is potentially deductible under either subsection 51(1) or subsection 78(11) of the ITAA.

BSAL will assume responsibility for the unfunded superannuation liability in relation to employees transferred from SBSA or a subsidiary of SBSA. It is expected that BSAL will either undertake to fund the liability by making contributions over and above what is required to fund its current superannuation liability in respect of those employees, or alternatively, make eligible termination payments to retiring employees in relation to the unfunded liability.

One of the conditions for the financial assistance package provided by the Commonwealth to South Australia is that the SBSA be brought into the Commonwealth's tax net free of tax losses.

Consistent with that condition, the new provision will reduce a deduction that would have been available to BSAL for a superannuation contribution or eligible termination payment to the extent that the payment is attributable to the unfunded liability assumed by BSAL.

Division 1- Preliminary

Clause 34 - Object of Part

This clause provides that the object of this Part is to facilitate the restructuring of the SBSA by modifying the effect of certain provisions of the income tax law.

Clause 35 - Interpretation

This clause provides that an expression used in this Part has the same meaning as in the ITAA.

Clause 36 - Definitions

This clause defines "designated subsidiary of the SBSA" to mean a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia and also defines "transfer provision" to mean either section 7 of the *State Bank (Corporatisation) Act 1994* of South Australia or a corresponding provision of a law of another State or of a Territory.

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

Clause 37 - Amendments to allow Bank of South Australia Limited to benefit from the post-26 February 1992 depreciation regime

This clause deems BSAL and SBSA or a subsidiary of SBSA not to be and never to have been associates for the purposes of section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*. This will allow BSAL to depreciate property transferred from SBSA or a subsidiary of SBSA according to the post-26 February 1992 depreciation regime.

Division 3 - Development allowance and general investment allowance

Clause 38 - Development allowance and general investment allowance

Subclause 38(1) limits the operation of the new section to a unit of property acquired, constructed or commenced to be constructed by SBSA or a subsidiary of SBSA that is transferred to BSAL as part of the corporatisation exercise.

Subclause 38(2) deems Subdivisions B and BA of Division 3 of Part III of the ITAA to apply and to have always applied as if each of the required conditions for a deduction under the Subdivisions is met by BSAL instead of SBSA or its subsidiary. Specifically:

> property acquired, constructed or commenced to be constructed by SBSA or its subsidiary is deemed to have been acquired, constructed or commenced to be constructed by BSAL;
>
> the amount of capital expenditure incurred by SBSA or its subsidiary is deemed to have been incurred by BSAL;
>
> where SBSA or its subsidiary had acquired the property, BSAL is deemed to have acquired the property at the time the property was acquired by SBSA or its subsidiary; and
>
> where SBSA or its subsidiary had constructed or commenced construction on the property, BSAL is deemed to have constructed or commenced construction at the time the property was constructed or commenced to be constructed by SBSA or its subsidiary.

This provision will treat BSAL as if it is and has always been the original taxpayer or leasing company in place of SBSA or a subsidiary of SBSA for the purposes of allowing a development allowance or a general investment allowance.

Division 4 - Transfer of tax file number information

Subdivision A - Transfers to Bank of South Australia Limited

Clause 39 - When Subdivision applies

Clause 39 limits the operation of Subdivision A to the transfer of TFN information quoted or deemed to have been quoted for the purposes of the TFN provisions of the ITAA in connection with an account or a deposit transferred to BSAL from SBSA or its subsidiary.

This Subdivision also applies where an account or a deposit is proposed to be transferred, so that the requirements of the Subdivision may be met before the actual transfer of the account or deposit. This will enable both the account or deposit and the corresponding TFN information to be transferred at the same time. This will ensure that BSAL is not required to withhold an amount on account of tax from any income it becomes liable to pay on an account or a deposit transferred over before the TFN information.

Clause 40 - Eligible tax file number information

Clause 40 specifies the kind of TFN information that may be transferred for the purposes of Division 4. Such information, referred to as 'eligible TFN information', is defined as follows:

> if an investor actually quoted a TFN to the SBSA or its subsidiary as required under the TFN provisions in the ITAA - that TFN and information connecting that number to the investor;
>
> if section 202DDA of the ITAA deems an investor to have quoted a TFN to SBSA or its subsidiary because an interposed entity had quoted an investment body remitter number to SBSA or its subsidiary as required - the investment body remitter number and the information connecting that number with the investor;
>
> if section 202DDB of the ITAA deems an investor to have quoted a TFN to SBSA or its subsidiary as required because the investor is an interposed entity not required to quote a TFN to a secondary investment body - the TFN of the primary investor involved and the information connecting that number with the primary investor;
>
> if section 202EB of the ITAA deems an investor to have quoted a TFN to SBSA or its subsidiary as required because the investor is a pension recipient - the information provided by the investor as required under section 202EB; and
>
> if section 202EC of the ITAA deems an investor to have quoted a TFN to SBSA or its subsidiary as required because the investor is a body corporate or an unincorporated association not required to lodge a tax return - the information provided by the investor as required under section 202EC.

Clause 41 - Eligible tax file number information may be disclosed to Bank of South Australia Limited

Clause 41 is the operative provision of Subdivision A. It allows SBSA or a designated subsidiary to disclose eligible TFN information (as defined) to BSAL provided that it publishes notices and provided also that the investor does not object to the disclosure.

Clause 42 - Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

Clause 42 provides that SBSA or a subsidiary of SBSA may notify investors about the proposal to disclose eligible TFN information to BSAL by publishing a notice both in a newspaper circulating generally throughout Australia and in a newspaper circulating generally throughout South Australia. It also stipulates the information that is to be included in that notice.

Clause 43 - Consequences of disclosure of eligible tax file number information to Bank of South Australia Limited

Subclause 43(1) explains the consequences of disclosure by SBSA or its subsidiary of eligible TFN information to BSAL. Where the eligible TFN information is disclosed, the investor is deemed to have quoted to BSAL his or her TFN under Division 4 of Part VA of the ITAA in connection with the investment at the stipulated time.

Subclause 43(2) prevents an investor who had actually quoted a TFN to SBSA or its subsidiary from being considered an "exempt person" according to the definition of the term under subsection 202DG(2A) of the ITAA for the purposes of subsection 202DG(2) of the ITAA. Without such a provision, the effect of the transfer of eligible TFN information to BSAL under Subdivision A will be that all transferred investors would be "taken to have quoted his or her tax file number" under

subclause 43(1) of this Bill. Accordingly, all investors would be exempt persons for the purposes of section 202DG of the ITAA.

Clause 44 - Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

Clause 44 applies to an investor who is deemed to have quoted a TFN under section 202EC of the ITAA because the investor is a body corporate or an unincorporated association not required to lodge a tax return. Subsection 202EC(4) of the ITAA makes it an offence if:

> the entity is still an investor in relation the investment at the end of a year of income;
>
> the entity becomes obliged to furnish an return (under section 161 of the ITAA) in respect of that year of income; and
>
> the entity fails to inform the investment body of its TFN or of its obligation to lodge a return within 2 months after the end of the year of income.

Where an account is transferred from SBSA or its subsidiary before 1 July 1994, this clause makes it an offence if the entity fails to inform BSAL of its TFN or its obligation to lodge when it becomes liable to lodge a tax return in respect of the year ending 30 June 1994.

Where an account is transferred after 30 June 1994, this clause makes it an offence if the entity fails to inform SBSA or the relevant SBSA subsidiary of its TFN or of its obligation to lodge a return in respect of the year of income ending 30 June 1994. If the entity remains an investor with BSAL as at the end of the following year of income and the other conditions of subsection 202EC(4) are met, it will be required to inform BSAL of its TFN or of its obligation to lodge a return, notwithstanding that the entity would have provided the information to SBSA or its subsidiary in relation to the year of income ended 30 June 1994.

Subdivision B - Re-transfers to the State Bank of South Australia

Clause 45 - When Subdivision applies

Clause 45 limits the operation of Subdivision B to the transfer of TFN information from BSAL to SBSA deemed to have been quoted for the purposes of the TFN provisions of the ITAA in connection with an account or a deposit that is transferred back to SBSA under a re-transfer provision.

Clause 46 - Eligible tax file number information may be disclosed to the State Bank of South Australia

Clause 46 is the operative provision of Subdivision B. It allows BSAL to disclose eligible TFN information (as defined) to SBSA provided that BSAL publishes notices and provided also that the investor does not object to the disclosure.

Clause 47 - Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

Clause 47 provides that BSAL may notify investors about the proposal to disclose eligible TFN information to SBSA by publishing a notice both in a newspaper circulating generally throughout Australia and in a newspaper circulating generally throughout South Australia. It also stipulates the information that is to be included in that notice.

Clause 48 - Consequences of disclosure of eligible tax file number information to the State Bank of South Australia

Subclause 48(1) explains the consequences of disclosure by BSAL of eligible TFN information to SBSA. Where the eligible TFN information is disclosed, the investor is deemed to have quoted to SBSA his or her TFN under Division 4 of Part VA of the ITAA in connection with the investment at the stipulated time.

Subclause 48(2) prevents an investor who had actually quoted a TFN to SBSA or its subsidiary from being considered an "exempt person" according to the definition of the term under subsection 202DG(2A) of the ITAA for the purposes of subsection 202DG(2) of the ITAA. Without such a provision, the effect of the retransfer of eligible TFN information from BSAL to SBSA under Subdivision B will be that retransferred investors would be "taken to have quoted his or her tax file number" under subclause 48(1) of this Bill. Accordingly, all investors would be exempt persons for the purposes of section 202DG of the ITAA.

Clause 49 - Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

Clause 49 applies to an investor who is deemed to have quoted a TFN under section 202EC of the ITAA because the investor is a body corporate or an unincorporated association not required to lodge a tax return. Subsection 202EC(4) of the ITAA makes it an offence if:

> the entity is still an investor in relation the investment at the end of a year of income;
>
> the entity becomes obliged to furnish an return (under section 161 of the ITAA) in respect of that year of income; and
>
> the entity fails to inform the investment body of its TFN or of its obligation to lodge a return within 2 months after the end of the year of income.

This clause makes it an offence if the entity fails to inform SBSA of its TFN or of its obligation to lodge a tax return as required under subsection 202EC(4) of the ITAA.

Subdivision C - Common provisions

Clause 50 - Division deemed to be a taxation law for the purposes of section 8WB of the *Taxation Administration Act 1953*

Clause 50 deems Division 4 to be a taxation law for the purposes of section 8WB of the TAA. This means that disclosure of eligible TFN information under this Division will not be an offence under section 8WB of the TAA.

Clause 51 - Disclosure of tax file number information under this Division taken not to be in breach of guidelines under the *Privacy Act 1988*

Clause 51 will ensure that any disclosures of a TFN, or TFN information (as defined under the Privacy Act) in accordance with Division 4 of Part 2.4 of the Bill, will not be considered to breach the Tax File Number Guidelines issued under section 17 of the Privacy Act.

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

Clause 52 - Reduction of deductions allowable to Bank of South Australia Limited, and associates of Bank of South Australia Limited, in respect of certain superannuation contributions and eligible termination payments

Subclause 52(1) provides for the reduction of deductions in respect of certain superannuation contributions and eligible termination payments that would ordinarily be allowable to BSAL or its associate(s) but for this clause. The deductions that are reducible deductions for the purposes of this provision are:

- superannuation contributions made in respect of ex-employees of SBSA or a tax-exempt subsidiary that would have been deductible to BSAL or its associate under section 82AAC of the ITAA, and

  eligible termination payments (apart from bona fide redundancy payments and approved early retirement scheme payments) made in respect of ex-employees of SBSA or a tax-exempt subsidiary that would have been deductible to BSAL or its associate under the ordinary provisions of the ITAA.

This clause only covers superannuation contributions and eligible termination payments made before a date specified by Proclamation. This is in recognition of the fact that at some point in the future this provision may become obsolete when the liabilities that accrued prior to the transfer of staff from the SBSA or a tax-exempt subsidiary have been extinguished.

Subclause 52(2) provides the formula to be used in determining the extent to which each relevant deduction will be reduced. The following are the components of the formula:

"Pre-transfer amount for the year" is defined to mean so much of the aggregate of the reducible deductions allowable to BSAL and its associate(s) that relate to the current actuarial value of liabilities that accrued to the SBSA or its tax-exempt subsidiary on the day before staff were transferred to BSAL or its associate(s). In determining the current actuarial value, reliance may be placed on the latest triennial actuarial valuation report where an authorised actuary is of the opinion that the report is a reasonable reflection of the current actuarial value.

"Total reducible deductions for the year" is defined to mean the aggregate of the reducible deductions that would have been allowable to BSAL and its associate(s) for the year of income but for this provision.

Subclause 52(3) provides that no deduction will be allowable to BSAL or its associate for any part of a reducible deduction unless BSAL or its associate, as the case requires, obtains a certificate from an authorised actuary reflecting the "pre-transfer amount for the year" used in the taxpayer's calculation of the extent to which a reducible deduction is reduced.

Subclause 52(4) explains the meaning of certain terms used in the clause. The terms have the following meaning:

"approved early retirement scheme payment" and "bona fide redundancy payment" are defined as having the same meanings as in the superannuation provisions of the ITAA;

"associate" is defined in very broad terms. It has the same meaning as in section 26AAB of the ITAA;

"authorised actuary" is defined as meaning a Fellow or an Accredited Member of the Institute of Actuaries of Australia. This is to ensure that, where required, the actuary's certificate is obtained from an independent, professionally recognised actuary;

"designated ETP" is defined more narrowly than the term "eligible termination payment" in the superannuation provisions of the ITAA. A designated ETP is confined to an eligible termination payment made by an employer (in contrast to such a payment made by a superannuation fund);

"employment" is defined to include the holding of an office. This will ensure that an eligible termination payment or a superannuation contribution made in respect of an office holder is covered by these provisions;

- "ex-employee" is defined to mean a person who is or has been transferred from SBSA or its subsidiary as part of the corporatisation exercise in accordance with the provisions of the *State Bank (Corporatisation) Act 1994* of South Australia;

- "in consequence of the termination of employment" is defined as having the same meaning as in the superannuation provisions in the ITAA. Although this term is not defined in the ITAA, there is ample case law dealing with its definition. Those cases are also to be applied in the context of this clause;

"Proclaimed day" is defined to mean the day on which this clause will cease to apply to BSAL and its associate(s). From this day, BSAL and its associate(s) will be entitled to a full deduction for a superannuation contribution or an eligible termination payment of the kind covered by this clause; and

"tax exempt designated subsidiary of the SBSA" is defined to mean a subsidiary of the SBSA that is exempt from tax.

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

The purpose of this part is to modify the application of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) relating to car fringe benefits to facilitate the restructuring of the BSAL in accordance with the conditions for the financial assistance package provided by the Commonwealth to South Australia.

Background to the Legislation

Ordinarily, if a taxpayer acquires a car and provides it to an employee, fringe benefits tax will be based on the amount the employer paid for the car. However, section 9 of the FBTAA contains a safeguard to prevent an artificial reduction in the base value (and hence the taxable value). The section provides that the original cost or market value, as the case may be, is determined at the time when the car was first held by the employer or an associate of the employer whoever held it earlier.

Prior to BSAL being fully privatised, BSAL will be an associate of SBSA or a subsidiary of SBSA for the purposes of section 9 of the FBTAA. This will mean that where BSAL acquires a car from SBSA or a subsidiary and provides it to an employee, fringe benefits tax will be based on the original cost or market value of the car, not to BSAL, but to SBSA or the relevant subsidiary of SBSA.

Nevertheless, because the transactions between the SBSA group and BSAL will be conducted on an arm's length commercial basis it is proposed to modify the effect of section 9.

The new provision will allow BSAL, in relation to a car transferred from SBSA or a subsidiary of SBSA, to calculate the taxable value of a car fringe benefit provided to an employee as if the car had been acquired from an unrelated party.

Clause 53 - Object of Part

The object of this clause is to modify the application of the FBTAA relating to car fringe benefits to facilitate the restructuring of the BSAL in accordance with the conditions for the financial assistance package provided by the Commonwealth to South Australia.

Clause 53 provides that the object of this Part is to facilitate the restructuring of the SBSA by modifying the effect of provisions of the fringe benefits tax law relating to car fringe benefits.

Clause 54 - Car benefits

Clause 54 deems BSAL and SBSA or a subsidiary of SBSA not to be and never to have been associates for the purposes of section 9 of the FBTAA. This means that where BSAL acquires a car from SBSA or a subsidiary and provides it to an employee of BSAL, this provision will allow BSAL to calculate the taxable value of a car fringe benefit on the basis of the cost of the car to BSAL.

CHAPTER 3 - OTHER MATTERS

PART 3.1 - AMENDMENT OF THE BANKING ACT 1959

Division 1 - Principal Act

Clause 55 - Principal Act

This clause is self-explanatory.

Division 2 - Amendments relating to the restructuring of foreign banks

Clause 56 - Objects of Division

The objects of this Division are:

to give the Governor-General the power to revoke a banking authority granted to a foreign bank if he is satisfied that a restructuring of the bank is contrary to the national interest; and

to require a foreign bank to give the Treasurer reasonable notice of a proposal to restructure the bank.

Clause 57 - Authority to carry on banking business

Section 9 of the Principal Act is amended by inserting a new sub-section, (8C), giving the Governor-General, on the recommendation of the Treasurer, power to revoke an authority granted to a foreign bank. This section would be invoked if a foreign bank enters into an arrangement, agreement or reconstruction of its business such that the Governor-General is satisfied that it would be contrary to the national interest for that foreign bank to continue to carry on banking business in Australia.

Clause 58 - Restructuring of banks

Section 63 of the Principal Act is amended by providing that subsections (1) - (3) do not apply to a foreign bank, and adding subsection (4) which requires a foreign bank to give the Treasurer reasonable written notice of a proposal to enter into an arrangement, agreement or reconstruction of the bank.

Division 3 - Amendment relating to prosecution of offences

Clause 59 - Object of Division

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

Clause 60 - Repeal of section 70

This clause is self-explanatory.

PART 3.2 - AMENDMENT OF THE RESERVE BANK ACT 1959

Clause 61 - Object of Part

The object of this part is to allow the Reserve Bank Board to grant a leave of absence to a member of the Board, rather than require the Treasurer to grant such applications.

Clause 62 - Principal Act

This clause is self explanatory.

Clause 63 - Termination of appointment

This clause amends the Principal Act to ensure that the responsibility for granting leave of absence to members of the Reserve Bank Board from Reserve Bank Board meetings passes from the Treasurer to the Reserve Bank Board.

Clause 64 - Insertion of new section

This clause inserts a new section which is intended to establish the Board's power to grant leave of absence conferred by section 18A and by setting out the rule that members not take part in a decision of the Board granting, or refusing to grant, leave to that member. That is, Board members will not be allowed to vote on a motion about granting themselves a leave of absence. If the members break this rule their appointment would be terminated.

Clause 65 - Application

This clause states that the amendments apply in relation to meetings of the Board held after the commencement of this section.

Clause 66 - Transitional - pre-commencement grant of leave of absence

This clause explains that if the Treasurer grants leave of absence to a Reserve Bank Board member before commencement of this section, the decision has the effect as if it were a decision of the Board.